FEDERAL ELECTION COMMISSION

RECORD

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REGULATIONS

DOMESTIC SUBSIDIARIES OF FOREIGN NATIONALS: PROPOSED RULEMAKING

On August 22, 1990, the Commission published a Notice of Proposed Rulemaking seeking comments on whether the agency should change its regulations governing foreign nationals at 11 CFR 110.4(a). See 55 Fed. Reg. 34280. The proposed rule under consideration would treat a domestic corporation as a foreign national if the corporation's foreign ownership exceeded 50 percent. The Commission is also seeking comments on the current foreign national rules, including suggestions that would promote compliance with the law's ban on foreign national contributions (2 U.S.C. §441e).

Commission regulations at 11 CFR 110.4(a)(1), which implement section 441e, prohibit foreign nationals from making contributions or expenditures, either directly or through another person, in connection with any local, state or federal election. In a series of advisory opinions, the Commission has permitted domestic subsidiaries, either partially or totally owned by foreign nationals, to engage in election-related activities as long as two basic conditions are met. First, the individuals who exercise decision-making authority for these activities must be U.S. citizens or individuals lawfully admitted for permanent residence (i.e., "green-card holders," who are not considered foreign nationals). Second, the funds used for election-related activities must not come from the foreign national parent or from a foreign citizen.

The proposed rule would supersede these advisory opinions by prohibiting election-related activity by a domestic corporation if its foreign national ownership exceeded 50 percent.

Comments on the proposed rule must be submitted by October 12, 1990, and should be addressed to Ms. Susan Propper, Assistant General Counsel, 999 E Street, NW, Washington, DC 20463. The Commission has scheduled a public hearing for October 31.

(continued)

REPORTS DUE IN OCTOBER: REMINDER

Quarterly, monthly and pre-general election reports are due in October. To find out what reports your committee must file, see the charts in the September Record or call the Commission (800/424-9530 or 202/376-3120).

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Persons wishing to testify should so indicate in their written comments.

PUBLICLY FINANCED PRESIDENTIAL NOMINATING CONVENTIONS: NOTICE OF PROPOSED RULEMAKING

On August 22, 1990, the Commission published a Notice of Proposed Rulemaking in the Federal Register seeking comments on proposed rules governing publicly funded Presidential nominating conventions. See 55 Fed. Reg. 34267. Written comments on the Rulemaking Notice were due September 21.

The proposed rules would reorder the regulations to track the logical progression of convention activity from registration to audits and repayments. The draft rules would also reorganize the current rules by dividing them into Subpart A (11 CFR 9008.1-9008.16), focusing on convention committees, and Subpart B (11 CFR 9008.50-9008.54), governing activity by host committees and local governments in convention cities. Finally, several proposed changes were made to conform with recent revisions to the regulations on publicly funded Presidential candidates.

The paragraphs below briefly summarize the major changes proposed in the Notice and the issues the Commission has raised for comment.

Convention Committees (Subpart A)

Reporting. Proposed section 9008.3(b) would set forth the registration and reporting requirements for convention committees now contained in 11 CFR 9008.12. Under the draft rules, convention committees would file their first report following the quarter in which the committee either began making disbursements for convention activity or received its first public funding payment, whichever was earlier. Reporting requirements would also be revised to track the reporting dates for other types of political committees filing quarterly reports under 11 CFR 104.5.

Use of Public Funds. With minor changes, proposed section 9008.7 on the use of public funds by convention committees follows current 11 CFR 9008.6. The Commission asked for comments, however, on whether to clarify the distinction between items that are convention expenses (which should be defrayed with public funds and which count against the committee's expenditure limit) and expenses that are related to the ongoing business of the national committee (which should not properly be paid with public funds).

In-kind Donations from Businesses. Proposed section 9008.9, like current 11 CFR 9008.7(c), specifies the circumstances under which convention committees may accept in-kind donations from businesses. Based on the experience of the last two election cycles, the Commission proposed the following changes:

- Proposed 9008.9(a)(1)(ii) would require the vendor to provide documentation to demonstrate that a reduction or discount, such as a volume discount on hotel rooms, was within the vendor's ordinary course of business.
- Paragraph (a)(2) would permit businesses to provide free products and services if they submitted documentation showing, among other things, that the business had an established practice of providing, to nonpolitical clients, products or services on the same scale and on similar terms. The new paragraph would codify the conclusion reached in AO 1988-25. Alternatively, the Commission asked whether the rules should require that products and services be provided at no less than the vendor's cost. Compare AO 1975-1.

The Commission also asked whether convention committees should be required to report their receipt of in-kind donations from businesses.

A related point concerns whether the Commission should retain the current distinction between "local businesses,"

Federal Election Commission, 999 E Street, NW, Washington, DC 20463
800/424-9530 202/376-3120 202/376-3136 (TDD)

"retail businesses" and "local retail businesses" in describing the types of businesses that may make in-kind donations. If the Commission permits only local retail businesses to offer discounts and donations, how should franchisees and national chains be regarded under the rule? Also, what factors would cause a business to be considered "retail" as opposed to "wholesale"?

Host Committees; Expenses Incurred by Government Agencies, Municipal Corporations (Subpart B)

Reporting by Host Committees. Proposed section 9008.51 would contain the rules on registration and reporting now found at 11 CFR 9008.12(a) but would also make several revisions:

- o Host committees would begin reporting with the first quarter of the election year.
- o The filing deadlines for quarterly reports would be the same as those for other types of committees.
- o Host committees would be required to itemize their receipts and disbursements to the extent required by 11 CFR Part 104.

Reporting by Government Agencies and Municipal Corporations. Proposed section 9008.51(c) would require disclosure by municipal corporations and other government agencies providing services and facilities to a national nominating convention. These entities would file two statements with the Commission broadly describing their convention-related activity. The first statement would be due 10 days after the city was selected as the convention site; the second would be due after the convention.

Establishment of Municipal Funds. The Commission asked for comments on the inclusion of new section 9008.53(a)(2), which would codify AOs 1982-27 and 1983-29. Based on these advisory opinions, the proposed rule would permit convention cities to establish municipal funds to receive donations and make disbursements in connection with nominating conventions, provided certain conditions were met:

- o The fund was created to attract conventions and other events to the locality--not just the nominating convention.
- o The fund was necessitated by a local law prohibiting the use of tax revenue for these purposes.
- o Donations to the fund were not designated for the nominating convention or any other particular activity.

Donations to Host Committees. Proposed section 9008.53(b), based on current 11 CFR 9008.7(d)(3), concerns donations by local retail businesses (excluding banks), municipal corporations and government agencies to convention committees to help defray certain convention expenses. (The Commission wishes to make clear that, under this rule, banks do not qualify as local retail businesses.) Under the proposed revision, the requirement that the amount of the donation be proportionate to the donor's commercial return would apply only to local businesses, since municipal corporations and government agencies may defray these expenses on their own, without limit.

INFORMATION

PROHIBITION ON CONTRIBUTIONS MADE IN THE NAME OF ANOTHER

A contribution made by one person in the name of another is prohibited. 2 U.S.C. §441f. Commission regulations specifically prohibit:

- o Making a contribution in the name of another;
- o Knowingly permitting one's name to be used to effect such a contribution;
- o Knowingly helping any person in making such a contribution; and
- o Knowingly accepting such a contribution. 11 CFR 110.4(b)(1).

For example, a person may not give money to another person to make a contribution in that person's name; nor may a person provide another person's name as the source of his or her own contribution. 11 CFR 110.4(b)(2). A corporation is prohibited from using bonuses, expense accounts or other methods of reimbursing employees for their contributions. 11 CFR 114.5(b)(1). Similarly, parents may not make contributions in the name of a minor child. 11 CFR 110.1(i)(2).

Enforcement Cases

The Commission has pursued violations of 2 U.S.C. §441b and 11 CFR 110.4(b) in a number of administrative enforcement cases (Matters Under Review or MURs) and in the courts. Selected cases are summarized below.

(continued)

MUR 2036; FEC v. Lee. In MUR 2036, a corporation reimbursed at least 15 employees for their contributions to a federal candidate. Each employee wrote out a personal check of $250 to the candidate and later received repayment from the corporation in a bonus check or an expense account reimbursement. The corporation agreed to pay a $4,000 civil penalty for making corporate contributions (in violation of 2 U.S.C. §441b(a)) and contributions in the names of other persons. Corporate executives involved in the case agreed to pay civil penalties ranging from $1,000 to $4,500. Employees who allowed their names to be used for corporate contributions each agreed to pay a $250 civil penalty.

A civil suit, filed by the Commission against the president of the company, resulted in a consent order involving a $5,000 civil penalty against the president. (FEC v. Roger Lee, U.S. District Court for the Central District of California, Civil Action No. 88-02640.)

MUR 2104. In this MUR, several corporate officers created a plan whereby $30,000 from the treasury of a subsidiary would be used to reimburse them for their contributions to federal and state candidates. Company funds totaling $11,600 were distributed, in cash payments, to the officers as advances or reimbursements for their contributions to federal candidates, which were made by personal check. The officers involved in the scheme paid civil penalties of up to $5,000. They also repaid the corporation in the amount of their contributions. The corporation paid an $8,500 civil penalty.

U.S. v. Brinkman; MUR 1861. In a criminal case pursued by the Department of Justice, U.S. v. Brinkman, et al., two corporate officers used employees as conduits to conceal the corporate source of approximately $25,000 in contributions to federal candidates. The corporation and the two officers pleaded guilty to conspiracy charges arising from knowing and willful violations of 2 U.S.C. §441b(a) (the prohibition on corporate contributions). In October 1984, the U.S. District Court for the Northern Division of Illinois fined the corporation $100,000. In November 1984, one of the officers was given four years probation, a $35,000 fine and 1,000 hours of community service. The other officer was given two years probation, a $1,000 fine and 250 hours of community service.

The Department of Justice referred the matter to the FEC. In MUR 1861, the Commission identified the corporate employees who had permitted their names to be used to effect contributions made in the name of another. One employee agreed to pay a $350 civil penalty; each of the other 21 employees paid a $100 penalty.

MUR 2465. In MUR 2465 (merged with MUR 1616), an Indian tribe used $119,400 of the tribe's funds to reimburse the tribe chairman and other individuals for their contributions to federal candidates. Some of the reimbursements for the contributions exceeded the limits (in violation of 2 U.S.C. §441a(a)(1)(A)). Moreover, the tribe failed to register and report as a political committee (in violation of §§433 and 434(a)) when it made contributions in excess of $1,000 during 1986. The tribe and its chairman agreed to pay a $32,000 civil penalty.

Refund of Contribution Made in the Name of Another

In AOs 1989-5 and 1984-52, the Commission said that if a committee discovers that it has received a corporate contribution made in the name of another, the committee must refund the contribution to the actual source of the contribution (the corporation), not the person in whose name the contribution was made. In both of these opinions, the committees became aware of the violation as a result of criminal cases against either the corporation or the conduit of the contribution.

PUBLIC APPEARANCES

10/10 The American University
Washington, DC
Chairman Lee Ann Elliott

11/15-16 National Association of Business Political Action Committees
Scottsdale, Arizona
Chairman Lee Ann Elliott

11/16-17 Association of State Democratic Chairs
Miami Beach, Florida
Commissioner Scott E. Thomas
Susan E. Propper, Assistant General Counsel for Regulations
Roberta B. Werfel, Chief, Information Services

ADVISORY OPINIONS

ADVISORY OPINION REQUESTS

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

AOR 1990-18
Establishment of separate segregated fund by federal credit union. (Date Made Public: August 15, 1990; Length: 37 pages)

AOR 1990-19
Fundraising items sold to (and repurchased from) committee by corporation. (Date Made Public: August 29, 1990; Length: 10 pages)

AOR 1990-20
Federal contractor status of law partnership that represents the Federal Deposit Insurance Corporation and the Resolution Trust Corporation. (Date Made Public: August 29, 1990; Length: 2 pages)

AOR 1990-21
Congressional campaign's expenditures for speeches made by candidate's wife in Congressional district. (Date Made Public: September 11, 1990; Length: 5 pages)

AO 1990-12: Volunteer Services by Former Potential Candidate Who Received Opinion Poll Results

David Hochberg's knowledge of the results of a poll he commissioned when he was a potential candidate will not, by itself, cause his volunteer services on behalf of a candidate for the same seat to result in a contribution as long as he does not impart the information to anyone on the campaign or use the information as the basis for giving campaign advice.

Mr. Hochberg, who was going to run for New York's 22nd Congressional District seat, paid for a survey concerning demographics, public opinion and name recognition. Deciding not to run, he offered to volunteer for the campaign of Sean Strub, a candidate for the same seat, by setting up interviews with the media and soliciting contributions. Mr. Hochberg did not inform Mr. Strub of the survey results, although that information could be strategically helpful to the Strub campaign.

The acceptance of an opinion poll by a candidate's campaign is a contribution in kind by the purchaser to the campaign. Poll results are considered "accepted" if the candidate or campaign agent requests the poll results; uses the poll results; or fails to notify the contributor that the results are refused. 11 CFR 106.4(b).

In this case, Mr. Hochberg commissioned the poll for his own potential candidacy prior to working for Mr. Strub. He did not enter into the transaction in contemplation of working for the Strub campaign, and his receipt of the poll was merely a completion of the transaction. In such circumstances, his knowledge of the poll results by itself is not treated as a contribution and does not preclude his volunteering on behalf of the campaign. If, however, Mr. Hochberg imparts poll results to campaign staff or uses them to advise the campaign on matters such as campaign strategy or media messages, the poll information will constitute an in-kind contribution from Mr. Hochberg to the Strub campaign. 11 CFR 106.4(b). The amount of such a contribution must be determined under sections 106.4(e) and (g), which explain the allocation and valuation of in-kind contributions of poll results.

(Date issued: August 3, 1990; Length: 3 pages)

AO 1990-13: Reporting Exemption for Minor Party

The Socialist Workers Party (SWP) National Campaign Committee and committees supporting SWP candidates are exempt from disclosing the identify of contributors and persons to whom expenditures are made because of the likelihood of harassment to those persons. The exemption extends until December 31, 1996. The SWP may seek a renewal of the exemption through another advisory opinion.

Background

The SWP was originally granted a disclosure exemption by the court in Socialist Workers 1974 National Campaign Committee v. FEC, Civil Action No. 74-1338 (D.D.C.). Under a consent decree entered into by the plaintiffs and the Commission in 1979, committees supporting SWP candidates were exempt from Federal Election Campaign Act provisions requiring disclosure of the names and addresses (and, if applicable, the occupations and principal places of business) of:

- o Contributors to SWP committees;
- o Candidates and political committees supported by SWP committees;

(continued)

- Lenders, endorsers and guarantors of loans to SWP committees; and
- Persons to whom SWP committees made expenditures.

The decree required the committees to maintain records in accordance with the Act and to file reports on time.

In 1985, the court approved an updated settlement agreement with the same exemptions. In view of the 1979 amendments to the Act, the court also exempted the SWP from reporting the identification of persons providing rebates, refunds and other offsets to operating expenditures and of persons providing dividends, interest and other receipts.

The exemptions expired at the end of 1988. The SWP missed the deadline for reapplying for the exemptions with the court and, instead, asked the Commission to determine whether SWP committees remain entitled to the exemptions.

Applicable Law

Although the Commission may not grant a renewal of an exemption granted by the court, the agency may consider whether it should grant a new exemption based on facts presented by the requester. See 11 CFR 112.1(b).

In Buckley v. Valeo, 424 U.S. 1 (1976), the U.S. Supreme Court recognized that the Act's disclosure requirements as applied to a minor party would be unconstitutional in cases where the threat to the exercise of First Amendment rights resulting from disclosure would outweigh the state interest furthered by disclosure. 424 U.S. at 71. The Court stated that the evidence offered by a third party to support its claim for a reporting exemption "need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties." 424 U.S. at 74.

The Court reaffirmed this standard in Brown v. Socialist Workers '74 Campaign Committee (Ohio), 459 U.S. 87 (1982), in which the court granted the SWP an exemption from state disclosure requirements. The Court in Brown also clarified that the exemption included the disclosure of the names of recipients of disbursements as well as the names of contributors. 459 U.S. at 95.

In agreeing to the 1979 and 1985 consent decrees that granted exemptions to SWP committees, the Commission considered both recent and historical incidents of harassment, as did the court in Brown when it rendered its decision.

Facts Presented by SWP

In its advisory opinion request, the SWP described a long history of FBI and other government harassment of the SWP set out in SWP v. Attorney General, 642 F. Supp. 1357 (S.D.N.Y. 1986). The SWP maintained that federal government hostility towards the party has continued, as documented by affidavits submitted in a second case, SWP v. Attorney General, 666 F. Supp. 621 (S.D.N.Y. 1987).

The SWP also documented a number of incidents over the past five years involving harassment of the SWP and those associated with it by private parties and local government in various parts of the country.

Commission Determination

Based on the information provided by the SWP indicating continued harassment, the Commission granted the reporting exemptions provided for in the previous consent agreements. The exemptions will last until December 31, 1996. At least 60 days before that date, the SWP may submit a new advisory opinion request seeking a renewal of the exemption.

The SWP, however, must still comply with all of the remaining requirements of the Act and Commission regulations, including the recordkeeping requirements.

(Date issued: August 21, 1990; Length: 9 pages.)

AO 1990-15: Administrative Termination of Committee Involved in Disputed Debt

Ken Kramer '86, the principal campaign committee for Mr. Kramer's 1986 Senate race, may qualify for administrative termination by the FEC if it applies for such and submits information to verify that the committee's only debt, currently under dispute, does not present a possible violation of the contribution limits or prohibitions.

Administrative Termination

The committee wishes to terminate but is involved in one unsettled obligation, a disputed debt. Under the Federal Election Campaign Act and FEC regulations, a political committee may terminate its reporting status only when it has no outstanding debts and obligations and when it no longer intends to receive contributions or make disbursements. 2 U.S.C. §433(d)(1); 11 CFR 102.3.

The Commission, however, on its own or at the request of a political committee, may terminate a committee's reporting

obligations based on eight factors listed in FEC regulations at 11 CFR 102.4(a).[1] The materials submitted by the Kramer committee and its recent FEC reports indicate that the committee has satisfied all of the factors with the possible exception of factor six: the committee's outstanding debts, as disclosed in the last report, must "not appear to present a possible violation of the prohibitions and limitations of 11 CFR Parts 110 and 114." 11 CFR 102.4(a)(6).

With regard to this one factor, the advisory opinion request did not offer complete information on the initial extension of credit by the vendor or the vendor's corporate status. If the initial extension of credit was not made in the ordinary course of business and on terms substantially similar to credit extended to nonpolitical clients, a excessive contribution could result or, in the case of an incorporated vendor, a prohibited contribution. See 11 CFR 114.10(c).

Concluding that the committee may apply for administrative termination, the Commission advised the committee to provide information enabling the Commission to review its compliance with factor six. Application should be made by letter to the Assistant Staff Director for the Commission's Reports Analysis Division.

Statute of Limitations on Debts

Concerning the effect of the Colorado statute of limitations on the requested termination, the state law would apply to the enforceability of the creditor's debt claim in Colorado courts. Although the running of the statute of limitations on the debt claim would not, by itself, remove the committee's reporting obligations, it might nonetheless be an additional factor considered by the Commission in reviewing a request for administrative termination.

(Date issued: August 24, 1990; Length: 6 pages)

[1] For the past several years, the Commission has had a policy of not initiating administrative terminations. See AO 1988-44, note 3.

COURT CASES

MILLER v. FEC

On April 25, 1990, the U.S. Court of Appeals for the District of Columbia Circuit granted the FEC's motion for summary affirmance of the district court's decision in favor of the FEC. (Civil Action No. 89-5394.)

Mr. Miller filed suit in January 1989 with the U.S. District Court for the District of Columbia. (Civil Action No. 89-0094.) He claimed that the FEC acted contrary law in dismissing his administrative complaint. In that complaint, he had alleged that several Texas state officials had conducted fraudulent activities on behalf of the Bush-Quayle 88 campaign. The Commission found no reason to believe that the violations had occurred (the respondents' denying any knowledge of the alleged violations) and accordingly dismissed the complaint.

On June 29, 1989, the district court found that the FEC's dismissal of the complaint was reasonable, stating that plaintiff Miller failed to show any evidence of illegal activity. (See the September 1989 Record for a summary of the district court suit.)

For the reasons stated in the district court opinion, the appeals court granted the FEC's motion for summary affirmance of the lower court decision, stating: "The merits of the parties' positions are so clear as to justify summary action."

FEC v. AFSCME-PQ (88-3208)

On July 10, 1990, the U.S. District Court for the District of Columbia granted the FEC's motion for summary judgment, ruling that the American Federation of State, County and Municipal Employees-P.E.O.P.L.E., Qualified (AFSCME-PQ), the separate segregated fund of AFSCME, and its treasurer, William Lucy, violated the law when they delayed the disclosure of in-kind contributions to the 1982 and 1984 Indiana House campaigns of Representative Frank McCloskey. (Civil Action No. 88-3208.)

During September of 1982 and 1984, AFSCME-PQ established telephone banks that were used in part to advocate the election of Representative McCloskey. Instead of reporting these in-kind contributions at the time they were made (i.e., when the services were provided on behalf of the

(continued)

candidate), AFSCME-PQ reported them after it paid the bills for the services, some months after the services were provided.

Although AFSCME-PQ claimed that the in-kind contributions were reported on time (i.e., when the funds were disbursed), the court disagreed, citing the statutory requirement that a committee must disclose the name and address of "each political committee which has received a contribution from the reporting committee during the reporting period, together with the date and amount of any such contribution." 2 U.S.C. §434(b)(6)(B)(i). Because AFSCME-PQ reported on a monthly basis, the contributions should have been disclosed in the months immediately following the making of the contributions, i.e., the operation of the phone banks.

The court has not yet ruled on the relief to be awarded.

FEC v. WEINBERG

On August 15, 1990, the U.S. District Court for the District of Columbia granted the FEC's petition to hold Mark R. Weinberg in contempt of court for failing to pay civil penalties included in a conciliation agreement and an earlier court order.

In a September 1989 default judgment, the court had ordered Mr. Weinberg to pay a $17,000 civil penalty included in a conciliation agreement (MUR 2073). The court also ordered him to pay 6 percent interest on the penalty; an additional $5,000 for violating the agreement; and the Commission's court costs. (Civil Action No. 89-0416(RCL)). Penalties and costs imposed by the September 1989 judgment totaled $22,906.

Under the terms of the court's August 1990 order, defendant Weinberg must pay:

- An additional fine of $10,000 and $500 per day until he complies with the court's prior order of September 1989;
- Post-judgment interest to the Commission (at a rate of 8.27 percent) until he complies with the September 1989 order; and
- Court costs and attorneys' fees incurred by the Commission in prosecuting the contempt proceeding.

DOLAN v. FEC

By agreement of both parties, the U.S. District Court for the District of Columbia dismissed this case on August 17, 1990. (Civil Action No. 90-0542.) Robert E. Dolan had asked the court to declare that 2 U.S.C. §438(a)(4), referred to as the "sale and use restriction," was unconstitutional as applied to his efforts to solicit individuals identified as contributors in FEC reports. (See the New Litigation summary, May 1990 Record.)

(On July 13, 1990, the Commission filed suit in the same court, asking the court to declare that Mr. Dolan knowingly and willfully violated the sale and use restriction. See the summary of FEC v. International Funding Institute, Inc., American Citizens for Political Action, Inc., and Dolan, September 1990 Record. On September 5, 1990, the Commission filed a motion to amend its complaint by requesting a court declaration that the "sale and use restriction" is constitutional insofar as it curtails the sale or use of contributor data for commercial purposes. The Commission also asked the court to certify the constitutional issue to the U.S. Court of Appeals for the District of Columbia Circuit under 2 U.S.C. §437h.)

DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE v. FEC (90-1504)

On August 27, 1990, the U.S. District Court for the District of Columbia granted the FEC's motion for summary judgment, ruling that the agency did not act contrary to law when it dismissed a portion of an administrative complaint filed by the Democratic Senatorial Campaign Committee (DSCC). (Civil Action No. 90-1504.)

Background

In its administrative complaint (MUR 2766), DSCC alleged that $325,000 in media expenditures made by the Auto Dealers and Drivers for Free Trade Political Action Committee (Auto Dealers PAC) in support of 1988 Florida Senate candidate Connie Mack were not independent and thus violated the PAC's $5,000 contribution limit for a candidate under 2 U.S.C. §441a(a)(2)(A). DSCC contended that, because the Auto Dealers PAC and the Mack campaign (Friends of Connie Mack) both used the services of two key campaign consultants, the independence of the PAC's expenditures was compromised, resulting in excessive contributions by the PAC. The consultants, two media firms, provided services to the Mack campaign in Florida and to the Auto Dealers PAC for expenditures in other states.

The PAC denied using either media firm in connection with the Florida Senate race, identifying a third firm as its media consultant for Florida. The PAC's director explained in an affidavit that, when the presidents of the two media firms disclosed that they were retained by the Mack campaign, he told them "not to say anything at

all" about the Florida race to anyone associated with the PAC. The PAC submitted affidavits by the two presidents consistent with the PAC director's affidavit. The Mack campaign also denied any consultation or coordination with the PAC and provided supporting affidavits.

The FEC's General Counsel recommended that the Commission authorize an investigation of the matter because of "unanswered questions." However, the Commission, by a vote of 3-2 (and one abstention), failed to find "reason to believe" that a violation had occurred with respect to the independent expenditure portion of the complaint, thereby dismissing that portion.[1] (The Commission did find reason to believe that the Mack campaign had failed to comply with the 48-hour notice requirement for last-minute contributions and later entered into a conciliation agreement with the campaign with respect to that violation.)

On June 26, 1990, DSCC filed suit seeking summary judgment that the FEC had acted contrary to law in dismissing DSCC's allegation of coordination between the Auto Dealers PAC and the Mack campaign with respect to the PAC's independent expenditures.

Court Decision

The court found that the Commission's decision to dismiss the independent expenditure allegation was not contrary to law, given the "totality of the circumstances" of the case.

DSCC had argued that the "totality of the circumstances" compelled an investigation to determine whether the PAC's expenditures were independent. These circumstances included: (1) the two common consultants used by the Auto Dealers PAC and the Mack campaign; (2) the General Counsel's recommendation to find "reason to believe" and authorize an investigation; and (3) the affidavits submitted by the PAC and the Mack campaign, which DSCC claimed raised substantial questions. The court, however, was not persuaded by DSCC's arguments.

With respect to the common consultants, the court found that "there was no reason to presume 'coordination' as the consultants were retained by the PAC to work on elections only outside the state of Florida."

The court also found that the Commission's decision not to follow the General Counsel's recommendation was not unreasonable. Citing Commissioner Josefiak's Supporting Memorandum for the Statement of Reasons, the court stated: "In refusing to order an investigation, the Commission applied a minimum evidentiary threshold that required at least 'some legally significant facts' to distinguish the circumstances from every other independent expenditure....[O]therwise every 'independent expenditure' complaint would demand investigation." The court said that "the only record of fact offered in support of DSCC's allegations was the use of 'common consultants.'" In the court's view, however, the affidavits suggested that "the Florida Auto Dealers PAC built a 'Chinese Wall' between itself and the two Mack consultants."

With regard to the affidavits, the court found it "entirely reasonable to read [them] as precluding, rather than raising, an inference of coordination."

Accordingly, the court entered summary judgment in favor of the FEC and against DSCC.

NEW LITIGATION

FEC v. Speelman

The Commission asks the district court to declare that Harry Speelman made excessive contributions to a political committee, in violation of 2 U.S.C. §441a(a)(1)(C). The FEC claims that in 1987 Mr. Speelman made $11,470 in contributions to American Citizens for Political Action, thereby exceeding the $5,000 per year limit on contributions to an unauthorized political committee. The FEC therefore asks the court to assess a civil penalty against Mr. Speelman, enjoin him from further violations of the contribution limits and award the FEC court costs.

U.S. District Court for the District of Maryland, Civil Action No. JFM-90-2190, August 19, 1990.

FEC v. National Republican Senatorial Committee

The Commission asks the district court to find that the National Republican Senatorial Committee (NRSC) and its treasurer, James L. Hagen, violated 2 U.S.C. §441a(h) by making contributions to Senatorial candidates that exceeded the contribution limits by over $2.6 million and by failing to report approximately $2.7 million in contributions made by NRSC.

(continued)

[1] Four affirmative votes are necessary to find "reason to believe."

- The first part of the memo entry discloses information on the contribution as originally reported on Schedule B.
- The second part of the memo entry discloses information on the redesignation, including the date it was made and the redesignated election. 11 CFR 104.8(d)(2)(ii).3

COMPLIANCE

MURS RELEASED TO THE PUBLIC

Listed below are MURs (FEC enforcement cases) recently released for public review. The list is based on the FEC press releases of August 21 and September 13, 1990. Files on closed MURs are available for review in the Public Records Office.

Unless otherwise noted, civil penalties resulted from conciliation agreements reached between the respondents and the Commission.

MUR 2128/2190/2210/2211
Respondents: (a) Populist Party, Willis Carto (DC); (b) Blayne E. Hutzel (MD); (c) Liberty Lobby, Inc. (DC); (d) Cordite Fidelity Service, Inc. (DC); (e) The Spotlight (DC); (f) Willis Carto (CA)
Complainant: FEC initiated (2211/2128/2190); Populist Party of the U.S. (2210)
Subject: Failure to report on time; failure to amend Statement of Organization on time; failure to disclose name of treasurer; failure to designate and disclose campaign depositories; knowingly making and accepting corporate contributions; failure to report or adequately itemize contributions, expenditures and debts
Disposition: (a)-(f) U.S. District Court Consent Order: $20,000 civil penalty

MUR 2406
Respondents: (a) Carl Russell Channell (DC); (b) National Endowment for the Preservation of Liberty (DC); (c) American Conservative Trust, Carl R. Channel, treasurer (DC); (d) American Conservative Trust State Election Fund (DC); (e) Anti-Terrorism American Committee, Carl R. Channell, treasurer (DC); (f) Anti-Terrorism American Committee State Election Fund, Carl R. Channell, treasurer (DC); (g) Sentinel (DC)
Complainant: Beryl Anthony, Chairman, Democratic Congressional Campaign Committee (DC)
Subject: Failure to register, file disclosure reports, report change of treasurer and accurately disclose information; prohibited contributions and expenditures; federal disbursements from nonfederal account
Disposition: (a)-(g) Reason to believe but closed the file following Mr. Channell's death.

MUR 2618
Respondents: (a) American Council for a Conservative Consensus, Sharlee Dodd, treasurer (AZ); (b) Arthur M. Jackson (AZ); (c) Nathan O. Rosenberg (CA); (d) Nathan Rosenberg for Congress, David R. White, treasurer (CA); (e) David W. Vaporean (CA)
Complainant: David W. Syme; Gary C. Huckaby (CA)
Subject: Independent expenditures; disclaimer
Disposition: (a) $1,500 civil penalty; (b) and (c) no reason to believe; (d) no probable cause to believe; (e) no reason to believe

MUR 2800
Respondents: (a) League of Conservation Voters, Tina Hobson, treasurer (DC); (b) Nalinda J. Kehoe (MD); (c) Alden M. Meyer (MD)
Complainant: FEC initiated
Subject: Excessive contributions
Disposition: (a) $2,250 civil penalty; (b) $1,375 civil penalty; (c) $1,375 civil penalty

MUR 2844
Respondents: Nevada Sportsmen and Outdoorsmen Association, Max Christiansen, secretary (NV)
Complainant: Bill Vincent, Citizen Alert (NV)
Subject: Failure to register and report as political committee; failure to disclose independent expenditures; disclaimer
Disposition: $2,500 civil penalty

MUR 2905
Respondents: American Association of Physicians from India PAC, Vinod K. Sawhney, treasurer (TX)
Complainant: FEC initiated
Subject: Failure to report on time; failure to report change of treasurer on time
Disposition: $3,250 civil penalty

MUR 3036
Respondents: (a) David L. Thomas (SC); (b) Thomas for Congress, David L. Thomas, treasurer (SC)
Complainant: Richard M. Bates, Executive Director, Democratic Congressional Campaign Committee (DC)
Subject: Failure to register as candidate and designate principle campaign committee; failure to file statement of organization and disclosure reports on time; disclaimer; corporate contributions
Disposition: (a) and (b) Reason to believe but took no further action

MUR 3040
Respondents: (a) Savings Association Political Action Committee, Marion A. Mallia, treasurer (NY); (b) C.F.S. Service Corporation (NY); (c) Yonkers Savings and Loan Association (NY)
Complainant: FEC initiated
Subject: Corporate contributions; failure to file change of treasurer on time
Disposition: (a) $1,000 civil penalty; (b) $1,000 civil penalty; (c) reason to believe but took no further action

MUR 3071
Respondents: (a) Homeshield Insurance Company (OK); (b) Gary R. Peterson (OK); (c) Betty L. Rodgers (OK); (d) George J. Records (OK)
Complainant: Bill Viner (OK)
Subject: Contribution in the name of another
Disposition: (a)-(d) No reason to believe

MUR 3083
Respondents: Enron Political Action Committee (FKA HNG/Internorth PAC), Robbie Leaver, treasurer (TX)
Complainant: FEC initiated
Subject: Failure to report on time
Disposition: $825 civil penaltlty

FEC PUBLISHES NONFILERS

The Commission recently published the names of authorized committees that failed to file required financial disclosure reports. See chart below.

Nonfilers are published pursuant to 2 U.S.C. §438(a)(7). Enforcement actions against nonfilers are pursued on a case-by-case basis.

Nonfiler	Office Sought	Report Not Filed
Anscher, B.	House-FL/18	Pre-primary
Cook, J.	House-WI/4	Pre-primary
Fish, H.	House-NY/21	Pre-primary
Fletcher, R.[1]	House-FL/5	Pre-primary
Owens, M.	House-NY/12	Pre-primary
Puca, A.	House-MD/6	Pre-primary
Udall, M.	House-AZ/2	Pre-primary
Young, N.	House-RI/2	Pre-primary

[1]This candidate's committee filed the pre-primary report after the date the Commission was required to publish the name.

STATISTICS

EIGHTEEN-MONTH ACTIVITY OF HOUSE AND SENATE CANDIDATES

During the first 18 months of the 1990 election cycle (from January 1989 through June 1990), U.S. House and Senate candidates raised $279 million, spent $191.8 million and had remaining cash of $158.8 million, according to an FEC press release of August 5, 1990. Compared with the same 18-month period of the 1988 election cycle, House and Senate receipts rose 3.3 percent (or $9 million) and spending increased by 5.8 percent (or $10 million).

As is typical, incumbents of both political parties commanded sizable financial leads over their challengers: four out of every five dollars received by Congressional campaigns went to incumbents.

The FEC report attached to the press release provides race-by-race statistics, candidate rankings and comparisons of 1990 activity with previous election cycles.

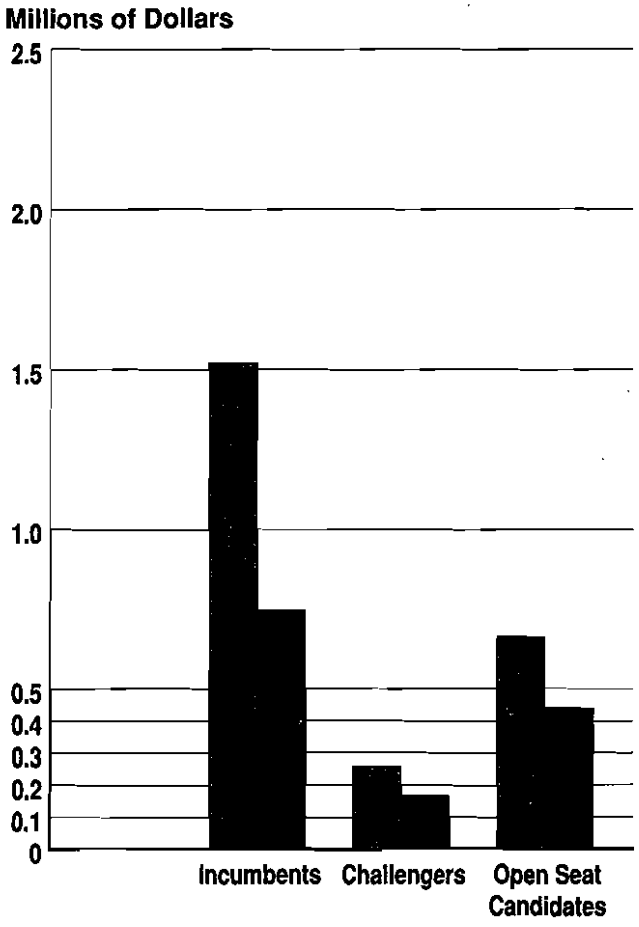
The charts on the following page show the median 18-month activity of 1990 House and Senate candidates by party affiliation and type of candidate (challenger, incumbent, open seat).

(continued)

Candidate Median Activity [1]
(January 1, 1989, through June 30, 1990)

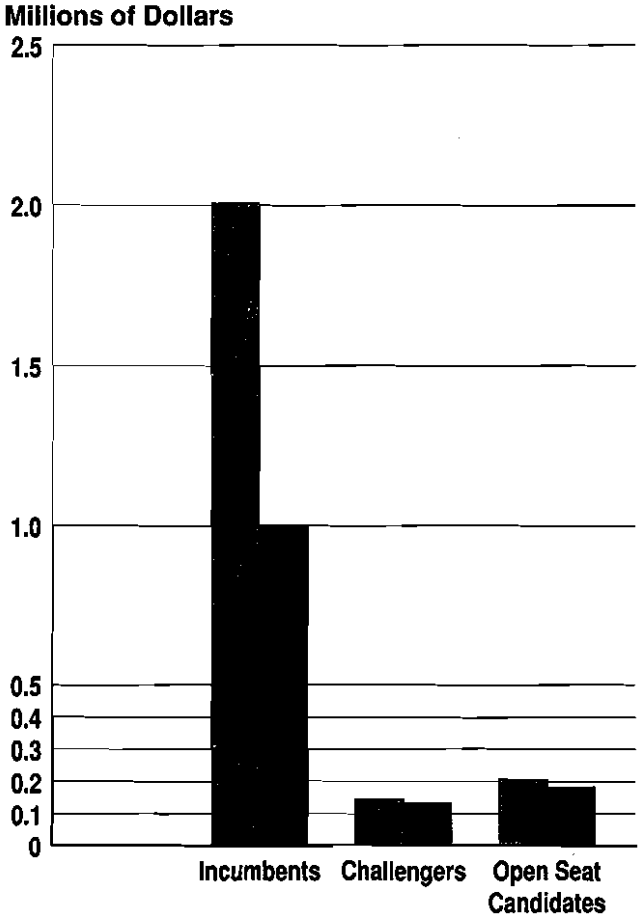
Receipts
Disbursements

Senate Republican Candidates



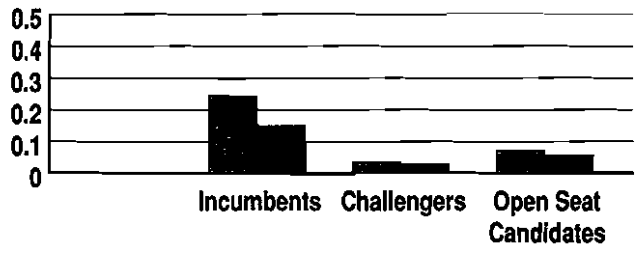
No. of Candidates	15	26	5

Senate Democratic Candidates



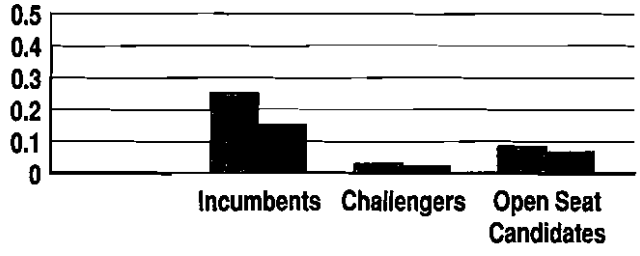
No. of Candidates	17	23	8

House Republican Candidates



No. of Candidates	160	154	72

House Democratic Candidates



No. of Candidates	248	116	66

[1] Median activity means that an equal number of candidates had activity above and below the amounts shown. Note that only candidates who raised over $5,000 are included in these charts. See the definition of candidate at 2 U.S.C. §431(2) and 11 CFR 100.3(a).

FEDERAL REGISTER

FEDERAL REGISTER NOTICES

Copies of Federal Register notices are available from the Public Records Office.

1990-11
11 CFR Part 110: Domestic Subsidiaries of Foreign Nationals; Notice of Proposed Rulemaking (55 Fed. Reg. 34280, August 22, 1990)

1990-12
11 CFR Parts 107, 114 and 9008: Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions; Notice of Proposed Rulemaking (55 Fed. Reg. 34267, August 22, 1990)

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The first number in each citation refers to the "number" (month) of the 1990 Record issue in which the article appeared; the second number, following the colon, indicates the page number in that issue.

(continued)

FEDERAL ELECTION COMMISSION
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