

# RECORD

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## LEGISLATION

### FEC DEFENDS FY 1990 BUDGET REQUEST

In a series of appearances before the House and Senate authorization committees this spring, FEC Vice Chairman Lee Ann Elliott testified in support of the agency's \$15.768 million budget request for fiscal year 1990. Commissioner Elliott, who is Chairman of the Commission's finance committee, also made a special plea for \$368,000 in supplemental funds for FY 1989.

Remarking that the FY 1990 budget request was "at serious odds with the Office of Management and Budget's assessment" of the agency's requirements, Commissioner Elliott told the Senate Rules Committee on April 6 that the requested allowance was essential for the agency to continue operations without cutting both staff and mandated programs.

The FEC's budget proposal for FY 1990 represents only a 2.2 percent (\$335,000) increase over FY 1989. In addition to reflecting mandated cost-of-living salary and benefit increases, the FY 1990 request includes such expenses as an increase in rent for the Commission's offices, expected increases in postage and other costs related to the 1990 elections, equipment replacement and restorations of mandated programs to normal operating levels—all amounting to a base budget proposal of \$15.330 million. As Commissioner Elliott told the Senate Rules Committee, "This base budget is as lean and mean as it can possibly get."

The Commission also proposes adding five new programs to the budget, totalling an additional \$438,000. These additional programs "reflect the Commission's experiences in increasing the speed and clarity of disclosure and enforcement, and promoting a better understanding of campaign finance," Commissioner Elliott said.

### REMINDER

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The five programs are:

- o Restoration of computerized data entry of reported individual contributions of \$200 or more (currently, only contributions of \$500 or more from individuals are entered into the FEC's computer system);
- o An in-house training program for attorneys in the General Counsel's Office;
- o An addition of three support staff positions in the General Counsel's Office;
- o An expanded program of public disclosure of campaign finance data through the agency's Press Office; and
- o A public educational program on the \$1 tax checkoff for the Presidential Election Campaign Fund.

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## JULY REPORTING SCHEDULE

### First Report for New Committees

The first report a committee files after registration should cover receipts and disbursements occurring since the committee's date of registration, as well as activity which occurred prior to registration in 1989. In the case of candidate committees, any activity which took place in 1988 should be reported separately.

These guidelines for the first report apply to any newly registered committee, regardless of the committee's filing schedule.

Note that committees of Congressional candidates who ran in special elections in 1989 follow the normal nonelection year reporting schedule for Congressional candidate committees.

### Semiannual Report

The semiannual (or mid-year) report must be filed by July 31. It must disclose all activity (not previously reported) that occurred between January 1 (or the closing date of the last report) and June 30.

### Quarterly Report (Presidential committees only)

Due by July 15, the report should cover all activity from April 1 (or from the closing date of the last report) through June 30.

### Monthly Report

Committees reporting on a monthly schedule must do so by July 20. The monthly report covers all activity between June 1 and June 30.

### How to Change Filing Schedule

PAC and party committees that plan to change their reporting schedules in 1989 (e.g., from monthly to semiannually) must notify the Commission in writing. A committee may not change its filing frequency more than once a year. 11 CFR 104.5 (c). Principal campaign committees for Congressional candidates must file semiannually during 1989 and may not change their reporting schedules. The FEC also requests that Presidential committees inform the Commission in writing if they decide to change their reporting schedules.

### WHERE REPORTS ARE FILED

Committees must file all reports and statements simultaneously with the appropriate federal and state officials, at the following addresses. 11 CFR 108.5.

### Filing with the Federal Government

- o The principal campaign committees of House candidates and committees supporting or opposing only House candidates file with the Clerk of the House, Office of Records and Registration, 1036 Longworth House Office Building, Washington, D.C. 20515. 11 CFR 104.4(c)(3) and 105.1.
- o The principal campaign committees of Senate candidates and committees supporting or opposing only Senate candidates file with the Secretary of the Senate, Senate Public Records, Senate Hart Office Building, Room 232, Washington, D.C. 20510. 11 CFR 104.4(c)(2) and 105.2.
- o All other committees, including the principal campaign committees of Presidential candidates, file with the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463. 11 CFR 105.3 and 105.4.

### Filing with State Governments

- o The principal campaign committees of Congressional candidates must file a copy of every report and statement with the Secretary of State or the appropriate elections official of the state in which the candidate seeks federal office. 11 CFR 108.3.
- o The principal campaign committees of Presidential candidates must file copies of reports and statements with the Secretary of State or the appropriate elections official of the state in which the committee makes campaign expenditures. These reports must contain all financial transactions which apply to that state during the reporting period covered. 11 CFR 108.2.
- o PACs and party committees making contributions or expenditures in connection with House and Senate races file reports and statements in the state in which the candidate seeks election. The law requires a copy only of that portion of the report applicable to the candidates being supported. Committees supporting Presidential candidates must file in the states in which the Presidential committee and donor committee have their headquarters.

### HOW TO OBTAIN MORE INFORMATION

Reporting forms for the semiannual report-- or quarterly report, depending on the committee-- will be sent to all registered committees. Committees may request additional forms from the FEC or use photocopies of blank forms previously sent to them.

Questions and requests for forms should be addressed to the FEC's Information Services Division. Call 800/424-9530 or 202/376-3120.

## REPORTS

### JULY REPORTING SCHEDULE

The following chart and paragraphs explain the July reporting schedule for the various categories of filers. Note that all registered political committees will receive a reporting packet with a peel-off address label. The Commission asks that committees place this peel-off label on line 1 of the reporting form, the space provided for identifying the committee's name and address. Any corrections should be made directly on the label.

Type of Filer	Report		
	Quarterly July 15	Monthly July 20	Semiannual July 31
Congressional Candidate Committees <sup>1</sup>			X
Presidential Candidate Committees/ Quarterly Filers <sup>2</sup>	X		
Presidential Candidate Committees/ Monthly Filers <sup>2</sup>		X	
PAC/Party Committees: Semiannual Filers <sup>3</sup>			X
PAC/Party Committees: Monthly Filers <sup>3</sup>		X	

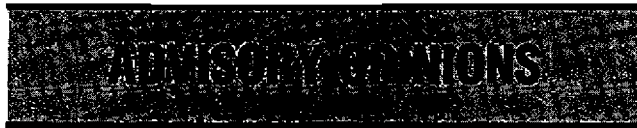
Reports sent by registered or certified mail must be postmarked by the filing date. Reports mailed first class or hand delivered must be received by the filing date.

<sup>1</sup>Includes Congressional candidates who ran in special elections in 1989.

<sup>2</sup>All Presidential candidate committees are required to file on either a monthly or a quarterly basis during 1989. 11 CFR 104.5(b)(2).

<sup>3</sup>All PAC and party committees are required to file on either a monthly or a semiannual basis in 1989. 11 CFR 104.5(c).

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### ADVISORY OPINION REQUESTS

The following chart lists recent requests for advisory opinions (AORs). The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject
1989-4	Sale of assets by candidate's federal committee to candidate's state committee. (Date made public: April 7, 1989; Length: 2 pp.)
1989-5	Refund of suspected illegal contribution to Congressional candidate. (Date made public: April 27, 1989; Length: 4 pp., including supporting documents)
1989-6	Stock given as contribution to Congressional candidate. (Date made public: May 1, 1989; Length: 5 pp., including supporting documents)
1989-7	Corporation's plan to match employee contributions to PAC with corporate contributions to charity. (Date made public: May 9, 1989; Length: 2 pp.)
1989-8	Corporation's establishment of separate segregated fund for soliciting restricted class of several affiliated corporations and an affiliated partnership. (Date made public: May 9, 1989; Length: 2 pp.)
1989-9	Corporation's plan to match employee contributions to PAC with corporate contributions to charity. (Date made public: May 10, 1989; Length: 4 pp.)

### ADVISORY OPINION SUMMARIES

#### AO 1989-1: Payment to Congressional Employee for Manuscript Not an Honorarium

A payment made to Ron Haskins for an original manuscript to be included in a book is not an honorarium under the Act. The compensation to Mr. Haskins, a staff member of the House Ways and Means Committee, would not be a payment for an "appearance, speech, or article," the three activities covered by the honorarium provision (2 U.S.C. §441i). Instead, the Commission regarded the manuscript as a chapter in a book; books are specifically excluded from the definition of "article" in the FEC regulations. 11 CFR 110.12(b)(4).

Mr. Haskins was invited by the Bush Institute for Child and Family Policy at the University of North Carolina-Chapel Hill to address a colloquium on "Legislation for Children." He was also asked to submit a paper that would be used for discussion at the colloquium and eventually published (along with works by other authors) in a book on child-related public policy. Regardless of whether he attended the conference, Mr. Haskins was to receive \$500 from the Institute upon submission of his manuscript.

In AO 1978-59, the Commission clarified the regulatory distinction between an article and a book with respect to honoraria, focusing on the form in which the writing is published. The AO made clear that neither the length of the manuscript nor its inclusion in a publication with works by other authors solely determined whether the manuscript was an article or a book. Based on that advisory opinion, the Commission concluded that the use of Mr. Haskins' writing in a book determined that his material was not an article. Therefore, the \$500 payment would not be an honorarium under the Act.

As a salaried employee of the federal government, Mr. Haskins remains subject to the honoraria limitations in section 441i, though in this particular situation those rules do not apply.

The Commission expressed no opinion about matters outside the FEC's jurisdiction, such as the possible application of House rules to Mr. Haskins' activity and the tax ramifications. Chairman Danny L. McDonald and Commissioner Scott Thomas plan to file a concurring opinion. (Date issued: April 10, 1989; Length: 5 pages)

#### AO 1989-2: Committee's Settlement of Debt with Corporate Creditor

Dave Baker for Congress, the principal campaign committee for C. David Baker's unsuccessful 1988 House campaign in California, may settle a debt to a corporate creditor using all or most of its available funds, provided that the committee complies with the FEC's debt settlement regulations and submits a Statement of Settlement to the Commission for review.

The committee had asked whether a payment to Wilcox & Sons (one of its corporate creditors) using all or most of the committee's cash on hand would be unlawful discrimination in favor of a single creditor. The committee owed a total of \$78,867 to twelve creditors, but its available funds after the election amounted to only \$5,719.76. To recover \$10,643.50 (plus interest and attorney fees) that the committee owed to Wilcox & Sons, the creditor had filed suit in state court against the committee and the candidate charging them with breach of contract. (The suit was still pending at the time of the request.)

The committee saw no likelihood of raising additional funds with which to pay other credi-

tors, claiming it lacked the needed supporters or saleable assets.

The Commission has long held that state law, rather than federal law, governs whether an alleged debt exists, what its amount is, and which persons or entities are responsible for paying it. (See AO 1975-102.) The California court, therefore, is the proper forum for determining these questions. If the suit by Wilcox & Sons proceeds to judgment, the committee will not be prohibited by the Act from paying the judgment rendered, using all or most of its funds.

The committee and the creditor may agree to settle the debt for less than the full amount owed—or even less than the amount of the court's judgment—as long as the settlement complies with the debt settlement conditions set out in FEC regulations at 11 CFR 114.10. Under those rules, a corporation may settle a debt for less than the full amount owed only if the corporation has "treated the outstanding debt in a commercially reasonable manner." The regulations give three conditions for determining whether a debt settlement is "commercially reasonable": (1) the creditor must have made the initial extension of credit in accordance with FEC regulations, (2) the debtor political committee must have "undertaken all commercially reasonable efforts to satisfy the outstanding debt" and (3) the creditor must have pursued "remedies in a manner similar in intensity to that employed by the corporation in pursuit of a nonpolitical debtor." 11 CFR 114.10(c).

Finally, once the two parties agree upon a settlement, either or both must file a Statement of Settlement with the Commission for review. Such a document must report the terms of credit, the steps the debtor took to satisfy the debt and the remedies pursued by the creditor. 11 CFR 114.10(c).

Neither the election law nor the Commission's regulations require that any particular creditor be given priority in the settlement of debts. Vice Chairman Lee Ann Elliott filed a concurrence. (Date issued: April 25, 1989; Length, including concurrence: 6 pages)

**AO 1989-3: Stockholder Contributions to Trade Association PAC through Payroll Deduction**

Branham, Inc., a corporate member of the Employee Stock Ownership Association, Inc., may not use a payroll deduction system for collecting contributions from employee stockholders to the association's separate segregated fund, ESOP PAC. The association is a national, nonprofit trade association.

Commission regulations prohibit a member corporation of a trade association from using payroll deduction to collect contributions for the association's PAC from the member's executive and administrative personnel and their families. 11 CFR 114.8(e)(3). This provision omits any

mention of "stockholders." However, the Commission maintains that subsection (e)(3) should not be read as implicitly permitting payroll deductions for stockholders.

In AO 1983-17, the Commission permitted the use of a payroll deduction plan to collect contributions of employee stockholders to their own corporation's PAC. The Commission concluded that, as stockholders, such employees were solicitable under 11 CFR 114.5 and could therefore have their contributions collected by means of the payroll deduction methods permitted for soliciting others within the restricted class. Just as that opinion treated all employees within that restricted class equally, the Commission interprets the prohibition of 114.8(e)(3) to bar the use of a payroll deduction plan for the contributions of all employees within the restricted class of a member corporation to the trade association's PAC, including employee stockholders. (Date issued: April 24, 1989; Length: 3 pages)

## COMPLIANCE

**MUR 2262: Presidential Candidate's Failure to Register and Report on Time**

This MUR, resolved through conciliation, concerned the failure of a Presidential candidate and his committee to register and report in a timely manner after conducting extensive activities that indicated he was actually a candidate, not simply an individual "testing the waters."

**Background**

The MUR originated in a sworn and notarized complaint filed with the FEC by a private citizen against the candidate and his "exploratory" committee. At the time, the candidate had not formally announced his candidacy, nor had he or his exploratory committee filed any statements or reports with the Commission.

The complaint focused on a nationwide, closed-circuit broadcast through which the candidate addressed about 150,000 supporters. In his speech the candidate solicited contributions for the exploratory committee and said that he would formally declare his candidacy for President within one year if certain conditions were met: three million registered voters had to sign petitions endorsing the candidacy and pledging their support through monetary contributions and volunteer work. In connection with the broadcast, a mass mailing to approximately 1.6 million residences repeated the candidate's request for contributions and other support.

*continued*

The complaint alleged that the candidate's fundraising activities and expenditures did not qualify for the testing-the-waters exemptions provided in the regulations at 11 CFR 100.7(b) and 100.8(b). Given the nature of the mailing and the broadcast, the complaint alleged, the expenditures connected with them (more than \$5,000) exceeded the law's registration thresholds, thereby requiring the candidate and his committee to register and to disclose financial information. The candidate did not file a Statement of Candidacy with the Commission until approximately one year after the broadcast.

#### General Counsel's Report

Under the election law, an individual seeking federal office becomes a "candidate" only after raising or spending \$5,000 for his or her campaign. Once this threshold is crossed, a candidate must file a Statement of Candidacy with the Commission within fifteen days. In the Statement, the candidate must designate a principal campaign committee, which then must register with the Commission by filing a Statement of Organization within ten days.

FEC regulations permit individuals to undertake certain activities to "test the waters" before making a decision to run for office. These activities are not considered "contributions" or "expenditures" in FEC regulations, though they may not be made with prohibited funds. Registration and reporting of these activities are not required unless the prospective candidate decides to run. At that time, all receipts and expenditures relating to the exploratory activity are reportable. 11 CFR 100.8(b)(1)(i).

Regardless of whether a formal announcement of candidacy is made, the testing-the-waters regulations specify certain types of campaign activity as indicative of an individual's decision to become a candidate. 11 CFR 100.7(b)-(1)(ii)(A)-(E). These activities, which can trigger candidate registration requirements if more than \$5,000 is raised or spent, include:

- o Political advertising aimed at the general public to make known the individual's intention to run;
- o Fundraising in excess of exploratory needs or to amass campaign funds for use after candidacy has been established;
- o Activity conducted over a protracted period of time; and
- o Making or authorizing statements referring to the individual as a candidate.

In applying these guidelines to the present case, the General Counsel recommended that the Commission find that the broadcast and mailings undertaken by the candidate indicated that he had already made a decision to run for President, notwithstanding the conditions he put on that decision in his statements.

The broadcast reached 150,000 people, and the follow-up mailings reached over 1.6 million; the whole project raised more than \$2.3 million—a sum indicating a broader purpose than the testing of a campaign's feasibility. The protracted period of time established during the broadcast for conducting the fundraising project—one year—also indicated that the candidate was building support for an actual campaign. Furthermore, although the candidate stated that he would not decide to run for President until after one year, other segments of the broadcast included speakers who clearly supported such a candidacy.

The follow-up mailings informed their recipients that they could claim a tax credit for a contribution of \$50 or less, although such a credit applied only to contributions to actual candidates, not to donations to individuals who were testing the waters.<sup>1</sup>

Concluding that the candidate had crossed the registration threshold through the broadcast and mailing project, the General Counsel recommended that the Commission find probable cause to believe that the candidate and his committee violated the election law by failing to register and report in a timely manner.

#### Commission Determination

The Commission accepted the General Counsel's recommendations, finding probable cause to believe that both the candidate and his committee had violated the election law's registration requirements by failing to register with the FEC until approximately one year after crossing the law's registration threshold. 2 U.S.C. §§432(e)(1) and 433. The Commission also determined that the committee should have begun filing reports of receipts and disbursements as early as the Presidential filing date following the broadcast; in not doing so, the committee had violated 2 U.S.C. §434.

The Commission and the respondents reached a conciliation agreement that included a civil penalty of \$25,000.

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<sup>1</sup>Income tax credits for political contributions were provided for in 26 U.S.C. section 24. That provision was repealed in 1986 by P.L. 99-514.

**MUR 2286: Membership Organization's Political Activity**

This MUR, resolved through pre-probable cause conciliation, concerned an incorporated membership organization's involvement in voter registration and support of a federal candidate.

**Background**

The Commission generated this matter as a result of a complaint filed by a national party committee. The party alleged that the membership organization violated the Federal Election Campaign Act by making corporate contributions or expenditures, failing to include a disclaimer on a solicitation, failing to register as a political committee and failing to file reports of receipts and disbursements.

**General Counsel's Report**

**Voter Registration Activities.** The Commission's investigation, conducted after finding "reason to believe" that a violation had occurred, indicated that the incorporated membership organization had made partisan voter registration communications to the general public.

While FEC regulations permit corporations to make nonpartisan voter registration communications to the general public under certain circumstances, the regulations prohibit them from making any partisan communications outside of their restricted class, i.e., the executive and administrative personnel of the corporation, the stockholders, and their families. 11 CFR 114.3.

According to the regulations governing corporate activity, a corporation may support nonpartisan voter registration drives beyond its restricted class if the corporation jointly sponsors the drives with a nonprofit organization that is exempt from federal taxation under 26 U.S.C. §501(c)(3) or (4) and that does not support, endorse or oppose candidates or political parties. A corporation may also cosponsor such a drive with a state or local agency that is responsible for administering elections. 11 CFR 114.4(c)(1)(i)(A).

In regard to the voter drive activities conducted by the incorporated organization in this case, the Commission's investigation and evidence supplied by the organization showed that, for two of the days during which the voter drive took place, partisan voter registration communications were made to the general public without a cosponsor. The General Counsel concluded that the respondents had violated 11 CFR 114.4(b)(2) and (c) and 2 U.S.C. §441b(a).

**Recruitment of Precinct Captains.** The Commission's investigation also revealed that an employee of the membership organization had recruited members of the organization to be precinct captains for a federal candidate's campaign. Although the organization's PAC reimbursed it for the salaried time spent, the General Counsel

believed that the organization had, nevertheless, made a corporate contribution in violation of 2 U.S.C. §441b(a).

**Disclaimer.** Whenever any person makes an expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate, the communication must state who authorized and paid for it. 2 U.S.C. §441d(a)(2). In a letter mailed to the organization's members, the respondent expressly advocated the election of a federal candidate and solicited contributions to the candidate's campaign, yet did not include a disclaimer stating who authorized or paid for it. For that reason, the General Counsel said that the respondent had violated 2 U.S.C. §441d(a)(2).

**Registration/Reporting.** A political committee is any association which receives contributions or makes expenditures aggregating in excess of \$1,000 during a calendar year. 2 U.S.C. §431(4)(A). Each political organization must file a Statement of Organization with the Commission. 2 U.S.C. §433(a). The treasurer of a political committee must file reports of receipts and disbursements with the Commission. 2 U.S.C. §434(a)(1). The organization had filed none of these documents.

The respondent claimed that the organization's primary purpose was educational—not commercial—and evidence corroborated that its main activities were not undertaken to influence federal elections. Furthermore, the contributions or expenditures which the respondents did receive or make in one calendar year were considerably less than \$1,000. Therefore, the General Counsel concluded that the respondent was not a political committee, was not required to report under the Act, and therefore did not violate 2 U.S.C. §§433(a) and 434(a)(1).

**Commission Determination**

In a conciliation agreement concluded between the respondents and the Commission prior to the latter's finding "probable cause to believe" the Act had been violated, the respondent agreed to pay a \$1,000 civil penalty. In the conciliation agreement, the organization admitted to staging voter registration drives for the general public that were, on two days, partisan and conducted without a cosponsor. The respondent also admitted to using a salaried corporate employee to recruit precinct captains for the candidate and to financing a solicitation that did not have a disclaimer stating who authorized and paid for it.



### FEC v. FRIENDS OF ISAIAH FLETCHER

On April 24, 1989, the U.S. District Court for the District of Maryland ruled that Friends of Isaiah Fletcher and Mr. Fletcher, as treasurer, violated section 434(a)(2)(A) of the election law by failing to file an October 1986 quarterly report. (Civil Action No. PN 88-2323.) The committee was Mr. Fletcher's principal campaign committee for his 1986 Congressional bid.

The court ordered the defendants to pay a civil penalty of \$5,000 and to pay the Commission's costs in the action. The court also permanently enjoined the defendants from similar future violations of the Act.

### FEC v. RON BOOKMAN & ASSOCIATES

On May 2, 1989, the U.S. District Court for the Northern District of Georgia, Atlanta Division, issued a final consent order and judgment in FEC v. Ron Bookman & Associates (Civil Action No. 1:88-CV-1807-JTC). The consent order declared that Bookman & Associates, a Georgia corporation, made a \$150 contribution to a federal candidate. The Act prohibits corporations from making contributions or expenditures in connection with federal elections. 2 U.S.C. §441b.

The order also declared that Ron Bookman, as president of the company, had violated the law by consenting to the making of the contribution. Section 441b also prohibits corporate officers and executives from consenting to the making of contributions and expenditures.

The consent order included a \$500 civil penalty and permanently enjoined the defendants from similar future violations of the Act.

### NEW LITIGATION

#### United States v. Michael R. Goland

In December 1988 a federal grand jury in Los Angeles indicted Michael R. Goland and two co-defendants, Lyle Weisman and Sandor Habalow, for criminal violations of federal law in connection with the 1986 Senatorial election in California. Mr. Goland, president and controlling shareholder of Balboa Construction Company (a California corporation), and the others are charged with:

- o Conspiring to defraud the United States and, in particular, the FEC by impairing, impeding and defeating the agency's lawful function and duties under the Act (18 U.S.C. §371); and
- o Conspiring to conceal and to cause others to conceal from the FEC, on two occasions, contributions amounting to \$120,000—prohibited by 2 U.S.C. §441(a)(1)(A)—made by Mr. Goland to

the Elect. Ed Vallen to the U.S. Senate committee (18 U.S.C. §§1001 and 1002(b)).

Mr. Goland is also personally charged with knowingly and willfully violating the Act by making the contributions amounting to \$120,000 to the Vallen committee in the names of 56 other persons. 2 U.S.C. §§437g(d) and 441f.

According to the indictment, the \$120,000 in contributions to the Vallen committee were made to finance a last-minute television advertisement advocating Mr. Vallen's election to the U.S. Senate. Mr. Vallen was the Senatorial candidate of the American Independent Party, opposing Senator Alan Cranston and the Republican challenger, then-Congressman Ed Zschau. By financing the Vallen committee's last-minute media effort, the defendants hoped to divert support from the Zschau campaign to Mr. Vallen, thus facilitating a victory by Senator Cranston. (Because of the elaborate conduit scheme the defendants are charged with perpetrating, the Vallen committee was not informed of the true origins of the \$120,000 and reported the money as contributions from the 56 individuals.) The FEC has submitted an amicus curiae brief defending the constitutionality of the Act.

Mr. Goland has also filed a civil suit against the United States asking that the indictment be dismissed on constitutional grounds (see below); the Commission has intervened as a party defendant in that suit.

U.S. District Court for the Central District of California, Criminal Action No. CR-88-1009-RSWL, December 14, 1988.

#### Michael R. Goland v. U.S. and FEC

On May 11, 1989, the U.S. Court of Appeals for the Ninth Circuit denied a motion by Michael Goland for a stay of his criminal trial in U.S. v. Michael R. Goland (above). However, the Court granted the plaintiff-appellant's motion for an expedited appeal of a district court's dismissal of a civil complaint Mr. Goland had brought against the government in connection with his criminal prosecution.

Mr. Goland had filed his appeal on May 1, 1989, after the U.S. District Court for the Central District of California that same day dismissed with prejudice his petition for certification of certain constitutional questions related to the government's actions against him, pursuant to 2 U.S.C. §437h. Mr. Goland also asked the appeals court to expedite its review of the matter.

Mr. Goland's original complaint had included a petition for a stay of the criminal proceedings against him while he pursued his civil action. He had asked the district court to declare that the Federal Election Campaign Act's provisions governing contributions violated his rights under the First Amendment. The plaintiff claimed that the First Amendment guaranteed a right to make



unlimited anonymous contributions to candidates. He also asked the court to declare that the Act's reporting requirements and criminal provisions, as well as 18 U.S.C. §1001 (regarding the making of false statements to a government agency), were unconstitutional as applied to him in the allegations of the criminal indictment.

Because Mr. Goland's complaint concerns the constitutionality of the Act, the district court permitted the FEC to intervene as a defendant in the case.

U.S. Court of Appeals for the Ninth Circuit (Civil Action No. 89-55422), May 1, 1989.

#### **Michigan State Chamber of Commerce v. Austin**

On May 1, 1989, the U.S. Supreme Court agreed to review a Sixth Circuit Court of Appeals decision in Michigan State Chamber of Commerce v. Austin, et al. (Civil Action No. 86-1867). The appeals court in September 1988 had ruled that a Michigan law prohibiting corporations from making independent expenditures with general treasury funds was unconstitutional as applied to the Michigan State Chamber of Commerce. The Chamber is a nonstock, nonprofit corporation, funded by dues. Seventy-five percent of its members are corporations.

The suit originated in 1985 when the Chamber sought to make an independent expenditure for a newspaper advertisement to advocate the election of a candidate for state office. Although the Chamber had a separate segregated fund for political purposes, the organization wanted to make the disbursement for the ad from its general treasury. Finding that section 54(1) of the Michigan Campaign Finance Act appeared to prohibit independent expenditures from the general treasuries of corporations, the organization filed suit against Michigan's then-Secretary of State, Richard H. Austin, challenging the law's constitutionality.

Section 54(1) was upheld by the U.S. District Court for the Western District of Michigan, which found that the prohibition served the "compelling state interest of preventing the threat or appearance of corruption."

The appeals court disagreed, finding the prohibition unconstitutional as applied to the Chamber. Comparing the case to the recent Supreme Court decision in FEC v. Massachusetts Citizens for Life, Inc., the appeals court noted that the district court "made no finding that corporate entities like the Chamber actually corrupted the political process." Because the Chamber was not a "traditional corporation" set up for economic gain, the appeals court determined there was no threat or appearance of corruption inherent in the organization's making of independent expenditures.

The FEC has filed an amicus curiae brief asking the Court to overturn the appeals court decision.

## CLEARINGHOUSE

### IMPROVEMENT IN VOTING PLACE ACCESSIBILITY REPORTED

In a biennial report to Congress, the FEC has documented substantial improvements in the accessibility of polling places to the elderly and handicapped throughout the United States. Of the nearly 152,000 polling places throughout the country, 79 percent were deemed accessible. These figures represent an increase in accessibility of six percentage points (about 6,000) since 1986, despite the application, in most cases, of more stringent accessibility criteria.

In those cases where voting places were judged inaccessible, the reasons for that judgment included:

- o Lack of adequate parking facilities;
- o Lack of ramped stairs; and
- o Obstructed passages to entrances and other architectural barriers.

The Voting Accessibility for the Elderly and Handicapped Act of 1984 requires each political subdivision within each state to take steps to ensure that the elderly and handicapped have access to polling places for federal elections, unless the chief elections officer of a state determines that no alternative to a nonaccessible voting place exists. The Act also requires the FEC to report to Congress every two years on progress made in making polling places more accessible to the physically disabled.

The FEC's National Clearinghouse on Election Administration conducted the study of voting place accessibility. For a copy of the 1989 report, contact the Clearinghouse at 202/376-5670 or 800/424-9530.

### CORRECTION

The 800 Line article in the May Record, "Basic Rules for Recordkeeping," gave a partially incorrect answer to the question on documenting advances to staff for travel and subsistence.

With regard to advances of more than \$500, last month's article erroneously said the committee should note the name and address of the employee.

The correct answer is: If the staff member was advanced more than \$500, the name and address of the payee (i.e., the commercial vendor paid by the employee) should be noted, along with the amount advanced, date and purpose.

Additionally, a receipt, invoice or canceled check must be kept. 11 CFR 102.9(b) (1) and (2).

## STAFF

### COMMISSION APPOINTS ACTING INSPECTOR GENERAL

In April the Commission appointed E. Craig Crooks, Deputy Assistant Staff Director of the FEC's Reports Analysis Division, to be the agency's acting Inspector General (IG). The appointment was necessary to comply with the Inspector General Act Amendments of 1988 (P.L. 100-504), which included the FEC among several federal agencies required to appoint an IG.

The IG reports directly to the Commission and is charged with conducting audits and investigations to detect fraud, waste and abuse within the agency and to recommend policies and procedures designed to improve the economy and efficiency of operations and programs.

Mr. Crooks has been a staff member at the FEC since 1975. He served several years with the CIA before his arrival at the Commission; prior to serving with the CIA, he worked as an insurance investigator-adjuster. He holds bachelor of arts degrees in history and government from Idaho State University.

### FEC AND STATE AGENCIES CONDUCT INTERAGENCY AUDIT TRAINING

Staff from the Kentucky Registry of Election Finance, the Washington State Public Disclosure Commission and the Federal Election Commission participated in a one-day, intensive cross-training session on audit techniques, held at the FEC's headquarters on May 19, 1989. The informal discussion compared and contrasted the agencies' statutory auditing duties and the issues they face in conducting desk and field audits.

The four-member Kentucky delegation was headed by Ray Wallace, executive director of the Kentucky Registry. The representatives from Washington were led by David Clark, deputy director of the Washington State Public Disclosure Commission.

The cross-training session was originally proposed by Mr. Wallace during the 1988 conference of the Council on Governmental Ethics Laws. Mr. Wallace's agency is in the process of implementing major changes in the Kentucky state election law.

## PUBLICATIONS

### CAMPAIGN FINANCE BROCHURE SERIES

The FEC's Information Services Division distributes a series of short brochures to help candidates, political committees and the general public comply with federal election laws and get the most out of the agency's services. Each brochure encapsulates a different aspect of campaign finance law or FEC resources:

- o **Using FEC Campaign Finance Information** explains how to gather information about the financial activity of candidates and political committees. It describes the FEC's computer indexes and suggests ways to utilize them.
- o **Public Funding of Presidential Elections** gives a brief history of the Presidential public funding program—including the \$1 tax checkoff for the Presidential Election Campaign Fund—and an explanation of how the process works. It also explains the ways individuals may support publicly financed candidates.
- o **Advisory Opinions** answers questions about how individuals and committees may seek guidance from the Commission on political activities by requesting advisory opinions, or AOs. An AO is an official response from the Commission to a question pertaining to the application of the law and regulations to specific situations.
- o **Filing a Complaint** explains the steps that can be taken if an individual wants to register a formal complaint concerning a possible violation of the election law.

Topics of other FEC brochures include:

- o **Candidate Registration**
- o **Committee Treasurers**
- o **Contributions**
- o **Corporate/Labor Communications**
- o **Corporate/Labor Facilities**
- o **FEC and Federal Election Law**
- o **Free FEC Publications**
- o **Independent Expenditures**
- o **Local Party Activity**
- o **Political Ads and Solicitations**
- o **State Access to FEC Data**
- o **State Elections and Federal Campaign Law**
- o **Trade Associations**
- o **Volunteer Activity**

Any of these free brochures may be ordered from the FEC by calling 800/424-9530 or 202/376-3120, or by writing to the Commission at 999 E St., NW, Washington, DC 20463. Multiple copies of all brochures are available.



## INDEX

This cumulative index lists advisory opinions, court cases, MUR summaries and 800 Line articles published in the Record during 1989. The first number in each citation refers to the "number" (month) of the Record issue; the second number, following the colon, indicates the page number in that issue.

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**RECORD SUBSCRIPTION RENEWAL**

Record subscribers who received a Renewal Notice in recent weeks are reminded to send back the postage-free notice immediately in order to remain on our mailing list. Renewals can also be made by telephone by calling the FEC at 800/424-9530.

Subscribers who already sent in their Renewal Notices do not need to contact us again. Subscribers who notified us of address changes should allow four weeks for the correct information to appear on the mailing label.

Treasurers of registered political committees automatically receive the Record and are not required to send a Renewal Notice.

**CHANGES OF ADDRESS FOR POLITICAL COMMITTEES**

Any change of address by a **registered political committee** must, by law, be made in writing as an amendment to FEC Form 1 (Statement of Organization) and filed with the Clerk of the House, the Secretary of the Senate or the FEC, as appropriate.

FEDERAL ELECTION COMMISSION  
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