

Record

October 1998

Federal Election Commission

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Reports

October Reporting Reminder

Committees should take note of the following due dates for October reports:

- Third quarter reports for quarterly filers are due on October 15 (reporting period July 1-September 30).
- Monthly reports for monthly filers are due on October 20 (reporting period September 1-30).
- Pre-general reports are due on October 22 (reporting period October 1-14). Candidate committees must file this report if their candidate is running in the general election. PACs and party committees that file quarterly must file this report if they make contributions or expenditures in connection with an election during this reporting period. PACs and party committees that file on a monthly schedule must file a pre-general report in lieu of the scheduled November monthly report.

In addition to these reports, candidate committees may also have to file 48-hour notices on last-minute contributions, and PACs and party committees may need to file 24-hour reports to disclose any last-minute independent expenditures.

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Commissioners

Chairman Aikens Retires

Chairman Joan D. Aikens retired from the Commission last month after 23 1/2 years of dedicated and distinguished public service.

Chairman Aikens was nominated to the newly created Commission in 1974 by then Senate Minority Leader Hugh Scott. A native Pennsylvanian, Ms. Aikens was very active in Pennsylvania politics, beginning as a volunteer for Richard Nixon in the 1960 Presidential election. She served as a precinct captain, President of the Pennsylvania Council of Republican Women and, eventually, as a member of the Pennsylvania Republican State Committee.

After being appointed by President Ford and confirmed in April of 1975 as one of the original Members of the FEC, Chairman Aikens was subsequently reappointed in 1976, 1981, 1983 and 1989 by Presidents Reagan and Bush. At the time of her retirement, she was serving her fourth term as Chairman.

Chairman Aikens—an ardent believer in the First Amendment and its overriding importance in interpreting federal election law—will be best remembered by the election law community as a fair and impartial

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Court Cases

Judd v. FEC

On August 20, the U.S. Court of Appeals for the District of Columbia Circuit denied plaintiff Keith Judd's motion to have the court reexamine its decision to dismiss this case for lack of prosecution. See the [June 1998 Record](#), p. 5.

U.S. Court of Appeals for the District of Columbia Circuit, 98-1078. ♦

FEC v. Al Salvi for Senate Committee

On August 10, the FEC refiled this case after the U.S. District Court for the Northern District of Illinois, Eastern Division, dismissed it on technical grounds. The case that was resubmitted is virtually identical to the one submitted on March 3. In the suit, the FEC asks the court to find that, during the

1996 election cycle, the Al Salvi for Senate Committee and its treasurer violated the reporting provisions of the Federal Election Campaign Act. The FEC contends that the committee misreported, and failed to report on time more than \$1.1 million in contributions and loans. See the [April 1998 Record](#), p. 4.

U.S. District Court for the Northern District of Illinois, Eastern Division, 98C-1321. ♦

New Litigation

FEC v. Freedom's Heritage Forum

The FEC asks the court to find that Freedom's Heritage Forum, a political committee, and its treasurer, Dr. Frank G. Simon, made excessive contributions to a candidate and failed to report the contributions to the FEC. The FEC also contends that the Forum failed to include required disclaimers on flyers it distributed in support of the candidate.

The Commission also asks the court to declare that the candidate who benefited from the Forum's advocacy, Timothy Hardy, knowingly accepted the Forum's impermissible contributions as well as more than \$4,000 in prohibited corporate in-kind contributions from another corporation. Mr. Hardy was a candidate in the 1994 Republican primary for Kentucky's 3rd Congressional District.

Excessive Contributions. The Commission alleges that the Forum made contributions of \$23,515—or, \$22,515 above its \$1,000 contribution limit—in the form of expenditures to host a campaign event and to pay for flyers on behalf of Hardy for Congress, Mr. Hardy's principal campaign committee. The Forum claims that its disbursements were independent expenditures.

The Federal Election Campaign Act (the Act) defines independent expenditures as disbursements for a communication that expressly

advocates the election or defeat of a clearly identified candidate and that is made without cooperation or consultation with the candidate or his/her committee. 2 U.S.C.

§431(17). Commission regulations explain that the independence of an expenditure is negated by coordination with the candidate or campaign. 11 CFR 109.1(b)(4)(i). 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 expenditures, with a view toward having an expenditure made. 11 CFR 109.1(b)(4)(i)(A).

If an expenditure does not qualify as an independent expenditure, it is treated as an in-kind contribution to the candidate (unless it is otherwise exempted). 11 CFR 109.1(c). The Act limits the amount that persons (other than multicandidate committees) may contribute to a federal candidate to \$1,000 per election. 2 U.S.C. §441a(a)(1)(A).

In this case, the Commission alleges that, through direct meetings between Dr. Simon and Mr. Hardy before he declared his candidacy, and then during his candidacy, the Forum was informed of the Hardy campaign's ideas and needs. Consequently, the Forum's expenditures were coordinated with the campaign and constituted excessive in-kind contributions to the campaign. The Commission also contends that the Forum and Dr. Simon violated the Act's reporting provisions by inaccurately disclosing these contributions to the Commission.

Lack of Disclaimers. The Commission also alleges that the Forum failed to use disclaimers on the flyers. When public political communications expressly advocate the election or defeat of a clearly identified candidate or solicit contributions, the Act requires that the communications include a disclaimer. The disclaimer must state who paid for it and whether or not it was authorized by a candidate or

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800/424-9530
202/694-1100
202/501-3413 (FEC Faxline)
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campaign committee. 2 U.S.C. §441d.

The Commission states that some of the flyers the Forum distributed included only information about who paid for them, but did not include a statement indicating whether or not they were authorized by a candidate. One set of flyers distributed by the Forum contained no disclaimer at all.

Candidate's Knowing Acceptance of Contributions. The Commission further alleges that the Hardy committee violated the Act by knowingly accepting the excessive contributions from the Forum. 2 U.S.C. 441a(f). The Commission also contends that Mr. Hardy knowingly violated the Act's prohibition on accepting corporate contributions when he used a corporation's bulk mailing permit to mail campaign literature. 2 U.S.C. §441b(a). Although the Hardy committee paid for the mailings, it derived a financial benefit of \$4,183 by using the bulk mailing permit.

U.S. District Court for the Western District of Kentucky at Louisville, 98CV-549-5, August 25, 1998. ♦

Compliance

Nonfilers

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

Candidate	Office Sought	Report Not Filed
Cook, William R.	House NY/27	Pre-Primary
Crawford, Jerry	House NY/28	Pre-Primary
Cusack, Patrick M.	House FL/21	Pre-Primary
Fiumefreddo, Peter	House NY/17	Pre-Primary
Jennings, Dorothy C.	House MD/07	Pre-Primary
Meeks, Gregory W.	House NY/06	Pre-Primary
Owens, Major Robert Odell	House NY/11	Pre-Primary
Peoples, Crystal D.	House NY/30	Pre-Primary
Wayman, Kenneth L.	Senate MD	Pre-Primary

Reports

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For more information on 1998 reporting dates:

- Visit the FEC's web site at <http://www.fec.gov> to view the [reporting tables](#);
- Obtain a faxed copy of the reporting tables by calling FEC Faxline (202/501-3413, request documents 586 and 587);
- See the reporting tables in the [January 1998 Record](#); or
- Call and request the reporting tables from the FEC at 800/424-9530 (press 1) or 202/694-1100. ♦

Commissioners

(continued from page 1)

administrator of the FECA, who steadfastly refused to compromise her core principles.

In a farewell message to the staff, Chairman Aikens said, "I leave the Commission after 23 1/2 years with a great sense of pride and satisfaction for what we have accomplished and a great deal of hope for the future and this agency's ability to meet the challenges that will face it, no matter how difficult." ♦

Regulations

Final Rules Requiring Electronic Filing by Publicly Funded Presidential Candidates

On August 20, the Commission approved the final rules—and the Explanation and Justification for the rules—that require Presidential candidates who voluntarily accept public funding to file their campaign finance reports electronically. The final rules were published in the August 27 *Federal Register* (63 FR 45679) and transmitted to Congress. The Commission will announce an effective date once the rules have been before Congress for 30 legislative days.

The rules apply only to Presidential candidate committees that computerize their campaign finance records. Committees will file reports electronically—either by mailing a diskette with the information or by transmitting the data via the Internet to the FEC. Exempt from the electronic filing requirements are candidates' Statements of Organization (Form 1), Statements of Candidacy (Form 2) and candidate agreements. The changes affect 11 CFR 9003.1 and 9033.1.

Electronic filing by Presidential committees is intended to enhance public disclosure and to save a substantial amount of time and Commission resources. See the [July 1998 Record](#), p. 7.

The full text of the final rules governing electronic filing by Presidential campaign committees appears in the *Federal Register*. It also is available at the FEC's web site (<http://www.fec.gov>—click on What's New) and through FEC Faxline (202/501-3413—request document 234). ♦

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Regulations

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Soft Money Hearing Rescheduled

The FEC's public hearing on soft money has been rescheduled for October 21. The hearing will be held in the FEC's hearing room at 999 E St., NW, in Washington, DC. The deadline for comments has been extended to October 2. Anyone wishing to speak at the hearing must submit written comments to the FEC by October 2, and indicate in their written comments that they would like to testify.

To view the Notice of Proposed Rulemaking on this matter, see the July 13 *Federal Register* (63 FR 37721). The NPRM is available at the FEC's web site (<http://www.fec.gov>) and at FEC Faxline (dial 202/501-3413 and request document 230). The NPRM is also available from the Public Records Office (call 800/424-9530 or 202/694-1120).

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. ♦

Advisory Opinions

AO 1998-14 Contributions from Micronesia, Palau and the Marshall Islands

Eugene F. Douglass for U.S. Senate, the principal campaign committee of Eugene F. Douglass, may not accept contributions from citizens of the Marshall Islands, the Federated States of Micronesia or the Republic of Palau because the citizens of those states are considered foreign nationals under the Federal Election Campaign Act (the Act). The Compact of Free Association with the United States, which has been signed by all three states and the United States, does not confer U.S. citizenship or the status of U.S. national upon the residents of these states, nor does it give permanent resident alien status to the residents.

Mr. Douglass, who is running for the Republican nomination to represent Hawaii in the U.S. Senate, plans to run campaign advertisements soliciting contributions in newspapers throughout the Pacific region. Some of those papers likely will reach the citizens of the Marshall Islands, Micronesia and Palau.

The Act prohibits foreign nationals from making contributions in connection with any election to political office. 2 U.S.C. §441e. Those foreign nationals, however, who have permanent residence in the United States are exempt from this prohibition. They may make contributions. 2 U.S.C. §441e(b)(2).

In AO 1994-28, the Commission concluded that citizens of American Samoa could make contributions in connection with U.S. elections because their status—being U.S. Nationals—was virtually the same as being a permanent resident. As U.S. Nationals, American Samoans

can be admitted for permanent residence in the United State at any time, without having to meet any special entry requirements. They are exempt from the definition of foreign national.

The situation is different with the three Compact states. They are considered sovereign nations. Further, the Compact agreement does not grant U.S. citizenship or U.S. national status upon the states' inhabitants. In fact, it specifically denies the automatic granting of permanent resident status to the citizens of the three states and instructs them to follow the usual administrative procedures available to aliens in securing permanent resident status. In addition to the differences under immigration statutes, Compact states do not have a Delegate to the U.S. Congress as is the case for American Samoa. Consequently, the residents are considered foreign nationals for purposes of the contribution prohibitions in the Act.

Given the multiethnic identity of the U.S. population, the Douglass Committee is not expected to screen the surnames of its contributors for evidence of possible foreign national status. Nonetheless, the committee should take minimally intrusive steps to ensure that contributions do not come from foreign nationals, as follows:

- Any advertisements in the public news media that could reach Compact nations should contain a clear and conspicuous printed summary of the prohibitions against contributions by foreign nationals.
- If the committee receives a contribution from within the Compact nations (as evidenced by the postmark, contributor address or bank identification), it should make further inquiry as to the nationality of the contributor.

Date Issued: August 13, 1998;
Length: 5 pages. ♦

AO 1998-16 Use of Security Personnel by PAC Official

Amway may pay for executive security personnel to accompany its president, Richard M. DeVos, Jr., when he travels in connection with business on behalf of Restoring the American Dream, a political action committee he chairs. Such payments do not constitute a contribution or expenditure for purposes of the Federal Election Campaign Act (the Act) and thus would not result in impermissible corporate contributions.

Amway executives such as Mr. DeVos are required by corporate policy to have an executive security officer present during all travel away from office headquarters. This security feature is in effect no matter where or in what capacity the executive is traveling. Amway pays for the security services and the travel expenses of the security personnel.¹

The committee that Mr. DeVos chairs is not connected to Amway. Nonetheless, the security officer would, under Amway policy, have to accompany Mr. DeVos on travel required for his work with the committee.

Commission statutes define a contribution, in part, as any gift, subscription, loan, advance or deposit of money, or anything of value given to influence any election for federal office. 2 U.S.C. §431(8)(A). An expenditure is any purchase, payment, distribution, loan, advance, deposit or gift of money, or anything of value made by any person to influence any election for federal office. 2 U.S.C.

¹ Amway executive officers are required to travel by corporate plane when such aircraft are available. This AO does not offer an opinion on whether providing travel services to Mr. DeVos to travel on committee business would be prohibited by 2 U.S.C. §441b.

§431(9)(A). The Act also states that it is unlawful for a corporation to make contributions or expenditures in connection with any federal election. 2 U.S.C. §441b(b).

It does not appear that the security service provided to Mr. DeVos would enhance the committee's political activity or its administration. Security officers will be provided to Mr. DeVos in his capacity as an Amway official, not in his capacity as the chairman of the committee. Thus, so long as Amway security officers do not perform services related to committee functions, Amway's payment of mandatory security services to Mr. DeVos (including salary and travel expenses of security personnel) while he conducts committee business would not constitute a contribution or expenditure. Since no contribution or expenditure results, Amway's payments to the security officers would not be impermissible under 2 U.S.C. §441b.

Date Issued: August 21, 1998;
Length: 3 pages. ♦

Advisory Opinion Requests

AOR 1998-18

State party committee's payment for testing-the-waters poll for individual who did not become a candidate. (Washington State Democratic Committee, September 4, 1998; 5 pages)

AOR 1998-19

Voluntary pre-authorized deductions for collection of contributions to trade association PAC from individual account holders in member credit unions. (Credit Union National Association, Inc., Credit Union Legislative Action Committee, Texas Credit Union League, Pennsylvania Credit Union League, San Antonio Telephone Federal Credit Union and Patriot Federal Credit Union, September 8, 1998; 8 pages plus 105-page attachment) ♦

Audits

Audit Reports Made Public

The FEC has released 12 final audit reports pursuant to 2 U.S.C. §438(b) and 26 U.S.C. §9038(a) since November 1997.

The first of these two provisions of the Federal Election Campaign Act authorizes the FEC to audit any political committee that files reports but fails to meet the threshold level of compliance set by the agency. The second provision authorizes the FEC to audit Presidential committees that receive federal funds. Presidential committees include committees of primary election candidates who receive federal matching payments, committees associated with the general election nominee who receives federal funds and committees involved in major and minor party Presidential nominating conventions.

The Commission has the authority to initiate an enforcement matter to pursue issues revealed by an audit. The audited committees are listed below.

Audits for Cause (2 U.S.C. §438(b))

- Dennis Newinsky for Congress (November 10, 1997)
- Joe Rogers for Congress Committee (December 1, 1997)
- Democratic Party of Illinois (February 19, 1998)
- Bob Barr-Congress (February 27, 1998)
- Darrell Ealum for Congress (June 18, 1998)

Audits of 1996 Presidential Committees (26 U.S.C. §9038(a))

- Perot '96 (December 17, 1997)
- Alan Keyes for President '96, Inc.; Alan Keyes Committee; Other Authorized Committees (January 15, 1998)

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Audits

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- Lugar for President Committee, Inc.; Lugar for President Committee Legal and Accounting Compliance Fund; Lugar for President Committee Audit Fund (May 29, 1998)
 - 1996 Committee on Arrangements for the Republican National Convention (July 6, 1998)
 - 1996 Democratic National Convention Committee (July 15, 1998)
 - Chicago's Committee '96 (July 15, 1998)
 - San Diego Host Committee/Sail to Victory '96 (July 31, 1998)
- Final audit reports, each of which includes an executive summary, are available from the FEC's Public Records Office. Dial 800/424-9530 (press 3) or 202/694-1120. ♦

Federal Register

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

Notice 1998-13

Electronic Filing of Reports by Publicly Financed Presidential Primary and General Election Candidates; Final Rule and Transmittal of Regulations to Congress (63 FR 45679, August 27, 1998)

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FECFile Order Form

Do you want to file your FEC reports electronically? The FEC will mail you a copy of its new, free electronic filing software—FECFile. Mail or fax this form to the address/number below. Currently, FECFile operates on Windows95 and WindowsNT platforms.

FEC Identification Number _____

Committee Name _____

Electronic Filing Contact Name _____

Address: Street 1 _____

Address: Street 2 _____

City _____

State _____

Zip Code _____

Phone Number _____

Fax Number _____

E-mail Address _____

Federal Election Commission
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