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Federal Election Commission

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Staff

FEC Staff Director Resigns

John C. Surina, the FEC's longtime staff director, has resigned from the agency to accept a newly created position at the Department of Agriculture. His last day with the Commission was July 31.

"It took a tremendous opportunity at Agriculture to lure me away from the FEC," Mr. Surina said.

Mr. Surina will head a new office charged with ensuring that agriculture staffers are trained in standards of conduct, that all personal financial disclosure reports are filed and reviewed on a timely basis and that any needed policies tailored for specific mission areas are developed and promulgated. He is scheduled to begin his new job on August 3.

"I am pleased to keep my career within the governmental ethics realm," said Mr. Surina, who had been the FEC's staff director for 15 years. "[M]any of the functional and technical approaches we use in regulating campaign finance transfer nicely to a large agency ethics program."

Mr. Surina said that whoever takes his place at the FEC will soon discover "a truly unique operating environment, a controversial but engaging mission, and an extraordinarily competent and non-partisan staff." ♦

(Staff continued on page 10)

Survey

Customer Satisfaction Survey to Begin This Month

As part of the FEC 1998 budget process, Congress directed the U.S. General Accounting Office (GAO) to oversee a contract with an outside management consulting firm for a management review of the FEC's business processes and management systems that support its public disclosure, compliance, public financing and election administration programs. The GAO has contracted with PricewaterhouseCoopers LLP to perform this assessment.

As part of its work, PricewaterhouseCoopers plans to conduct a telephone survey of randomly selected congressional candidate committees, political party committees and PACs that have filed reports with the Commission during the 1997-1998 election cycle. Survey questions will focus on specific FEC products, services and processes with the objective of evaluating FEC effectiveness in providing information to the regulated community and facilitating disclosure of campaign finance information.

This telephone survey should take no more than 15 minutes. The PricewaterhouseCoopers representa-

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Survey

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tive will need to speak with the individual who has the most interaction with the FEC—likely the committee treasurer.

The questions to be asked are not sensitive questions. In addition, individual responses to this survey will be kept strictly confidential. Responses will be combined with the responses of other committees and reported only in aggregate form.

PricewaterhouseCoopers will begin contacting selected committees during the week of August 10th and the study will conclude in late September. If you are contacted, please take the time to respond to the survey. Your responses will provide the FEC with valuable information. Questions should be directed to Bryan Dumont of PricewaterhouseCoopers at 301/897-4549 or to the FEC at 800/424-9530 (press 1) or 202/694-1100. ♦

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Regulations

Commission Seeks Comments on Soft Money NPRM

On July 6, the Commission approved a Notice of Proposed Rulemaking (NPRM) that contains draft regulations that could change the way party committees raise and use soft money. Alternatives listed in the NPRM include leaving the FEC's current regulations unchanged, prohibiting national party committees from receiving and using soft money and modifying the way soft money is raised and used by national and state party committees. The deadline for comments on this NPRM is September 11, and the Commission anticipates holding a public hearing on the issue on September 23 at 10 a.m. at its headquarters in Washington, DC.

Soft money (also called nonfederal funds) refers to contributions received by party committees that do not comply with the Federal Election Campaign Act's (the Act's) limits on individual contributions (section 441a) or the statute's prohibition on contributions from corporate and union general treasuries (section 441b) and federal contractors (section 441c). Soft money must be used exclusively for state and local election activity and other party activities that do not influence federal elections.

The overarching objective of the two petitions that spawned the NPRM was to find ways to limit the use of soft money that has an impact on federal elections. Prompted by perceived abuses of the federal campaign finance system, the petitioners—President Bill Clinton and five members of Congress—said that soft money was being used in ways that were inconsistent with the purposes of the Act.

Proposals

The Commission received 188 comments in response to its June 12, 1997, Notice of Availability on the issue of soft money. See the [July 1997 Record, p. 1](#). In response to those comments, the Commission has proposed the following modifications to the FEC regulations—at 11 CFR parts 102, 103 and 106. These proposals do not constitute a final decision regarding the issue of soft money.

Option One. The current rules would remain in effect. National party committees could use the soft money raised in their nonfederal accounts only for nonfederal election-related purposes. Nonfederal accounts would continue to be permitted for building fund accounts authorized by the Act.

Option Two. The current rules would be revised to prohibit national party committees from raising and spending soft money, and would eliminate all national party committee nonfederal accounts other than building fund accounts. There are three variations to this proposal.

- The first variation would create an exception allowing national party committees to raise soft money only for making direct or earmarked contributions to state and local candidates.
- The second variation would modify the regulation to ensure that hard money transfers to state or local party committees are spent according to the allocation ratios applicable to the national committees rather than the more favorable allocation ratios used by state and local committees. National committees would have to earmark their transfers for specific activities, and state and local committees would have to finance those activities entirely with hard dollars.
- The third variation would require state and local party committees to

finance mixed federal/nonfederal activities entirely with hard dollars.

Early Attempts to Regulate Soft Money

Since its start in the mid 1970s, the Commission has struggled with the fact that many political party functions have an impact on both federal and nonfederal elections. To ensure that prohibited nonfederal funds are not used to pay for activities related to federal elections, the Commission has required party committees to pay for at least a portion of these mixed activities with federally permissible funds, or hard money.

In 1975, the Commission issued an advisory opinion (AO 1975-21) that required a local party committee to use federal funds to pay for a portion of its administrative expenses and voter registration costs. The rationale behind this decision was that these functions had an indirect effect on federal and nonfederal elections when they were being held at the same time. To use only soft money contributions would in essence have freed up hard money to be used for other purposes that benefited federal candidates. Thus, the Commission stipulated that committees involved in federal and nonfederal activities had to allocate their administrative expenses between hard and soft money accounts. In its response to a 1976 advisory opinion request (Re: AOR 1976-72), the Commission concluded that voter registration and get-out-the-vote (GOTV) drives had to be paid for entirely with hard money.

In 1978, however, the tide shifted somewhat. In AO 1978-10, the Commission allowed the parties to allocate their costs for voter registration and GOTV drives, using corporate/labor contributions to cover the nonfederal portion of the expenses. In AO 1979-17, the Commission concluded that national

party committees could establish separate accounts to be used exclusively to fund elections of nonfederal candidates.

The next year, Congress amended the Act to carve out several “exempt activities” for state and local party committees to encourage their greater participation in federal elections. Under certain conditions prescribed by Congress, state and local committees could spend unlimited amounts on campaign materials (such as bumper stickers and yard signs) used in connection with volunteer activities on behalf of party nominees. State and local committees could also spend unlimited amounts on voter registration and voter drives on behalf of their party’s Presidential and Vice Presidential nominees under certain circumstances. The House report on these amendments recognized that, in some situations, party committees could allocate the costs of these activities between their federal and nonfederal accounts.

Court Recognizes FEC Authority to Regulate Soft Money

Alleging that the national parties were using soft money to influence federal elections, Common Cause, in 1984, submitted a petition for rulemaking, asking the Commission to create new rules governing the use of soft money.

After the Commission rejected its petition, Common Cause filed suit in U.S. District Court, challenging the denial. The court found that, while the Act did not prohibit allocation between federal and nonfederal accounts, the Commission’s policy of allowing allocation “on any reasonable basis” was contrary to law “since Congress stated clearly in the FECA that all monies spent by state committees on these activities vis-à-vis federal elections must be paid for ‘from contributions subject to the limitations and prohibitions of this Act.’” The court directed the FEC to craft

Federal Register

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

Notice 1998-12

Notice of Proposed Rulemaking: Prohibited and Excessive Contributions; “Soft Money” (63 FR 37721, July 13, 1998)

specific allocation formulas, but it acknowledged that the FEC could “conclude that no method of allocation will effectuate the Congressional goal that all moneys spent by state political committees on those activities permitted in the 1979 amendments be ‘hard money’ under the FECA.”

The Commission issued new rules in 1990 that addressed the court’s concerns, creating specific formulas for allocating expenses that impact on both federal and nonfederal elections. The formulas vary depending on the type of committee and the type of expense. Disclosure requirements of these allocated expenses also were increased. The six national party committees were required to disclose all receipts of and disbursements from their nonfederal accounts. The new rules went into effect on January 1, 1991, and those same rules are in effect today.

Evidence of Increase in Use of Soft Money

Prior to 1991, it was difficult to determine how much soft money party committees raised or spent because there were no uniform guidelines for allocation in expenses and no systematic disclosure of soft money on the state level. However, with the expanded reporting requirements came a renewed perception that soft money was being used to influence federal elections. The Commission made several observations to support this view.

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Regulations

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- *A dramatic increase in the amount of soft money raised and spent by national party committees.* At the end of the 1996 election cycle, the national party committees had raised \$262.1 million in soft money, three times as much as the \$86 million they received in 1992. Soft money disbursements for the 1996 election cycle totaled \$271.5 million, up from \$79.1 million spent in 1992.
- *An increase in the number of contributions made to national party committees' soft money accounts that would have been prohibited in their hard money accounts.* In 1996, nearly 1,000 individuals made contributions of more than \$20,000 to national party committees' soft money accounts. In 1992, the same category included only 381 people. The number of contributions from prohibited sources—such as corporations and unions—totaled approximately 27,000 in 1996, up from about 11,000 such contributors in 1992.
- *An increase in soft money following promulgation of allocation rules.* Two of the six national party committees that did not have nonfederal accounts prior to 1991 established such accounts and began raising soft money after the new rules went into effect. Another national party committee, which already had a nonfederal account before 1991, reportedly increased its soft money from \$3.7 million in the 1984 Presidential election year to \$23.5 million in the 1992 election year, and \$66.2 million in 1996.
- *An increase in national party committee transfers to state and local party committees.* National party committees apparently have interpreted the rules to allow them to shift some federal/nonfederal activities to state and local committees, which generally operate

under more favorable allocation ratios. The upshot of this is significant savings of hard money for the national committees' federal accounts.

- *Allegations that the national party committees have transferred soft money to nonprofit organizations, which, in turn, conduct voter registration drives and GOTV drives to influence federal elections.* Many nonprofits are not political committees under the Act and therefore are generally not subject to the allocation rules. Consequently, these organizations can often pay for these activities entirely with soft money.
- *Allegations that federal candidates and officeholders have taken a more active role in raising soft money than in the past.* Personal solicitations by federal officeholders may lead contributors to believe that their contributions will be used for federal elections when, in fact, soft money can only be used for nonfederal elections.

The evidence suggests that the use of soft money has expanded far beyond what the Commission anticipated when it drafted the 1991 allocation rules, especially where national party committees are concerned.

The NPRM acknowledges that only a small percentage of elected positions in the United States are federal, that national party committees may have an inherent interest in the outcome of both federal and nonfederal elections and that the national committees sometimes promote issues that fall outside the purview of the Act. Nevertheless, states the NPRM, "by allowing national party committees to pay a portion of their mixed activities costs with soft dollars, the allocation rules appear to be allowing the national party committees to use large soft money contributions in ways that unavoidably influence federal elections, even though they are ostensibly raised for nonfederal

election activity. This is inconsistent with the policy goals of the FECA, which seeks to limit corruption and the appearance of corruption that is created when large individual contributions and corporate, labor organization and federal contractor funds are used to influence federal elections."

Comments

The NPRM provides greater detail about each of the options listed above. It is available from the Public Records Office at 800/424-9530 (press 3); through the FEC's Faxline at 202/501-3413 (request document 230); and at the FEC's web site—<http://www.fec.gov>. The NPRM also is published in the July 13 *Federal Register* (63 FR 37721).

Public comments must be submitted in either written or electronic form to Susan E. Propper, Assistant General Counsel. Written comments should be mailed to the Federal Election Commission, 999 E St., NW, Washington, DC 20463. Faxed comments should be transmitted to 202/219-3923, with a copy mailed to the preceding address to ensure legibility.

Comments also may be sent by e-mail to softmoneynpr@fec.gov. In order to be considered with the other comments, electronic submissions must include the commenter's full name, e-mail address and postal mail address. ♦

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Court Cases

Ohio Democratic Party v. FEC (98-0991) RNC v. FEC (98-1207)

On June 25, the U.S. District Court for the District of Columbia denied motions by the Ohio Democratic Party (ODP) and the Republican National Committee (RNC) for a preliminary injunction to prevent the FEC from enforcing its allocation regulation found at 11 CFR 106.5 and interpreted in AO 1995-25. The regulation and advisory opinion require the plaintiffs to pay a portion of their federal election-related advertisement costs with hard money, or funds that comply with the law's contribution limits and prohibitions. Both committees filed suits this year charging that application of the allocation regulation to issue advocacy advertisements was unconstitutional. The two suits were subsequently consolidated.

The ODP and RNC charge that the FEC's allocation regulation violates the First and Fifth Amendments to the Constitution, and that the FEC lacks the authority to promulgate rules such as this. The ODP and RNC further allege that the allocation regulation exceeds the FEC's authority because it regulates issue advocacy communications, not merely communications that expressly advocate the election or defeat of a federal candidate. The plaintiffs told the court that they would suffer irreparable harm if the injunction was not granted. See the [June 1998 Record, pp. 1 and 2](#).

Rules for Preliminary Injunction

A preliminary injunction may be granted when:

- There is a substantial likelihood that the plaintiffs will succeed on the merits of the case;
- The plaintiffs will suffer irreparable harm if an injunction is not issued;

- An injunction will not substantially injure others; and
- An injunction will serve the public interest.¹

District Court Decision

In denying the motion for a preliminary injunction, the court stated that the ODP and RNC were not likely to prevail on the merits of their claims and that the plaintiffs would not suffer irreparable injury if the injunction was not issued.

First Amendment Challenge. The plaintiffs argued that no compelling interest supported the FEC's allocation regulations, but the court recognized that the regulation prevents the appearance of corruption that could result if soft money was spent to influence federal elections. As the court explained: "The FEC is not seeking a spending cap on advertisements that influence federal campaigns, but rather is attempting to ensure that political parties do not facilitate any impression that wealth can buy access to our important federal decision makers."

Fifth Amendment Challenge. The ODP argued that it and other party committees are being treated differently than other types of organizations since they must fund issue advertising with a mix of hard and soft money. Organizations that are not political committees, such as corporate and labor organizations, may fund issue advertising completely with nonfederal funds. The court recognized the party committees' "unique burden," but noted that party committees also have "special benefits" under the Act. The court concluded that the FEC should be given the opportunity to develop evidence of "special corruption problems" associated with the parties' use of soft money to finance ads that influence federal elections.

¹ *Cityfed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 746 (D.C. Cir. 1995).

Regulatory Powers. The plaintiffs also argued that the FEC lacked the authority to promulgate the allocation rules. The court, however, pointed out that Congress gave the Commission extensive rulemaking and enforcement powers. Further, the court noted that the Commission had submitted the regulation in question to Congress for review, and neither chamber had disapproved it.

The court dismissed the plaintiffs' claims that they would suffer irreparable injury if the injunction was not granted. The court stated that: "Instead, it is the public who would be harmed if the FEC was enjoined from enforcing (its allocation regulations). If the public were to conceive that each Congressperson elected in the 1998 elections were improperly influenced by large donations to their political parties which were later funneled into issue advertisements with a clear electioneering message, public confidence in our system of government is likely to be further eroded."

The ODP and RNC are appealing the decision to the U.S. Court of Appeals for the District of Columbia Circuit.

U.S. District Court for the District of Columbia, 98-0991 and 98-1207. ♦

FEC v. California Democratic Party

On June 11, the U.S. District Court for the Eastern District of California denied the California Democratic Party's (CDP's) motion to dismiss a complaint filed against it by the FEC. The FEC alleged that the CDP violated the Federal Election Campaign Act (the Act) when it used only nonfederal funds to pay for a voter registration drive conducted by a ballot measure committee instead of allocating the costs between its federal and nonfederal accounts.

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Court Cases

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Background

Taxpayers Against Deception-No on 165 (No on 165) was a state political committee organized to defeat a California ballot initiative of the same name. Proposition 165 was designed to reduce state spending on welfare and other social programs and was supported by the state's Republican governor, Pete Wilson. No on 165's strategy was to register prospective voters who supported its efforts to defeat the initiative, and who would likely support Democratic candidates who also were on the ballot during the same election—including federal candidates. The CDP ultimately spent \$719,000 from its nonfederal account to aid No on 165 in its registration effort, with most of that money being used to register Democratic voters. The CDP did not report the disbursement to the FEC.

The FEC alleged that the CDP used prohibited funds in connection with a federal election, failed to allocate voter registration payments between its federal and nonfederal accounts and failed to report the amounts that should have been allocated. 11 CFR 102.5(a)(1)(i), 104.10(b)(4) and 106.5(d) and 2 U.S.C. §441b(a). See the [July 1997 Record, p. 5](#).

District Court Decision

The court rejected the CDP's arguments for dismissing the case.

The CDP first argued that, since it did not conduct the voter drive, the money it gave to No on 165 was not subject to the allocation regulations. The Commission argued that the CDP's contributions were subject to the regulation because the situation as presented was no different than if the CDP had conducted the voter registration drive itself or hired someone to do so. The court pointed out that the FEC had claimed that the CDP knew that No on 165 would use the

money to register Democrats who ostensibly would vote in the general election for both state and federal candidates. Further, the FEC had alleged that No on 165 provided the CDP with weekly updates on the success of the voter drive, with success being measured by the number of Democrats registered. The court said, "it is conceivable that these facts, if proven, could show that the voter registration drive was conducted on behalf of the CDP."

The CDP also argued that it was not subject to the FEC's allocation rules because the voter drive did not urge the support of or opposition to federal candidates. The court rejected this argument because the FEC's regulation at 11 CFR 106.5(a)(2)(iv) explicitly states the opposite, namely that party committees must allocate generic voter drive costs "that urge the general public to register [to vote] ... without mentioning a specific candidate." The court pointed out that the allocation rules expressly state that no candidate need be mentioned, and that the FEC's interpretation of this rule is entitled to deference.

The CDP also maintained that the FEC did not have the authority to promulgate allocation rules. The court pointed out, however, that the Act's legislative history demonstrates that Congress anticipated the allocation of federal and nonfederal funds when it enacted the 1979 statutory provisions on voter registration activities.

The CDP argued that the allocation regulations as applied are unconstitutional because they restrict the CDP's ability to engage in issue advocacy and curtail its freedom to associate with people with whom it shares the same political leanings. The court stated that the CDP had engaged in activity that went beyond issue advocacy when it contributed money to register Democrats to vote in a

federal election. Consequently, the court concluded, the CDP had not shown that the allegations limit its right to engage in issue advocacy.

The court also rejected the CDP's assertion that the regulation impermissibly infringes its freedom of association rights. It stated: "The Supreme Court has made clear that associational rights may be...overborne by the interests Congress has sought to protect in enacting 441b," the provision prohibiting corporate/labor activity. The court added that the regulation is tailored to restrict only funds that would be illegal under 2 U.S.C. §441b.

The court also dismissed former CDP treasurer Gary Paul as a defendant in this case. Mr. Paul was not the committee's treasurer at the time of the alleged violations, and is not currently the treasurer of the CDP.

U.S. District Court for the Eastern District of California, 97-0891. ♦

Fulani v. FEC (97-1466)

On June 23, the U.S. Court of Appeals for the District of Columbia Circuit denied a petition from Dr. Lenora B. Fulani and the Lenora B. Fulani for President Committee to review the FEC's final repayment determination for the committee's financial transactions during the 1992 Presidential campaign. The FEC had determined that Dr. Fulani and her committee had to repay the U.S. Treasury \$117,269 in public matching funds.

Dr. Fulani received about \$2 million for the 1992 campaign, under the Presidential Primary Matching Payment Account Act. Under the Matching Payment Act, eligible candidates can use matching funds only for qualified campaign expenses. Committees that receive such funds are also subject to an audit by the FEC and the requirement to make repayments to the

U.S. Treasury if the audit reveals that they made nonqualified campaign expenses or received payments in excess of their entitlement. Commission regulations allow a candidate to contest the initial repayment determination by submitting written materials and by requesting an oral hearing before the Commission issues a final repayment determination. The regulations further state that, if the candidate does not contest an initial repayment determination, it becomes final 30 days after a candidate is served written notice of the determination.

Dr. Fulani did not contest the Commission's initial repayment determination, which concluded that Dr. Fulani owed the Treasury \$1,394. Dr. Fulani had already repaid this amount. The Commission, however, held its final determination in abeyance after a former Fulani campaign worker came forward to challenge the accuracy of some of the documentation on which the FEC had based its initial repayment determination. The FEC continued to investigate—though hampered by a lack of cooperation from committee staff and vendors—and issued a second initial repayment determination, this time, in the amount of \$612,557. Dr. Fulani contested this determination, and, in its final repayment determination, the Commission reduced the amount to \$117,269. Dr. Fulani asked for a rehearing, which was denied by the Commission, and then brought the matter before the appellate court. Dr. Fulani challenged the FEC's authority to issue a second repayment determination and, in the alternative, argued that the Commission's findings that she and her committee owed \$18,768 in nonqualified disbursements to a vendor and \$73,750 in unsubstantiated payments to individuals by check were unreasonable. See the [October 1997 Record, p. 2](#).

Dr. Fulani and the committee first argued that the Matching Payment

Act contemplates only one repayment determination and that the FEC had no authority to make a second one in their case. Commission regulations, however, allow additional repayment determinations after a final determination has been made "where there exist facts not used as the basis for a previous final determination." 11 CFR 9038.2(f). The court agreed with the Commission that the statute is silent on this matter and the agency's regulation is a reasonable construction of the Act.

Dr. Fulani also argued that the FEC had no authority to hold its first repayment determination in abeyance because the determination became final when Dr. Fulani did not object to it within the designated 30-day period. The court agreed with the Commission that it makes no difference whether the first initial repayment determination had become final or had been suspended because the FEC's own regulation explicitly authorizes it to make additional repayment determinations on the basis of new facts.

Dr. Fulani also argued that, even if the Commission is authorized to make a second repayment determination, it did not issue that determination within the three-year period the statute requires. Although the Commission, in fact, did issue the second initial determination just before the three-year period ended, Dr. Fulani stated that the determination figure (\$612,557) was drawn up just to meet the deadline and was not the product of a thorough examination and audit. But the court found that the obstacles the Commission encountered in investigating the committee understandably led it to draw all inferences against the committee. "When a candidate seeks to frustrate and delay a government investigation, it can hardly be heard to complain that the product is insufficiently thorough," the court stated.

The court also affirmed the Commission's determination on the

merits and its denial of Dr. Fulani's petition for a rehearing. In regard to the payments to the vendor, the court stated that Dr. Fulani failed to offer a timely explanation of the payments. In regard to the Fulani committee's payments by check to individuals, the court deferred to the Commission's construction of its own regulations even when it found that the "FEC's reading of its regulation admittedly is not obvious."

U.S. Court of Appeals for the District of Columbia Circuit, 97-1466. ♦

On Appeal?

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

The U.S. Court of Appeals for the District of Columbia Circuit denied the FEC's petition for a rehearing in these two cases. In April, the court remanded both lawsuits to the district court after determining that the Democratic Senatorial Campaign Committee had not demonstrated that it has standing to sue the FEC. See the [June 1998 Record, p. 4](#). ♦

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Compliance

MUR 3847 Excessive Contributions Among Campaign Finance Violations That Net Committee Civil Penalty

Friends of Steve Stockman, the principal campaign committee of Stephen E. Stockman, has agreed to pay a \$40,000 civil penalty for various violations of the Federal Election Campaign Act (the Act) that occurred in connection with his federal campaigns during the 1994 and 1996 election cycles.

Specifically, the committee accepted excessive in-kind contributions from two newspapers and failed to report the contributions to the FEC; included no disclaimers or improper disclaimers on express advocacy communications and solicitations; and failed to adequately report various disbursements and contributions.

Newspaper Stories as In-kind Contributions

The *Southeast Texas Times*, a newspaper distributed in Mr. Stockman's district in 1993, produced nine issues containing articles related to Mr. Stockman's campaign. The Stockman committee controlled the newspaper, and the paper did not contain balanced campaign-related news accounts about all opposing candidates.

The Act limits a person's contribution to a federal candidate to \$1,000 per election. The term contribution includes expenditures made by any person in cooperation with the candidate or his authorized committee, including payments to finance the dissemination and distribution of written campaign materials prepared by the campaign. The Act exempts, however, costs associated with the production of news stories, commentaries or editorials distributed through

newspapers and other periodicals as long as the media entity is not owned or controlled by a political committee or candidate. 2 U.S.C. §431(9)(B)(i); 11 CFR 100.7(b)(2) and 100.8(b)(2). If the newspaper is owned or controlled by a candidate or political committee, such costs may still be exempt if the news story represents a bona fide news account appearing in a general circulation publication and is part of a general pattern of campaign-related news that gives reasonable coverage to all opposing candidates in the circulation area. 11 CFR 100.7(b)(2) and 100.8(b)(2).

The Commission concluded that, in this case, the newspaper was not an activity separate from Mr. Stockman's campaign for federal office, but rather a component of the overall effort. Thus, the \$14,336 in expenditures associated with the newspaper's production resulted in \$13,336 in excessive in-kind contributions to the Stockman campaign, which the campaign accepted but did not report.

In 1995, a similar newspaper controlled by the Stockman committee called the *Southeast Texas Statesman* was published in a similar manner to the 1993 publication. Expenditures associated with the production of this newspaper totaled at least \$3,200, resulting in at least \$2,200 in excessive in-kind contributions to the committee. Again the Stockman committee accepted these contributions, but did not report them.

Disclaimer Notices

The Act also requires any person who pays for an express advocacy communication or a solicitation through a newspaper (or other form of public advertising) to include a disclaimer saying who paid for and who authorized the communication. 2 U.S.C. §441d(a). The disclaimer must be placed in a clear and conspicuous manner. A communication will be considered to contain

express advocacy when such phrases as "vote for" and "support" are used, or when campaign slogans appear which, in context, can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates. 11 CFR 100.22(a).

The *Southeast Texas Times* carried advertising aimed at the general public that solicited contributions for the Stockman committee, but included no disclaimers.

The Stockman campaign produced other communications—formatted to resemble a newspaper—in 1994. One such communication, called "Chronicle of Our Times," contained express advocacy statements. The communication included this disclaimer: "Paid for by the National Republican Congressional Committee, Authorized by Friends of Steve Stockman." The communication was not, however, paid for entirely by the National Republican Congressional Committee (NRCC). Thus, the communication failed to contain an accurate disclaimer.

Inaccurate Reporting

Political Won Stop (PWS), a consulting firm with close ties to the Stockman campaign, worked on Mr. Stockman's campaign and was paid \$470,000. PWS, in turn, disbursed the funds to third party vendors. The Act requires that committees identify persons to whom expenditures are made and disclose the "purpose" of those expenditures—a brief description of why the disbursement was made. Statements such as "expenses," "miscellaneous" and "outside service" are not sufficient.

In AO 1983-25, the Commission determined that payments to a media consulting firm by a campaign committee could be reported without identifying the ultimate payee based on the facts that the firm had a separate legal existence, its principals did not hold any staff position with the committee, and the

committee had arm's length negotiations with the firm and planned to enter a formal contract. None of these factors existed in the relationship between the Stockman committee and PWS, yet the committee did not report the ultimate payees of its payments to PWS. Additionally, the committee reported virtually all of its payments to PWS as "consulting," "consulting fees," "consulting services" or "fundraising services"—inadequate descriptions of the underlying purpose of the disbursements as required by the Act and AO 1983-25.

Further, the committee failed to report disbursements totaling approximately \$17,000; failed to report \$2,800 in contributions from the NRCC; incorrectly reported approximately \$3,700 in disbursements; cumulated disbursements to a vendor within one reporting period; and failed to report some disbursements under \$200 regardless of the aggregate amount disbursed to the person within a calendar year.

After finding probable cause to believe that the committee violated the Act, the FEC entered into a conciliation agreement with it.¹ ♦

MUR 4116 Coordination with Candidates Nets Seniors Group Civil Penalty

The National Council of Senior Citizens (NCSC) and its separate segregated fund, the National Council of Senior Citizens Political Action Committee (NCSC-PAC), have agreed to pay a \$12,000 civil penalty to the FEC for a series of

violations of the Federal Election Campaign Act (the Act), including excessive contributions in the form of communications coordinated with candidates, prohibited corporate contributions, failure to use disclaimers on public political advertisements and failure to adequately report contributions and expenditures. The violations occurred in connection with the campaigns of Charles Robb and Harris Wofford, Senate candidates in Virginia and Pennsylvania, respectively.

NCSC is a nonprofit membership corporation. In 1994, NCSC and NCSC-PAC participated in a press conference with Mr. Robb and held a press conference for Mr. Wofford that he attended. Within a few days after each press conference, NCSC-PAC began purchasing radio ads supporting each man in his election. The NCSC-PAC spent about \$18,800 on behalf of Mr. Robb and about \$12,440 on behalf of Mr. Wofford.

NCSC-PAC reported disbursements for both of the ads as independent expenditures (i.e., expenditures that are made for a communication that expressly advocates the election or defeat of a clearly identified candidate and that are made without cooperation or consultation with any candidate (or candidate's committee) and that are not made in concert with or at the request or suggestion of any candidate). 2 U.S.C. §431(17). Commission regulations explain that the independence is negated by any "arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication." 11 CFR 109.1(b)(4)(i). Further, the regulations presume that expenditures are coordinated if they are based on information about the candidate's plans, projects or needs that is provided by the campaign to the person making the expenditure, with a view toward having an expendi-

ture made. 11 CFR 109.1(b)(4)(i)(A).

In both of these cases, the press conferences and the communications between NCSC and the campaigns concerning the press conferences, involved an exchange of information and called into question the independence of the NCSC-PAC's expenditures. The Commission thus found that the expenditures in the Virginia and Pennsylvania campaigns were not made independently of the candidates' committees and, therefore, constituted in-kind contributions, which exceeded the limits set out in the Federal Election Campaign Act (the Act). While independent expenditures are not limited by the Act, contributions are. A multicandidate PAC may make contributions up to \$5,000 per election, per candidate. 2 U.S.C. §431(17) and §441a(a)(2)(A).

NCSC-PAC contended that it did not communicate with the Robb or Wofford campaigns about its decision to run the ads, or about their content or placement.

During the same campaign, NCSC staffers, on company time, worked on NCSC-PAC projects related to press conferences, radio ads, flyers and press releases that expressly advocated the election or defeat of federal candidates. Some of these projects, because they were coordinated with federal candidates, constituted in-kind contributions from NCSC-PAC to the candidate. To avoid making a contribution, NCSC-PAC should have paid in advance for the staff time expenses (\$12,334). It did not, however, reimburse its corporate sponsor until more than a month after the elections. Thus, the \$12,334 in NCSC staff time constituted an impermissible corporate contribution. 2 U.S.C. §441b(a).

Additionally, NCSC distributed flyers during this same election campaign that expressly advocated

(continued on page 10)

¹ The Commission also found probable cause to believe that, along with his campaign committee, Stephen E. Stockman controlled the newspaper in this matter and violated the Act by accepting the newspapers' excessive contributions and failing to timely file a Statement of Candidacy.

Compliance

(continued from page 9)

Mr. Robb's reelection. However, the flyers did not contain a disclaimer as to who paid for and who authorized the communications, as is required by law. 2 U.S.C. §441d(a).

In addition to the civil penalty paid by NCSC and NCSC-PAC, the two must institute procedures to ensure that none of the violations that occurred in 1994 reoccur, and the PAC must file amendments to its reports disclosing the true nature of its expenditures. The Commission entered into a conciliation agreement with NCSC and NCSC-PAC prior to finding probable cause to believe that a violation of the Act had occurred.¹ ♦

Advisory Opinions

Advisory Opinion Requests

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

AOR 1998-14

Acceptance of contributions from residents of Pacific Island nations covered under the Compact of Free Association (Eugene F. Douglass for U.S. Senate Campaign Committee, June 23, 1998; 1 page plus 4-page attachment)

AOR 1998-15

Contribution limits of limited liability company in Illinois

¹ The Commission also found probable cause to believe that Robb for the Senate, the principal campaign committee of Charles Robb, violated the Act by accepting excessive contributions, failing to report contributions and accepting corporate contributions.

Staff

(continued from page 1)

Acting Staff Director Named

James A. Pehrkon has been appointed by the Commission as Acting Staff Director of the FEC. Mr. Pehrkon, who has been with the agency almost since its inception, begins his new duties on August 1.

Mr. Pehrkon started with the FEC in November 1975, setting up the data processing department. He then established and became director of the agency's Data Systems Development Division. In 1980, he became Deputy Staff Director taking on a broad range of management responsibilities for budget, administration and computer systems.

As the Acting Staff Director, Mr. Pehrkon will oversee the Commission's public disclosure activities, outreach efforts, reports processing and audit program, in addition to the administration of the agency. Mr. Pehrkon replaces former Staff Director John Surina, who accepted a new position at the Department of Agriculture.

A native of Austin, TX, Mr. Pehrkon received an undergraduate degree in economics from Harvard University, and did graduate work in foreign affairs at Georgetown University. ♦

(Fitzgerald for Senate, Inc., June 30, 1998; 2 pages)

AOR 1998-16

Corporate payment of security for executive conducting activity on behalf of nonconnected committee (Restoring the American Dream, July 9, 1998; 3 pages. ♦

Alternative Disposition of Advisory Opinion Request

AOR 1998-10

The requester withdrew this request for an advisory opinion. The request, submitted on May 6, sought the Commission's opinion on the restricted class of American Oncology Resources, Inc., a physician practice management corporation. ♦

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GAO asking political committees to evaluate FEC services and products. For story, see page 1.

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