

Record

June 1998

Federal Election Commission

Volume 24, Number 6

Table of Contents

Reports

- 1 Reports From '96 Available on Web

Court Cases

- 1 New Litigation
- 4 DSCC v. FEC (97-5160 and 97-5161)
- 4 RNC v. FEC (97-1552)
- 5 Judd v. FEC

- 4 **Federal Register Notice**

- 5 **Advisory Opinions**

Publications

- 6 FEC Issues 1997 Annual Report

Compliance

- 7 Nonfilers
- 7 MUR 4215

Statistics

- 8 Fundraising Increases Continue in 1998 Election Cycle

Regulations

- 9 Commission Hears Different Views on "Member" Regulations
- 9 NPRM Alternatives for Member Regulations

- 10 **Index**

Reports

Reports From '96 Available on Web

The FEC's web site has expanded to include images of reports filed with the Commission during the 1996 election cycle. Already, the web site provides images of current reports (from the 1998 election cycle) filed by PACs, political party committees and Presidential and House campaigns.

The reports are available at the FEC's web site: <http://www.fec.gov>. Once there, click on "View Financial Reports Filed by Presidential and House Campaigns, Parties, and PACs." Simply follow the directions on the screen to access digital images of committee reports. Once the current report for the committee appears, scroll down to get to the older reports from 1995 and 1996. Note that reports from House campaign committees are available only from June 1996, the date the Commission began to receive those reports directly from committees. Reports from Senate candidate committees and those committees that support only Senate candidates are not available on the web site because those committees file their reports directly with the Secretary of the Senate and the copies that the FEC receives on microfilm cannot

(continued on page 2)

Court Cases

New Litigation

RNC v. FEC (98-1207(WBB))

The Republican National Committee (RNC) asks the court for preliminary and permanent injunctions to prevent the FEC from applying its regulation at 11 CFR 106.5 to "issue" ads that the RNC intends to run beginning late spring or early summer. The RNC claims the regulation is unconstitutional because it requires party committees to allocate expenses between their federal and nonfederal accounts for advertising that does not expressly advocate the election or defeat of a clearly identified candidate.

Section 106.5 implements the Act's restrictions on contributions to national political party committees. These restrictions prohibit contributions to those committees from certain sources, such as corporations, labor organizations and foreign nationals, and limit the amounts that may be contributed by permissible sources. The regulation requires national party committees to pay for at least 60 percent of expenses incurred for activities that influence both federal and nonfederal elections with contributions raised in accordance with the Act's restrictions ("hard dollars")

(continued on page 2)

Reports

(continued from page 1)

be used successfully to create digital images.

The FEC's addition of the 1996 election cycle data adds nearly 1.4 million pages of reports to the 400,000 already available for viewing. Future plans call for adding reports from 1993 and 1994 to the site. The latest reports, as well as all older reports, remain available for viewing and copying at the agency's Public Records Office, which is located at 999 E St., N.W., in Washington, DC. ♦

Court Cases

(continued from page 1)

during non-presidential election cycles and 65 percent during presidential election cycles. The remainder of the costs of these mixed activities may be paid with funds that do not satisfy the Act's

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)

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

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

Published by the Information
Division

Louise D. Wides, Director
Angela Rucker, Editor

<http://www.fec.gov>

restrictions ("soft money") unless state law provides otherwise. See AO 1995-25 and the October 1995 *Record*, p. 7.

The RNC contends that this regulation, as applied to party "issue" ads, would violate the First Amendment's guarantee of free speech. The First Amendment, it argues, forbids any regulation of the raising and spending of money by a national party committee, except for money used to expressly advocate the election or defeat of particular federal candidates. The RNC contends that the allocation rules will force it to spread its hard dollar assets between "issue" advocacy and express advocacy for its candidates and thereby will "seriously" curtail its political speech.

The RNC states that its planned advertising campaign will not expressly advocate the election or defeat of any identified candidate for federal office. Thus, the RNC contends, the planned ads will not fall under the FEC's purview, and the committee should be able to pay for them entirely with soft money without running any risk that it might be assessed civil or criminal penalties for doing so. This would hold true, in the RNC's view, whether or not it coordinated with candidates in producing its advertising campaign. The RNC states that its issue ads will focus on such matters as "the importance of a balanced federal budget" and "the impending insolvency of the Medicare and Social Security programs." Moreover, they "may discuss the positions of officeholders and candidates on these issues."

Also a party to the lawsuit is Alexandria, VA, resident Gant Redmon, who alleged that he desires to receive the kind of information that the RNC intends to produce.

On May 8, the U.S. District Court for the Eastern District of Virginia granted the FEC's request to transfer this case to the U.S. District Court for the District of Columbia.

That same day, the RNC filed a motion to consolidate its case with one filed by the Ohio Democratic Party (ODP), and the RNC asked that its motion for preliminary and permanent injunctions be heard at the same time as the ODP's similar motion. See *ODP v. FEC* on this page. The FEC has filed oppositions to those motions for preliminary and permanent injunctions.

U.S. District Court for the Eastern District of Virginia, 98-537A, filed April 14, 1998, and transferred May 8, 1998, to U.S. District Court for the District of Columbia, 98-1207 (WBB). ♦

Ohio Democratic Party v. FEC

The Ohio Democratic Party (ODP) asks the court to find that FEC regulation 11 CFR 106.5 violates the First and Fifth Amendments of the U.S. Constitution. The regulation requires state party committees to finance at least a portion of the costs of their activities that influence both federal and nonfederal elections with contributions raised in accordance with the restrictions that the Federal Election Campaign Act (the Act) places on contributions to political party committees ("hard money"). In the case of the ODP, the ratio in 1998 is 22 percent hard money and 78 percent money that does not meet the Act's restrictions ("soft money"). The ODP alleges that the Constitution forbids any regulation of the raising and spending of money by a party committee, except for money used to expressly advocate the election or defeat of particular federal candidates.

The ODP filed a motion for expedited consideration of its complaint and to shorten the time for it to move for summary judgment. On April 28, the court denied the ODP's motion to expedite, and on April 30 the ODP filed a motion for preliminary and permanent injunctions.

The ODP states that it plans to finance “issue” advertising in spring/summer 1998. The ads will include communications that will not directly advocate the election or defeat of an identified candidate, but will discuss legislative issues and positions that the ODP advocates. While it will continue to follow the 22-to-78 ratio in financing this advertising campaign, ODP stresses that hard money (the 22 percent) is far more difficult to raise than soft money. The ODP argues that the FEC’s allocation regulation:

- Violates the First Amendment because it requires party committees to pay a substantial portion of “issue” ads with hard dollars and, because it is more difficult to raise hard dollars than soft money, ODP will be limited in the amount of “issue advocacy” that it can produce;
- Violates the Fifth Amendment by disadvantaging party committees in comparison with individuals, corporations and unions whose independent “issue” ads are not regulated under the Act;
- Exceeds the Commission’s authority in that Congress allegedly clearly stated that it did not want spending on “issue advocacy” advertisements to be regulated; and
- Violates the Administrative Procedure Act because it is contrary to law.

U.S. District Court for the District of Columbia, 98-0991, April 17, 1998. ♦

Need FEC Material in a Hurry?

Use FEC Faxline to obtain FEC material fast. It operates 24 hours a day. Use a touch tone phone to dial **202/501-3413** and follow the instructions. To order a complete menu of Faxline documents, enter document number 411 at the prompt.

Perot '96, Inc., v. FEC (97-2554 and 98-1022)

Perot '96, Inc., asks the court to find that the FEC acted contrary to law when it dismissed its administrative complaint (MUR 4473) alleging several violations of campaign finance law related to the Commission on Presidential Debate’s (CPD’s) sponsorship of several Presidential debates in 1996. Perot '96 also asks the court to order the FEC to take action on its administrative complaint.

In the alternative, Perot '96 asks the court to find that the FEC’s regulations governing nonpartisan candidate debates found at 11 CFR 110.13 and 114.4(f) are unconstitutional. Perot '96 contends—as it did in previous litigation—that the FEC lacked the authority to promulgate such regulations, and that the regulations constitute an illegal exception to the statutory ban on corporate contributions and expenditures under 2 U.S.C. §441b. While the law generally prohibits corporations from making contributions or expenditures in connection with federal elections, Commission regulations make an exception for bona fide nonprofit corporations to sponsor public debates among candidates, provided they follow rules for conducting such debates. 11 CFR 110.13 and 114.4(f). Perot '96 states that, if the court finds that these regulations are unconstitutional, it should then declare that all expenditures made or contributions received by the CPD are unlawful under the Federal Election Campaign Act (the Act).

In September 1996, Perot '96 filed an administrative complaint alleging that the CPD had violated Commission regulations in the formulation of its debate participant selection criteria. Specifically, Perot '96 charged that the CPD had used subjective criteria to select debate participants, contrary to the Commission’s regulations that state that objective criteria must be used

in the selection process. It stated that such criteria as polling results and the opinions of journalists were too subjective. Perot '96 also charged that the Democratic and Republican national committees had colluded with the CPD, ensuring that their nominees would be debate participants and violating the debate regulations’ proscription against CPD’s selecting debate participants solely by their party affiliations.

In February 1998, the Commission voted to reject the FEC General Counsel’s recommendation that the CPD had violated Commission regulations on debates and that, as a result, the CPD had made prohibited corporate contributions to the Clinton/Gore and Dole/Kemp committees, that those committees had accepted prohibited contributions, and that the CPD was a political committee that had failed to register or report.

Prior to the Commission’s vote, in October 1997, Perot '96 had filed another lawsuit, charging the FEC with delaying its investigation of the administrative complaint (*Perot '96 v. FEC*, 97-2554). After the FEC dismissed the administrative complaint in February, both Perot '96 and the Commission agreed to the dismissal of that case.

U.S. District Court for the District of Columbia, 98-1022, April 24, 1998; U.S. District Court for the District of Columbia, 97-2554. ♦

Natural Law Party v. FEC (98-1025)

In a lawsuit nearly identical to one filed by Perot '96, the Natural Law Party (NLP) and its 1996 Presidential and Vice Presidential candidates ask the court to find that the FEC acted contrary to law when, in February, it dismissed their administrative complaint (MUR 4451) alleging campaign finance violations related to the Commission on Presidential Debate’s (CPD’s)

(continued on page 4)

Court Cases

(continued from page 3)

sponsorship of several debates in 1996. They also ask the court to order the FEC to take action on the administrative complaint.

In the alternative, the plaintiffs ask the court to find that the FEC's regulations governing nonpartisan candidate debates found at 11 CFR 110.13 and 114.4(f) are unconstitutional. For an explanation, see the previous article (*Perot '96, Inc., v. FEC*).

U.S. District Court for the District of Columbia, 98-1025, April 24, 1998. ♦

DSCC v. FEC (97-5160 and 97-5161)

On April 10, the U.S. Court of Appeals for the District of Columbia Circuit remanded these two cases to the district court after finding that the question of standing had not been resolved.

Background

These cases, which date back to 1993, involve allegations by the Democratic Senatorial Campaign Committee (DSCC) that the National Republican Senatorial Committee (NRSC) made soft money donations to nonparty organizations, which then funneled the money into the 1992 Senate race in Georgia to support the Republican nominee.

The DSCC initially filed an administrative complaint with the FEC outlining the alleged campaign finance law violations. In 1995, the DSCC filed suit in U.S. District

Court for the District of Columbia against the FEC, charging that the agency had failed to take action on its administrative complaint within a reasonable time. Because nearly 600 days had passed before the Commission had assigned the case to an attorney, the court ruled that the FEC's inaction was contrary to law. 2 U.S.C. §437g(a)(8). The court subsequently ordered the Commission to pay the DSCC's attorney fees. Later, when the Commission still had not completed its investigation more than four years after it had received the DSCC's administrative complaint, the court again found that the Commission had acted contrary to law and ordered the FEC to take action within 30 days. In June 1997, the FEC appealed this district court order and the previous court order to pay the DSCC's attorney's fees.

Appeals Court Ruling

The appeals court remanded both cases to the district court to determine whether the DSCC had standing to sue the Commission under §437g(a)(8). In citing the issue of standing, the appeals court acknowledged that the question had come up only on appeal and mainly through an *amicus curiae*, or friend of the court, brief. The appeals court based its ruling on a 1998 U.S. Supreme Court decision in *Steel Co. v. Citizens for a Better Environment*, which "seems to hold that before deciding the merits (of a case), federal courts must always decide Article III (of the U.S. Constitution) standing whenever it is in doubt." Because some doubt has now been raised, the appeals court remanded the cases to the district court to address the standing question. The DSCC must present evidence that it satisfied the three-pronged test of standing—injury in fact, causation and redressability. With regard to redressability, the court said that the standing analysis may well have to depend on the Supreme Court's decision in *Akins v. FEC*. See page

1 of the [February 1997 Record](#). That case has been argued before the high court, but no decision has yet been rendered. During oral arguments, however, questioning by the justices suggested that their decision might hinge on the redressability element of standing.¹

For past *Record* stories on these suits, see page 5 of the [July 1996 issue](#), page 2 of the [January 1997 issue](#), page 3 of the [August 1997 issue](#) and page 1 of the [October 1997 issue](#).

U.S. Court of Appeals for the District of Columbia Circuit, 97-5161, 97-5160; U.S. District Court for the District of Columbia, 96-2184 and 95-0349. ♦

RNC v. FEC (97-1552)

On April 7, the parties to this suit agreed to dismiss this case with prejudice and to pay their own legal expenses. The Republican National Committee (RNC) had asked the U.S. District Court for the District of Columbia to find that the FEC's dismissal of an administrative complaint it had filed with the agency was contrary to law.

In its initial administrative complaint, filed in 1995, the RNC had charged that the Democratic National Committee (DNC) had used impermissible nonfederal funds to pay all the expenses of a nationwide media campaign that highlighted the party's legislative proposals for health care reform. Commission regulations require that if a political committee has both federal and nonfederal accounts, then it must allocate its administrative and generic expenses between

¹ In the *Akins* case, several former government officials filed a lawsuit against the FEC after it dismissed an administrative complaint they had filed. Among the issues discussed at the Supreme Court was whether these former officials had standing to initiate this lawsuit.

Federal Register

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

Notice 1998-9

Filing Dates for New Mexico Special Election (63 FR 19260, April 17, 1998)

those two accounts. 11 CFR 102.5. The Commission did not have four votes to proceed against the DNC and, therefore, voted unanimously to close the case. The RNC had filed this lawsuit in response to that vote. See page 1 of the [September 1997 Record](#).

U.S. District Court for the District of Columbia, 97-1552. ♦

Judd v. FEC

Keith Judd, a Texas resident and registered Presidential candidate in 2000, asked the U.S. Court of Appeals for the District of Columbia Circuit to find that the Presidential Primary Matching Payment Account Act is unconstitutional and to award him public funding for the election equal to that awarded President Bill Clinton during his 1996 reelection effort. On April 9, the court dismissed Mr. Judd's petition for lack of prosecution.

U.S. Court of Appeals for the District of Columbia Circuit, 98-1078, filed February 16, 1998, and dismissed April 9, 1998. ♦

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.

Advisory Opinions

AO 1997-21 Repayment to Candidate of Advances to Campaign Committee

After reconsidering its October 2, 1997, decision in this advisory opinion, the Commission concluded that the Firebaugh for Congress Committee may use an unexpected refund from a vendor to repay its candidate, Emily Firebaugh, for advances she made to the committee during the campaign. The Commission had previously ruled that the Committee could not use the refund to repay Ms. Firebaugh for a transaction that her committee had reported as an in-kind contribution. Since that opinion was issued, however, the Committee produced evidence that the transaction had been incorrectly reported and that it had been, in fact, an advance to the campaign.

When Ms. Firebaugh was vying for the 8th congressional district seat in Missouri during the 1996 election, the Committee secured a \$100,000 bank loan with the candidate as the guarantor. When the loan came due, Ms. Firebaugh paid the bank \$125,000, which represented an advance to the committee. That advance, however, was mistakenly recorded in her committee's reports as an in-kind contribution rather than as an advance forgiven by the candidate.

In March 1997, the Committee received an unexpected media refund of \$46,131 and wanted to use it—and any other remaining balances in its accounts—to repay Ms. Firebaugh for the advance.

Citing affidavits from both Ms. Firebaugh and the Committee treasurer attesting to the mistake in reporting and the true intent of the advance, the Commission concludes that the media refund and any other

funds that remain following the final settlement of the Committee's debts may be used to repay the remainder—\$125,000—of the advance from the candidate.

The Committee must file an amended 30-day post election report for the 1996 election cycle, and must amend all subsequent reports to correctly designate the transactions as advances from the candidate to the Committee. The remainder of the loan to the Committee should be reported as forgiven to the extent that any amount of the advance remains unpaid to the candidate.

Date Issued: April 20, 1998;
Length: 4 pages. ♦

AO 1998-4 Use of Contributor Information to Demonstrate Data Mining Technology

White Oak Technologies, Inc. (WOTI), may use the FEC's database of contributors to federal elections in order to demonstrate a software system it has developed that performs specialized analyses of transaction databases, or "data mining." This use of contributor information does not violate the Federal Election Campaign Act's (the Act's) prohibition against the sale and use of contributor information. 2 U.S.C. §438(a)(4).

WOTI's software has been designed to detect, within data bases, hidden patterns of collaborations among people or organizations. To demonstrate its capabilities to prospective clients—both political and nonpolitical organizations and individuals—WOTI intends to use the FEC's contributor database and to display the results. In order to establish the veracity of its data mining software, WOTI states that it must use data—including full names, addresses and contribution amounts—that potential clients can verify independently. WOTI states

(continued on page 6)

Advisory Opinions

(continued from page 5)

that, with the exception of its marketing materials, it would not publish or distribute FEC data. In those marketing materials, only city and zip code information would be displayed or published. FEC contributor information would not be part of the software packages delivered to clients.

The Act requires political committees to identify each individual whose aggregate contributions exceed \$200 in a calendar year by listing their name, mailing address, occupation and employer. 2 U.S.C. §434(b)(3)(A). The FEC must make disclosure reports available for public inspection and copying within 48 hours of receipt. However, "information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes." 2 U.S.C. §438(a)(4).

Because WOTI plans only to use contributor information to illustrate its methodology and will not sell the information drawn from FEC reports to its prospective clients, its use of the data is permissible.

Date Issued: April, 20, 1998;
Length: 4 pages. ♦

Advisory Opinion Requests

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

AOR 1998-9

Generic party expenditures made in connection with special election (Republican Party of New Mexico, April 15, 1998; 3 pages plus 1-page attachment)

AOR 1998-10

Restricted class of physician practice management corporation (American Oncology Resources, Inc., May 6, 1998; 6 pages plus 101-page attachment) ♦

Alternative Disposition of Advisory Opinion Requests

AOR 1997-24

The Commission vote on this AOR was split 3-2, and no opinion was rendered. (Four affirmative votes are necessary to approve an advisory opinion.) The request, submitted on October 21, 1997, sought the Commission's opinion on the conversion of a separate segregated fund to a nonconnected PAC after dissolution of the SSF's parent corporation.

AOR 1998-5

The requester withdrew this request for an advisory opinion. The request, submitted on March 5, sought the Commission's opinion on the preemption of Michigan law governing payroll deductions for contributions to separate segregated funds.

AOR 1998-6

The Commission vote on this AOR was split 2-2, and no opinion was rendered. The request, submitted on March 24, sought the Commission's opinion on the solicitation of contributions from, and the making of election advocacy communications to, the restricted class of a foreign corporation and its domestic subsidiaries. ♦

Publications

FEC Issues 1997 Annual Report

The FEC's *Annual Report 1997* is now available. The report chronicles the agency's activities during the last year and includes the legislative recommendations that it presented to Congress in March.

Among the topics covered in the report are independent expenditures by nonprofit corporations and by party committees, express advocacy, major purpose test, limited liability companies and soft money. The report also discusses the agency's limited financial resources and the increased demands on those resources in the area of enforcement. The report contains an update on the predicted shortfall in public funding for the 2000 Presidential election. A number of charts and statistical tables are included.

Free copies of the annual report are available by calling the FEC's Information Division at 800/424-9530 (press 1) or 202/694-1100. The report also is available at the FEC's web site—<http://www.fec.gov>. ♦

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 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.

Compliance

Nonfilers

The campaign committees listed at right failed to file required campaign finance disclosure reports. The list is based on recent FEC news releases. The FEC is required by law to publicize the names of nonfiling campaign committees. 2 U.S.C. §438(a)(7). The agency pursues enforcement actions against nonfilers on a case-by-case basis. ♦

MUR 4215 MI Democrats Agree to \$35,000 Penalty

The Michigan Democratic State Central Committee and its treasurer, Roger Winkelman, have agreed to a \$35,000 civil penalty for misreporting a total of \$355,316 in allocable expenses for a get-out-the-vote effort undertaken before the 1994 general election, for paying the nonfederal portion of shared expenses directly to the vendor rather than transferring it to the federal account and having the federal account pay the vendor and for reporting transfers from its nonfederal to its federal account that did not occur.

Commission regulations require committees that make expenditures in connection with both federal and nonfederal elections to make the payments only from a federal account or to establish separate federal and nonfederal accounts and to allocate the costs between the two accounts. Party committees with federal and nonfederal accounts must allocate certain expenses between those accounts, including generic voter drives that support federal and nonfederal candidates, and then report these allocations. 11 CFR 106.5(a)(2)(i-iv) and 104.10(b)(1). If using two accounts, a committee must pay all of its

Candidate	Office Sought	Report Not Filed
Adametz, Paul T.	House PA/04	Pre-Primary
Carn, Andrew J.	House PA/01	Pre-Primary
Firestone, Brooks	House CA/22	April Quarterly
Golding, Susan	Senate CA	April Quarterly
Holtz, Daniel A.	House IN/03	Pre-Primary
Lobato, Francesco	House NM/03	April Quarterly
MacCallum, James J.	House WV/03	Pre-Primary
Overman, John W. J.	House CA/44	April Quarterly
Petyo, Michael Edward	House IN/01	April Quarterly & Pre-Primary
Ruehl, Bill E.	House WV/01	Pre-Primary
Scarborough, Ella Olivia Butler	Senate NC	April Quarterly & Pre-Primary
Smith, Judy	House AR/04	Pre-Primary
Stoker, Michael Brian	House CA/22	April Quarterly
Zemel, Robert S.	House CA/46	April Quarterly

allocable expenses from its federal account and then transfer funds from its nonfederal account to its federal account to cover the nonfederal portion of the expenditure. 11 CFR 106.5(g)(1)(i).

The Federal Election Campaign Act (the Act) requires committees to report all transfers and disbursements during a reporting period. 2 U.S.C. §434(b). Commission regulations further state that political committees must report each transfer of funds from their nonfederal accounts to their federal accounts. 11 CFR 104.10(b)(3).

On November 1 and 2, 1994, the Committee made disbursements to a vendor for services related to generic voter activity. These payments were disclosed on the Committee's 1994 Post-General report and amended on a report submitted in July 1995.

The Committee's allocation ratio in 1994 was 22 percent federal and 78 percent nonfederal—based on the ballot composition method applicable in Michigan. The Committee itemized the disbursements to the vendor using the proper allocation formula on a Schedule H-4, the schedule used to report joint federal/nonfederal activity, with the reported figures for the two dates being \$37,598.66 federal/

\$133,304.34 nonfederal and \$40,570.86 federal/\$143,842.16 nonfederal. However, the actual wire transfers to the vendor were in the amounts of \$66,964 federal/\$103,939 nonfederal and \$11,206 federal/\$173,207 nonfederal. Thus, even though the combined figures for the actual payments complied with the Committee's allocation ratio, the reported figures were incorrect.

In addition, on a Schedule H-3 in the same report (this schedule shows transfers from nonfederal accounts to federal accounts), the Committee reported a total of \$277,146 in nonfederal funds as transferred to its federal account for purposes of paying for the generic voter activity at issue. However, these funds were actually disbursed directly from the nonfederal account to the vendor.

In addition to paying the civil penalty, the Committee agreed to file amended reports to correct all of its reporting violations.

This MUR (Matter Under Review) came out of a complaint filed by the Michigan State Republican Committee. The Commission reviewed the complaint and found no violations pertaining to the Republican committee's allegations, but it did turn up the violations discussed above. ♦

Statistics

Fundraising Increases Continue in 1998 Election Cycle

Candidates running for House and Senate seats in 1998 raised a total of \$338 million and spent \$185 million during the first 15 months of the 1998 election cycle. Receipts increased by \$41 million over the same reporting period in the 1996 election cycle. The totals include reports from 1,509 candidates running for the House and Senate.

As in past years, contributions from individuals continued to be the largest source of campaign funds, reaching 57 percent. PAC money

accounted for 25 percent of receipts, and direct contributions and loans from the candidates themselves accounted for 12 percent of receipts.

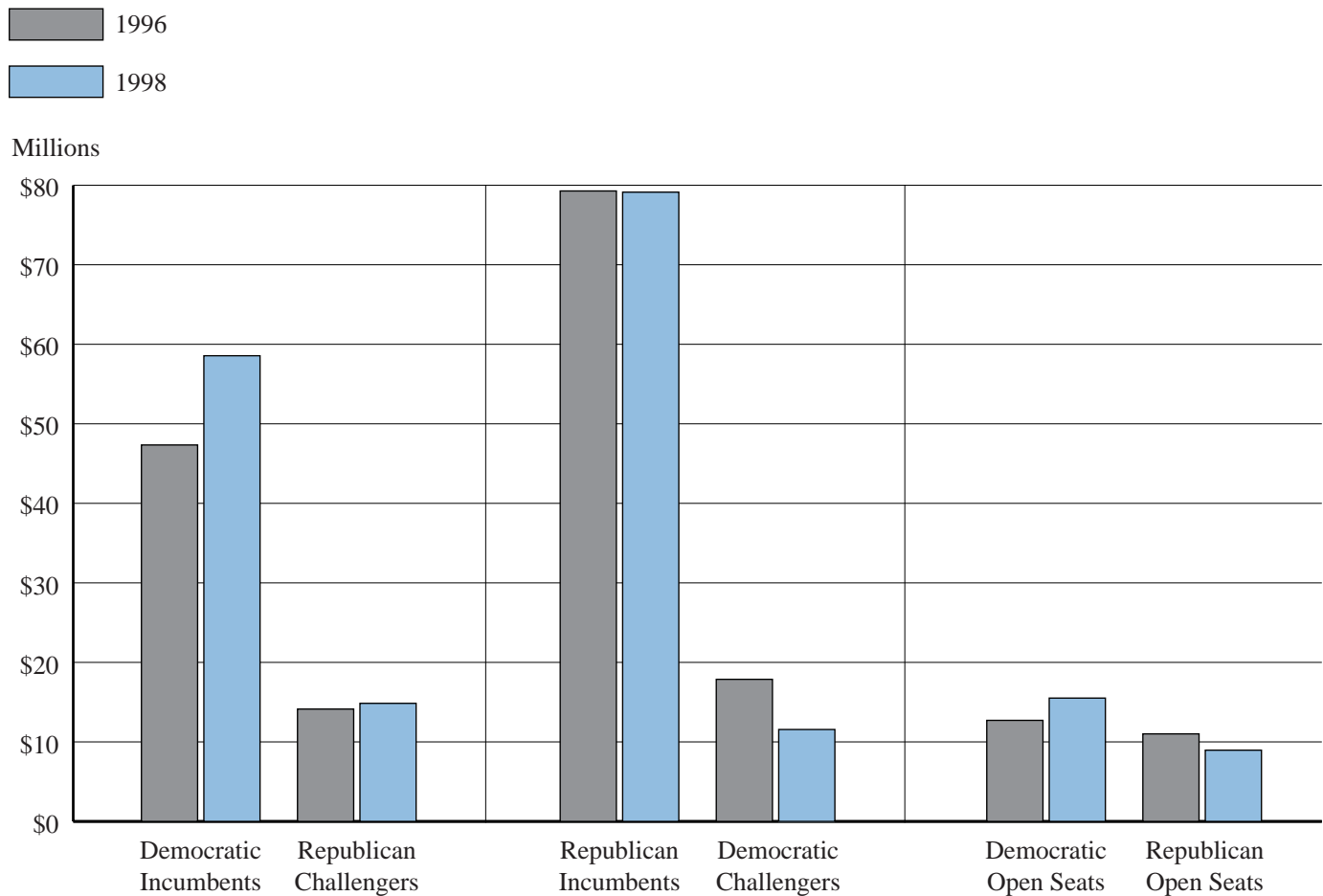
Senate candidates who filed campaign disclosure reports—166 in all—raised \$140.3 million and spent \$70.9 million. House candidates filing with the FEC numbered 1,343 and raised and spent \$197.9 million and \$113.9 million, respectively.

In the upcoming cycle, Senate receipts are up, reflecting competitive races in states with large populations, such as California, New York and Florida. In general, however, comparisons between different Senate election cycles are difficult because different seats in different states are up for election each cycle.

This information about candidates' April quarterly reports is included in a May 8 news release. The chart on this page is based on data taken from this news release. The complete news release, which contains statistical campaign finance information for individual candidates, is available:

- At the FEC's web site at <http://www.fec.gov> (click on "News Releases and Media Advisories" at the main menu);
- From the Public Records Office (call 800/424-9530 and press 3, or call 202/694-1120); and
- By fax (call FEC Faxline at 202/501-3413 and request document 610). ♦

Total Receipts for House Candidates: First 15 Months of Election Cycle



Regulations

Commission Hears Different Views on “Member” Regulations

During testimony at the FEC’s April 29 public hearing concerning changes to its “member” qualification regulations, representatives of several organizations expressed their views on the three alternatives that the Commission has proposed. Testimony highlighted the relative merits of these alternatives and of conferring membership status on a case-by-case basis. (See sidebar on this page for an explanation of the alternatives.)

Members of an incorporated membership association can be solicited for contributions to the association’s separate segregated fund and can also receive express advocacy communications from the organization. The proposed rules would result in an expansion of the types of persons considered to be members.

Background

The Commission published its Notice of Proposed Rulemaking (NPRM) on who qualifies as a member of a membership association on December 22, 1997, in response to a petition for rulemaking filed by the National Right to Life Committee, Inc. The petition sought revisions in the regulations in light of the decision in *Chamber of Commerce of the United States v. FEC*. (See the August 1997 *Record*, p. 8, and the January 1998 *Record*, p. 4.) In that case, the U.S. Court of Appeals for the District of Columbia Circuit held that the FEC’s rules on who could be considered a member were unduly restrictive as applied to the U.S. Chamber of Commerce and the American Medical Association. 11 CFR 100.8(b)(4)(iv) and 114.1(e).

NPRM Alternatives For Member Regulations

The changes proposed in the Notice of Proposed Rulemaking (NPRM) would modify language at 11 CFR 100.8(b)(4)(iv) and 114.1(e), and would repeal 11 CFR 114.7(k) and 114.8(g). The proposed rules also would provide that direct membership in any level of a multi-tiered association be construed as membership in all tiers of the association for purposes of the regulations.

All three alternatives would retain the three preliminary requirements set forth in the current rules: that the membership association specifically provide for members in its articles and by-laws, expressly solicit members and acknowledge the acceptance of membership by, e.g., sending a membership card or including the new member on a mailing list.

Alternative A

For all organizations:

- Annual dues of at least \$50,
- A major organizational attachment to the membership association, or
- A combination of annual dues of less than \$50 and some lesser

organizational attachment to the association.

Alternative B

Organizations formed to further an ideological, social welfare or political agenda:

- Annual Dues of \$200, or
- A lesser dues obligation coupled with specified governance rights in the organization.

Organizations formed to further business or economic interests (business leagues, trade associations, labor organizations and self-regulating professional associations)

- Any set amount of annual dues.

Alternative C

For all organizations:

- Any set amount of annual dues.

The NPRM detailing the list of alternatives in full is available:

- From the FEC’s Public Records Office, 800/424-9530 (press 3) or 202/694-1120;
- Through the FEC’s Faxline, 202/501-3413 (request document 229);
- At the FEC’s web site—<http://www.fec.gov>; and
- In the December 22, 1997, *Federal Register* (62 FR 66832).

Testimony Favoring “C”

Representatives from several nonmember ideological associations and advocacy groups favored alternative “C.” James Bopp Jr., general counsel for the James Madison Center for Free Speech, suggested that membership in an organization alone should satisfy the FEC’s requirements for member without requiring a set amount of dues. He said “psychological” attachments to organizations, particularly ideological organizations, are sufficient, and that a dues requirement could result in “politics for the wealthy.”

Paul Sullivan, president of Americans Back In Charge Foundation, agreed, stating that too much is being made of the financial commitment a member has to his or her organization. Another speaker, William J. Olson, expressed concern that alternatives “A” and “B” could discourage people from becoming involved in the political process because of the dues requirement. Mr. Olson, legal co-counsel of Free Speech Coalition, Inc., a nonpartisan group of ideological organizations, also opposed alternative “B,” which he agreed would treat ideological organizations more harshly

(continued on page 10)

Regulations

(continued from page 9)

than those organized around business concerns.

Another theme was summed up by Jerald A. Jacobs, general counsel for the American Society of Association Executives, who appealed to Commissioners to make changes to the regulations that are “simple, enduring and easy to follow.” While several speakers leaned toward alternative “C,” under which any amount of dues would be sufficient to confer member status, several speakers said that there should be waivers for those members who pay no dues (i.e., lifetime members or new members for whom the dues payment is waived for the first year).

Union Representatives’ Concerns

Laurence Gold, associate general counsel of the AFL-CIO, said that in his view all three alternatives raised concerns because they do not fully satisfy the standards set by the Supreme Court in *FEC v. National Right to Work Committee*. He also urged the Commission to retain the current rule treating union local members as members of the AFL-CIO and to permit retirees to qualify as members. Mr. Gold’s views were shared by Robert Lenhard, associate general counsel for the American Federation of State, County and Municipal Employees.

The Case-By-Case Approach

Daniel M. Schember, an attorney representing several former government officials in *Akins v. FEC*, which is now before the Supreme Court (see page 1 of the [February 1997 Record](#)), proposed rejecting all the alternatives and assessing member status on a case-by-case basis. Calling membership a “thorny” problem, Mr. Schember suggested that the Commission craft a series of “factors” that would be applied to each organization seeking approval to solicit and communicate with its members.

Additional comments also came from Michael Boos, legal director of the National Citizens Legal Network, who questioned whether any of the alternatives could pass a First Amendment test. Mr. Boos also suggested that the Commission defer to state laws defining who is a “member” for organizations organized under the laws of that state.

In all, 10 people offered testimony at the public hearing. The FEC received 20 written comments in response to the NPRM on the definition of member. To review the written comments, call the FEC’s Public Records Office at 800/424-9530 (press 3) or 202/694-1120. ♦

Index

The first number in each citation refers to the “number” (month) of the 1998 *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.

Advisory Opinions

- 1997-18: Status of committee as local party committee, 1:14
- 1997-21: Refund to candidate who had made contribution to own campaign, 6:5
- 1997-22: Communicating membership corporation’s endorsements of federal candidates to members and their restricted classes, 1:14
- 1997-25: Affiliation of corporate SSFs after reorganization, 3:5
- 1997-26: Establishment of nonconnected PAC by individuals affiliated with trade association, 3:7
- 1997-27: Use of campaign funds to pay legal expenses, 4:7
- 1997-28: Reinstatement of terminated candidate committee to retire debt to candidate, 4:8

- 1997-29: Status as state committee of political party, 4:8
- 1998-1: Use of campaign funds to pay legal expenses, 4:8
- 1998-2: Status as national committee of political party; status of affiliated state parties as state committees of political party, 4:10
- 1998-3: Status as state committee of political party, 4:11
- 1998-4: Use of contributor lists from FEC reports for marketing application of “data mining” technologies to campaign finance, 6:5

Court Cases

- FEC v. _____
- Al Salvi for Senate Committee, 4:4
- Charles Woods for U.S. Senate, 3:3
- National Medical Political Action Committee, 1:3
- Williams, 1:3
- _____ v. FEC
- Clifton, 4:5
- DSCC (97-5160 and 97-5161), 6:4
- Hollenbeck, 4:4
- Judd, 6:5
- Judicial Watch, Inc., 4:4
- National Committee of the Reform Party, 1:2; 4:4
- Natural Law Party (98-1025), 6:3
- Ohio Democratic Party, 6:2
- Perot ’96, Inc., (97-2554), 6:3
- Perot ’96, Inc., (98-1022), 6:3
- RNC (97-1552), 6:4
- RNC (98-1207 (WBB)), 6:1
- Stockman, 5:3

Reports

- Electronic filing, 4:1; 4:2
- On FEC web site, 2:1; 4:2; 6:1
- Pre-Election Reporting Dates: 1998
 - Primary and Runoff Elections, 1:8
- Reports, Alabama Runoff, 2:1
- Reports due in 1998, 1:6; 1:11
- Reports due in April, 4:2
- Special Elections, California, 1:12; 3:9
- Special Election, New Mexico, 5:3
- Special Election, New York, 2:4
- Special Election, Pennsylvania, 1:13
- Surveying potential for electronic filing, 2:2



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

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

