

Record

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Federal Election Commission

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Reports

Post-General Reporting Reminder

The 30-day post-general election report is due on December 3. Reports sent by registered or certified mail must be postmarked by this date. The post-general report should cover activity from October 15 (or from the close of books of the last report filed) through November 23. The following committees must file this report:

- All registered PACs and party committees, even committees with very little or no activity to disclose. This report is filed in lieu of the November monthly report for monthly filers.
- Authorized committees of federal candidates running in the general election, including committees of unopposed candidates.

For more information on reporting dates for political committee activity during 1998:

- Visit the FEC's web site at <http://www.fec.gov>;
- Dial the automated FEC Faxline at 202/501-3413 (request documents 586 and 587);
- See the reporting tables in the [January 1998 Record](#); or
- Call and request that the reporting tables be mailed to you (800/424-9530 and press 1, or 202/694-1100). ♦

Court Cases

RNC v. FEC (98-5263)

The U.S. Court of Appeals for the District of Columbia Circuit denied the Republican National Committee's (RNC's) and the Ohio Democratic Party's (ODP's) emergency motion for an injunction pending appeal in this case. The RNC and ODP had asked the court to prevent the FEC from enforcing its allocation regulation 11 CFR 106.5.

The regulation requires that the RNC, ODP and other party committees pay for a portion of certain federal election-related advertisement costs with federally permissible funds, or hard money. The other portion of the advertisements can be funded with nonfederal funds, or soft money, which is easier to raise in large sums.

The RNC filed suit in April charging that the FEC's allocation regulation violated the U.S. Constitution and that the FEC lacked the authority to promulgate the regulation. The RNC also contended that the FEC exceeded its authority in crafting the regulation because the rule pertains to issue advocacy communications. See the [June 1998 Record, p. 1](#). The RNC case was subsequently consolidated with a similar suit brought by the ODP.

(continued on page 2)

Publications

Updated List of Federal PACs Available

The Commission has published the 1998 edition of *PACronyms*, an alphabetical listing of acronyms, abbreviations and common names of political action committees (PACs).

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

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

To order a free copy of *PACronyms*, call the FEC's Disclosure Division at 800/424-9530 (press 3) or 202/694-1120. *PACronyms* also is available on diskette for \$1 and can be accessed free under the ["Using FEC Ser-](#)

[vices" icon at the FEC's web site—
http://www.fec.gov.](#)

Other PAC indexes, described below, may be ordered from the Disclosure Division. Prepayment is required.

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

The Disclosure Division can also conduct database research to locate federal political committees when only part of the committee name is known. Call the telephone numbers above for assistance or visit the Public Records Office in Washington at 999 E St., N.W. ♦

Compilation of FEC Court Cases Available

The FEC has published the latest edition of *Selected Court Case Abstracts*, a collection of summaries of court decisions pertinent to the Federal Election Campaign Act. This latest edition, which covers court decisions from 1976 through September 1998, includes:

- The summaries of court opinions,
- An alphabetical list of opinions, with page references to the summaries, and
- A subject index.

A table of contents is also included.

The publication is available free from the FEC's Information Division. Call 800/424-9530 or 202/694-1100 to request a copy. *Selected Court Case Abstracts* is also available at the FEC's web site—<http://www.fec.gov>—as a PDF file. You will need Adobe Acrobat Reader to view the publication once it has been downloaded. ♦

Court Cases

(continued from page 1)

In June, the U.S. District Court for the District of Columbia denied a motion by the RNC and ODP for a preliminary injunction against the FEC. See the [August 1998 Record, p. 5](#). In this latest decision, the appellate court stated that the plaintiffs failed to justify why they had not followed judicial procedures or satisfied the stringent standards required in requesting an injunction.

U.S. Court of Appeals for the District of Columbia Circuit, 98-5263. ♦

New Litigation

FEC v. Forbes

The FEC asks the court to find that Malcolm S. "Steve" Forbes, Jr., a candidate for the 1996 Republican nomination for President, the corporation he directs and his principal campaign committee violated the Federal Election Campaign Act's (the Act's) prohibitions against corporate contributions.

In November 1995, while running for the Republican nomination, Mr. Forbes took a leave of absence from Forbes, Inc., but continued to write the weekly column "Fact and Comment" for the company's flagship publication, *Forbes Magazine*. In addition, Mr. Forbes continued to be listed as editor-in-chief on the magazine's masthead, and he controlled the length, content and format of the articles. Excerpts of these columns also appeared in another Forbes publication, *The Hills-Bedminster Press*. The columns discussed some of the same themes Mr. Forbes pressed during his presidential campaign, including the flat tax, term limits, abortion and foreign intervention in Bosnia, and have been valued at \$94,900.

Laws and Regulations. The Act prohibits corporations from making contributions or expenditures in

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connection with any federal election. The Act also prohibits the knowing acceptance by any candidate, political committee or other person of corporate contributions and prohibits any corporate officer or director from consenting to such contributions or expenditures. 2 U.S.C. §441b(a).

Contributions and expenditures include “any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any service, or anything of value ... to any candidate, campaign committee, or political party” in connection with a federal election. 2 U.S.C. §441b(b). Expenditures made in consultation with or at the request or suggestion of any candidate, candidate committee or authorized agent of the committee are considered to be contributions to the candidate. 2 U.S.C. §441a(a)(7)(B).

An exception in the Act provides that “expenditure” does not include any news story, commentary or editorial distributed by bona fide media outlets as long as such facilities are not owned or controlled by a political party or committee, or by a candidate. 2 U.S.C. §431(9)(B)(i). Even if the media outlet is controlled by a political party or committee or by a candidate, no contribution or expenditure will result if the article or broadcast represents a bona fide news account communicated in a general circulation publication or on a licensed broadcasting facility, and it is part of a general pattern of campaign-related news accounts that provide equal coverage to all opposing candidates in the circulation or listening area. 11 CFR 100.7(b)(2), 100.8(b)(2).

Violations Alleged. The Commission contends that Mr. Forbes’s columns were not bona fide news accounts and were not part of a general pattern of campaign-related news accounts that gave reasonably equal coverage to all opposing candidates. Furthermore, the

Commission argues that Forbes, Inc., published the columns in consultation with Mr. Forbes while he was a candidate, thereby turning the corporation’s expenditure for the columns—\$94,900—into a contribution to the Forbes campaign.

In addition, the Forbes committee failed to report the value of the columns in any of its reports filed with the Commission. 2 U.S.C. §434(b)(2)(A).

The FEC asks the court to find that Forbes, Inc., made prohibited in-kind corporate contributions to the Forbes committee and that Mr. Forbes, in his capacity as CEO, violated the Act by consenting to the contributions. The FEC also asks the court to find that Mr. Forbes, the Forbes committee and the committee treasurer violated that Act when they knowingly accepted the prohibited in-kind contributions. The FEC asks the court to enjoin the defendants from violating the Act further and to assess a civil penalty against them.

U.S. District Court for the Southern District of New York, 98 Civ. 6148, August 28, 1998. ♦

FEC v. Friends of Jane Harman

The FEC asks the court to find that Friends of Jane Harman, the principal campaign committee of Congresswoman Jane Harman, violated the Federal Election Campaign Act (the Act) when it knowingly accepted more than \$21,000 in corporate contributions.

Hughes Aircraft Company, a Los Angeles corporation, sponsored a fundraiser for Ms. Harman at her request during the 1993-1994 election cycle. At the time of the fundraiser, Hughes PAC had already given the maximum \$5,000 contribution to the Congresswoman’s committee for the primary election.

Hughes’s chairman and CEO approved the fundraiser and directed a subordinate to plan it. That person, in turn, directed another company

employee to carry out the logistics of the fundraiser, including securing a room and hiring a caterer.

The Act contains a broad prohibition against corporate contributions in federal campaigns. 2 U.S.C. §441b(a). A corporation’s employees may undertake isolated volunteer activities in connection with a federal election while at work so long as that employee reimburses the corporation to the extent that its overhead or operating costs are increased by such activity. 11 CFR 114.9(a)(2). This exception, however, does not apply to campaign contributions resulting from collective enterprises where a corporate executive directs subordinates in fundraising projects using corporate resources or solicits the executive employees.

The fundraiser netted \$20,600 in impermissible corporate contributions. Hughes also made \$857.46 in expenditures in connection with the fundraiser. While Hughes billed the Harman committee for that amount shortly after the fundraiser, the committee did not pay Hughes for three months, resulting in an impermissible advance of corporate funds to the committee.

In addition to finding that the committee violated the Act, the Commission asks the court to require the committee to disgorge to the U.S. Treasury an amount equal to the prohibited contributions, to assess a civil penalty against the committee and to enjoin the committee from accepting corporate contributions in violation of 2 U.S.C. §441b.

U.S. District Court for the Central District of California, 98-7691-CAS(JGx), September 21, 1998. ♦

Statistics

Republicans Hold Lead in 1997-1998 Fundraising

Coming into the final stretch of the 1997-1998 election cycle, Republican party committees have amassed a considerable lead over their Democratic counterparts when it comes to raising both federal funds and nonfederal funds, or soft money.

Between January 1, 1997, and June 30, 1998, Republican party committees' federal accounts raised \$193.3 million and spent \$177.5 million. In contrast, Democratic party committees, in the same time period, reported raising \$107.7 million for their federal accounts and spending \$100.4 million from their federal accounts. Republicans had \$17.3 million in cash on hand while Democrats had \$10.3 million in cash on hand.

When measured against the last comparable nonpresidential election cycle—the 1993-1994 cycle—the Republican committees posted a 19 percent increase in receipts and a 30 percent increase in disbursements. Democrats showed a 30 percent increase in receipts and a 36 percent increase in disbursements for the same comparison period.

Republican party committees contributed \$1.4 million to federal candidates and spent \$414,562 in coordinated expenditures for the first 18 months of the election cycle. Democratic party committees contributed \$1.3 million to federal candidates and spent \$3.6 million in coordinated expenditures for the same period.

The Republican party committees collected \$71.8 million in soft money, a dramatic 255 percent increase when compared to the 1993-1994 election cycle. The Democrats raised \$53 million in nonfederal funds, a 70 percent increase over four years ago.

Republicans spent \$60.4 million in soft money; Democrats spent nearly \$49 million in soft money.

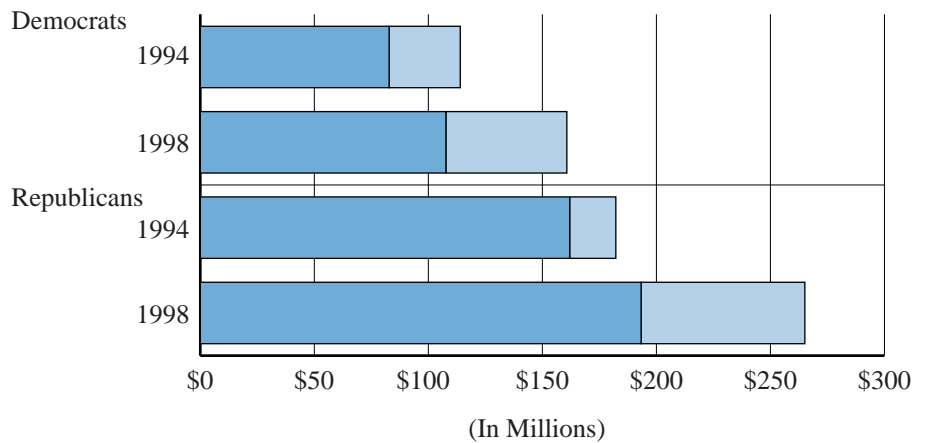
This article and the accompanying charts (see charts below) are based on data taken from a September 9 news release. The release is available:

- At the FEC's web site, <http://www.fec.gov> (click "News Releases and Media Advisories");
- From the Public Records Office and the Press Office (call 800/424-9530); and
- By fax (call FEC Faxline at 202/501-3413 and request document 609). ♦

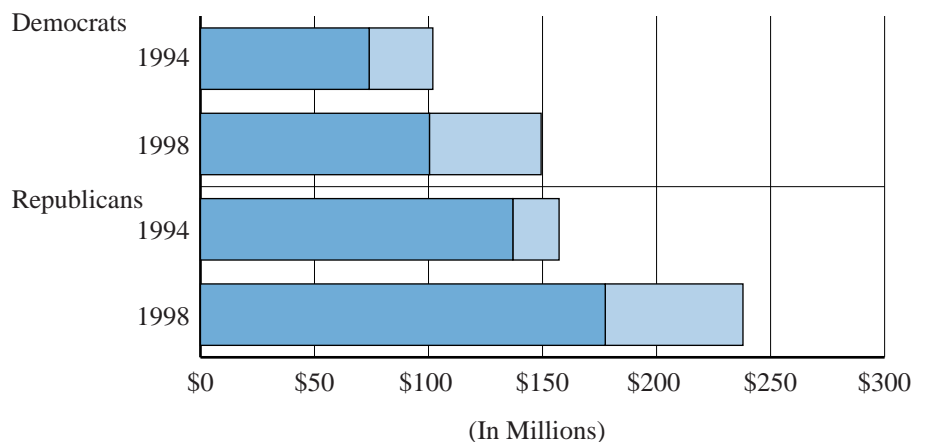
Party Committee Receipts and Disbursements: First 18 Months of 1994 and 1998 Election Cycles

■ Hard Money
 ■ Soft Money

Receipts



Disbursements



PAC Contributions Favor Incumbents by Wide Margin

Political action committees, or PACs, contributed \$134.3 million to campaigns of federal candidates between January 1, 1997, and June 30, 1998, marking a 6 percent increase in contributions over the same 18-month period in the previous election cycle (1995-1996). All but \$10 million of the contributions were given to candidates seeking election in November. The rest of the money went to candidates trying to retire debts and to those planning to run in future elections.

Incumbents received \$113.6 million of the total take by PACs during this period, while challengers received \$8 million. Candidates vying for open seats got \$12.6 million in PAC contributions. PACs also reported spending \$1.1 million on independent expenditures.

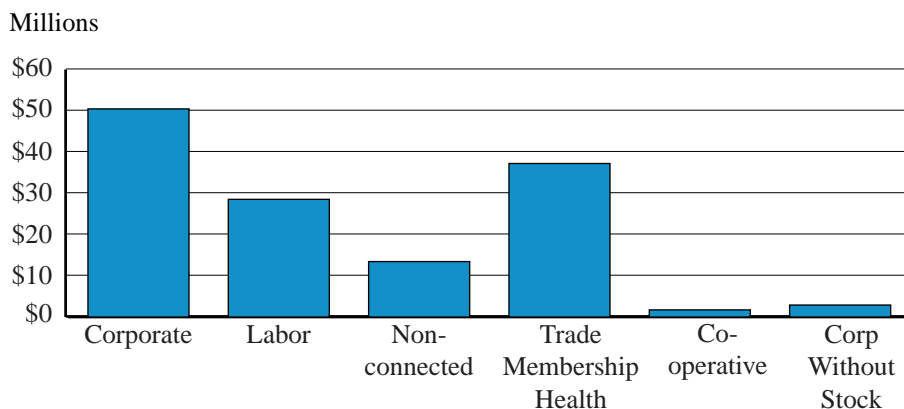
PACs nearly split their giving down the middle between Democrats and Republicans. Republican candidates received \$69.1 million from PACs for this period and Democratic candidates received \$65 million.

The 4,486 federal PACs that file with the Commission reported total receipts for this period of \$359.4 million and total disbursements of \$292.6 million. This represents a 10.6 percent increase in receipts and a 15 percent increase in disbursements from the 1995-1996 election cycle.

This article and the accompanying chart (see chart at right) are based on data taken from a September 24 news release. The release is available:

- At the FEC's web site, <http://www.fec.gov> (click "News Releases and Media Advisories");
- From the Public Records Office and the Press Office (call 800/424-9530); and
- By fax (call FEC Faxline at 202/501-3413 and request document 611). ♦

PAC Contributions: First 18 Months of 1998 Election Cycle



FEC Web Site Offers Easy Access to Last-Minute Financial Activity from 1998 Election Cycle

The FEC has enhanced its web site to enable reporters, researchers and others interested in campaign finance to more easily identify last-minute contributions to federal candidates and independent expenditures made on their behalf and/or against them during the waning days of the 1998 election cycle.

Contributions of \$1,000 or more received from October 14 through November 1 had to be reported by campaigns to the FEC within 48 hours of receipt. Independent expenditures aggregating \$1,000 or more made between October 15 and November 2 had to be reported to the FEC within 24 hours.

Information about these financial activities already had been available at the FEC's web site, but it was accessible only through each individual candidate or committee. Now the information has been consolidated, permitting users to see which candidates filed last-minute reports on a given day, or to view the reports filed on a given day by all candidates from a particular state. The new approach will save time and allow users to view all or selected parts of the financial activity.

To access the new information, go to the FEC's web site at <http://www.fec.gov> and click on "View Contributions and Financial Reports Filed by Presidential and House Campaigns, Parties and PACs." Then choose "Last Minute Activity."

Independent expenditures, which are reported by various committees, groups and individuals, are accessible from this web page. Select a candidate by his or her last name, by state and district or by the name of the committee, group or person making the expenditure.

To access information about contributions, click on the link "Last Minute Contributions" and follow the instructions on the screen. Choose all candidates within a state by clicking on "By State" and then clicking on a particular state within a map of the United States. Alternatively, click on "By Candidate Last Name," which will provide an alphabetical listing of the candidates who filed reports on a particular day. ♦

Compliance

MUR 4772 **Sun-Land Pays Civil Penalty for Impermissible Contributions**

The corporation Sun-Land Products of California has paid an \$80,000 civil penalty for knowingly and willfully using corporate funds to make contributions to federal candidates and committees in the names of others.

During the 1992 campaign, Sun-Land's Board of Directors paid 16 non-management directors \$2,500 stipends and suggested they make contributions to certain political campaigns and groups. Between March and May of that year, Sun-Land sent the collective contributions from some of the 16 employees it targeted to the Bush-Quayle '92 Primary Committee. Some of the stipend recipients sent contributions directly to Bush-Quayle '92 using their own names or the names of family members. In all, the targeted employees sent \$16,000 to Bush-Quayle '92.

In 1993, Sun-Land initiated the same stipends-for-contributions plan. This time, the company collected and sent contributions to Campaign America, a federal PAC. Again, some of the targeted employees sent contributions directly to the PAC in their names or the names of family members. Campaign America received a total of \$21,000 in contributions from Sun-Land employees.

Federal Register

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

Notice 1998-15

Change of Public Hearing Date: Prohibited and Excessive Contributions; "Soft Money" (63 FR 55056, October 14, 1998)

It is unlawful for a corporation to make contributions or expenditures in connection with any federal election, and it is unlawful for any person to make a contribution in the name of another or knowingly permit its name to be used to effect such a contribution. 2 U.S.C. §441b(a) and §441f.

This matter was referred to the FEC by the Department of Justice. The Commission found reason to believe Sun-Land knowingly and willfully had violated 2 U.S.C. §§441b(a) and 441f and entered into a conciliation agreement with Sun-Land. ♦

MUR 4790 **Contributions Exceeding Annual \$25,000 Limit**

E. William Crotty, the recently confirmed ambassador to Barbados, has paid a \$13,989 civil penalty for exceeding the annual \$25,000 individual contribution limit.

The Federal Election Campaign Act limits total contributions by an individual to \$25,000 during a calendar year. 2 U.S.C. §441a(a)(3). Any contribution that is made during a nonelection year to a candidate or authorized committee with respect to a particular election counts toward the contributor's annual limit for the calendar year in which that election is held. 11 CFR 110.5(c)(2).

Mr. Crotty made \$38,989 in contributions for the 1996 elections—\$13,989 over the contribution limit. Once he learned that his contributions likely exceeded the annual limit for individuals, he requested refunds or asked that some of the funds be reclassified as nonfederal and transferred to the nonfederal accounts of the committees. He also alerted the FEC to the excessive contributions. The Commission investigated the information and entered into a conciliation agreement with Mr. Crotty over the matter. ♦

Advisory Opinions

AO 1998-11 **Contributions from California LLC**

Patriot Holdings (PH), a California limited liability company, may make contributions to federal political committees subject to the contribution limits for "person" set out in the Federal Election Campaign Act (the Act). Individuals associated with PH may also join with individuals associated with its two subsidiaries, also limited liability companies (LLCs), in forming a nonconnected PAC despite the fact that the subsidiaries are federal contractors.

In addition to revenue from its two subsidiaries, PH generates revenue from separate business ventures. PH must use this separate pool of revenue in making contributions to federal political committees.

The Act does not specifically address LLCs, but, in past advisory opinions, the Commission has concluded that LLCs in four different jurisdictions constitute a distinct entity, different from corporations (contributions are prohibited) and partnerships (contributions require dual attribution to the firm and the partners). For purposes of contribution limits, the Commission has concluded that LLCs fall within the category of "any other organization or group of persons." See AOs 1997-17, 1997-4, 1996-13 and 1995-11. (Entities in this category may contribute \$1,000 to each candidate, per election, \$20,000 to a national party committee and \$5,000 to any other political committee per year.)

In determining that LLCs in the District of Columbia, Missouri, Pennsylvania and Virginia are eligible to make contributions in connection with federal elections, the Commission noted:

- The state's recognition of the LLC as a distinct form of business, separate from a corporation or partnership, with its own statutory framework;
- The state's requirements for naming the LLC;
- The corporate attribute of limitation of liability for all members; and
- The lack of the general corporate attributes of free transferability of interests and continuity of life.

California laws pertaining to LLCs closely track the statutes in the other locations where the Commission ruled that LLCs could make contributions to federal campaigns. In granting LLCs the ability to make contributions, however, the Commission stated that if any member of the contributing LLC fell within a prohibited category—corporations, federal contractors, foreign nationals—the contribution by the LLC would be impermissible. In this instance, the Commission has likened PH's relationship with its two subsidiaries as that of a holding company. In past advisory opinions, the Commission reasoned that a holding company was a distinct legal entity and that no language in the Act's prohibitions disallowed such entities from making contributions to federal candidates. That conclusion was based on the assumption that the holding company had a separate identity from its subsidiaries and was not merely an agent, instrumentality or alter ego of the subsidiaries. Additionally, contributions from the holding company could not come from revenue derived by the subsidiaries that were prohibited from making contributions to federal political committees.

Forming a Nonconnected PAC

The Act at 2 U.S.C. §441c prohibits federal contractors from contributing to or making expenditures on behalf of any federal political committee. Nevertheless,

Commission regulations permit employees, officers or individual members of an organization that is a federal contractor to make contributions from their personal assets or to form a nonconnected PAC. 11 CFR 115.6. See AOs 1993-12, 1991-1 and 1990-20. Consequently, individuals associated with PH and its two subsidiaries may establish a nonconnected PAC. The PAC would have to be independent of and receive no support from the federal contractor. Additionally, any payments to the PAC by PH for administrative costs would be considered contributions.

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

AO 1998-15 Contributions from Illinois LLCs

Fitzgerald for Senate, Inc., the principal campaign committee of Republican Senate nominee Peter Fitzgerald, may accept contributions from limited liability companies (LLCs) in Illinois subject to the contribution limits for "person" set out in the Federal Election Campaign Act (the Act).

The Act does not specifically address LLCs, but, in past advisory opinions, the Commission has concluded that LLCs in four jurisdictions constitute a distinct entity, different from corporations (contributions are prohibited) and partnerships (contributions require dual attribution to the firm and the partners). For purposes of contribution limits, the Commission has concluded that LLCs fall within the category of "any other organization or group of persons." See AOs 1997-17, 1997-4, 1996-13 and 1995-11. (Entities in this category may contribute \$1,000 to each candidate, per election, \$20,000 to a national party committee and \$5,000 to any other political committee per year.)

In determining that LLCs in four jurisdictions are eligible to make contributions in connection with federal elections, the Commission noted:

- The state's recognition of the LLC as a distinct form of business, separate from a corporation or partnership, with its own statutory framework;
- The state's requirements for naming the LLC;
- The corporate attribute of limitation of liability for all members; and
- The lack of the general corporate attributes of free transferability of interests and continuity of life.

The Illinois law pertaining to LLCs is similar to the statutes in the other jurisdictions where the Commission has ruled that LLCs may make contributions to federal campaigns (the District of Columbia, Missouri, Pennsylvania and Virginia). The Commission's approval of these LLC contributions was conditioned on the assumption that none of the members of the LLC was in a category prohibited from contributing to federal elections—corporations, foreign nationals or federal contractors.

Thus, upon receipt of a contribution from an LLC, the Fitzgerald committee treasurer should ask the LLC, orally or in writing, whether any of its members fall within the prohibited categories. If the committee does not receive written or oral (memorialized in writing) confirmation that none of the LLC's members fall within those categories, the committee must return the contribution in accordance with 11 CFR 103.3(b).

Date Issued: September 3, 1998;
Length: 4 pages. ♦

(continued on page 8)

Advisory Opinions

(continued from page 7)

AO 1998-17

Free Air Time on Cable for California Candidates

Daniels Cablevision, Inc. (Daniels), may carry out its plan to provide free cable television air time to federal candidates in the communities in which it offers its cable services without making a contribution to the committees.

Daniels plans to make up to 750 thirty-second spot advertisements available to bona fide candidates for the Senate from California and for the House in the 44th, 48th and 51st California congressional districts—the cable company’s coverage area—for each of the eight weeks leading up to the general election. Daniels defines bona fide candidates as those who meet the state requirements to run for the office and qualify as a candidate under the definition in the Federal Election Campaign Act (the Act). 2 U.S.C. §431(2).

Under its plan, Daniels would broadcast the candidates thirty-second ads for free. It would not exercise any control over the content. The ads would run on commercial cable channels, such as CNN and ESPN, between 6 a.m. and midnight. The specific time slots for each ad would be developed by Daniels and made available to the public. Each candidate would be permitted to run between 15 and 60 ads per week in the free time slots. If a campaign did not submit its advertisements for the week in a timely fashion, the time slots would be lost. This would prevent candidates from stockpiling their time for use as the election nears.

The Act prohibits corporations from making contributions or expenditures in connection with federal elections. 2 U.S.C. §441b(a). It defines “contribution” and “expenditure” to include any gift of money or anything of value for the

purpose of influencing a federal election. 2 U.S.C. §431(8)(A)(i) and (9)(A)(i). There is, however, an exemption from these definitions for any news story, commentary or editorial distributed through the facilities of a broadcasting station (including a cable television operator), as long as the station is not owned or controlled by a political party, political committee or candidate. 2 U.S.C. §431(9)(B)(i), 11 CFR 100.7(b)(2) and 100.8(b)(2).

Daniels falls within this media exemption by virtue of the facts that it is not owned or controlled by a political party, political committee or candidate; it qualifies as a bona fide media entity; and, in providing free air time to candidates, Daniels would be performing a function of a media entity contemplated under the Federal Communications Act. See AOs 1996-48, 1996-41, 1996-16 and 1982-44. The Commission notes that Federal Communications Commission statutes indicate media companies such as Daniels should provide access to candidates on an equal-opportunity basis to more fully inform voters about candidates before an election. The Commission views the airing of candidate advertisements for free as a form of commentary and thus concludes that the activity would fall within the press exemption. If, however, the cable company’s plans reflect an intent to advance one candidate over another, or to give preference to certain candidates, the ads would fall outside of the FEC’s media exemption.

Although the disclaimer requirements do not apply to Daniels as a donor of time to candidates, the cable company should advise each candidate whose advertisements it runs that a disclaimer is required on the ads themselves. The disclaimer must say who paid for the communication, and, in the case of an ad that was paid for by a person other than the candidate’s committee, who paid for and who authorized it. 2 U.S.C.

§441d(a). Examples of acceptable disclaimers include: “Paid for by X for Congress,” “Paid for by X for Congress and time provided free by Daniels Cablevision,” and “Time for the following message is provided free by Daniels Cablevision to help inform the public about the current House campaign and other costs are paid by X for Congress.”

Date Issued: September 10, 1998;
Length: 7 pages. ♦

AO 1998-18

Payment for Testing-the-Waters Poll

The Washington State Democratic Committee must pay for a testing-the-waters poll entirely from its federal account despite the fact that the person whose prospects were being tested declined to seek federal office.

The state committee initiated the poll in June 1998 to explore the prospects of an individual who was considering a run for Congress. The randomly conducted telephone survey of 400 people consisted of a number of questions about the individual running against a Republican incumbent, impressions of other candidates and officeholders, views of certain issues and the likelihood and manner of voting by the respondent. The polling firm billed the state committee \$8,000. Ultimately, the individual decided not to run for election in 1998.

Applicable Laws and Regulations

The Federal Election Campaign Act (the Act) defines “contribution” to include a gift of money or anything of value given to any person to influence a federal election. 2 U.S.C. §431(8)(A)(i). An “expenditure” is defined to include the purchase or payment of money or anything of value for the purpose of influencing a federal election, as well as a written contract or agreement to make an expenditure. 2 U.S.C. §431(9)(A).

Commission regulations exempt from these definitions testing-the-waters activities—such as conducting a poll to determine whether an individual should become a candidate. Nonetheless, the regulations require that only federally permissible funds be used for any such exploratory activities. The regulations go on to state that if the prospective candidate decides to run for election, he or she must report all funds received and payments made in connection with any testing-the-waters activities as contributions and expenditures. 11 CFR 100.7(b)(1) and 100.8(b)(1).

When a PAC or party committee purchases results of an opinion poll and a candidate accepts the results, then an in-kind contribution by the purchaser to the recipient candidate occurs. 11 CFR 106.4(b).

Poll results purchased by a PAC or party committee for its own use is considered an overhead expenditure by the political committee to the extent of the benefit derived by the committee. 11 CFR 106.4(d).

Poll Payment by Committee

Although, for reporting purposes, the cost of the testing-the-waters poll is not considered a contribution or expenditure until the prospective candidate becomes a candidate, Commission regulations require that committees adhere to the Act's limits and prohibitions in anticipation of an eventual candidacy.

Had the state committee entered into a written contract with the polling firm, that action would have created the equivalent of an expenditure. Furthermore, because the poll results were given to, and were accepted by, the potential candidate, the result would have been an in-kind contribution to the individual at that time had he or she later decided to run in the election. Thus, federal funds must be used to pay for the poll. The fact that the payment to the pollster did not occur before the

individual decided not to run for Congress does not change the result.

Date Issued: October 9, 1998;
Length: 4 pages. ♦

Advisory Opinion Requests

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

AOR 1998-20

Application of contribution limits to fundraising for repayment to U.S. Treasury (Dr. Lenora B. Fulani for President, September 9, 1998; 6 pages)

AOR 1998-21

Permissibility of post-election transfer between federal and nonfederal accounts for administrative expenses (National Republican Senatorial Committee, September 17, 1998; 11 pages)

AOR 1998-22

Application of expenditure definition and disclaimer requirements to web site containing express advocacy (Leo Smith, September 18, 1998; 2 pages plus 3-page attachment)

AOR 1998-23

Status as state committee of a political party (Maine Green Party, September 9, 1998; 3 pages plus 13-page attachment)

AOR 1998-24

Status as state committee of a political party (American Heritage Party, October 8, 1998; 2 pages plus 19-page attachment)

AOR 1998-25

Contributions forwarded by connected organization to union PAC after being held in escrow account for more than 30 days (Mason Tenders District Council, October 2, 1998; 2 pages plus 5-page attachment) ♦

Alternative Disposition of Advisory Opinion Request

AOR 1998-13

The requester withdrew this request for an advisory opinion. Submitted on June 15, the AOR sought the Commission's opinion on the legality of contributions made by a limited liability company in New York and by its members using non-repayable drawing accounts. ♦

Regulations

Soft Money Hearing Set for This Month

The FEC has rescheduled its public hearing on soft money at the request of one of the commenters, the National Republican Senatorial Committee. The hearing will now take place on November 18 at 9 a.m. in the FEC's hearing room at 999 E St., NW, in Washington. The deadline for comments has passed.

Anyone who wants to learn more about the Commission's proposed rules for soft money should see the July 13 *Federal Register* (63 FR 37721). It is available at the FEC's web site (<http://www.fec.gov>) and at FEC Faxline (202/501-3413, request document 230).

A copy of the Notice of Proposed Rulemaking (NPRM) may also be obtained by calling the Public Records Office (800/424-9530 or 202/694-1120). Callers can also purchase copies of comments the FEC has received in response to the NPRM. The 82 comments, totaling 1,232 pages, are available from the Public Records Office at 5 cents per page. ♦

Public Funding

Fulani Repayment Stay Lifted

On September 18, the Commission voted to lift the stay of repayment granted Lenora B. Fulani and the Fulani for President Committee. The Commission acted after the U.S. Court of Appeals for the District of Columbia Circuit denied the committee's petition seeking judicial review of the FEC's repayment determination of \$117,269. See the [August 1998 Record, p. 6](#).

The Commission had stayed \$115,875.54 of the repayment determination while the committee disputed some of the issues in the Commission's final determination that the committee repay \$117,269 to the U.S. Treasury.

The Commission also granted the committee a 90-day extension to make the repayment, and concluded that the committee had to pay interest on the repayment amount dating back to August 1997—the original due date for the repayment. ♦

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