Record

April 1996 *Federal Election Commission* *Volume 22, Number 4*

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Regulations

MCFL Rules on Corporate/ Labor Activity Take Effect

On March 13, 1996, new and revised FEC regulations on corporate and labor communications and the use of corporate/labor facilities and resources went into effect.[1] These rules, which represented the second part of the Commission's MCFL rulemaking, reflect recent judicial and Commission interpretations of 2 U.S.C. §441b. This section of the law prohibits corporate/labor organizations from using treasury funds to make contributions or expenditures in connection with federal elections.

The new rules modify FEC regulations in five significant ways:

- They provide a new standard for determining which communications must be limited to the restricted class;
- They set guidelines for communications made by corporate/labor organizations;
- They clarify that coordination

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[1] Announcement of Effective Date, 61 FR 10269, March 13, 1996. Final Rule, 60 FR 64260, December 14, 1995, with corrections, 61 FR 4302, February 5, 1996. Use the FEC's automated Flashfax system to have copies of these Federal Register notices faxed to you; use a touch tone telephone to dial 202/501-3413 and request document 230 at the prompt.

Court Cases

FEC v. GOPAC

On February 28, 1996, the U.S. District Court for the District of Columbia ruled in GOPAC's favor and dismissed this case. The FEC had asked the court to find that, under the Federal Election Campaign Act, GOPAC first qualified as a political committee in 1989 and as such was required to file and register with the FEC since then. GOPAC argued that it did not qualify as a political committee under the Act until 1991, at which time it did register with the FEC.

The court ruled that an organization's status as a political committee under the Act is properly determined by applying the "major purpose" test to narrow the statutory definition, which states that a political committee is any group that receives at least $1,000 in contributions or makes at least $1,000 in expenditures to support federal candidates. According to the court, the major purpose test serves as a bright line that separates groups that are political committees from those that are not; under the major purpose test, a group is a political committee if its major purpose is to elect a particular candidate or candidates for federal office.

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Information

The FEC Now Takes Visa and Mastercard

FEC customers can now pay for FEC materials with Visa or Mastercard. Most FEC materials are available free of charge, but some are sold, including financial statistical reports ($10 each), candidate indexes ($10) and PAC directories ($13.25). The FEC also has a 5¢ per page copying charge for paper documents and a 15¢ per page copying charge for microfilmed documents.

Paying by credit card has its advantages. For instance, since the FEC will not fill an order until payment is received, using a credit card speeds delivery by 4 to 5 days.

Visitors to the FEC's Public Records Office will also be able to make payments by credit card. Regular visitors, such as researchers and reporters, who in the past have paid for FEC materials out of their own pockets, may now make payments with a company credit card.

The new credit card payment system also reduces costs and paperwork associated with check processing, enabling FEC staff to better serve the walk-in visitor. ❖

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

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

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Free FEC Brochures Address Common Questions

How does the $25,000 annual limit for individuals work? How far reaching is the ban on foreign national contributions? When do state laws apply to federal campaign activity?

The answers to these questions can be found in three of the FEC's free brochures: "The $25,000 Annual Contribution Limit," "Foreign Nationals" and "Federal and State Campaign Finance Laws." Other available brochures address advisory opinions, filing an administrative complaint, independent expenditures, volunteer activity and a number of other federal election issues.

Free brochures may be ordered from the FEC's Information Division: 800/424-9530. We accept bulk orders of a few hundred brochures. Political committees are encouraged to order brochures in bulk and distribute them to their contributors. ❖

Audits

Jude for Congress Audit Report

An FEC audit of Jude for Congress, Thaddeus Jude's 1994 campaign for the U.S. House seat in Minnesota's sixth district, found that:

- Ruth Jude, the candidate's mother, appears to have exceeded her contribution limit by having infused funds into her deceased husband's trust account, which were used by the candidate to make a $50,000 loan to his committee;
- The committee failed to itemize 28 contributions received from individuals totaling $19,550;
- The committee failed to itemize 32 contributions received from political committees totaling $19,753; and
- The committee failed to disclose the purpose of a material number of disbursements.

The committee submitted amended reports to correct the reporting deficiencies described above.

With regard to the first finding, Ruth Jude, the candidate's mother, appears to have exceeded her $1,000 contribution limit to the candidate's campaign when she transferred $50,000 from her trust account into the Victor N. Jude Revocable Trust, the trust account of her deceased husband. This transaction provided liquidity to the Victor Jude trust account. The candidate issued himself a $50,000 check drawn on his father's trust account and loaned the money to his campaign. The candidate also deposited an additional $1,500 from the Victor Jude trust account into his campaign.

According to the committee's attorney, the $50,000 transaction did not represent a loan from Ruth Jude to her son's campaign for the purpose of influencing an election, but rather a loan to her son of a portion of his share of the Victor Jude Trust.

The FEC notes, however, that the trust agreements of neither the Victor Jude account nor the Ruth Jude account provided for such disbursements to the candidate at the time of these transactions.

This audit was conducted pursuant to 2 U.S.C. §438(b), which authorizes the Commission to conduct audits of any political committee that files reports that fail to meet the threshold level of compliance set by the Commission. Subsequent to a final audit report, the FEC may choose to pursue any of the audit's findings in an enforcement matter. ❖

Regulations

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between a corporation (or labor organization) and a candidate generally results in an illegal contribution to the candidate;
- They provide guidelines on the permissible uses of corporate and labor facilities and resources; and
- They clarify that corporate and labor facilitation of contributions to candidates and committees is prohibited.

New Standard for Identifying Communications Appropriate for Restricted Class

The new rules substitute a new standard for the partisan/nonpartisan standard previously used for deciding which communications had to be limited to the restricted class (i.e., members, stockholders, executives, administrative personnel and the families of each group) and which could be distributed to a broader audience (i.e., all employees or the general public). The new standard is based on "express advocacy" (i.e., a communication that expressly advocates the election or defeat of a clearly identified candidate for federal office or the candidates of a clearly identified political party). See also the August 1995 *Record*, page 1. Under this new standard, corporate and labor communications that contain express advocacy may be sent only to the restricted class.

Corporate/Labor Communications

The new rules also provide guidance on the following:

- Candidate appearances and speeches at corporate/labor events;
- Endorsements of candidates;
- Candidate appearances and speeches on college campuses;
- Candidate debates;
- Written political communications, including voter guides, voting records and press releases;
- Voter registration and get-out-the-vote drives; and
- Voting information. (See the accompanying chart.)

Coordination with Candidate

A new provision in the revised rules addresses the topic of coordination between a candidate and the corporate or labor sponsor of an election-related communication. When communicating with its restricted class, a corporation or labor organization may coordinate with candidates concerning their campaign plans, projects and needs. That coordination, however, may compromise the independence of future communications to the general public (by the organization or its separate segregated fund).

When communicating beyond the restricted class, coordination with the candidate (other than the kinds of coordination specified in the regulations—see chart) may result in a prohibited in-kind contribution to the candidate. Additionally, it may compromise the independence of future communications to the general public (by the organization or its separate segregated fund).

Permissible Use of Corporate and Labor Facilities

The new regulations reaffirm that, if a candidate or committee uses the facilities of a corporation or labor organization, the organization must be reimbursed within a commercially reasonable time for the usual and normal rental charge. Reimbursement is not required for the use of meeting rooms if the organization normally makes such rooms available to civic or community groups without charge and if it makes the room available on the same terms to any other candidate (running for the same office) who requests to use it.

Facilitation of Contributions

Additionally, the rules clarify that corporations and labor organizations are prohibited from facilitating contributions to candidates or political committees (other than the organization's separate segregated fund). Facilitation means using corporate or labor facilities or resources to raise funds in connection with any federal election. The new regulations provide several examples. They also explain that, in a few specific cases, a fundraising activity sponsored by a corporation or labor organization is not facilitation if someone, such as a candidate, individual or political committee, pays the organization in advance for the use of the facilities or resources. This principle applies to three situations:

- Directing staff to work on the fundraiser;
- Using the corporate or labor organization's mail list; and
- Using the organization's food services. ❖

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April Reporting Reminder

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

Please note that, in addition to filing quarterly reports, committees of candidates active in 1996 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.

For more information on 1996 reporting, including reporting dates and when to file 48-hour notices, see the reporting schedule in the January 1996 *Record*. To order the 1996 reporting schedule handout, call 800/424-9530 or 202/219-3420. Or use Flashfax: 202/501-3413 and request document 344.

For special election reporting, see: February *Record*, page 5 (CA 37th); and March *Record*, page 2 (MD 7th, OR 3rd).

Corporate/Labor Communications

Candidate Appearances[1]	Restricted Class	Other Employees[2]
Campaign-Related Appearance at Corporation or Labor Organization *11 CFR 114.3(c)(2), and 114.4(b)(1) and (2)*	Organization and candidate may expressly advocate election or defeat of candidate.	Candidate may advocate his/her election, but the organization and its SSF may not; nor may they encourage employees to do so.
	Organization may solicit for candidate, but may not collect contributions.	Candidate may solicit funds, but neither the organization nor its SSF may solicit, direct or control contributions to candidate, in connection with the appearance.
	Candidate may solicit and accept contributions before, during or after appearance.	Candidate may not accept contributions at event, but may leave return envelopes and campaign materials for audience.
	Organization may bar other candidates from addressing restricted class.	Organization must, upon request, give opportunity to all candidates seeking the same office. Unless impractical, organization must make equal time and location available to all candidates who wish to appear.
	Organization may consult candidate on structure, format and timing of appearance, and on campaign plans, projects or needs.[3]	Organization may consult candidate on structure, format and timing of appearance, but not on candidate's campaign plans, projects or needs.
	If organization allows more than one candidate to appear, and permits news coverage, it must allow media to cover appearances by other candidate(s) for same office.	(Same as the adjacent restricted class rules.)
	Organization must provide news media equal access.	(Same as the adjacent restricted class rules.)
	De minimis number outside restricted class may attend: employees who facilitate the meeting, news media, guests being honored or participating.	In addition to restricted class and other employees, news media and guests being honored or participating may attend.
	Organization must file reports if communication contains express advocacy and costs exceed $2,000 per election.	

[1] *These rules also apply to appearances by party representatives.*

[2] *Communications directed to employees outside the restricted class may also go to those within the restricted class.*

[3] *That consultation, however, may compromise the independence of future communications to the general public by the organization or its separate segregated fund.*

Candidate Appearances	General Public
Noncampaign-Related Appearance at Corporation or Labor Organization *AO 1980-22*	Candidate may speak about issues of interest to industry or union. Candidate must avoid reference to campaign—no solicitation and no advocacy of election. No requirement to offer other candidates equal opportunity. Proximity to election day is not relevant.
Public Debates *11 CFR 114.4(f)*	Any corporation or labor organization may donate funds to support debate conducted by nonprofit organization. Debate may be sponsored by nonprofit organization—501(c)(3) and 501(c)(4)—that does not support or oppose any candidate or party, or by a broadcaster, newspaper, magazine or other general circulation periodical publication. Debate must include at least two candidates, meeting face to face, and may not promote one candidate over another. Organization staging debate must select debate participants on the basis of preestablished objective criteria: • In primary election, may restrict candidates to those seeking nomination of one party • In general election, may not use nomination by a particular party as sole criterion
Public Appearance at a College or University[4] *11 CFR 114.4(c)(7)*	Tax-exempt educational institution—either incorporated or not—may rent facilities to candidate or political committee in normal course of business and at usual and normal charge. Tax-exempt educational institution—either incorporated or not—may make facilities available to candidate or party for free or at discount if it: • Makes reasonable efforts to avoid campaign event and ensure that appearance constitutes communication in academic setting; • Does not make express advocacy communication; and • Does not favor one candidate or party over another. College or university may host noncampaign appearance under above guidelines. College or university may host candidate debates under above guidelines.

[4] *Consult IRS or applicable state rules regarding state colleges and universities, and private tax-exempt schools.*

Publications	Restricted Class	General Public
General Rule *11 CFR 114.3(a), (b) and (c)(1), and 114.4(c)(1)*	Organization may expressly advocate election or defeat of candidate or a party's candidates.	Organization may not expressly advocate election or defeat of candidate or a party's candidates.
	Organization may solicit contributions for candidate or party.	No solicitations.
	Organization may use brief quotations from candidate, but may not republish candidate materials.	
	Organization must file reports if communication contains express advocacy and costs exceed $2,000 per election.	

Publications	General Public
Voting Records of Incumbent Candidates *11 CFR 114.4(c)(4)*	Organization may publish factual record of votes on legislative matters. Voting record may not include express advocacy. Decision on content and distribution may not be coordinated with candidate or party.
Voter Guides *11 CFR 114.4(c)(5)*	Type 1: Based on prepared written questions submitted to candidates Type 2: Not based on written questions Characteristics Common to Both Types of Guides: • Guide consists of at least two candidates' positions on campaign issues. • Guide may include biographical information. • Organization may not coordinate with candidates concerning content (other than by receiving prepared questions) or distribution. • Guide may not contain express advocacy. Characteristics of Voter Guide Based on Written Questions (Type 1): • Questions may be directed in writing to all candidates for a particular Congressional seat and candidates may respond in writing. • Questions may be directed in writing to Presidential candidates (all in one party for primary or all on general election ballot in state where guide is distributed or in enough states to win majority of electoral votes). • No candidate may receive greater prominence than another. • Guide may not contain an electioneering message. • Guide may not score or rate responses in such a way as to convey an electioneering message.
Press Releases/Endorsements *11 CFR 114.4(c)(6)*	Organization (except 501(c)(3) nonprofit organization) may announce at a press conference or in a press release sent to regular press contacts that it made a candidate endorsement to its restricted class, as long as costs are de minimis and the announcement is not coordinated with candidate

Voting Information	Restricted Class	General Public
Voter Drives: Registration and Get-Out-the-Vote *11 CFR 114.4(d)*	Organization may expressly advocate election/defeat of candidate/party.	Organization may not expressly advocate election/defeat of candidate/party.
	Organization may use phone bank to encourage registration and voting for particular party and candidate.	
	Organization may provide transportation to registration place and to polls, but cannot condition service on support of particular candidate or party.	(Same as the adjacent restricted class rules.)
		Organization must give persons receiving services written notice of the nonpartisan nature of the services.
		No coordination with candidate or party is permitted.
		Organization may not pay individuals conducting drive based on number of persons (registered or transported) who support particular candidate or party.
		Organization may not target people it believes will support its favored candidate or party.

	General Public
Voter Advertisements *11 CFR 114.4(c)(2)*	Organization may pay for ads (posters, billboards, broadcasting, print or direct mail) urging public to register to vote and to vote. The advertisement may not contain express advocacy. The advertisement may not be coordinated with candidate.
Distribution of Official Voter Information *11 CFR 114.4(c)(3)*	Organization may distribute voter information produced by official election administrators, including registration-by-mail forms and absentee ballots. Voter information may not contain express advocacy. Voter information may not be coordinated with candidate. Organization may give funds to state and local governments to defray costs of voter registration, voting information and forms.

Court Cases

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FEC Administrative Activity

Following an investigation into an administrative complaint filed by the Democratic Congressional Campaign Committee in September 1990, the FEC found probable cause to believe that in 1989 GOPAC qualified as a political committee under the Act, and that, until 1991, GOPAC failed to abide by the Act's registration and disclosure requirements for political committees. This probable cause finding was based on a GOPAC solicitation that urged contributors to help "break the Democrats' stronghold on power" in the U.S. House of Representatives.

The FEC was unable to reach a conciliation agreement with GOPAC and filed this lawsuit on April 14, 1994. The FEC asked the court to impose civil penalties on GOPAC and to require GOPAC to file 1989 and 1990 disclosure reports.

Factual Background

In 1989, GOPAC's stated mission was: "to create and disseminate the doctrine which defines a caring, humanitarian, reform Republican Party in such a way as to elect candidates, capture the U.S. House of Representatives and become a governing majority at every level of government."

The court said that although this mission statement had as its ultimate objective the election of Republican candidates to the U.S. House of Representatives, GOPAC's direct support in 1989 and 1990 was for state and local candidates and not for any federal candidates.

GOPAC did develop and distribute materials espousing a set of ideas for Republican candidates, including federal candidates. GOPAC also targeted cash contributions to local and state candidates in areas where it hoped this support might indirectly influence the election of other candidates, including federal candidates, on the Republican ticket.

GOPAC also provided assistance to Congressman Newt Gingrich in 1989 and 1990, but the court said there was no material evidence that Congressman Gingrich used these funds for his 1992 reelection campaign as opposed to his work as GOPAC Chairman.

Legal Analysis

The Act defines a political committee as any group that receives at least $1,000 in contributions or makes at least $1,000 in expenditures for the purpose of influencing a federal election. 2 U.S.C. §431(4)(A).

In *Buckley v. Valeo*, the Supreme Court, citing First Amendment concerns, ruled that the definition of political committee "need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate."

The FEC contended that the *Buckley* decision did not require a group to provide direct support to a specific federal candidate in order for the group to be considered a political committee under the major purpose test. Instead, the FEC argued that *Buckley's* definition of "political committee" encompassed groups organized to engage in partisan electoral politics or electoral activity. Accordingly, the FEC argued that if GOPAC's sole purpose was to advocate the election of Republicans as a class of candidates, then the purpose of its activities was by definition campaign related. And if its expenditures or contributions for these campaign-related activities exceeded $1,000, it qualified as a political committee under the Act.

The court disagreed because it found the term "partisan electoral politics" to be vague and therefore to chill the First Amendment rights of issue advocacy groups. The court quoted the *Buckley* decision: " . . . the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application."

The court reasoned that a bright-line test was therefore required, so that contributors and committee treasurers could easily conform their conduct with the law and so that the FEC could easily identify violations and take quick and decisive action. The court concluded that the appropriate bright line was provided by limiting the definition of political committee to groups whose major purpose was the election of a particular federal candidate or candidates. The court said that this test drew two relatively clear lines: it distinguished between federal and nonfederal candidates; and it distinguished between groups that support particular federal candidates and those that lend general party support.

The court noted that the FEC conceded that there was no evidence of direct GOPAC support to federal candidates in 1989 and 1990. GOPAC's support appeared to have been limited to state and local candidates, to general nationwide dissemination of ideological materials and to Congressman Gingrich in his role as GOPAC chairman and not as a federal candidate. The court therefore ruled in GOPAC's favor and dismissed the FEC's complaint.

U.S. District Court for the District of Columbia, 94-0828-LFO, February 28, 1996. ✦

Maine Right to Life Committee v. FEC

On February 15, 1996, the U.S. District Court for the District of Maine ruled that the FEC's regulation at 11 CFR 100.22(b) exceeded the FEC's statutory authority because it broadened the definition of express advocacy beyond the Supreme Court's interpretation. *Buckley v. Valeo* and *Massachusetts Citizens for Life v. FEC*. This court case marked the first judicial review of the FEC's definition of express advocacy at 100.22.

Background

The Maine Right to Life Committee (MRLC) is a nonprofit membership corporation established for the purpose of advocating pro-life stances. MRLC uses its funds to create and distribute a newsletter that includes discussions of federal candidates' stances on pro-life issues.

Legal Analysis

The Federal Election Campaign Act (the Act) contains a broad prohibition against using corporate and labor organization money in connection with a federal election. 2 U.S.C. §441b.

The Supreme Court, citing First Amendment concerns, explicitly limited the scope of §441b in its *Buckley* and *MCFL* decisions. The Court held that the ban on corporate and labor organization money could only be constitutionally applied in instances where the money is used to expressly advocate the election or defeat of a clearly identified candidate for federal office. The *Buckley* decision listed examples of specific phrases that the Court said constituted express advocacy. The FEC incorporated this list in its definition of express advocacy at 11 CFR 100.22(a).

However, subpart (b) of 11 CFR 100.22 is based, inter alia, on the decision of the Court of Appeals for the Ninth Circuit in *FEC v. Furgatch.* The *Furgatch* case involved a communication that criticized President Carter and included the phrase: "Don't let him do it." The court held that this communication contained express advocacy and supported this conclusion by noting that the timing of the message coincided with the eve of the 1980 Presidential general election. The Court of Appeals reasoned that language may be said to expressly advocate a candidate's election or defeat if, when taken in context and with limited reference to external events, it can have no other reasonable interpretation.

District Court Decision

The court held that the Supreme Court's *MCFL* decision and a decision of the Court of Appeals for the First District in *Faucher v. FEC* supported using *Buckley's* list of phrases as a bright-line test to detect express advocacy. The rigid approach of a bright-line test, noted the court, avoids the chilling of free speech that occurs when the communicator is uncertain about whether or not his or her message contains express advocacy. Further, the idea that a message's content might become express advocacy as an election nears adds to the chilling effect of 11 CFR 100.22(b) on free speech.

The court recognized the difficulty the FEC faces in crafting a regulation that effectively defines express advocacy, but noted that the *Buckley, Faucher* and *MCFL* decisions required it to safeguard First Amendment interests over the interest of keeping corporate and labor organization money out of the electoral process. Based on these precedents, therefore, the court ruled that 11 CFR 100.22(b) was invalid because it defined express advocacy in broader terms than the *Buckley, MCFL* and *Faucher* decisions.

The court dismissed MRLC's other claims for injunctive and declaratory relief (see page 3 of the January 1996 *Record*).

U.S. District Court for the District of Maine, 95-261-B-H, February 15, 1996. ✦

FEC v. Legi-Tech

On February 16, 1996, the U.S. Court of Appeals for the District of Columbia Circuit reversed the district court's decision to dismiss the FEC's case against Legi-Tech. See page 6 of the December 1994 *Record* for a summary of the district court's decision. The district court had dismissed the case on October 12, 1994, based on the ruling of the U.S. Court of Appeals for the District of Columbia Circuit in *FEC v. NRA Political Victory Fund.* See page 2 of the December 1993 *Record* for a summary of that decision.

Background

Legi-Tech used contributor information drawn from FEC disclosure reports to create a computerized database that it marketed to its subscribers. Some of Legi-Tech's subscribers in turn used this database to solicit contributions.

The FEC found probable cause to believe that Legi-Tech violated 2 U.S.C. §438(a)(4), which makes it unlawful for anyone to use information disclosed with the FEC for commercial purposes or for the purpose of making solicitations. The FEC and Legi-Tech were unable to arrive at a conciliation agreement so the FEC filed suit.

The District Court Decision

While the court was considering the FEC's suit, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision in *FEC v.*

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Court Cases

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NRA Political Victory Fund. In that decision, the appeals court ruled that the FEC's structure was unconstitutional because, by having the Clerk of the House and the Secretary of the Senate as nonvoting ex officio members, it violated the separation of powers principle.

Following the *NRA* decision, the FEC removed the ex officio members from its body and, in this new form, ratified its former actions and authorized its attorneys to continue litigation against Legi-Tech. The district court, however, said that these corrective measures were not enough. The court reasoned that, because enforcement proceedings against Legi-Tech had been initiated by an unconstitutionally structured FEC, the rule set forth in *Harper v. Virginia Department of Taxation*—that a newly enunciated rule of law must be retroactively applied to pending cases—had to be applied in this case. For this reason, the district court dismissed this case.

The Appeals Court's Decision

While the appeals court did not object to the district court's application of the *Harper* rule in this case, it disagreed that dismissal was the only remedy.

In its decision, the appeals court pointed out that: "Even were the Commission to return to square one—assuming the statute of limitations were not a bar—it is virtually inconceivable that its decisions would differ in any way the second time from that which occurred the first time."

Most of the Commissioners who originally voted to find probable cause that Legi-Tech had violated §438(a)(4) and, subsequently, voted to initiate a lawsuit against Legi-Tech, are still on the Commission and would likely vote the same way now as they had before, reasoned the court. The court noted that it can not "examine the internal deliberations of the Commission, at least absent a contention that one or more of the Commissioners were actually biased."

Therefore, instead of dismissal, the appeals court said that "the better course is to take the FEC's post-reconstitution ratification of its prior decisions at face value and treat it as an adequate remedy for the *NRA* constitutional violation."

U.S. Court of Appeals for the District of Columbia Circuit (94-5379), D.Ct.No. 91-0213, February 16, 1996. ✦

Federal Register

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

1996-8
Filing Dates for the Oregon Special Elections (61 FR 6837, February 22, 1996)

1996-9
11 CFR 100, 102, 109, 110 and 114: Corporate and Labor Organization Activity, Express Advocacy and Coordination with Candidates; Announcement of Effective Date (61 FR 10269, March 13, 1996)

RNC v. FEC (94-1017)

On February 20, 1996, the U.S. Court of Appeals for the District of Columbia Circuit affirmed most of the district court's decision[1] upholding the FEC's "best efforts" regulation. 11 CFR 104.7(b). The only part of the district court's decision that the court of appeals did not affirm was the FEC's requirement that specific language accompany solicitations and follow-up requests for contributor information. The court of appeals found the mandatory language prescribed in the regulation to be misleading and therefore contrary to law.

The "Best Efforts" Rules

The Federal Election Campaign Act (the Act) requires political committees to show best efforts to obtain and report the name, address, occupation and employer of any individual who makes contributions of more than $200 in a single year to the committee. 2 U.S.C. §§431(13), 432(i) and 434(b)(3)(A).

In 1994, due to low rates of disclosure of contributor information, the FEC implemented a regulation that defined "best efforts" to obtain contributor information. 11 CFR 104.7(b). This regulation required committees to place the following statement conspicuously on solicitation materials: "Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of $200 in a calendar year."

Additionally, this regulation required committees to send a stand-alone, follow-up request for contributor information in instances where the contributor failed to respond to the original request or provided incomplete information. The follow-up request also had to include the statement noted above. Committees were allowed to include an expression of gratitude for the contribution in this follow-up request, but no other extraneous information was permitted.

The Legality of a Stand-Alone, Follow-Up Request

The court found the FEC's regulation reasonable because nothing in the statute or its legislative history precluded the FEC from requiring committees to make more than one request for contributor information. *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

[1] *See page 8 of the September 1994* Record *for a summary of the district court's decision.*

The court also concluded that the new regulation was based on a reasoned analysis. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983). The court noted that the FEC was concerned about the number of committees submitting reports with a low rate of complete contributor information. The FEC held a public comment period and drafted 11 CFR 104.7(b) based on the public comments it received. The court concluded, "the Commission's new regulation results from exactly the kind of agency balancing of various policy considerations to which courts should generally defer."

The Trouble With the Mandatory Language

The court did not question the FEC's authority to require specific language on a follow-up request for contributor information. However, the court found that the mandatory language at 11 CFR 104.7(b) was inaccurate and misleading.

The language was inaccurate, the court said, because the Act does not require committees to report full contributor information for each donor; rather, it only requires them to undertake "best efforts" to obtain it. The court found that 11 CFR 104.7(b) had the effect of forbidding a more accurate paraphrasing of the law, such as: "Federal law requires us to use our best efforts to collect the information."

Additionally, the mandatory language was misleading, the court said, because it led readers to infer that federal law required contributors to disclose this information. In fact, neither the Act nor any other federal law requires contributors to do so.

For these reasons, the court ruled that the mandatory language at 11 CFR 104.7(b) was unreasonable and contrary to law.

First Amendment Issues

The RNC posed First Amendment issues with regard to both the stand-alone, follow-up notice and the specific mandatory language at 11 CFR 104.7(b). Having invalidated the specific mandatory language on statutory grounds, the court only addressed the constitutional arguments put forth by the RNC with respect to the follow-up notice.

The RNC had argued that the requirement to incur additional costs to send out additional messages was not narrowly tailored to the interests the Supreme Court had identified in *Buckley v. Valeo.* The court of appeals, however, found that the best efforts provision was essentially a safe harbor for political committees that was added to the Act after the Supreme Court upheld a more stringent and absolute FEC requirement in *Buckley.* As an optional safe harbor, it was thus less burdensome than the absolute disclosure requirement that had previously been found consistent with the First Amendment.

The court also noted that the stand-alone request was a content-neutral restriction on speech and that the RNC had other avenues, besides the follow-up notice, for communicating with donors. The court also found unconvincing the RNC's argument that the follow-up requirement sapped the committee's resources. The court noted that: "Even at the [RNC's] estimate of up to $6 per follow-up request, the cost is only about three percent of a $200 contribution, an amount not likely to inhibit political committees from 'speaking.'"

U.S. Court of Appeals for the District of Columbia Circuit (94-5248), D.Ct. No. 94-1017, February 20, 1996. ✦

FEC v. National Right to Work Committee (90-0571)

On February 15, 1996, the U.S. District Court for the District of Columbia ruled that the FEC was barred from suing for a civil penalty in this case because the 5-year statute of limitations had expired. 28 U.S.C. §2462. Additionally, the court ruled that injunctive relief was not warranted because the defendant had not violated the law again for more than 10 years.

Background

The National Right to Work Committee (NRWC) is a nonprofit corporation that defends workers' rights to refuse to join or support a labor union. In 1984, the NRWC spent $100,000 to hire private detectives to infiltrate the AFL-CIO, the National Education Association (NEA) and the Mondale for President Committee for the purpose of gathering evidence that the unions were using their general treasury monies to provide support to Walter Mondale's Presidential effort. (The use of labor union money in connection with a federal election is prohibited by 2 U.S.C. §441b.) The NRWC used the information gathered by its hired detectives to file administrative complaints with the FEC.

In October 1984, the NEA filed an administrative complaint with the FEC that accused the NRWC of violating the same federal election laws that the NRWC had accused the NEA of violating. The NEA complaint contended that the NRWC's payment of $100,000 represented illegal contributions and expenditures because the payments funded the services of detectives

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Court Cases

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who, in the course of conducting their clandestine information gathering, rendered services to the Mondale campaign.

On May 23, 1989, the Commission found "probable cause" that the NRWC had violated §441b. On March 13, 1990, the FEC filed this lawsuit.

Statute of Limitations

In general, federal government agencies must initiate proceedings to assess civil penalties, fines and forfeitures within 5 years from "the date when the claim first accrued." 28 U.S.C. §2462. In *FEC v. National Republican Senate Committee*, the court ruled that this statute of limitations applied to the FEC and that the statute of limitations began to run when the alleged offense was committed. See page 4 of the April 1995 *Record*. The FEC conceded that the NRWC's hired detectives ceased their undercover operations by September 1984. The court noted that the Commission did not file this lawsuit until March of 1990. The court concluded that the 5-year statute of limitations ran out on this case and the FEC was therefore barred from pursuing a civil penalty in this matter.

Furthermore, the court ruled that because the FEC failed to put forth any compelling evidence that the NRWC had violated the law since 1984, it was both unnecessary and unwarranted to issue injunctive relief.

U.S. District Court for the District of Columbia, 90-0571, February 15, 1996. ✥

Jordan v. FEC

On November 3, 1995, the U.S. Court of Appeals for the District of Columbia Circuit remanded this case to the district court with instructions to dismiss for lack of jurisdiction.

Absalom Jordan brought this case before the courts seeking judicial review of the FEC's decision to dismiss an administrative complaint he had filed. The district court ruled in favor of the FEC, upholding its decision to dismiss the complaint.

The court of appeals, however, noted that the FEC dismissed Mr. Jordan's complaint on July 24, 1991, and that Mr. Jordan did not file suit with the district court until September 25, 1991. Under 2 U.S.C. §437g(a)(8)(B), a petition to review an FEC decision to dismiss an administrative complaint must be filed within 60 days after the date of dismissal. The court ruled that the 60-day period began when the Commission voted to dismiss the complaint, and not on the date of the FEC's letter informing Mr. Jordan of the dismissal. When Mr. Jordan received the FEC's letter informing him of the dismissal, he had 53 days left on the 60-day limit in which to file a suit. He did not file suit with the district court until 63 days after the FEC voted to dismiss his complaint. As a result, the court of appeals ruled that the courts lacked jurisdiction to review this case. On January 23, 1996, the district court carried out the appeals court's instructions to dismiss this case.

U.S. Court of Appeals for the District of Columbia Circuit (94-5216), D.Ct. No. 91-2428, November 3, 1995. ✥

FEC v. Hartnett for U.S. Senate, et al.

On January 25, 1996, the U.S. District Court for the District of Columbia granted the FEC's request for voluntary dismissal. The FEC and the defendants agreed to settle this case.

The FEC brought this suit to enforce a civil penalty assessed against the Hartnett for U.S. Senate committee and its treasurer, Paul Meierer, for failing to comply with the 48-hour reporting requirements at 2 U.S.C. §434(a)(6)(A). Subsequent to the filing of this lawsuit, Mr. Meierer made a payment, which the FEC agreed to accept to settle this matter.

U.S. District Court for the District of Columbia, 95-1829, January 25, 1996. ✥

Compliance

Maryland and Texas Pre-Primary Nonfilers

The Jim Plack for Congress committee was the only candidate committee that failed to file a 1996 pre-election report for Maryland's March 5, House primary election. This committee is Jim Plack's principal campaign committee for the U.S. House seat representing Maryland's 1st district. See the FEC press release of March 1, 1996.

The Friends of Jim Broyles committee was the only candidate committee that failed to file a 1996 pre-election report for Texas's March 12, House primary election.

This committee is Jim Broyles's principal campaign committee for the U.S. House seat representing Texas's 11th district. See the FEC press release of March 8, 1996.

The FEC is required by law to publicize the names of nonfiling candidate committees. 2 U.S.C. §438(a)(7). The FEC pursues enforcement actions against nonfilers on a case-by-case basis. ✦

MURs Released to the Public

Listed below are summaries of FEC enforcement cases (Matters Under Review or MURs) recently released for public review. This listing is based on the FEC press releases of March 1 and 8. Files on closed MURs are available for review in the Public Records Office.

MUR 3708 (reopened, see January 1995 *Record*, page 10, *DSCC v. FEC* (93-1321))
Respondents: (a) National Republican Senatorial Committee, Maureen Goodyear, treasurer (DC); (b) Coverdell Senate Committee, Marvin Smith, treasurer (GA)
Complainant: Democratic Senatorial Campaign Committee
Subject: Excessive coordinated expenditures
Disposition: (a) $5,000 civil penalty; (b) took no action (district court's remand order encompassed the National Republican Senatorial Committee only)

MUR 4166
Respondents: (a) The Honorable Jim Bates (CA); (b) Jim Bates for Congress Committee, Jim Bates, treasurer (CA); (c) Mark A. Battaglia (CA); (d) David L. Bain (CA); (e) Sami I. Bandak (CA); (f) San Diego National Bank (CA)
Complainant: FEC initiated (Audit)
Subject: Corporate contributions; labor organization contributions; excessive contributions; failure to file 48-hour reports; failure to report expenditures; failure to maintain proper recordkeeping for disbursements; incorrect reporting of candidate as source of loans; candidate loans from other than personal funds; contribution by national bank
Disposition: (a-b) $7,000 civil penalty (all of the above except for contribution by national bank); (c) $1,300 (excessive contribution); (d-e) reason to believe, but took no further action (excessive contributions); (f) reason to believe, but took no further action (contribution by national bank)

MUR 4229
Respondent: Friends of Bernadette Castro Committee, E. Edgar Cosman, treasurer (NY)
Complainant: FEC initiated (RAD)
Subject: Failure to file 48-hour report (candidate loan of $352,810)
Disposition: $22,000 civil penalty

MUR 4256
Respondent: Levin for Congress, Joseph J. O'Brien, treasurer (MI)
Complainant: FEC initiated (RAD)
Subject: Failure to file 48-hour reports
Disposition: $4,500 civil penalty

MUR 4269
Respondents: North Dakota Republican Party, David P. Vanderscoff, treasurer (ND)
Complainant: FEC initiated (RAD)
Subject: Failure to file disclosure reports timely
Disposition: $4,000 civil penalty

MUR 4276
Respondent: Inlandboatmen's Union Political Action Committee, Terri Mast, treasurer (WA)
Complainant: FEC initiated (RAD)
Subject: Failure to file disclosure reports timely
Disposition: $1,375 civil penalty ✦

Change of Address

Political Committees

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

Other Subscribers

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

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

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

Party Activities

1996 Coordinated Party Expenditure Limits

The 1996 coordinated party expenditure limits are now available. They are:

- $11,994,007 for Presidential nominees;
- $30,910 for House nominees;[1] and
- A range from $61,820 to $1,409,249 for Senate nominees, depending on each state's voting age population.

Party committees may make these special expenditures on behalf of their 1996 general election nominees. National party committees have a separate limit for each nominee, but they share their limits with their national senatorial and congressional committees. Each state party committee has a separate limit for each House and Senate nominee in its state. Local party committees do not have a limit. One party committee may authorize another party committee to make an expenditure against its limit. Local committees may only make coordinated party expenditures with advanced written authorization from another committee.

Coordinated party expenditure limits are separate from the contribution limits; they also differ from contributions in that the party committee must spend the funds on behalf of the candidate rather than give the money directly to the campaign. Although these expenditures may be made in consultation with the candidate, only the party committee making the expenditure—not the candidate committee—

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[1] In states that have only one U.S. House Representative, the coordinated party expenditure limit for the House nominee is $61,820, the same amount as the Senate limit.

Authority to Make Coordinated Party Expenditures on Behalf of House, Senate and Presidential Nominees

National Party Committee	May make expenditures on behalf of House, Senate and Presidential nominees. May authorize[1] other party committees to make expenditures against its own spending limits. Shares limits with national congressional and senatorial campaign committees.
State Party Committee	May make expenditures on behalf of House and Senate nominees seeking election in the committee's state. May authorize[1] other party committees to make expenditures against its own spending limits. May be authorized[1] by national committee to make expenditures on behalf of Presidential nominee that count against national committee's limit.
Local Party Committee	May be authorized[1] by national or state party committee to make expenditures against their limits.

[1] The authorizing committee must provide prior, written authorization specifying the amount the committee may spend.

Calculating Coordinated Party Expenditure Limits

	Amount	Formula
Presidential Nominee	$11,994,007	2¢ x VAP[1] x COLA[2]
Senate Nominee	See table on facing page	The greater of: $20,000 x COLA or 2¢ x state VAP x COLA
House Nominee in States with Only One Representative	$61,820	$20,000 x COLA
House Nominee in Other States	$30,910	$10,000 x COLA
Nominee for Delegate or Resident Commissioner[3]	$30,910	$10,000 x COLA

[1] VAP means voting age population. VAP figures are not yet official.

[2] COLA means cost-of-living adjustment. The 1996 COLA is 3.091.

[3] The District of Columbia, Guam and the Virgin Islands elect Delegates; Puerto Rico elects a Resident Commissioner.

Coordinated Party Expenditure Limits for '96 Senate Nominees

State	Voting Age Population[1] (in thousands)	Expenditure Limit
Alabama	3,173	$ 196,155
Alaska*	414	$ 61,820
Arizona	3,025	$ 187,006
Arkansas	1,834	$ 113,378
California	22,796	$1,409,249
Colorado	2,765	$ 170,932
Connecticut	2,477	$ 153,128
Delaware*	538	$ 61,820
Florida	10,794	$ 667,285
Georgia	5,277	$ 326,224
Hawaii	878	$ 61,820
Idaho	815	$ 61,820
Illinois	8,704	$ 538,081
Indiana	4,316	$ 266,815
Iowa	2,117	$ 130,873
Kansas	1,873	$ 115,789
Kentucky	2,888	$ 178,536
Louisiana	3,103	$ 191,827
Maine	936	$ 61,820
Maryland	3,770	$ 233,061
Massachusetts	4,642	$ 286,968
Michigan	7,030	$ 434,595
Minnesota	3,364	$ 207,962
Mississippi	1,935	$ 119,622
Missouri	3,942	$ 243,694
Montana*	634	$ 61,820
Nebraska	1,194	$ 73,813
Nevada	1,132	$ 69,980
New Hampshire	853	$ 61,820
New Jersey	5,982	$ 369,807
New Mexico	1,185	$ 73,257
New York	13,599	$ 840,690
North Carolina	5,396	$ 333,581
North Dakota*	471	$ 61,820
Ohio	8,291	$ 512,550
Oklahoma	2,400	$ 148,368
Oregon	2,344	$ 144,906
Pennsylvania	9,163	$ 566,457
Rhode Island	752	$ 61,820
South Carolina	2,729	$ 168,707
South Dakota*	523	$ 61,820
Tennessee	3,946	$ 243,942
Texas	13,324	$ 823,690
Utah	1,277	$ 78,944
Vermont*	438	$ 61,820
Virginia	5,006	$ 309,471
Washington	4,013	$ 248,084
West Virginia	1,406	$ 86,919
Wisconsin	3,770	$ 233,061
Wyoming*	344	$ 61,820

* *In these states, which have only one U.S. House Representative, the spending limit for the House nominee is $61,820, the same amount as the Senate limit. In other states, the limit for each House nominee is $30,910.*

[1] *These figures are not yet official. In the unlikely event that the official figures differ, a future* Record *will notify readers.*

Party Activities

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must report them. (Coordinated party expenditures are reported on FEC Form 3X, line 25, and are always itemized on Schedule F, regardless of amount.)

The accompanying tables include: information on which party committees have the authority to make coordinated party expenditures; the formula used to calculate the coordinated party expenditure limits; and a listing of the state-by-state coordinated party expenditure limits. ❖

Advisory Opinions

Advisory Opinion Requests

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

AOR 1996-4
Publicly funded Presidential campaign's assignment of entitlement to another entity (Lyndon LaRouche; February 9, 1996; 2 pages)

AOR 1996-5
Refunding contributions made in the name of another (Jay Kim for Congress; February 13, 1996; 2 pages plus 4-page attachment)

AOR 1996-6
Establishment of PAC by domestic subsidiary of foreign corporation (Barrick Goldstrike Mines, Inc.; February 13, 1996; 4 pages plus 12-page attachment)

AOR 1996-7
May a Presidential campaign receive public funding certification but refuse matching funds (Harry Browne for President; February 20, 1996; 2 pages plus 4-page attachment) ❖

Public Funding

Alan Keyes Declared Eligible For Matching Funds

On February 13, 1996, Republican Alan Keyes became the eleventh 1996 Presidential candidate to become eligible to receive public matching funds. See the chart below for a list of the eleven candidates certified to receive public funding.

To be eligible to receive public funding, a candidate must submit documentation to the FEC showing campaign receipts in excess of $5,000 in matchable contributions in each of at least 20 states. Only contributions received from individuals, and only up to $250 of a contributor's total, are matchable. The candidate must also certify that he or she will abide by spending limits and use funds for campaign-related expenses only. Additionally, the candidate must agree to an FEC audit of his or her campaign and otherwise comply with election law.

Once Presidential candidates establish eligibility for matching funds, they may submit additional contributions for matching fund consideration on a monthly basis. ✦

Mid-March Matching Fund Payment

In mid-March, the U.S. Treasury disbursed $7,072,308 in matching funds to 11 certified Presidential candidates. This disbursement was the fourth matching fund disbursement of 1996, and represented 35 percent of each candidate's unpaid entitlement as of that day.

Certified 1996 candidates are not receiving their full entitlements due to a public funding shortfall. (See page 13 of the January 1996 *Record*.) Instead, all certified candidates are receiving the same percentage of their entitlement, based on the monies available at the time of the pay out. The U.S. Treasury has decided to make unscheduled pay outs to lessen the impact of the shortfall on the candidates.

The first disbursement to 1996 certified candidates totaled $22,384,654 and was made on January 2, 1996, but only covered about 60 percent of the initial certifications for the 10 candidates then certified. The second payment was made on February 2, and totaled $198,013 for 10 candidates, representing less than 1 percent of the then-certified amount. The third payment was made on February 13, and totaled $550,538 for 10 candidates, representing 3 percent of the then-certified amount.

Alan Keyes did not receive any public money from the first three disbursements because he was not certified until February 13, 1996.

The accompanying chart lists the amount of each candidate's mid-March public funding pay out.

The Presidential Public Funding Program is financed by taxpayers participating in the voluntary $3 "check off" found on all U.S. federal income tax forms. ✦

Mid-March Public Funding Payments

Candidate	Mid-March Payment
Bill Clinton (D)	$1,860,011
Bob Dole (R)	$1,737,588
Phil Gramm (R)*	$1,025,192
Pat Buchanan (R)	$ 997,310
Lamar Alexander (R)*	$ 565,242
Richard Lugar (R)*	$ 360,347
Pete Wilson (R)*	$ 230,840
Arlen Specter (R)*	$ 140,799
Lyndon LaRouche (D)	$ 74,931
John Hagelin (NLP)	$ 44,942
Alan Keyes (R)	$ 35,100

** These candidates have dropped out of the 1996 Presidential race.*

Hearing on Fulani Repayment Determination

At a February 7, 1996, public hearing, Dr. Lenora B. Fulani contested the FEC's August 1995 initial repayment determination that her campaign committee repay $612,557 to the U.S. Treasury.[1] The FEC had based this repayment determination on an FEC investigation into charges made by former campaign worker Kellie Gasink in January 1994.[2]

The FEC will decide what action to take after considering Dr. Fulani's presentation and all the documentation submitted by her committee.

Revised Repayment Based on Investigation

Ms. Gasink had alleged that Dr. Fred Newman, Dr. Fulani's campaign manager, used a network of vendors to funnel campaign funds to himself. Ms. Gasink had claimed that these vendors billed expenses to the committee that were either inflated or fabricated. Additionally,

[1] Dr. Fulani requested this hearing despite her belief that the FEC was barred from pursuing this matter because the 3-year statute of limitation for issuing an initial repayment determination had expired. This initial repayment determination came after and was separate and in addition to the initial determination contained in the Final Audit Report; that report set the committee's repayment obligation at $1,394 (the pro-rata portion of $3,235 in lost money orders). The committee paid this amount to the U.S. Treasury without dispute. See page 6 of the June 1994 Record *for a summary of the Final Audit Report.*

[2] See page 9 of the December 1994 Record *(AO 1994-32) and page 8 of the April 1995* Record *(AO 1995-1) for summaries of advisory opinions related to Ms. Gasink's allegations. See also page 11 of the August 1994* Record *and page 12 of the June 1995* Record *for articles on a related law suit* (Fulani v. FEC).

Ms. Gasink had alleged that Dr. Newman embezzled campaign funds by reporting that certain individuals received salary payments and reimbursements when actually they had not.

Ms. Gasink's allegations led the FEC to conduct an investigation that concluded that the Fulani committee had to repay $612,557 to the U.S. Treasury. This amount consisted of (rounded down to the dollar):

- $381,171 for nonqualified expenses to vendors that appeared to have been paid for goods/services that they did not provide or were overpaid for goods/services that they did provide;
- $98,095 for nonqualified expenses in salary and reimbursement checks to individuals that were cashed by a third party and could not be traced to the original payee; and
- $133,289 for public funds received in excess of entitlement, based on the campaign's use of public funds for the nonqualified expenses noted above.

The FEC based this repayment determination on a review of information provided by the Fulani committee, a number of its vendors, its campaign depository and other sources. Additionally, the FEC based its determination on adverse inferences drawn from the fact that the committee treasurer and campaign manager refused to appear for depositions. Further, the FEC regarded the questioned expenses as undocumented because the committee failed to submit subpoenaed documents on time. The Fulani committee disputes this repayment determination and has provided additional materials to support the points made by Dr. Fulani at the public hearing. The FEC will consider these additional materials and Dr. Fulani's comments at the hearing before making its final repayment determination.

Payments to Vendors

Dr. Fulani's campaign contracted with vendors that were owned by or employed persons affiliated with her party, the New Alliance Party. Dr. Newman was one of the persons who was involved with both the Fulani campaign and the vendors. Based on this interconnected relationship, the FEC concluded that these vendors were not at "arms length" from the campaign and were thus in a position that would have allowed Dr. Newman to use them to embezzle campaign funds, as alleged by Gasink. But, Dr. Fulani argued, the FEC relied on an incorrect standard for detecting nonqualified campaign expenses. Additionally, the committee stated that it had provided the FEC with sufficient documentation to revise this aspect of the determination.

Payments to Individuals

In its August 1995 initial repayment determination, the FEC determined that $227,691 in salary payments and reimbursements to individuals were nonqualified campaign expenses because the checks they were written on were doubly endorsed and because payees testified that they did not receive the money cashed under their names. The FEC determined that further documentation was needed to prove that the money had actually gone to the original payee. Absent such documentation, the FEC determined that the Fulani campaign had to repay $98,096, representing the public funds used to make these payments.

In arguing against this determination, Dr. Fulani explained that her campaign functioned as part of a "socialist collective," wherein all members accepted and understood that their time and money belonged to the collective as a whole. This philosophy impacted on the Fulani campaign's method of making salary and reimbursement payments to collective members. For instance, according to Dr. Fulani, it was accepted and understood by members of the collective that the campaign treasurer or other campaign staff member could cash their checks for them without needing to secure their signature, and that, in certain circumstances, the money owed them could be kept in the collective rather than actually given to the individual. This sentiment was echoed in affidavits from campaign workers submitted by the Fulani campaign.

The committee also stated that the FEC incorrectly included the following in its collection of doubly endorsed checks: 65 checks that had been endorsed only once; 113 checks that included the notation "OK to cash" followed by a campaign staffers initials, which, the committee explained, the campaign's bank required in order to issue cash to persons who did not have bank accounts there; and 20 checks that were money order purchases and therefore, maintained Dr. Fulani, were not disbursements but "asset exchanges."

The committee also criticized Ms. Gasink for lacking personal knowledge of the events surrounding the Fulani campaign. ✥

Need FEC Material in a Hurry?

Use the FEC's Flashfax service to obtain FEC material fast. It operates 24 hours a day, 7 days a week. Over 300 FEC documents—reporting forms, brochures, FEC regulations—can be faxed almost immediately.

Use a touch tone phone to dial **202/501-3413** and follow the instructions. To order a complete menu of Flashfax documents, enter document number 411 at the prompt.

Statistics

1995 Year-End PAC Count

As of December 31, 1995, there were 4,016 PACs registered with the FEC. This represents a net increase of 34 PACs since the midyear PAC count taken July 1, 1995. (The number of PACs does not necessarily correspond with PAC financial activity, since many registered PACs have little or no activity.)

The accompanying table shows midyear and year-end PAC counts since the start of the 1990s. The total is broken down by PAC type. A January 23, 1996, FEC press release contains similar figures dating back to 1974's year-end PAC count. This press release may be ordered through the Flashfax system; dial 202/501-3413 and request document 526. ✦

PACs in the '90s: Midyear and Year-End PAC Counts

	Corporate	Labor	Trade/ Member/ Health	Coop-erative	Corp. w/o Capital Stock	Non-connected[1]	Total
Jul. '90	1,782	346	753	58	139	1,115	4,193
Dec. '90	1,795	346	774	59	136	1,062	4,172
Jul. '91	1,745	339	749	57	137	1,096	4,123
Dec. '91	1,738	338	742	57	136	1,083	4,094
Jul. '92	1,731	344	759	56	144	1,091	4,125
Dec. '92	1,735	347	770	56	142	1,145	4,195
Jul. '93	1,715	338	767	55	139	1,011	4,025
Dec. '93	1,789	337	761	56	146	1,121	4,210
Jul. '94	1,666	336	777	53	138	963	3,933
Dec. '94	1,660	333	792	53	136	980	3,954
Jul. '95	1,670	334	804	43	129	1,002	3,982
Dec. '95	1,674	334	815	44	129	1,020	4,016

[1] Nonconnected PACs must use their own funds to pay fundraising and administrative expenses, while the other categories of PACs have corporate or labor "connected organizations" that are permitted to pay those expenses for their PACs. On the other hand, nonconnected PACs may solicit contributions from the general public, while solicitations by corporate and labor PACs are restricted.

Index

The first number in each citation refers to the "number" (month) of the 1996 *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.

FEC Seeks Comments on Electronic Filing

A Notice of Proposed Rulemaking on Electronic Filing (11 CFR 104.18) appeared in the Federal Register during the last week of March. Electronic filing will not be a filing option until 1997. The proposed rules address a variety of issues, including:

- The establishment of format specifications for data submitted in an electronic format;
- Procedures for submitting amendments to reports; and
- Methods of satisfying signature requirements under the law.

The FEC seeks comments on the proposed rules from the public, especially committees, vendors and other jurisdictions that have implemented similar systems. The May *Record* will carry an article describing the proposed rules, but persons interested in participating in the comment process should look for the Notice of Proposed Rulemaking in the Federal Register, since the 60-day comment period will begin once the notice is published. Unfortunately, the April *Record* went to press before the notice was published in the Federal Register, so an exact date and page cite could not be printed here. However, copies of the proposed rules may be obtained from the FEC's Public Records Office: call 800/424-9530 or 202/219-4140. Alternatively, use the FEC's automated Flashfax system to have a copy faxed to you: call 202/501-3413 and request document 234.

Persons interested in commenting on the proposed rules must submit their comments in writing within the 60-day comment period. Comments should be addressed to:

Susan E. Propper, Assistant General Counsel
999 E Street, NW
Washington, DC 20463

FEDERAL ELECTION COMMISSION
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Washington, DC 20463

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