

# Record

April 1997

Federal Election Commission

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## Information

### FEC Announces Workshop Sites for Candidates and Political Committee Officials

Specialists from the Commission's Information Division will visit five cities this spring and summer to educate political committee officials in various aspects of the Federal Election Campaign Act. They will meet with congressional candidates and representatives of political party committees and PACs. Dates and specific locations within all of the listed cities had not been finalized before this issue of the *Record* went to press. To receive additional information, call the Information Division at (800) 424-9530 (press 1) or (202) 219-3420.

The five cities are:

- Trenton, NJ—April 16-18
- Des Moines, IA—April 30-May 2
- Madison, WI—May
- Phoenix, AZ—June
- Bismarck, ND—June

Regional conferences will be scheduled later, beginning in the fall of 1997. The first two will be held in Seattle, in September, and Atlanta, in October. Watch future editions of the *Record* for additional information. ♦

## Legislation

### Commission Submits Recommendations to Amend FECA

On February 19, the Commission submitted 57 proposals to President Bill Clinton and the U.S. Congress for legislative action. If adopted, the recommendations would likely ease some of the filing burdens on political committees and streamline the administration of current campaign finance laws for the FEC.

Among the recommendations were these:

- *Issue Advocacy Advertising.* Clarify when issue advocacy advertising (by corporations, labor organizations, political parties and other organizations) coordinated with a federal candidate is impermissible activity.
- *Definition of Political Committee.* Revise the definition of a political committee to incorporate "major purpose" as a test recognized by the courts. The FEC believes that revising the definition would resolve the apparent conflict between the U.S. Supreme Court's ruling in *Buckley v. Valeo*, which articulated the "major purpose" test, and a recent appeals court ruling that narrowly interpreted the

(continued on page 2)

## Legislation

(continued from page 1)

statute to mean that the \$1,000 threshold for contributions or expenditures is the only determining factor for political committee status for those groups making contributions.

- **Electronic Filing Threshold.** Amend the law to require that political committees with a certain level of financial activity file their disclosure reports with the FEC electronically. Started in January, electronic filing is not currently mandated for any committee. Requiring certain committees to file electronically would allow the agency to disseminate data from the reports more easily and efficiently, resulting in better use of Commission resources. The information would be standardized in the FEC's database, thereby enhancing public disclosure. Committees also would find it easier to file and complete disclosure forms using electronic filing methods.

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<http://www.fec.gov>

- **Campaign-Cycle Reporting.** Authorize candidate committees to report on a campaign-to-campaign basis, rather than the current calendar-year cycle. Making this change would eliminate burdensome record keeping and reporting provisions that require campaigns to track contributions on both calendar-year and per-election bases.
- **Election Period Limitations.** Replace the current per-election contribution limits with a single limit that covers the entire election cycle. The change would eliminate complicated and time-consuming bookkeeping requirements.
- **Ensuring Independent Authority of FEC in All Litigation.** Authorize the Commission to petition the U.S. Supreme Court for certiorari under Title 2. This change would ensure nonpartisan enforcement of the law. Currently the FEC must ask the U.S. Solicitor General to ask the Supreme Court to consider a case.
- **Filing Reports Using Registered or Certified Mail.** Eliminate the mail or post mark date and require that reports be filed with the FEC by one specific due date. This would simplify the law and prevent delays in mail delivery of the reports.

The recommendations were submitted in three parts. The first part included recommendations to improve the efficiency and effectiveness of current laws. The second part of the recommendations contain proposals that address areas of the Act that have been problematic. Part three includes conforming legislative recommendations that would correct outdated or inconsistent parts of the Act. ♦

## 800 Line

### Reporting Amendments to Previously Filed FEC Forms

Even the most careful committees sometimes have to file amendments to their disclosure documents when they find errors or determine that information was missing in the initial filing.

#### Guidelines on Amending Reports

A committee must file an amended report if it discovers that an earlier report contained incorrect information or if it receives late information about a transaction that already has been reported. 11 CFR 104.7(b)(4). In the case of updating contributor information—name, address, occupation and place of employment—a committee may, as an alternative, file an updated Schedule A as a memo entry, attached to its next scheduled report.

In order to file an amended report, authorized candidate committees should complete a new Summary Page (Form 3) and check "YES" on line 3 where it asks if the report being filed is an amendment to a previous report. All other committees should file either an amended Form 3X or 3P and should check the "YES" box on line 4b of the Summary Page. A revised Detailed Summary Page should also be included if the information on it has changed since the original filing.

In addition, committees should submit a corrected version of the FEC schedule that contained the error or incomplete information. Committees need only submit the corrected pages—not the full report. Transactions that have been reported correctly do not need to be reported again.

#### Alerting Public to Amendment

It is in a committee's best interest to clearly show where their reports have been amended. The regulated community, the press, watchdog

### New Mexico Special Election Reporting

Committees\* involved in the May 13 Special Election to fill the 3rd Congressional District seat vacated by UN Ambassador Bill Richardson must follow the reporting schedule below. Note that 48-hour notices are required of authorized committees that receive contributions of \$1,000 or more between April 24 and May 10.

	Close of Books	Certified/Registered Mail Date	Filing Date
<b>Pre-General Report</b>	April 23	April 28	May 1
<b>Post-General Report</b>	June 2	June 12	June 12
<b>Mid-Year Report</b>	June 30	July 31	July 31

### Texas Special Runoff Election Reporting

Committees\* involved in the April 12 Special Runoff Election to fill the 28th Congressional District seat vacated by the late Congressman Frank Tejeda must follow the reporting schedule below. Note that 48-hour notices are required of authorized committees that receive contributions of \$1,000 or more between March 24 and April 9. Also note that Pre-Runoff disclosure reports, covering financial activity from February 24 to March 23, were due on March 31.

	Close of Books	Certified/Registered Mail Date	Filing Date
<b>Post-Runoff Report</b>	May 2	May 12	May 12
<b>Mid-Year Report**</b>	June 30	July 31	July 31

\* These committees include authorized committees of candidates running in the election and other political committees that support these candidates and do not file monthly.

\*\* The Mid-Year report for committees participating in the Runoff should cover financial activity between May 3 and June 30. The Mid-Year report for committees that are not participating in the Runoff, but filed pre-election reports for the March 15 Special General Election, should cover financial activity between February 24 and June 30.

groups, researchers and the general public will be reviewing the information; identifying the amended information will help these reviewers find the changes.

Among the most important ways to identify the amended information is to attach a cover letter that explains the changes made to the report and where those changes are located within the report. Here is one example: "Changed designation

of disbursement from primary to general election; see Schedule B, page 3, entry H." In addition, committees may want to mark the amended information by applying underlining or adding stars or asterisks. Larger committees that file computer-generated reports may want to type or legibly write in the amended information directly on the computer printout. Again, only those pages with changes need to be

## Special Elections

### Party Spending Limit Set for Special Elections

The coordinated party spending limit for political party committees that are supporting candidates vying for seats in the U.S. House of Representatives in 1997 is \$31,810. This figure is based on the formula used for states with more than one representative: \$10,000 multiplied by the cost-of-living adjustment.

FEC regulations provide for set limits on expenditures by national and state party committees on behalf of candidates. 11 CFR 110.7 (a)(1) and (b)(1). These coordinated party expenditures must be used in connection with the general election of candidates for federal office. The limits on coordinated party expenditures are in addition to limits on how much party committees may contribute to candidates and other political committees. ♦

submitted to the FEC, not the entire report.

Committees filing an amendment in response to a letter from an FEC analyst should address the amended information to that person, who can more quickly determine whether the response is adequate.

For questions about filing amended reports, call the FEC's Information Division at 1-800-424-9530 (press 1). ♦

## Compliance

### MUR 4194 Congressman's Federal, State Committees Agree to Pay \$50,000 Civil Penalty

Mascara for Congress and the Mascara Campaign Committee, the federal and state political committees that supported Congressman Frank Mascara's campaigns for congressional and municipal offices, agreed to pay a \$50,000 civil penalty to the FEC for seven violations of the law, including improperly disclosing the terms of a \$40,000 bank loan.

Mascara for Congress, Mr. Mascara's principal campaign committee, also agreed to return \$12,250 in excessive contributions to the original contributors and to amend its disclosure reports after the Commission found that the committee had violated Federal Election Campaign Act (the Act) restrictions governing excessive

### Correction

An article in the March *RECORD* contained an incorrect statement regarding certain reason to believe findings made by the Commission against Firearms Training Systems, Inc., and its former president, Jody D. Scheckter. The article suggested that the Commission found reason to believe that violations with regard to six contributions were committed knowingly and willfully. In fact, the Commission only found reason to believe that violations surrounding the last two of the six contributions were committed knowingly and willfully. In resolution of this matter, the Commission accepted a joint conciliation agreement with Firearms Systems and Mr. Scheckter in which neither party admitted to a knowing and willful violation of the Federal Election Campaign Act.

contributions. 2 U.S.C. §441a(f).

In April 1992, the state campaign committee transferred \$10,635 to the federal committee. At the time of the transfer, the committee registered as a federal committee, as required by FEC regulations in effect.<sup>1</sup> Immediately thereafter, it requested termination as a federal committee.

However, the state committee continued for another year to make transfers to the federal campaign committee and failed to disclose the transfers or the sources of the funds contained in the transfers, in violation of 2 U.S.C. §434(b)(4)(B). Among the transfers was a \$40,000 loan that Mr. Mascara secured and then contributed to the state campaign committee. That committee transferred the bank loan to the federal committee, where it was used in connection with Mr. Mascara's 1992 federal campaign. The state campaign committee then proceeded to repay the \$40,000 bank loan.

The state campaign committee failed to register as a federal political committee, in violation of 2 U.S.C. §433(a). It also failed to file disclosure reports with the FEC about the loan payments, in violation of 2 U.S.C. §434(b)(5)(D). Further, the state campaign committee raised \$21,742 in contributions that exceeded the limits of the Act (but would have been permissible under Pennsylvania law) to pay off the \$40,000 loan, in violation of 2 U.S.C. 441a(f). These transactions

<sup>1</sup> Section 110.3(c)(6) of FEC regulations, in effect until July 1993, permitted state campaign committees to contribute to affiliated federal campaign committees provided they registered as federal committees, purged any nonfederal funds from their accounts, filed reports required by the Commission and otherwise complied with the Act. After July 1993, state campaign committees were no longer permitted to transfer funds to affiliated campaign committees.

were reported on Pennsylvania state reports.

Mascara for Congress also violated 2 U.S.C. §441a(f) when it indirectly accepted the \$12,250 in excessive contributions. These excessive contributions resulted from the fact that they came from persons who already had contributed the maximum to Mascara for Congress.

Additionally, Mascara for Congress filed the required Schedule C-1s with the FEC disclosing certain additional lines of credit, along with bank statements evidencing the draws, but it did not file the original agreements for the lines of credit, in violation of 11 CFR 104.3(d)(2).

Finally, Mascara for Congress failed to file 48-hour notices with the FEC for 34 contributions it received totaling \$76,000. 2 U.S.C. §434(a)(6)(A). The \$40,000 loan was part of that total.

The FEC discovered the discrepancies in the committees' reports during the agency's normal course of reviewing disclosure reports. The Commission found reason to believe the violations had occurred and entered into conciliation agreements with Mr. Mascara and his federal and state committees prior to finding probable cause to believe that they had violated the election law. ♦

### FEC Increases Civil Penalties

The FEC has increased by 10 percent the maximum amount of civil monetary penalties that can be assessed in cases involving violations of the Federal Election Campaign Act (the Act). The increases went into effect March 12. 62 Fed. Reg. 11316 (Mar. 12, 1997).

The Debt Collection Improvement Act (DCIA), adopted in 1996, amended the Federal Civil Penalties Inflation Adjustment Act to require that the FEC and other executive agencies adjust the top amount of



their current civil penalties, and continue to do so at least once every four years after that, based on the Consumer Price Index (CPI). 28 U.S.C. §2461 nt.

The DCIA also stipulated that this first increase in penalties could be no greater than 10 percent of the current penalty amount, despite the fact that the CPI has increased by far more than 10 percent since the penalties were enacted in 1977 and 1980. Therefore, the penalties have been increased by 10 percent.

As a result of the change, the general provisions found at 2 U.S.C. 437g(a)(5) and (6) now call for a maximum penalty of the greater of the amount of any contribution or expenditure involved in the violation or \$5,500, up from \$5,000. The maximum penalty for knowing and willful violations increased from \$10,000 to \$11,000.

Civil penalties assessed for violating the Act's confidentiality provisions (i.e., for making FEC information concerning investigations and other matters public) increased to \$2,200 and, for knowing and willful violations, to \$5,500. The penalties had been assessed at \$2,000 and \$5,000. 2 U.S.C. 437g(a)(12).

The increases apply only to violations that have occurred since the new penalties took effect.

The DCIA required the Commission to implement these changes by adopting regulations. The penalties for violating campaign finance had only been found in the Act, and not the regulations. Accordingly, the Commission adopted 11 CFR 111.24 to implement this new requirement. Because these revisions are required by law, they are regarded as technical amendments and are exempt from the notice and comment requirements of the Administrative Procedure Act and from the legislative review requirements of the Act. Consequently, the new regulations became effective immediately upon publication in the *Federal Register*. ♦

## Public Funding

### Repayment Determination Finalized for Fulani Presidential Committee

On March 6, 1997, the Commission released a final repayment determination for the Lenora B. Fulani for President committee and Dr. Lenora B. Fulani, instructing them to repay to the U.S. Treasury \$117,269 of the public funds they received during the 1992 election cycle. (See the November 1995 *Record*.) The major findings of the report are summarized here.

The repayment includes: \$18,767 for nonqualified campaign expenses that the Committee disbursed to a vendor; \$73,750 for nonqualified campaign expenses to individuals that cannot be traced; \$1,394 in lost money orders.<sup>1</sup> The Commission's determination is a pro rata portion of the nonqualified expenses that were paid with federal matching funds. The formula for determining the repayment is explained at 11 CFR 9038.2(b)(2)(iii). The Commission also made a final determination that the Committee repay \$23,357 in public funds received in excess of the candidate's entitlement. 26 U.S.C. §9038(b)(1). Specifically:

- The Fulani committee made \$43,562 in nonqualified campaign expenses to New Alliance Productions, Inc., when it purchased bulk orders of the journal, *National Alliance*, at more than twice its bulk rate price during a nine-month period in 1992.
- The committee failed to properly distribute and document \$171,182 in checks paid to campaign workers.
- The committee could not demonstrate that \$3,235 in unsold money orders were used in connection

<sup>1</sup> This repayment was made in January 1994.

with Dr. Fulani's seeking of the Presidential nomination.

During the 1992 election cycle, the Fulani committee met the conditions set forth in 26 U.S.C. §9033(a) and qualified to receive just over \$2 million in public funds under the Presidential Primary Matching Payment Account Act. The Fulani committee spent just over \$4 million between March 6, 1991, and October 31, 1992. However, Dr. Fulani lost her eligibility to receive public funds on August 20, 1992.

After the date of ineligibility, a candidate may continue to receive matching funds until December 31 of the election year provided that, on the date of payment, the candidate has net outstanding debts for qualified campaign expenses and necessary winding down costs. 11 CFR 9034.1(b) and 9034.5(a)(1). A qualified campaign expense is any purchase, payment, gift or anything of value that is incurred on behalf of a candidate or authorized committee during the eligibility period and is made in connection with the candidate's campaign for nomination.

FEC statutes and regulations also require any candidate who receives public funds in excess of his or her entitlement to repay that amount to the Treasury Department. 26 U.S.C. §9038(b)(1). ♦

### 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.

## Court Cases

### New Litigation

#### FEC v. Public Citizen

The FEC asks the court to find that Public Citizen Inc. and its separate segregated fund, Public Citizen Inc.'s Fund for a Clean Congress (the Fund), violated several sections of the law during the 1992 election when the Fund opposed the re-nomination of Congressman Newt Gingrich. Public Citizen was an incorporated non-profit membership association, and the Fund was a political committee that had not qualified as a multicandidate committee.

Before the 1992 primary election, the Fund contacted Friends of Herman Clark for Congress, the authorized campaign committee of Herman Clark. Mr. Clark was Mr. Gingrich's only challenger in the Republican primary. Representatives from the Fund and Clark for Congress communicated several times between their initial contact in April 1992 and the primary election, which was held three months later on July 21. The two organizations discussed the Clark campaign's intent, plans and needs and reviewed suggestions about how to defeat Mr. Gingrich.

Under the Federal Election Campaign Act, expenditures made by any person in cooperation with a candidate or his or her committees are considered contributions to the candidate. 2 U.S.C. §441a(a)(7)(B)(i). They are commonly known as coordinated expenditures. As a result of the coordination between the Fund and the Clark campaign, a series of Fund expenditures made in opposition to Mr. Gingrich's campaign represented coordinated expenditures on behalf of the Clark campaign.

Specifically, the Fund paid for a television advertisement known as "Boot Newt," which expressly advocated Mr. Gingrich's defeat; the Fund mailed postcards to approximately 6,000 voters in the Sixth District urging them to "Boot Newt" at the polls; and the Fund distributed fliers with the "Boot Newt" message. These and other coordinated expenditures to defeat Mr. Gingrich cost \$59,200, representing excessive contributions of \$58,200 on behalf of the Clark campaign. The Fund failed to report the \$59,200 as contributions to Clark for Congress in violation of 2 U.S.C. §434(b).

In addition, the Fund's disclaimer on its "Boot Newt" television advertisement failed to state whether or not it was authorized by the candidate. Commission statutes stipulate that a communication must indicate whether or not it is authorized by a candidate or a candidate's committee and identify who paid for it. 2 U.S.C. §441d(a)(2) and (3). Similarly, the Fund failed to include the proper disclaimer on its "Boot Newt" fliers.

Public Citizen failed to follow the statutory requirements for soliciting contributions to the Fund. 2 U.S.C. §441b(b)(3)(B). It failed to inform those solicited of the political purpose of the Fund in its solicitation letters. Public Citizen also failed to inform solicitees that they had a right to refuse to contribute to the Fund without reprisal and that its contribution guidelines were merely suggestions.

The FEC asks the court to assess civil penalties against Public Citizen and the Fund, and to order the Fund to amend its reports to the FEC and refund any contributions it received as a result of the solicitation letters.

U.S. District Court for the Northern District of Georgia, Atlanta Division, 97-0358-FMH, February 4, 1997. ♦

#### FEC v. Charles Woods for U.S. Senate

The FEC asks the court to find that a corporation and a subsidiary of a corporation, both owned by Charles Woods, made prohibited contributions to his 1992 campaign for the Democratic nomination for a Senate seat in Nevada.

The Federal Election Campaign Act prohibits corporations from making contributions in connection with a federal election. 2 U.S.C. §441b(a). The statute also prohibits political committees from accepting such contributions.

The FEC alleges that:

- Quinn River Ranch, which is wholly owned by Mr. Woods, contributed \$290,000 to the Charles Woods for U.S. Senate committee.
- WTVY-FM, a subsidiary of another corporation that Mr. Woods owns, called Woods Communications Group, used its corporate American Express card to charge \$1,426.43 in expenses for the committee.
- Mr. Woods's committee accepted the corporate contributions.
- The campaign committee and its treasurer failed to file the required 48-hour notices for two contributions, totaling \$28,000, that the committee received between August 13 and August 29, 1992. 2 U.S.C. §434(a)(6)(A).

U. S. District Court for the District of Nevada, 97-00182-DWH, February 10, 1997. ♦

## Advisory Opinions

### AO 1996-46 Exemption from FECA Filing Requirements

The Socialist Workers Party National Campaign Committee and committees supporting candidates of the Socialist Workers Party (SWP) may remain exempt from disclosing information on their FEC disclosure forms that identify contributors and persons to whom expenditures are made.

The SWP has been a minor party in the United States since 1938. While the party has fielded candidates in numerous elections since 1948, none has ever been elected to office in a partisan election and SWP candidates receive very low vote totals.

In 1979, the U.S. District Court for the District of Columbia first granted the SWP national committee and committees supporting SWP candidates a partial reporting exemption, which allowed them to file disclosure reports without identifying the names, addresses, occupations or places of employment of contributors and other entities as required under 2 U.S.C. §434(b)(3), (5) and (6). When this exemption expired in 1984, the court approved an updated settlement agreement in 1985 with an expiration date in 1988. The SWP missed the deadline for reapplication when the agreement expired, but subsequently sought a determination from the Commission to continue the partial reporting exemption. In 1990, the Commission issued Advisory Opinion 1990-13 granting the same exemption the district court had decreed in 1985. This exemption expired at the end of last year.

The Federal Election Campaign Act (the Act) requires political committees that are registered with

the FEC to file reports disclosing their disbursements and receipts, including the identification of individuals and other persons who make contributions of more than \$200 in a calendar year. However, in *Buckley v. Valeo* the U.S. Supreme Court recognized that under certain circumstances the Act's disclosure requirements as applied to a minor party would be unconstitutional because the threat to First Amendment rights outweighed the need for full disclosure. Evidence of this risk "need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties," the high court said.

In weighing this issue in AO 1990-13, the Commission considered both present-day and historical incidents of harassment of the SWP and its supporters, including the FBI surveillance of the SWP from 1941 to 1976. In its request for a renewal, the SWP submitted documentation of numerous incidents of harassment occurring between 1990 and 1996. Such harassment appears to have been intended to intimidate the SWP and its supporters from engaging in their political activities and expressing their political views. While hostility from governmental sources appears to have abated, the continuation of a significant amount of harassment from private and local police sources, coupled with the long history of harassment of the SWP, is sufficient evidence that there is a reasonable probability that public disclosure of the previously exempted information will subject persons in the exempted categories to threats or harassment.

SWP committees still must comply with all other requirements of the Act and Commission regulations, such as filing reports on time, maintaining records of contributions and disbursements, and adhering to the Act's contribution limits and prohibitions.

### Federal Register

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

#### Notice 1997-1

Filing Dates for Texas Special Elections (62 FR 8449, February 25, 1997)

#### Notice 1997-2

Filing Dates for New Mexico Special Elections (62 FR 10562, March 7, 1997)

#### Notice 1997-3

Final Rule; Adjustment to Civil Monetary Penalty Amounts (62 FR 11316, March 12, 1997)

#### Notice 1997-4

Rulemaking Petition: Definition of Member of Membership Association; Notice of Availability (62 FR 13355, March 20, 1997)

In granting the exemption renewal, the Commission added a new condition that requires SWP committees to assign a code number to each individual or entity from whom it receives contributions aggregating in excess of \$200 during a calendar year. This will allow FEC staffers and the public who review disclosure reports to determine whether any contributor has exceeded the contribution limits found at 2 U.S.C. §441a.

This exemption will be in effect through December 31, 2002. To seek a further renewal of the exemption, SWP officials must submit a new advisory opinion request at least 60 days before that date.

Date Issued: March 11; Length: 9 pages. ♦

### Advisory Opinion Requests

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

#### AOR 1997-3

Qualification as state committee of political party (Constitution Party of Pennsylvania, December 20, 1996; 1 page plus 16-page attachment) ♦



## Veteran FEC Staffer Heads Public Disclosure Division

Patricia Klein Young has been named the new Assistant Staff Director of the FEC's Public Disclosure Division. She assumed that post on March 17.

Mrs. Young has worked at the Commission for 18 years, starting her career in the Public Records Office. She was Chief of the Public Records Office from 1981 to 1985. From there, she moved to the Information Division where she served as a Public Affairs Specialist from 1985 to 1992. She had been the Deputy Assistant Staff Director of the Public Disclosure Division since 1992.

A 1979 graduate of Trinity College in Washington, D.C., Mrs. Young holds a bachelor of arts degree in political science and international relations. She replaces Kent C. Cooper, who resigned from the Commission in January.

## Index

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