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Federal Election Commission

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Reports

Electronic Filing Update: Enhanced Version of Free Software Available, Committees Now Transmitting Reports Directly to FEC

The FEC is moving ahead with its electronic filing program. In March, the second version of the agency's free electronic filing software, FECFile, became available. This new version has a number of enhancements, such as importing capabilities, direct modem and Internet transmission capabilities, data purging (the ability to maintain records over a long period of time) and data masking (restricted data entry fields to assist the user in entering the correct information).

Now, electronic filers can send their computer-prepared reports electronically through a direct transmission to the FEC. To take advantage of this, committees must use the new Digital Encrypted Password (DEP) system being implemented by the FEC. Committees that choose to send their reports through a direct dial connection (via a modem) or a TCP/IP (Internet access) will no longer be required to send a hard copy of the report's Summary Page containing the

(continued on page 2)

Legislation

FEC Legislative Recommendations Submitted to President and Congress

On March 12, the Commission submitted 60 proposals to President Bill Clinton and the U.S. Congress for legislative action. If adopted, the recommendations would ease the burden on political committees and streamline the administration of campaign finance law.

Most of the legislative recommendations are designed to reduce some of the difficulties encountered by committees in complying with FEC laws and regulations. Here are four examples:

- *Electronic Filing Threshold.* Grant the FEC the authority to require electronic filing of reports by committees that meet a specific level of financial activity. This would result in better use of government and political committee resources.
- *Campaign-Cycle Reporting.* Revise current regulations to require that political committees report on a campaign-cycle basis rather than on both calendar-year and per-election bases. This would simplify burdensome and confusing recordkeeping and reporting duties for committees.

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Reports

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treasurer's signature.¹ Instead, the committee treasurer will need to establish a password, which will be transmitted to the FEC along with the encrypted file and the committee's FEC identification number.

¹ Please note, certain report schedules require additional documentation: Schedule C1 requires a bank signature and Schedule E and Schedule F require a Notary stamp. If you are a committee choosing to file electronically, on diskette, and you are required to file any of the above schedules you must submit hard copies of any of the applicable schedules as well as the signed Summary Page with your diskette. If you are filing through a direct dial connection or TCP/IP, you must send a hard copy of the above schedules to the following address: Federal Election Commission, Electronic Filing Office—Room 431, 999 E Street, NW, Washington, DC 20463.

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

800/424-9530
202/694-1100
202/501-3413 (FEC Faxline)
202/219-3336 (TDD for the
hearing impaired)
800/877-8339 (FIRS)

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Lee Ann Elliott, Commissioner
Danny L. McDonald,
Commissioner
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Commissioner

John C. Surina, Staff Director
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Counsel

Published by the Information
Division

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<http://www.fec.gov>

Committees that do not want a password may still request the new version of FECFile and submit their reports on a diskette, but they will not be able to transmit their filings through direct dial or TCP/IP connections.

Last year, the FEC contracted with a software company to provide a user friendly computer program that would generate the required electronic filing format for committees. The result, the first version of FECFile, was distributed to 24 committees (consisting of candidate, party and political action committees) that consented to serve as the FEC's software testing group. October 1997 marked FECFile's official release. Currently, 490 committees have requested and received FECFile. Of those committees, more than 50 have already filed monthly or quarterly reports electronically.

Committees interested in more information about the FEC's new DEP system should call the Electronic Filing Office at 202/694-1293 or 800/424-9530 (press 5 and ask for the Electronic Filing Office) or the Data Division at 202/694-1250. Call the same numbers to receive a free copy of the latest version of FECFile, or fax the order form on the next page to 202/219-0674. ♦

Electronic Filing, Internet Access Gain Following

More than 50 political committees have filed their 1997 year-end and 1998 monthly disclosure reports electronically with the FEC, demonstrating a growing interest in the Commission's efforts to implement electronic filing.

In January 1997, the Commission began a voluntary electronic filing program to make reporting disclosure information more efficient for both filers and the agency. Of the 42 electronic filers who submitted year-end reports on diskette, 32 were PACs, one was a party committee

and nine were candidate committees. Included in the latter were three incumbents—Bruce Vento of Minnesota and Dan Schaefer and Bob Schaffer, both of Colorado. For more information about electronic filing—and the FEC's free electronic filing software called FECFile—call the FEC's Electronic Filing Office at 202/694-1293 or 800/424-9530 (press 5 and ask for the Electronic Filing Office) or the Data Division at 202/694-1250.

Disclosure Reports on Internet

Internet-accessible disclosure reports are also catching on with the regulated community and with those interested in federal campaign financing. Earlier this year, the FEC made digital images of all the reports filed by PACs, political parties and Presidential and House campaigns for the 1998 election cycle available for immediate viewing on the Internet (<http://www.fec.gov>). This site is updated regularly with the latest filings. Callers to the FEC's offices have been told that they can immediately view filed reports on the agency's web site as an alternative to ordering copies from Public Records. During January and February, these images on the web were "hit" more than 300,000 times, significantly expanding the scope and timeliness of the Commission's disclosure efforts.

In all, the FEC's Public Disclosure division made public more than 123,000 pages of the 5,500 year-end reports submitted to the Commission. Those reports were available for viewing—on the Internet or at the FEC's offices—within 24 to 48 hours of their receipt. ♦

April Reporting Reminder

Committees filing on a quarterly basis must file their first quarterly report by April 15. Those filing on a monthly basis have a report due on April 20.

In addition to filing quarterly reports, committees of candidates



FECFile Order Form

Do you want to file your FEC reports electronically? The FEC will mail you a copy of its new, free electronic filing software—FECFile. Mail or fax this form to the address/number below. Currently, FECFile operates on Windows95 and WindowsNT platforms.

FEC Identification Number _____

Committee Name _____

Electronic Filing Contact Name _____

Address: Street 1 _____

Address: Street 2 _____

City _____

State _____

Zip Code _____

Phone Number _____

Fax Number _____

E-mail Address _____

Federal Election Commission
Data Division—Room 431
999 E Street, NW
Washington, DC 20463
Fax: 202/219-0674

active in the 1998 primary and runoff elections must file pre-election reports and may have to file 48-hour notices. PACs and party committees filing on a quarterly basis may also have to file pre-election reports and 24-hour reports of independent expenditures.

For more information on 1998 reporting dates:

- See the reporting tables in the January 1998 *Record*;
- Call and request the reporting tables from the FEC at 800/424-9530 (press 1) or 202/694-1100;

- Fax the reporting tables to yourself using the FEC's Faxline (202/501-3413, documents 586 and 587); or
- Visit the FEC's web site at <http://www.fec.gov> to view the reporting tables on line. ♦

Legislation

(continued from page 1)

- *Election Period Limitations.* Apply a single contribution limit to an election cycle, instead of separate

limits for primary and general elections. This provision would eliminate complicated and time-consuming bookkeeping requirements for committees.

- *Ensuring Independent Authority of FEC in All Litigation.* Grant the FEC the explicit authority to petition the U.S. Supreme Court for certiorari under Title 2. This would ensure nonpartisan enforcement of the law.

Public Funding Recommendations

The Commission has also developed new recommendations to specifically address the projected shortfall in 2000 of the Presidential Election Campaign Fund.

- *Automatic Adjustment of the Presidential Election Checkoff.* Index the value of the checkoff (currently fixed at \$3) to inflation, similar to the automatic adjustment to the spending limits and the corresponding public subsidies.
- *Priorities for Public Funding Payments.* Make the national nominating conventions the third priority for receiving payments, rather than the first priority, and devise an alternative mechanism for allocating funds between primary and general election candidates.
- *Qualifying Threshold for Eligibility for Primary Matching Funds.* Raise the threshold for publicly funded Presidential candidates—currently, a Presidential primary candidate must raise in excess of \$5,000 in each of at least 20 states—and make it adjustable for inflation.

Each of the 60 recommendations in the report is followed by an explanation of the need for and expected benefits from the recommended change. To view the full list of legislative recommendations, visit the FEC's web site at <http://www.fec.gov>. ♦

Court Cases

National Committee of the Reform Party v. FEC

On February 27, the U.S. District Court for the Northern District of California dismissed this case after agreeing with the FEC that the plaintiffs had failed to state a claim upon which relief could be granted.

The National Committee of the Reform Party, groups aligned with Ross Perot and an individual eligible to vote in the United States alleged that parts of the Presidential Election Campaign Fund Act and the Federal Election Campaign Act (the Act) were unconstitutional. The Reform Party also alleged that the Democratic and Republican national party committees and the campaign committees of their 1996 presidential candidates had violated federal election law by exceeding the Act's coordinated expenditure limits by millions of dollars. Citing the 1996 public funding pay out for presidential nominees, the Reform Party claimed that it was unfairly held to the same \$61.8 million expenditure limit as applied to the major party nominees even though it received only \$29 million in public funds and the major party candidates received the full amount. See page 2 of the [January 1998 Record](#).

U.S. District Court for the Northern District of California, C97-4048. ♦

New Litigation

Hollenbeck v. FEC

Pennsylvania resident Thomas Hollenbeck asks the court to find that the FEC acted in an arbitrary and capricious manner when it took no action on his complaint that a former candidate for federal office had accepted excessive contributions in the form of three loans.

In May 1997, Mr. Hollenbeck filed an administrative complaint

with the FEC alleging that Michael Becker, who in 1994 ran for the House of Representatives in Pennsylvania's 13th district, had accepted three loans totaling \$33,400 during that election cycle from one individual, Claire Clemens. The FEC designated the complaint MUR 4641, examined the relevant information and declined to take action.

Additionally, Mr. Hollenbeck asks the court to overturn the FEC's action, determine appropriate punishment for Mr. Becker and order a federal investigation into a charge that in 1996 the loans influenced Mr. Becker—in his role as a township supervisor—to vote to approve a measure that was favorable to the lender.

U.S. District Court for the District of Columbia, 98-469, February 12, 1998. ♦

Judicial Watch, Inc., v. FEC

Judicial Watch, Inc., a nonprofit, public interest organization, asks the court to find that the FEC acted contrary to law when it dismissed its administrative complaint that alleged that Democratic groups traded government favors for large campaign contributions.

On August 26, 1996, Judicial Watch filed the administrative complaint with the FEC. In it, the group alleged that the White House, the Democratic National Committee (DNC), the U.S. Department of Commerce and President Bill Clinton and his administration sold seats on foreign trade missions sponsored by the Commerce Department for campaign contributions that frequently exceeded \$100,000. Judicial Watch contended that the contributions went to the DNC and the Clinton/Gore 1996 reelection campaign. Such actions would constitute a violation of 18 U.S.C. §600, which makes it unlawful to promise any special benefit or treatment as a reward for political activities in support of or opposition

to a particular candidate, election or political event, such as a convention or caucus.

On December 15, 1997, the Commission voted to take no action on Judicial Watch's complaint, citing the information pertaining to the allegations, the relative significance of the case and the amount of time that had elapsed. Judicial Watch contends this decision was arbitrary and capricious.

In addition to finding the Commission's actions contrary to law, Judicial Watch also asks the court to direct the Commission to conform with such a directive within 30 days after it is made. The organization also asks the court to retain jurisdiction over the matter in the event that the Commission again fails to take action on its administrative complaint.

U.S. District Court for the District of Columbia, 98-386, February 13, 1998. ♦

FEC v. Al Salvi for Senate Committee

The FEC asks the court to find that the Al Salvi for Senate Committee and its treasurer violated the Federal Election Campaign Act (the Act) when they misreported and failed to report in a timely manner more than \$1.1 million in contributions and loans during the 1996 election cycle.

More specifically, the Commission alleges that the Committee:

- Reported bank loans to Mr. Salvi as personal loans from the candidate, never identifying the source of the funds;
- Failed to report debts to the candidate;
- Failed to file 48-hour notices for personal advances from the candidate; and
- Failed to disclose campaign-related payments by the candidate to vendors and a bank.

The Commission became aware of the reporting errors during the

normal course of reviewing committee reports and after receiving an administrative complaint questioning the accuracy of the Committee's reports. Despite being told of the inaccuracies, the Committee failed to comply with the Act and properly amend its reports until five months after Mr. Salvi's primary election. 2 U.S.C. §434(a)(6)(A), 2 U.S.C. §434(b) and 11 CFR 104.3(d).

In addition to asking the court to find that the Committee violated federal election law, the FEC asks the court to assess a civil penalty against the Committee and its treasurer and to enjoin them from committing further violations of the Act.

U.S. District Court for the Northern District of Illinois, Eastern Division, 98C-1321, March 3, 1998. ♦

On Appeal?

Clifton v. FEC

The U.S. Supreme Court **denied** Maine Right to Life Committee's petition for certiorari in this case, after the U.S. Court of Appeals for the First Circuit denied requests from both the FEC and the plaintiffs for a rehearing en banc. In June 1997, the First Circuit invalidated two parts of the FEC's regulations that govern publication of voting guides and voting records by corporations and labor organizations. See page 1 of the [August 1997 Record](#). ♦

Federal Register

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

Notice 1998-7

Filing Dates for the California Special Election (63 FR 9232, February 24, 1998)

Notice 1998-8

Public Hearing on Definition of Member of a Membership Association (63 FR 10783, March 5, 1998)

Compliance

MUR 4608 New York Committee Pays Penalty, Agrees to Take Remedial Steps to Improve Reporting

The New York State Democratic Committee and its treasurer have agreed to pay a \$45,000 civil penalty for improper reporting of expenditures and debts during the 1994 election cycle.

In addition to paying the civil penalty, the Committee must take the following steps:

- Implement accounting procedures designed to identify and detect reporting errors and substantive irregularities;
- Contract with an accounting firm to conduct a review of all disclosure records in order to bring them up-to-date and in compliance with the Federal Election Campaign Act (the Act) and Commission regulations;
- Require all new Committee personnel who will be involved with FEC compliance matters to attend an FEC training conference or comparable training program;
- Prepare an internal training manual to supplement Committee personnel's understanding of the Act and Commission regulations; and
- Purchase and use a computerized reporting format that has been approved by the FEC.

The Committee filed its 1994 30 Day Post General report, disclosing 98 disbursements totaling \$272,007 that were identified as either "GOTV" (get-out-the-vote) or "voter registration" expenses. This identification was inadequate. 11 CFR 104.3(b)(3)(i)(B). The Committee also failed to include payee addresses for 86 disbursements totaling \$48,411.

The Commission's Reports Analysis Division (RAD) ques-

tioned the Committee's reporting omissions in early 1995, but the Committee did not amend the report until March 1996, and, even then, the amended report did not include all the information that had been requested.

The Committee also reported \$403,899 in debts and a cash-on-hand balance of negative \$145,487 on its 1994 Year End report. RAD also questioned these figures. In a second amendment to the report, the Committee reported debts of \$611,925 and cash on hand at \$33,211. Thus, on its original and first amended 1994 Year End report, the Committee failed to disclose \$208,000 in debts. ♦

MUR 3770 UPSPAC's Improper Solicitations

The United Parcel Service PAC has paid a \$9,000 civil penalty to the FEC for failing to tell its contributors that they had the right to refuse to contribute without the fear of any reprisals for such actions, a violation of 2 U.S.C. §441b(b)(3)(C).

Between 1989 and 1992 and again in 1995, UPS solicited its executive and administrative personnel with a presentation involving a scripted introduction, a video tape or slide show and scripted remarks about the importance of making contributions to UPSPAC. In written and oral solicitations, UPS officials stated that all contributions were voluntary and would neither benefit nor disadvantage contributors' jobs. The solicitations, however, failed to contain language advising contributors of their right to refuse to contribute to the PAC without reprisal.

The Federal Election Campaign Act states that all solicitations for contributions to a separate segregated fund must inform the person

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Compliance

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being solicited, at the time of such solicitation, that he or she has a right to refuse to contribute without any reprisal. 2 U.S.C. §441b(b)(3)(C). Commission regulations further state that this requirement must be followed with regard to all written solicitations addressed to employees. 11 CFR 114.5(a)(5).

In addition to paying the penalty, UPS agreed to inform its employees of their right to refuse to contribute without reprisal in all future solicitations. ♦

Nonfilers

Eddie Bernice Johnson, who is running in the primary in Texas's 30th Congressional District, failed to file a pre-primary report. The FEC is required by law to publicize the names of nonfiling candidate committees. 2 U.S.C. §438(a)(7). The agency pursues enforcement actions against nonfilers on a case-by-case basis. ♦

Regulations

Commission Declines Rulemaking on Express Advocacy

On February 12, the Commission declined to open a rulemaking to revise its definition of express advocacy set out at 11 CFR 100.22. The Commission's action came in response to a petition from the James Madison Center for Free Speech. The petitioner had asked the Commission to repeal 11 CFR 100.22(b) to conform with the 1997 decision of the U.S. Court of Appeals for the First Circuit in *Maine Right to Life Committee v. FEC (MRLC)*, which found the provision unconstitutional.

The challenged paragraph defines express advocacy as a communication that is "unmistakable, unambiguous, and suggestive of only one meaning, and [from which] reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action." The ruling left intact paragraph 100.22(a), which defines "express advocacy" to include words or phrases that specifically call for the election or defeat of a clearly identified candidate. The petitioners had asked for the rulemaking following the Supreme Court's refusal to review the Circuit Court decision. The petitioner also claimed that the Commission had violated the Administrative Procedure Act by failing to follow the First Circuit's ruling on a nationwide basis.

The U.S. Court of Appeals for the Fourth Circuit reached a similar conclusion to *MRLC* in *FEC v. Christian Action Network* that same year. However, in 1987, the appellate court for the Ninth Circuit had found in *FEC v. Furgatch* that "context is relevant to a determination of express advocacy." The Ninth Circuit opinion, on which 11 CFR 100.22(b) is largely based, thus conflicts with the opinions of the First and Fourth Circuits. It is well established that the decision of one U.S. circuit court of appeals is not binding outside its circuit and that the Supreme Court's declining to hear a case implies nothing as to the merits of the lower court decision. Where circuit court opinions disagree, the Supreme Court has long recognized that an agency is free to adhere to its preferred interpretation of regulations and laws in all circuits where the courts have not rejected such interpretation.

Additionally, the Commission continues to believe that the definition of express advocacy at paragraph 100.22(b) is constitutional.

Public Hearing

The FEC has scheduled a public hearing on April 29 at 10 a.m. to hear testimony about its proposed changes to the rules that define who qualifies as a "member" of a membership association. The hearing will be held in the FEC hearing room at 999 E Street, NW, in Washington, DC.

The deadline for requests to testify and accompanying comments is April 6. For more details about the Notice of Proposed Rulemaking and more information about how to participate in the hearing, see page 1 of the [March 1998 Record](#).

For example, in *FEC v. Massachusetts Citizens for Life* (1986), the Supreme Court held that materials that were "marginally less direct than 'vote for Smith'" were, nevertheless, express candidate advocacy, even though the materials themselves stated that they were not endorsing particular candidates.

In light of its decision, the Commission published a Notice of Disposition on this matter in the February 19 *Federal Register* (63 FR 8363). Copies of the General Counsel's recommendation are available from the FEC's Public Records Office (call 800/424-9530, press 3). The document also is available through the FEC's Faxline (call 202/501-3413, document 232). ♦

Testimony Yields Guidance for Reporting and Recordkeeping Revisions

Testimony at a public hearing on February 11 addressed several issues raised by the FEC's reporting and recordkeeping requirements.

Keith Davis, of Huckaby, Davis, and Associates, delivered his remarks in response to the Commission's Notice of Proposed

Rulemaking (NPRM), which contains draft revisions to 11 CFR 102.9, 104.3 and part 108. The changes are mostly technical in nature and are intended to update, clarify and simplify current requirements for recordkeeping, reporting and filing with state officers.

In his testimony before the Commission, Mr. Davis discussed: reporting loan repayments; filing a Schedule C-1 in connection with a line of credit; reporting (and itemizing) disbursements paid by credit card; filing amendments to previously filed reports; and changes proposed for the Commission's disclosure forms. He responded to multiple questions from the Commissioners concerning those issues. In addition, he urged that the Commission implement any changes to the current recordkeeping and reporting requirements no earlier than the next election cycle, or 1999.

To find out more about this NPRM and the public hearing:

- Review the transcript of the public hearing, which includes comments and questions from Commissioners and FEC staff. Call the Public Records Office at 800/424-9530 (press 3). Callers can also review five written comments received in response to the NPRM by calling Public Records.
- Read the FEC's NPRM in the September 26, 1997, *Federal Register* (62 FR 50708) or request the document from the FEC Faxline at 202/501-3413 (request document 231).
- Visit the FEC's web site at <http://www.fec.gov> for a downloadable copy of the NPRM.
- See the October 1997 and January 1998 issues of the *Record* for summaries of the NPRM and public hearing notice. ♦

Advisory Opinions

AO 1997-27 Use of Campaign Funds for Legal Expenses

Congressman John Boehner and his campaign committee, Friends of John Boehner, may use campaign funds to pay the legal expenses incurred in evaluating and pursuing a lawsuit involving the interception of a cellular telephone conversation in which he was a participant. If damages are awarded as a result of the lawsuit, Mr. Boehner may not receive any tax or other financial benefit from them.

In December 1996, Mr. Boehner—using a cellular telephone—participated in a conference call with several other members of the House of Representatives. The telephone call was intercepted, taped and released to the public without the knowledge or consent of any of the participants. The released information included conversation about what was then soon-to-be-released findings from the House Ethics Committee concerning activities undertaken by House Speaker Newt Gingrich.

Under 18 U.S.C. §2520, a person whose electronic communication is intercepted, disclosed or intentionally used in violation of the Electronics Communications Privacy Act of 1986 (ECPA) may seek civil action against the person who engaged in the violation. Mr. Boehner intends to retain an attorney and pursue legal remedies available under this section of Title 18. Any damages that Mr. Boehner receives will be used to defray the costs of the litigation (including repayments to the Boehner Committee for the amounts it paid), and any leftover funds will be donated to a tax exempt, charitable organization.

The Federal Election Campaign Act prohibits a candidate from

converting campaign funds to personal use. 2 U.S.C. §439a. Commission regulations define personal use as “any use of funds in a campaign account...that would exist irrespective of the candidate's campaign or duties as a federal officeholder.” 11 CFR

113.1(g)(1)(i). When a specific use is not listed in the regulations, as in the case of legal expenses, the Commission examines the use of campaign funds on a case-by-case basis. 11 CFR 113.1(g)(1)(ii)(A).

A private right of action under ECPA is available to any person. However, the particular activity for which Mr. Boehner seeks judicial remedy resulted directly from the pursuit of his duties as a federal officeholder. His conversation pertained specifically to House business and was in pursuit of his duties as a member of the House Republican leadership. The recording and dissemination of the conversation occurred as a result of interest in its content and in the fact that the participants in the conversation were House Republican leaders. The legal expenses thus would not exist irrespective of Mr. Boehner's duties as a federal officeholder. Campaign funds may therefore be used to cover expenses provided that Mr. Boehner receives no direct or indirect tax or other financial benefit from the award or use of damages.

The disbursements for the legal expenses should be reported within the category “other disbursements,” with the purpose noted. 11 CFR 104.3(b)(2)(vi) and (4)(vi). If Mr. Boehner receives an award as a result of the lawsuit, the proceeds repaid to the Committee should be reported under the category, “offsets to operating expenditures,” with the purpose noted. 11 CFR 104.3(a)(3)(ix) and 104.3(a)(4)(v).

Date Issued: February 23, 1998;
Length: 4 pages. ♦

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Advisory Opinions

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AO 1997-28

Reactivation of Terminated Committee

W. Ben Bius may reactivate his principal campaign committee, Ben Bius Committee (the Committee), revoke his prior forgiveness of a \$92,000 personal loan made to the Committee and conduct fundraising to retire the reinstated debt.

Mr. Bius was a 1996 candidate in the Republican primary to represent Texas's 2nd Congressional District. His committee filed a termination report on July 15, 1996. Before the termination, Mr. Bius forgave \$92,000 in campaign loans that he had given to the committee from his personal funds with the understanding that the amount would be deductible against capital gains under the tax code. Subsequently, he learned that this tax information, supplied to him by a certified public accountant, was incorrect.

A committee may terminate provided it will no longer receive contributions or make disbursements, and as long as it has no outstanding debts or obligations. A political committee may terminate its filing obligations and status after filing a valid termination report with the FEC, either on the appropriate agency form or with a written statement containing the same information. 11 CFR 102.3(a)(1).

Because Mr. Bius is dealing with a unique mistake stemming from erroneous advice, the Committee may be reinstated and begin fundraising anew—subject to the Federal Election Campaign Act's limits and prohibitions—to retire the revived debt of \$92,000.

The Committee is required to file reports covering the entire period from the last report that it filed through the end of 1997. One report should cover all of calendar year 1996, except the period covered by the Committee's pre-primary election report. A second filing

should cover all of calendar year 1997. These reports must be filed within 30 days of receipt of the advisory opinion. The Committee must also file reports covering its 1998 activity on a semi-annual schedule.

Date Issued: March 6, 1998;
Length: 3 pages. ♦

AO 1997-29

Status of State Party as State Committee of Political Party

The Green Party of New Mexico meets both of the Commission's requirements for state committee status and thus is bona fide state committee under FEC regulations.

The Federal Election Campaign Act (the Act) defines a state committee as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission." 2 U.S.C.

§431(15). The definition of a state committee requires the existence of a political party. A political party is "an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization." 2 U.S.C. §431(16).

In a number of advisory opinions starting with AO 1992-30, the Commission has identified two requirements necessary for state political committee status. First, the organization must have a state affiliate agreement that "delineates activities commensurate with the day-to-day operation" of a party at a state level. Second, the state affiliate must gain ballot access for its Presidential and other federal candidates. See AO 1997-7, 1997-3, 1996-51, 1996-43, 1996-27 and 1995-49.

The Green Party of New Mexico meets both requirements. In ad-

ressing the first requirement, the party's bylaws set out a comprehensive organizational structure for the party from the statewide level down through local levels. These bylaws do indeed delineate activity commensurate with the day-to-day functions and operations of a political party on the state level. The second requirement of ballot access also has been satisfied. Three of four federal candidates who have represented the Green Party in the state attained ballot access and registered their principal campaign committees and filed disclosure reports with the FEC. Additionally, three of these candidates qualified as candidates under 2 U.S.C. §431(2) by virtue of the fact that their campaigns raised or spent \$5,000 or more during election cycles in 1994, 1996 or 1998.

Date Issued: February 12, 1998;
Length: 3 pages. ♦

AO 1998-1

Use of Campaign Funds for Legal Expenses

Alabama Representative Earl F. Hilliard and the Hilliard for Congress Campaign (the Committee), his principal campaign committee, may use campaign funds to partially pay for legal expenses incurred as the result of newspaper allegations made against Mr. Hilliard and his committee. A Washington newspaper questioned Mr. Hilliard's conduct before and during his tenure as a federal officeholder. The law firm will provide research and advice on Mr. Hilliard's dealings with the media, law enforcement and oversight entities (including the FEC) and the House Committee on Standards of Official Conduct (House Ethics Committee). Some of the legal expenses will be payable from campaign funds—either with 100 percent campaign funds or 50 percent campaign funds—if they meet certain criteria listed below.

Allegations of Wrongdoing and Aftermath

In December 1997, Mr. Hilliard was the subject of a two-part series of articles that alleged a number of instances of wrongdoing by him, the Committee, his district congressional offices and businesses and charities that are owned and controlled by Mr. Hilliard and his family. In summary, the newspaper alleged that:

- The Committee had made excessive payments and loans to Hilliard businesses and charities, and to Hilliard family members.
- Mr. Hilliard had failed to fully disclose his business interests to the House Ethics Committee.
- Mr. Hilliard's district office in Birmingham, AL, was used for Committee activities and for Mr. Hilliard's non-election-related businesses, resulting in improper payments from federal funds and rental payments that were excessive.
- Mr. Hilliard had failed to disclose a negative cash balance for several months on his FEC disclosure reports.
- Mr. Hilliard and his businesses and charities had engaged in other improper activities, including failure to pay taxes in a timely manner, default on a \$300,000 loan from Birmingham, and unlawful use of tax funds for a Hilliard-owned radio station. None of these allegations was directly related to Mr. Hilliard's duties as a federal officeholder or to his campaigns for office, and some occurred before he was elected to the House in 1992.

Several weeks later, an article appeared in another Washington newspaper indicating that the House Ethics Committee had opened an inquiry into whether Mr. Hilliard had violated House rules in his use of campaign funds and district office resources. The newspaper article also indicated that the House

Ethics Committee might explore Mr. Hilliard's business activities that took place before he was elected.

Mr. Hilliard has denied any wrongdoing and has retained the law firm Cochran & Lotkin to assist him further. The firm already has reviewed the allegations and the federal election law. It will monitor media reports, conduct an independent investigation of the allegations, review documents in order to help Mr. Hilliard respond further to the allegations, and conduct legal research to help Mr. Hilliard and the Committee in their dealings with the Commission and other oversight agencies.

Legal Analysis

The Federal Election Campaign Act (the Act) prohibits a candidate from converting campaign funds to personal use. 2 U.S.C. §439a. Commission regulations define personal use as "any use of funds in a campaign account...that would exist irrespective of the candidate's campaign or duties as a federal officeholder." 11 CFR 113.1(g)(1)(i). When a specific use is not listed, as in the case of legal expenses, the Commission examines the use of campaign funds on a case-by-case basis. 11 CFR 113.1(g)(1)(ii)(A).

Moreover, activities of candidates and officeholders may receive heightened attention in the news media because of the person's status. AOs 1997-12 and 1996-24. Mr. Hilliard's need to respond to media allegations that result from this heightened scrutiny would not exist irrespective of his campaign or officeholder status.

For such cases, the Commission has developed an approach to payment of legal fees by an authorized committee that takes into account the high level of media attention focused on the officeholder and the unavoidable overlap between the legal services needed to

respond to the press and to respond in legal proceedings, even when the media reported allegations are not directly related to campaign or officeholder activities. Based on criteria established in AO 1997-12,¹ Mr. Hilliard's committee may use campaign funds to partially cover the legal expenses incurred as a result of the newspaper allegations. The first four allegations listed above arise directly out of Mr. Hilliard's status as a federal candidate and/or officeholder, and, as such, may be paid for with 100 percent campaign funds. Some of the fifth set of allegations listed above occurred prior to Mr. Hilliard's candidacy and service in the House; others occurred while Mr. Hilliard was in office but did not directly relate to his officeholder status. In these cases, if the House Ethics Committee considers these activities in its inquiry—thus, making the response to the charges directly related to his duties as a federal officeholder—then 100 percent of the fees for responding to the charges may be paid with campaign funds.

With respect to the press allegations that did not directly arise from campaign or officeholder duties, however, the Committee cannot cover 100 percent of the expenses. If an agency other than the House

(continued on page 10)

¹ Any legal expenses that relate directly and exclusively to dealing with the press would qualify for 100 percent payment with campaign funds. Any legal expenses that relate directly to allegations arising from campaign or officeholder activity would qualify for 100 percent payment with campaign funds. Legal expenses that do not fall into the first category and do not directly relate to allegations arising from campaign or officeholder activity would qualify for 50 percent payment with campaign funds because the candidate is providing substantive answers to press questions beyond "no comment" statements.

Advisory Opinions

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Ethics Committee reviews or investigates activities occurring before Mr. Hilliard's 1992 candidacy and if the Congressman needs to provide substantive responses to the press regarding these activities, the Committee may pay up to 50 percent of the legal expenses for responding to an agency regarding such activities. If an agency other than the House Ethics Committee is investigating allegations of wrongdoing that occurred after 1992 involving Mr. Hilliard's businesses and charities, but not involving his campaign or district offices, then any legal expenses would be 50 percent payable by the Committee if Mr. Hilliard needs to respond to the press as to those activities. If, in either of the two examples given above, legal expenses are incurred for responding to the investigating agency's request for information from the Committee or for information related to the conduct of district offices, then the Committee may pay those expenses with 100 percent campaign funds.

Legal expenses that are paid with campaign funds should be reported as operating expenditures on FEC disclosure forms, with the purpose noted. Billing documentation submitted by the law firm should provide sufficient detail about the services to allow the Committee to determine which expenses can be lawfully covered with campaign funds.

Date Issued: February 27, 1998;
Length: 7 pages. ♦

AO 1998-2 Status of Reform Party's National Committee and State Affiliates

Reform Party USA is a "national committee" for purposes of the Federal Election Campaign Act (the Act), and 29 Reform Party affiliates,

through this opinion, have gained the status of state committees.

Reform Party USA began its activities in 1992, and in 1995 a number of state parties joined with individuals interested in establishing a new national party. The assemblage nominated Ross Perot as its 1996 Presidential candidate and Pat Choate as its Vice-Presidential candidate. Both Mr. Perot and Mr. Choate gained ballot access as Reform Party candidates in all 50 states, and several state Reform Parties also obtained ballot access for other federal candidates. The Perot/Choate ticket garnered 8.4 percent of the vote in 1996.

The Reform Party National Organizing Committee was formed in January 1997, and the party's first national convention took place that year. In addition to holding the convention, Reform Party USA has undertaken voter registration and get-out-the-vote activities, distributed party information through various means and established a checking account.

The Act defines a national committee as the organization that, by virtue of a party's bylaws, is responsible for the day-to-day operations of that party at the national level. 2 U.S.C. §431(14). Reform Party USA must first qualify as a political party under FEC statutes before national committee status is conferred. A political party is defined as an association, committee or organization that nominates a candidate for election to federal office and whose name appears on the ballot as the candidate of that group. 2 U.S.C. §431(16).

The Reform Party does qualify as a political party by virtue of the fact that Mr. Perot, Mr. Choate and 16 other federal candidates obtained ballot access. All of them qualified as candidates under 2 U.S.C. §431(2).

Reform Party USA must meet several criteria set out by the Commission to demonstrate suffi-

cient activity on a national level to qualify as a national committee. Those criteria include:

- Nominating candidates for Presidential and other federal offices in numerous states;
- Engaging in certain activities on an ongoing basis, such as voter registration and get-out-the-vote drives;
- Publicizing nationwide issues of importance to its followers;
- Holding a national convention;
- Setting up a national office; and
- Establishing state affiliates.

Reform Party USA documents show that it has satisfied these criteria. Most significantly, the Party's success at gaining ballot access for its candidates extends beyond the Presidential and Vice Presidential positions. Records indicate that 16 individuals in eight states across the nation qualified as candidates (under the Act) representing the Reform Party.

Reform Party USA's national committee status requires it to follow contribution limits at 2 U.S.C. §441a and 2 U.S.C. §441a(d).¹

State Affiliates

The Act defines a state committee as the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of the party at the state level, as determined by the Commission. 2 U.S.C. §431(15). This definition also requires the existence of a political party.

In several advisory opinions, the Commission has clarified this definition by requiring that (1) the organization must have a state affiliate agreement that "delineates activities commensurate with the day-to-day operation" of a party at a

¹ The advisory opinion did not address whether Reform Party USA and its candidates would qualify for public funding in connection with the Presidential primaries, the convention or the general election.

state level; and (2) the state affiliate must gain ballot access for its Presidential and other federal candidates. See AOs 1997-7, 1996-27 and 1992-30.

Reform Party USA's constitution and bylaws lay out a framework whereby state party organizations do indeed function as state affiliates to the national organization. The party's constitution states that among its objectives is to assist state party organizations in the election of their candidates, and it requires that state organizations be responsible for Reform Party business at the state level. State parties must also operate in keeping with the national party constitution and are subject to the provisions of that constitution and Reform Party USA bylaws.

Each of the 29 affiliates that are a party to this advisory opinion has agreed to abide by the national rules. Such statements, coupled with Reform Party USA's constitution and bylaws, evidence the intentions of Reform Party affiliates to engage in activity commensurate with the day-to-day functions and operations of a political party on the state level.

The second requirement for state committee status—that of ballot access for federal candidates—also has been satisfied. All of the 29 Reform Party USA affiliates successfully gained ballot access for candidates for President and Vice President in 1996.

The Reform Party USA affiliates that qualify for state party committee status as a result of this advisory opinion are from the following jurisdictions: Alaska, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Idaho, Illinois, Iowa, Florida, Kentucky, Louisiana, Maine, Maryland, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont and Wisconsin.

Date Issued: March 6, 1998;
Length: 7 pages. ♦

AO 1998-3 Status of State Party as State Committee of Reform Party

The Reform Party of Idaho constitutes a state committee of a political party because it has satisfied the definitions and requirements set out in the Federal Election Campaign Act and Commission regulations and advisory opinions. Advisory Opinion 1998-2 (see previous page) provides a full explanation.

Date Issued: March 6, 1998;
Length 2 pages. ♦

Advisory Opinion Requests

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

AOR 1998-5

Preemption of state law governing use of payroll deduction by combined federal, state and local SSF (American Electric Power Service Corp., March 5, 1998; 4 pages plus 12-page attachment) ♦

Conferences

Final FEC Conference in 1998

Information on the final FEC conference scheduled for 1998 is provided below. To register, call Sylvester Management at 800/246-7277 or send an e-mail message to: TSYLVESTER@WORLDNET.ATT.NET.

Washington, DC

For nonconnected committees (this includes partnership, leadership and ideological PACs)

Date: April 27
Location: Madison Hotel
Registration: \$175
Hotel rate: \$165

Statistics

Record Fundraising Marks Year-End Reports

Candidates vying for a seat in Congress have set a nonelection year record for the amount of money raised and spent, and for the amount of cash on hand available to fuel their electoral ambitions through the coming months of the campaign.

The group, which includes 1,037 candidates for the House and Senate, raised \$232.9 million and spent \$112.1 million during 1997, according to year-end reports filed with the Commission. These same committees entered the 1998 election year with \$207.1 million cash on hand.

The receipts represented a 26 percent increase—or \$48 million—over receipts collected during the same period of the 1996 election cycle (1995), which was a Presidential election cycle. Much of the increase, however, was due to 1998 Senate campaigns and especially to upcoming elections in several large states, such as California, New York and Pennsylvania. All told, Senate receipts were up 44 percent from this same reporting period in the 1996 cycle, while House receipts increased by 16 percent. It is worth noting that comparisons between Senate races conducted in different election cycles is difficult because of the differing nature of the states involved.

While Republicans retained their lead in actual dollars raised in both the House and Senate, the Democrats in both chambers made substantial showings over their 1995 receipts. Senate Democratic candidates reported a 45 percent increase in receipts while Republicans showed a 39 percent increase. House Democrats registered a 16 percent increase in receipts, while

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Statistics

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House Republicans came in with a 5 percent increase.

For more information about candidates' financial activities on year-end reports, including summary data on all registered 1998 Senate and House candidates, see the FEC's March 6 news release. It is available:

- At the FEC's web site (<http://www.fec.gov>);
- From Public Records (800/424-9530, press 3); and
- On the FEC Faxline (202/501-3413—request document 610).

To view individual candidate reports on-line, visit the FEC's web site at <http://www.fec.gov> and click on "View Financial Reports Filed by Presidential and House Campaigns, Parties, and PACs." The FEC recently launched this section of its web site, which allows users to view digital images of campaign finance reports. ♦

Back Issues of the Record Available on the Internet

This issue of the *Record* and all other issues of the *Record* from 1996, 1997 and 1998 are available through the Internet as PDF files. Visit the FEC's World Wide Web site at <http://www.fec.gov> and click on "What's New" for this issue. Click "Help for Candidates, Parties and PACs" to see back issues. Future *Record* issues will be posted on the web as well. You will need Adobe® Acrobat Reader software to view the publication. The FEC's web site has a link that will take you to Adobe's web site, where you can download the latest version of the software for free.

Total Receipts Collected in 1997 by Major Party Candidates¹ for the U.S. House of Representatives

Type of Candidate	Receipts (in millions)
Democratic Incumbents	\$44.6
Republican Challengers	\$8.0
Republican Incumbents	\$60.9
Democratic Challengers	\$5.9
Democratic Open Seat Challengers	\$11.0
Republican Open Seat Challengers	\$5.4

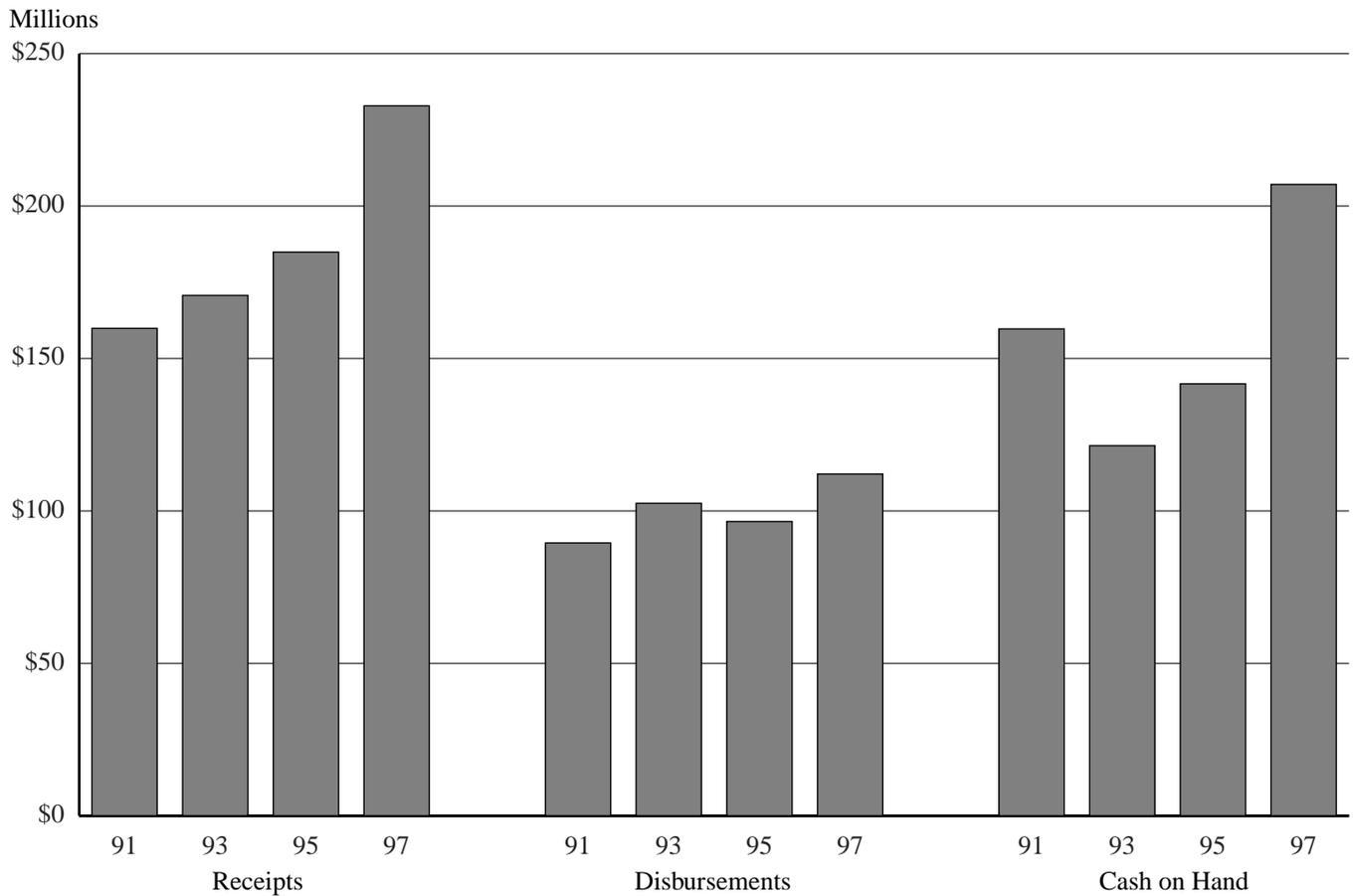
¹ With regard to nonmajor party candidates, House incumbents raised \$244,003, challengers raised \$174,406 and those seeking to win open seats raised \$120,516.

Total Receipts Collected in 1997 by Major Party Candidates¹ for the U.S. Senate

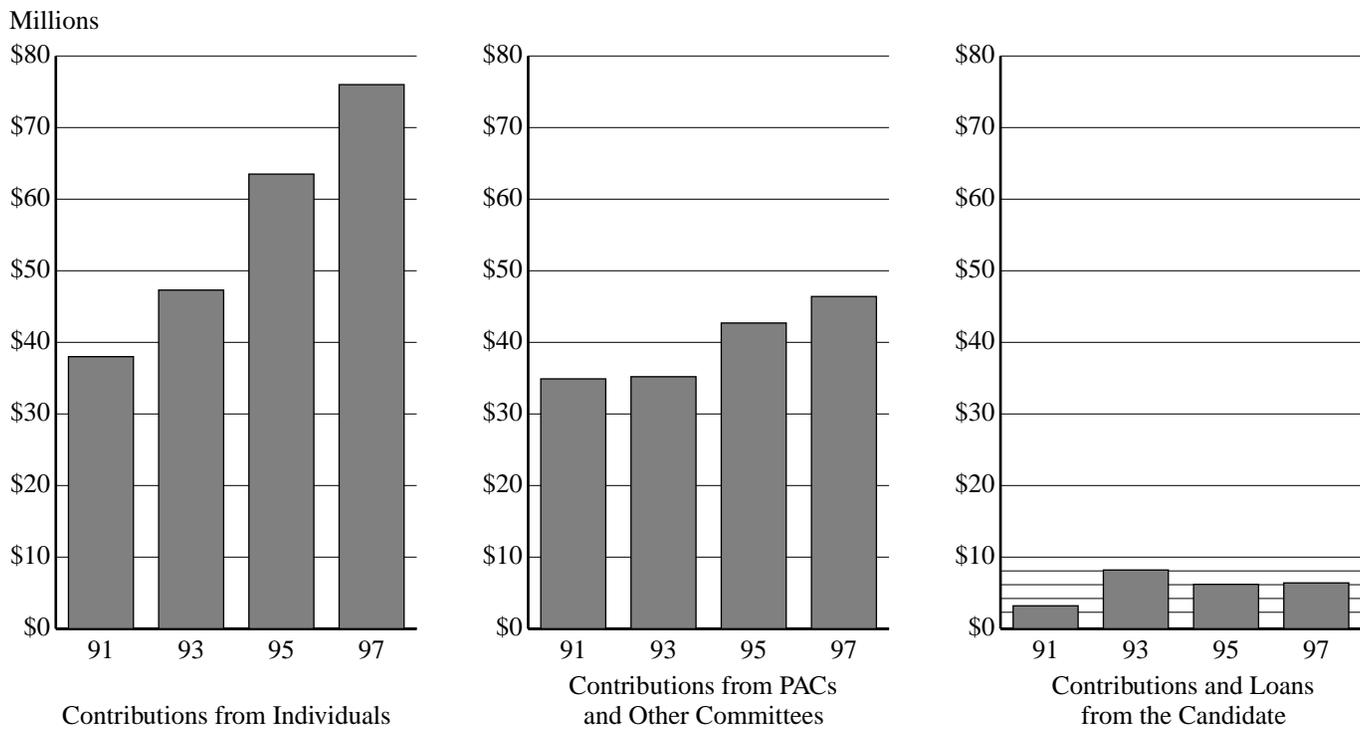
Type of Candidate	Receipts (in millions)
Democratic Incumbents	\$27.6
Republican Challengers	\$19.2
Republican Incumbents	\$25.9
Democratic Challengers	\$14.1
Democratic Open Seat Challengers	\$5.3
Republican Open Seat Challengers	\$4.4

¹ Challengers from other parties and independent candidates registered receipts totaling \$63,707. There are no nonmajor party incumbents seeking reelection in the Senate, and, at the time year-end reports were due, there were no open seat candidates from nonmajor parties running in the 1998 races.

House and Senate Campaign Activity in Year Before Election



House Campaigns: Fundraising in Year Before Election



Information

FEC Faxline Menu

FEC Faxline documents may be ordered 24 hours a day, 7 days a week, by calling **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 telephone number. The documents will be faxed shortly thereafter.

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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 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.

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