FEDERAL ELECTION COMMISSION

RECORD

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PUBLIC FUNDING

FEC PROJECTS SMALLER SHORTFALL OF 1992 MATCHING FUNDS

The Commission now expects that 1992 Presidential primary candidates will receive more matching funds in the early months of 1992 than previously projected. According to a revised analysis, the balance in the Matching Fund Account will be sufficient to cover January 1992 matching fund payments in full but will be short about $1 million in February and about $2.5 million in March. As a result, candidates would receive a pro rata portion of their matching fund certifications for those two months. The projection anticipates that certifications outstanding from February and March will be paid in April 1992, when full monthly payments of certifications are expected to resume.

The current projection, developed in August 1991, improves the picture for 1992 compared with a projection calculated in November 1990. Then, the Commission estimated that candidates would be shortchanged $15 million during the early primary months and that this amount would not be paid until spring 1993.

The difference between the projections is based on three factors: an unexpected increase in checkoff receipts;1/ a lower rate of inflation; and the late start-up of 1992 primary campaigns.

Based on checkoff receipts through June 1991, it appears that 1991 revenue in the Presidential Election Campaign Fund will exceed the 1990 level by nearly $1 million. The FEC had originally projected a $2 million decrease, based on an anticipated decline in checkoff receipts in the year preceding the Presidential election year, a pattern that has occurred in every election cycle since the public funding program began. But that third-year dip never occurred. Consequently, the Commission increased its projection for 1992 receipts $3 million.

Because recent information suggests that the inflation adjustment for 1991 may be less than the 5 percent used in the earlier projection, the Commission adopted a 4.2 percent inflation rate for its current projection. The overall effect of this adjustment is to increase the public funds available in the Matching Payment Account in January 1992 by about $1 million, since less money will be needed for the convention committees and general election candidates, whose entitlements to

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[1]Public funding of Presidential elections is financed by dollars checked off by taxpayers on their federal income tax returns.

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public funds are indexed to inflation.2/ (Under Treasury Department rules, public funds needed to cover convention and general election funding are held in reserve at the beginning of the election year; the remaining balance is then used for primary matching fund payments.)

The Commission also reduced by 10 percent its previous estimate of January 1992 certifications for matching fund payments. This reflects the late start in primary campaign activity. January 1992 matching fund certifications will be based on contributions raised in 1991. However, by the end of June 1991, Democratic campaigns and exploratory committees had raised only about $700,000, compared with $16 million raised in 1987 and $13 million in 1983 during the same period.

The Commission plans to revise its current projection as more precise information becomes available.

Despite the improved outlook for the 1992 Presidential elections, the Commission projects that the Presidential Election Campaign Fund will run out of money for the 1996 elections, with the shortfall expected to exceed $100 million. The agency has recommended possible actions Congress could take to avert the shortfall; see the May 1991 issue, page 3.

2/In July 1991, the Democratic and Republican parties each received $10.6 million in public funds for their 1992 Presidential nominating conventions. The parties will receive "catch-up" inflation payments in 1992.

CONFERENCES

CHICAGO CONFERENCE

On November 14 and 15, the FEC is holding a regional conference in Chicago to assist candidates, political party organizations and PACs with their preparations for the 1992 elections.

Workshops

In addition to workshops on the federal campaign laws, the conference will include a workshop on state campaign finance laws presented by the Illinois State Board of Elections.

A representative of the Internal Revenue Service will be available to answer election-related tax questions.

Registration Information

The $130 registration fee for the conference covers the cost of the conference, materials and meals for both days (continental breakfast, lunch). Call the FEC to order a registration form and schedule of workshops (800/424-9530 or 202/219-3420).

To avoid a late fee, the registration form (with fee enclosed) must be postmarked by October 30.

Hotel

The conference will be held at the Swissotel Chicago, 323 East Wacker Drive, Chicago, Illinois 60601-9722. Call 312/565-0565 for room reservations. To receive the group rate of $110 per night, notify the hotel that you will be attending the FEC conference.

Federal Election Commission, 999 E Street, NW, Washington, DC 20463
800/424-9530 202/219-3420 202/219-3336 (TDD)

INFORMATION

FEC COMMENTS ON FCC PROPOSED RULEMAKING

On August 2, 1991, the Commission submitted comments on a proposed rulemaking by the Federal Communications Commission to revise their political broadcast regulations. (For a synopsis of the proposed rulemaking, see 56 FR 30526, July 3, 1991.) The FEC commented on three areas that related to the Federal Election Campaign Act (the FECA): the donation of free airtime to candidates; a 1978 Joint Public Notice on advertising notices that was issued by the two agencies; and specifications for video disclaimers.

Free Airtime to Candidates

Although FCC rules permit broadcasting stations to donate free airtime to candidates, the FEC has not resolved the issue of whether such donations constitute prohibited contributions by an incorporated station. In AO 1986-35--later vacated--the Commission said that if an incorporated station donated free airtime to U.S. House candidates for the broadcast of their campaign ads, the donation would result in a corporate contribution, prohibited under 2 U.S.C. §441b. The opinion explained that the FECA media exemption--the provision at §431(9)(B)(i) that exempts news stories, commentaries and editorials from the definition of expenditure--would not apply in this case, since the station would not be informing the electorate through the discussion of issues but, rather, would be airing campaign ads on a commercial advertising basis.

AO 1986-35 was vacated in order for the FEC to reconsider the issue. However, when voting on alternative responses to AOR 1986-35, the agency was unable to approve an advisory opinion by the required four-vote majority. Since then, the Commission has not revisited the issue.

Joint Public Notice

The FEC and the FCC issued the 1978 Joint Public Notice on broadcast political advertising to give examples of notices that complied with both: (1) FEC rules on the disclaimer requirement for public political advertising that expressly advocates the election or defeat of a candidate; and (2) FCC rules that apply to broadcast licensees and that require the sponsor to be identified in political ads.

The FEC pointed out that the Notice needs to be updated because the FEC's disclaimer requirements were revised under a 1979 amendment to 2 U.S.C. §441d(a). The FEC recommended that the two agencies work together to issue a revised Public Notice.

Video Disclaimers

The FEC also commented on the compatibility between FEC rules and proposed FCC rules on disclaimer notices in political ads.

Under FEC rules, disclaimers must "be presented in a clear and conspicuous manner." 11 CFR 110.11(a)(1). The FEC said that the FCC's proposed specifications for sponsorship identification in televised ads--display time and visibility--appeared consistent with the FEC's "clear and conspicuous" requirement for disclaimers.

The FCC received suggestions to allow televised advertisements to include only a visual sponsorship identification without an audio voice-over. The FEC said that this could be a problem, noting an example raised by the FCC: radios that transmit the audio portion of TV broadcasts.

STATISTICS

NATIONAL PARTY ACTIVITY: FIRST DISCLOSURE OF NONFEDERAL ACCOUNTS

Reports covering the first six months of 1991 disclose, for the first time, the nonfederal financial activity of the national party committees. New FEC regulations now require national party committees to report information on their nonfederal accounts and building fund accounts.

Nonfederal accounts are used solely for state and local election activity. These accounts are not subject to federal contribution restrictions and therefore contain contributions from corporations and labor organizations. The accounts may not be used for federal election support.

Building fund accounts are also exempt from federal contribution restrictions, but the funds must be used for the purchase or construction of an office facility.

Reports filed through June 30, 1991, show that the Republican national committees raised $10.9 million for their nonfederal and building fund accounts and that the Democratic national committees raised $3.3 million (see chart on next page).

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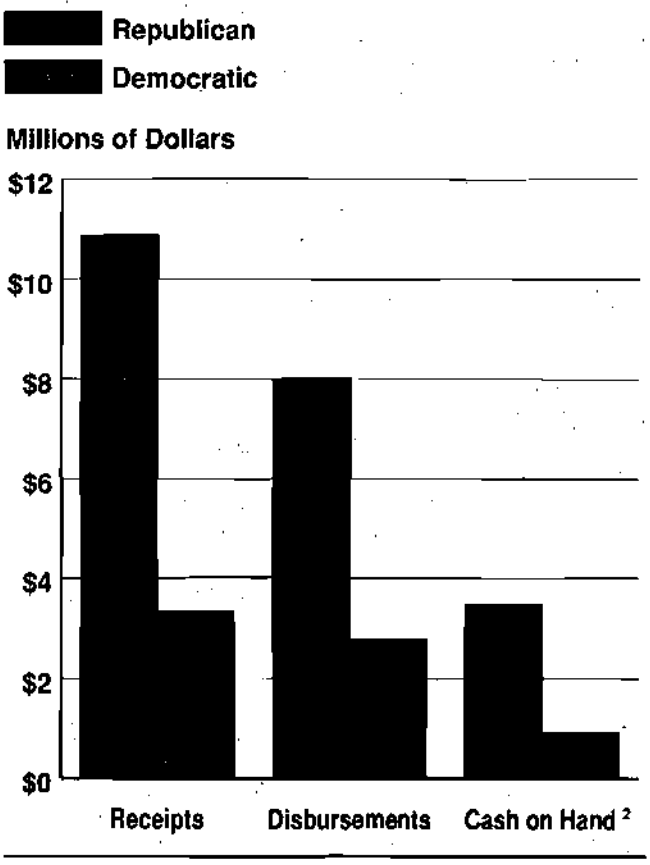
With respect to their federal activity, Republicans again outraised the Democrats by more than $31 million. Republicans raised $40.9 million and spent $34.7 million, while the Democrats raised $9.7 million and spent $9.6 million.

A recent FEC press release provides summary data on the financial activity of the Democratic and Republican national party committees, comparing their federal activity through June 1991 with six-month activity in previous election cycles. The release also provides summary information on nonfederal activity through the end of June 1991. To order a free copy of the August 6 release, call the Public Records Office: 800/424-9530 (ask for Public Records) or 202/219-4140.

National Party Committees: Activity of Nonfederal and Building Fund Accounts [1]

January through June 1991



[1] Graphs show the aggregate activity of the three national committees of each major party: the national party committee, the Senatorial campaign committee and the Congressional campaign committee.

[2] The National Republican Congressional Committee's cash-on-hand total was not available.

FEC RELEASES SIX-MONTH ACTIVITY OF 1992 SENATE CAMPAIGNS

During the first six months of 1991, the campaigns of 1992 Senate candidates raised $33.3 million and spent $10.1 million. They began the second half of the year with $44 million cash on hand and $1.2 million in debts. Thus far, 55 candidates have registered for the 1992 Senate elections (including the 1992 California special election).

Of the money raised, $20 million was received from individuals and $9.4 million from PACs and other nonparty committees.

The chart below compares the six-month financial activity of 1992 Senate campaigns with that of 1990 and 1988 Senate campaigns.

An FEC press release of August 22, 1991, breaks down the data on six-month activity of 1992 Senate campaigns by party affiliation and candidate status (incumbent, challenger, open seat). The release also individually lists the campaign activity of each 1992 Senate candidate as well as candidates registered for the 1991 Pennsylvania special election. For incumbent candidates, the list covers activity from 1987 through June 1991; for other candidates, the list covers activity from the beginning of their campaigns through June 1991.

To order a free copy of the press release, call 800/424-9530 (ask for Public Records) or call the office directly at 202/219-4140.

Senate Campaigns: January–June Activity in Year Preceding the Election Year (in millions of dollars)

	1992 Campaigns	1990 Campaigns	1988 Campaigns
Receipts	$33.3	$29.3	$25.0
Disbursements	$10.1	$ 9.6	$ 5.4
Number of Candidates	55	45	40

PUBLICATIONS

GUIDE FOR MATCHING FUND SUBMISSIONS AVAILABLE

On August 15, 1991, the Commission approved the 1992 edition of the Guideline for Presentation in Good Order, a manual for Presidential primary candidates eligible to receive federal matching funds. The Guideline describes the format and documentation requirements for matching fund requests. Also explained are the procedures campaigns must follow when submitting matching fund requests and the FEC's procedures for certifying the amount of matching funds payable to the campaign by the U.S. Treasury. The FEC's Audit Division will provide the Guideline to Presidential campaigns. Other interested parties may obtain copies from the Public Records Office at a charge of $7.50 per copy. To order, call 800/424-9530 (ask for Public Records) or 202/219-4140.

The 1991 Guideline incorporates changes contained in a recent FEC rulemaking that substantially revises procedures for matching fund submissions and certifications.1/ The rulemaking is based on Treasury Department regulations under which Treasury will make matching fund payments to candidates only once a month. To conform with this change, the Commission's rulemaking also specifies a monthly schedule for submissions and certifications rather than the more frequent schedule that previously applied.

The Guideline also incorporates new rules on magnetic media requirements. Under those rules, if a campaign has prepared matching fund requests from a computerized system, the campaign must submit computer tapes or disks containing the necessary documentation in a format compatible with the FEC's computer system.2/ An appendix to the Guideline details the format specifications for matching fund submissions. Moreover, a separate attachment sets forth the magentic media requirements for the campaign's entire accounting system.3/

ADVISORY OPINIONS

ADVISORY OPINION REQUESTS

Recent requests for advisory opinions (AORs) are listed below. The full text of each AOR is available for review and comment in the FEC's Public Records Office.

AOR 1991-28
Videotaped twice-yearly solicitation. (Date Made Public: August 27, 1991; Length: 2 pages)

AOR 1991-29
Corporation's contribution program under which employees contribute to accounts established in their names and designate outgoing contributions through the corporation's PAC. (Date Made Public: September 13, 1991; Length: 16 pages)

AOR 1991-30
Individual contributors' names and addresses copied from FEC reports and used for lobbying mailings by tax exempt corporation. (Date Made Public: September 16, 1991; Length: 17 pages)

AOR 1991-31
Incumbent candidate committee's reporting obligation with respect to charitable donations given in Congressman's name by individual responding to committee solicitation for campaign contributions. (Date Made Public: September 18, 1991; Length: 11 pages)

(Advisory Opinions continued)

1See 56 FR 34130, July 25, 1991; see also the summary in the August 1991 Record.

2Those rules also require campaigns with computerized systems to submit records for mandatory FEC audits in a compatible format. 11 CFR 9003.6 and 9033.12. (See 55 FR 26392, June 27, 1990; see also the summary in the August 1990 Record.) Moreover, under recently proposed revisions to the public funding rules, candidates must

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agree to submit records in the required format as a condition for receiving federal funds. See proposed 11 CFR 9003.1(b)(4) and 9033.1(b)(5) in the final rulemaking notice, 56 FR 35898, July 29, 1991; see also the summary of the proposed revisions in the September 1991 Record.

3The document is entitled Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding.

REQUEST FOR RECONSIDERATION OF AO 1991-13 DENIED

On August 15, 1991, the Commission denied a request for a reconsideration of AO 1991-13. The request was submitted by the New York State Public Employees Federation, AFL-CIO (PEF), a local union. In AO 1991-13, the Commission concluded that a proposed separate segregated fund formed by PEF would be affiliated with the separate segregated funds of the two international unions that jointly controlled PEF. (The opinion was summarized in the July 1991 Record.)

Because none of PEF's arguments presented any grounds for a reconsideration of the opinion, the Commission denied the request.

ADVISORY OPINION SUMMARIES

AO 1991-20: Procedures for Service Bureau Providing 900-Line Fundraising Services

When providing 900-line fundraising services to political committees, Call Interactive, a service bureau, must:

- o Establish one separate bank account for the deposit of proceeds to its political committee customers and the withdrawal of its fees;
- o Keep separate records on each committee's account activity;
- o Forward contributions to the committee within the time limits of 11 CFR 102.8;
- o Provide the services necessary to obtain contributor information or, alternatively, obtain certification that the committee has arranged to receive comparable services from another company; and
- o Obtain certification that the committee will lawfully dispose of illegal contributions and contributions from unidentified sources.

Call Interactive is not, however, required to obtain an up-front deposit from political committee customers, given the facts described in the opinion.

Contract with AT&T

In providing 900-line services, Call Interactive contracts with AT&T to provide phone network services and a billing service. AT&T does not bill callers directly but sells its receivables to local exchange carriers (LECs), which then collect charges from the callers. AT&T remits the funds it receives from this sale to Call Interactive after first deducting charges for its own services. Call Interactive, in turn, deducts its charges and remits the proceeds to its customers. It takes from two to three months for the customer to receive proceeds from the end of the month in which the calls are made.

Contract with Committees

In its contracts with political committees, Call Interactive plans to hold the committee responsible for ensuring that the fundraising program complies with all applicable laws and with AT&T guidelines (described in AO 1990-14).

Call Interactive also plans to require that advertisements promoting the 900-line number:

- o Disclose the name of the political committee clearly and conspicuously;
- o State that the entire charge for a call is a political contribution, which is not tax deductible;
- o State that corporations, labor unions and foreign nationals are prohibited from contributing.

Call Interactive intends to place a $50 limit on the amount that can be charged per call.

Deposits from Committees

When providing services to political committees, Call Interactive proposes following its usual practice of not requiring payment of deposits or advances. The company also proposes to:

- o Bill committees for upfront costs, which are low, when they are incurred.
- o Deduct other charges from the proceeds it collects before forwarding the funds to the committee.
- o Deduct amounts for chargebacks, i.e., calls for which the callers have requested refunds, if the committee does not submit payment for them in a timely manner.
- o To the extent the company doubts a committee's ability to pay chargebacks, contract for the right to retain a reasonable percentage of the proceeds as security.

In view of these payment arrangements, and the fact that they conform to the company's ordinary course of business when dealing with nonpolitical customers, Call Interactive is not required to obtain deposits from political committees. However, to avoid a prohibited advance of funds from the company, the initial extensions of credit to political committees must be substantially similar, in amount and risk, to extensions of credit the company makes to nonpolitical customers.

Separate Account

Call Interactive receives proceeds for 900-line calls from AT&T in one lump sum and must use a Call Detail Report provided by AT&T, and its own records, to separate the funds received by each customer.

Given the way Call Interactive receives proceeds, the potentially large number of political committee customers that a service bureau may have, and the company's plan to keep separate records for each committee, Call Interactive may use one separate bank account for the deposit of all political committee proceeds. This alternative to setting up separate accounts for each committee is premised on Call Interactive's maintaining separate book records for each committee customer.

The company must forward proceeds to each committee within 10 days (authorized committees of candidates) or 30 days (unauthorized committees). 2 U.S.C. §432(b)(1) and (2); 11 CFR 102.8(a) and (b). With the exception of charges billed directly to the committees, Call Interactive should withdraw charges for its services from this account, again keeping separate records for each committee.

Information on Contributors

It is necessary to obtain information on callers making 900-line contributions in order for the committee to identify and refund prohibited contributions, monitor contribution limits and comply with reporting requirements.

Although the political committee is ultimately responsible for identifying contributors and refunding illegal contributions, Call Interactive also has certain responsibilities. The company must either:

- Provide its own services for obtaining the information, charging the committee its usual fee for the services; or, alternatively,
- Obtain certification from the committee that is has arranged to obtain comparable services elsewhere.

Call Interactive must follow the procedures described below for each alternative.

Call Interactive Services. If Call Interactive provides contributor identification services, it must develop a script for 900-line calls that asks callers to make responses (either by voice or by touchtone) that are later transcribed. In this way, Call Interactive must seek and transcribe the following information:

- The caller's name and address;
- The number of the phone the caller is using;
- Whether the call is made from a phone billed to a corporation, labor organization or foreign national (to identify prohibited contributions); and
- Whether the call is made from a phone that is not billed in the caller's own name or that of an immediate family member (to minimize or avoid contributions made in the name of another).

In conjunction with this procedure, Call Interactive must use a reverse directory data base that matches phone numbers with names and addresses. In this way, the company can identify an average of 90 percent of callers' names and addresses.

Although Call Interactive stated that it would not be relying on the Call Detail Report (provided by AT&T) to obtain telephone numbers, the Call Detail and Call Refund Reports appear to be useful--perhaps essential--in determining when a payment representing an individual caller's contribution was received by Call Interactive, thus enabling the payment to be monitored for purposes of 11 CFR 102.8 (time limits for forwarding contributions). Therefore, unless there is an alternative way of determining this date, Call Interactive must consult the Call Detail Report.

Finally, Call Interactive must forward information on contributions to the committee in a timely manner to ensure proper reporting.

Comparable Services. If the committee obtains contributor information from another source, the services must be similar or superior in identifying contributors and prohibited sources. Call Interactive should obtain a written statement, certified by a responsible committee officer, that identifies the company providing the services and briefly describes them. However, if Call Interactive has actual knowledge that the certification is incorrect, it should contact the committee which, in turn, should cease the program until comparable services are found.

Unlawful and Unidentified Contributions

Regardless of whether Call Interactive or another source provides the information, Call Interactive should obtain certification from the committee that it will use contributor information to return prohibited or excessive contributions and to dispose of contributions from sources that cannot be identified despite call identification procedures. Call Interactive should therefore forward all proceeds to the committee (after deducting charges), regardless of their legality.

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It is the committee's responsibility to refund prohibited or excessive contributions in compliance with 11 CFR 103.3(b).

With respect to proceeds from unidentified callers, the committee must promptly dispose of the funds for some purpose unrelated to federal elections or federal candidates. Unidentified contributions may not be retained as anonymous contributions under 11 CFR 110.4(c)(3) or AO 1980-99.1/ Fundraising through 900-line technology does not result in truly anonymous contributions, since it usually produces the name and address of a telephone subscriber to whom a bill is sent. Moreover, the ability of callers to make repetitive calls distinguishes 900-line fundraising from the situation in AO 1980-99.

Reporting Call Interactive Charges

Call Interactive may provide political committees with a gross figure for its charges without a breakdown of amounts paid to third-party vendors such as AT&T. The committee, when itemizing payments made to Call Interactive, may describe the purpose of the expenditures in general wording such as "services and charges for 900-line program." The committee must separately itemize charges deducted from proceeds and charges that are billed directly.

(Date Issued: August 30, 1991; Length: 13 pages)

AO 1991-21: Terminating PAC's Payment of Remaining Funds to Individual

Subject to certain conditions, the Alliance for Representative Government (ARG), a multicandidate PAC that plans to terminate, may distribute $30,000-$35,000 in remaining funds to Mr. Peter Schabarum, the individual who formed the committee.

ARG was formed by Mr. Schabarum to support Congressional candidates. Mr. Schabarum, although a former California officeholder, was never a candidate for federal office.

Because ARG was not an authorized committee of Mr. Schabarum, it may expend its funds for any lawful purpose consistent with the Federal Election Campaign Act and FEC rules. AOs 1986-32, 1985-34 and 1983-4. (Authorized committees of candidates, by contrast, are subject to the ban on the candidate's personal use of excess campaign funds under 2 U.S.C. §439a and 11 CFR 113.2.)

If, however, ARG were to give the funds to Mr. Schabarum in anticipation of, or in relation to, a possible federal candidacy on his part, then the committee's payment to him would be subject to the contribution limits. The funds would not be considered the candidate's "personal funds" under 11 CFR 110.10(b).

The contribution limits would also apply if ARG distributed the funds to Mr. Schabrum in contemplation of his forwarding them to specific federal political committees. That would result in contributions made by ARG with Mr. Schabarum's acting as the agent or conduit. See 11 CFR 110.6.

As long as the funds are paid to Mr. Schabarum for a purpose unrelated to federal elections, the distribution is not subject to any limit under the federal campaign law, and the payments would be reported under the category "other disbursements." 11 CFR 104.3(b)(1)(ix) and (b)(3)(ix). In this case, the federal campaign law would not preempt any state or local law that might apply to the distribution. See 2 U.S.C. §453; 11 CFR 108.7; AOs 1986-39 and 1986-5. Moreover, any tax ramifications would be outside the FEC's jurisdiction.

ARG may terminate only upon filing a termination report pursuant to 11 CFR 102.3(a). (Date Issued: August 19, 1991; Length: 3 pages)

AO 1991-23: Donation of Raffle Prize to Trade Association by Nonmember Corporation

Because it is not a member of the trade association, an incorporated automobile distributor may not donate a car to the National Association of Retail Druggists as a fundraising raffle prize for the Association's PAC.

Incorporated members of a trade association may make donations to help defray fundraising expenses of the association's PAC. AO 1986-13. Donations by nonmembers, however, are considered contributions to the PAC and thus are subject to the contribution limits and prohibitions as well as the solicitation restrictions of Part 114. See AOs 1989-18 and 1983-24. Therefore,

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[1] Section 110.4(c)(3) permits the retention of anonymous cash contributions of $50 or less; the committee must promptly dispose of amounts in excess of $50, using the excess amounts for any lawful purpose unrelated to federal candidates or elections. AO 1980-99 involved the mass collection of small contributions at a fundraising event and permitted a committee to record the name of event and the amount collected each day, without identifying each contributor.

the proposed donation by the automobile distributor would result in a corporate contribution, prohibited under 2 U.S.C. §441b.

The corporate prohibition applies despite any promotional value to the automobile distributor in donating a car. A corporate contribution may be avoided due to the promotional aspect of a gift only under narrow exceptions that do not apply here. See, for example, AOs 1988-25 and 1987-24. (Date Issued: August 19, 1991; Length 3 pages)

AO 1991-24: Candidate-Advocacy Communications by Trade Associations to Members

An incorporated trade association, the Credit Union National Association, Inc. (CUNA), may make partisan communications to its league members (also incorporated trade associations) recommending that they support or oppose certain federal candidates and asking that they pass on the recommendations to their own members. In response to the CUNA communication, the Wisconsin Credit Union League (a member of CUNA) may make similar communications to its member credit unions.

As an exception to the ban on corporate expenditures, FEC regulations permit incorporated trade associations to make partisan communications to their members. 11 CFR 114.3(a)(2) and 114.8(h). However, in the case of incorporated members, a trade association must direct partisan communications to official representatives of the member. 11 CFR 114.8(h).

CUNA and the Wisconsin League both satisfy the definition of trade association at 11 CFR 114.8(a) and therefore may make partisan communications to the representatives of their incorporated members. Moreover, CUNA league members and Wisconsin League credit union members qualify as "members" under 11 CFR 114.1(e) because they may participate in the governance of the organization by exercising voting rights and must pay regular dues of a fixed amount. See AOs 1990-18, 1987-13 and 1984-33.

The partisan communications proposed by CUNA and the Wisconsin League comply with FEC rules because:

- The communications will not reproduce, in whole or in part, candidate campaign materials;
- They will not facilitate contributions, that is, provide the means for recipients to make contributions to candidates (for example, by enclosing envelopes or stamps); and
- Neither CUNA nor the Wisconsin League will subsidize any partisan communications made on the basis of their recommendations. 11 CFR 114.3; AOs 1987-29 and 1982-2.

CUNA and the Wisconsin League may have to report their disbursements for partisan communications on FEC Form 7 if:

- The communication is primarly devoted to expressly advocating the election or defeat of a clearly identified candidate; and
- The cost of the communication exceeds $2,000 per election. 11 CFR 100.8(b)(4) and 104.6.

Although the advisory opinion request asked whether the Wisconsin League's credit union members could make partisan communications to their own memberships, the Commission could not respond because the credit union members did not participate in the request. See 11 CFR 112.1(b). The Commission did note, however, the possible relevance of AO 1990-18, which permitted a federal credit union to solicit its noncorporate members for separate segregated fund contributions. The opinion contains a footnote stating that restrictions on solicitations (i.e., who may be soliticted) are similar to restrictions on partisan communications.

(Date Issued: August 30, 1991; Length: 8 pages)

AO 1991-25: 1991 Special Election and Local Elections: Ballot Composition Change

Due to the 1991 special Senate election in their state, the Pennsylvania Democratic and Republican State Party Committees must adjust their ballot composition ratios by adding an additional federal point; the adjusted ratio applies only to generic voter drive costs incurred between April 4 (the date the seat become vacant) and November 5, 1991 (the date of the special election). (For convenience, committees may use May 1 as the starting date.) Also, the committees may add one more nonfederal point to their ballot composition ratios for the entire 1991-92 election cycle to reflect partisan local offices, even though elections for local offices will take place in 1991, while elections for other nonfederal offices will occur in 1992.

Ballot Composition Ratio

Under FEC regulations that became effective at the start of 1991, state party committees with separate federal and nonfederal accounts must use the ballot

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composition method to allocate their administrative and generic voter drive costs between the two accounts. 11 CFR 106.5(d). This method is "based on the ratio of federal offices...to total federal and nonfederal offices expected on the ballot in the next general election to be held in the committee's state or geographic area." 11 CFR 106.5(d)(1)(i). The ratio is determined at the start of each two-year federal election cycle. Thus, the ratio for the 1991-92 cycle is based on the 1992 general election ballot.

Ratio Adjustment for Special Senate Election

The effect of a special election on the ballot composition ratio is decided on a case-by-case basis. In AO 1991-6, the Commission concluded that a special Senate election should count as an additional federal point for the entire 1991-92 election cycle. In that situation, however, the vacancy in the seat occurred before the start of the 1991-92 cycle, and the special election to fill the seat was scheduled for the 1992 general election. (See also AO 1991-15, which presented a similar situation with respect to a special election for a nonfederal statewide office.)

The Pennsylvania special election presents a different situation: The vacancy did not occur until April 4, 1991 (the date of Senator Heinz's death), and the election is scheduled for 1991 (November 5). In this situation, the committees must add an extra federal point to the ballot composition ratio, but the adjusted ratio applies only to the period of the vacancy (April 4-November 5). (Committees may use May 1 as a starting date, for convenience.) Furthermore, the adjusted ratio applies only to generic voter drive costs incurred during the vacancy period; it need not be applied to administrative expenses. See 11 CFR 106.5(a)(2)(i) and (iv) and 106.5(d)(2).

Ratio Adjustment for 1991 Partisan Local Offices

The regulations did not contemplate the situation in Pennsylvania, where elections for partisan local offices are held in odd-numbered years and elections for state offices are held in federal election years. However, the intent of the regulations was to allow state party committees to include a nonfederal point for local offices to adequately reflect the scope of their activity. See the Explanation and Justification for 11 CFR 106.5(d), 55 FR 26064 (June 26, 1990); see also AO 1991-6. Therefore, even though local offices will not appear on the 1992 ballot, the state party committees may recalculate their ballot composition ratios for the 1991-92 cycle to include an additional nonfederal point for those offices.

Computing the Adjusted Ratios

The additional nonfederal point for the 1991 local elections results in the following allocation percentages: 37 percent federal and 63 percent nonfederal (3 federal points and 5 nonfederal points).1/

The addition of the federal point for the special Senate election increases the federal portion of generic voter drive costs to 44 percent and reduces the nonfederal portion to 56 percent (assuming the committees choose to take the optional nonfederal point for 1991 local elections.) On November 6, the day after the special election, the additional federal point is subtracted, and the allocation formula for generic voter drive costs returns to 37 percent federal and 63 percent nonfederal (based on the same assumption).

Corrective Transfers

The committees may have to transfer funds between their federal and nonfederal accounts to reflect the changes in the federal percentages caused by the adjusted ballot composition ratios. Corrective transfers must be made within 30 days after the date of the advisory opinion. See AO 1991-15.

With respect to the additional federal point for the special Senate election, it may be necessary for the committees to transfer funds from their federal accounts to their nonfederal accounts to reflect the higher federal percentage applied to generic voter drive costs incurred during the applicable period.

With respect to the addition of a nonfederal point for local offices, the committees may apply the revised ratio to 1991 expenses that were allocated under the old ratio and accordingly transfer funds from their nonfederal accounts to their federal accounts to reflect the lower federal percentage.

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[1] Before this advisory opinion was issued, the ballot composition formula for the Pennsylvania state party committees was based on 3 federal points and 4 nonfederal points, for a federal/nonfederal ratio of 43 percent/57 percent.

Reporting Ratio Adjustments and Transfers

In reporting the change to the ballot composition ratio necessitated by the Senate special election, each committee should, in its next report, file an amended Schedule H1 noting the change to the ratio and the reason for the change. See AO 1991-15. The report filed after the November special election should similarly include a Schedule H1 amendment that notes and explains the ratio change that occurred on November 6.

If the committee adjusts its ratio for the 1991-92 cycle to include a nonfederal point for local offices, it must also file a Schedule H1 amendment.

With respect to either ratio adjustment, the committees are not required to recalculate previously reported entries on joint federal/nonfederal disbursements (Schedule H4). Instead, the committees may enter the amount of the corrective transfer on Schedule H4 with a note explaining why the adjustment was made.

(Date Issued: August 20, 1991; Length: 5 pages)

COURT CASES

FEC v. POLITICAL CONTRIBUTIONS DATA, INC.

On August 21, 1991, the U.S. Court of Appeals ruled that Political Contributions Data, Inc. did not violate 2 U.S.C. §438(a)(4) by selling, for profit, individual contributor information copied from FEC reports. (Civil Action No. 91-6084). This ruling reversed the district court's decision.

Background

Section 438(a)(4) protects information on individual contributors (including names, addresses, occupations and employers) that is disclosed on reports filed with the FEC. Under section 438(a)(4), information copied from such reports "may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes...." (The names and addresses of political committees, however, may be used for solicitation purposes.)

In AO 1986-25, issued to Public Data Access, Inc. (PDA), the Commission considered PDA's proposed sale of information on individual contributors that was compiled from FEC reports. The Commission concluded that the proposed sale would be for "commercial purposes" and would therefore violate section 438(a)(4).

After the opinion was issued, PDA established Political Contributions Data, Inc. (PCD), a for-profit corporation, which then sold lists of individual contributor information compiled from FEC reports. PCD marketed two standard reports: a list of contributions made by officers and upper-level employees of the 700 largest U.S. corporations; and a list of individuals contributing $500 or more, sorted by congressional district.

The Commission filed suit in August 1989 alleging that PCD had violated section 438(a)(4).

District Court Decision

On December 19, 1990, the U.S. District Court for the Southern District of New York ruled that PCD's sale of contributor lists violated the "commercial purposes" prohibition. (Civil Action No. 89-CIV-5238.) In reaching this decision, the district court found that the FEC's determination in AO 1986-25 was reasonable. The Commission had concluded that PDA's for-profit status indicated a commercial purpose. The Commission also concluded that PDA could not claim the exception for media use of contributor information under 11 CFR 104.15(c) because PDA's lists would have a commerical value to list brokers and because the FEC information contained in the lists was not incidental to the sale of the communication (as in a newspaper) but was instead the primary focus of the communication.

The court also considered but rejected PCD's constitutional challenges to section 438(a)(4). The court imposed a $5,000 penalty against PCD but stayed payment pending the resolution of PCD's appeal.1/

Court of Appeals Decision

The court of appeals rejected the Commission's conclusion in AO 1986-25 as an unreasonable interpretation of section 438(a)(4) and 11 CFR 104.15(c). The court instead found that PCD's sale of contributor lists was permissible under those provisions.

Under section 104.15(c), the use of information copied from FEC reports "in newspapers, magazines, books or other similar communications is permissible as long as the principal purpose of such communications is not to communicate any contributor information...for the purpose

(continued)

[1]For a detailed summary of this decision, see the February 1991 Record.

of soliciting contributions or for other commercial purposes." [emphasis added]

The court found that PCD's contributor lists qualified as "other similar communications" and that PCD's sale of FEC information did not violate the commercial purposes prohibition: "The absence from PCD's reports of mailing addresses and phone numbers, as well as the caveat on each page against solicitation and commercial use, make it virtually certain that these reports will be used for informative purposes (similar to newspapers, magazines, and books...), not for commercial purposes (similar to soliciting contributions or selling cars)."

The court based this conclusion on its interpretation of the commercial purposes prohibition: "The §438(a)(4) prohibition is only violated by a use of FEC data which could subject the 'public-spirited' citizens who contribute to political campaigns to 'all kinds of solicitations,'" such as commercial solicitations for magazine subscriptions or credit cards. The court said that this reading of the prohibition balances the need to protect the privacy of individual contributors with statutory intent to promote public disclosure of campaign finance information.

Finding the PCD did not violate section 438(a)(4), the court remanded the case to the district court with instructions to dismiss the FEC's complaint.

FEDERAL REGISTER

FEDERAL REGISTER NOTICES

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

1991-11
11 CFR Parts 100, 102, 106, 110, 116, 9001-9007, 9012 and 9031-9039: Public Financing of Presidential Primary and General Election Candidates; Final Rule and Transmittal to Congress (56 FR 35898, July 29, 1991)

1991-12
11 CFR Parts 102 and 113: Use of Excess Funds; Final Rule and Transmittal to Congress (56 FR 34124, July 25, 1991)

1991-13
11 CFR Parts 9034, 9036 and 9037: Matching Fund Submission and Certification Procedures for Presidential Primary Candidates; Final Rule and Transmittal to Congress (56 FR 34130, July 25, 1991)

1991-14
Filing Dates for Virginia Special Elections (56 FR 36153, July 31, 1991)

1991-15
Rulemaking Petition: Common Cause; Notice of Availability (56 FR 41496, August 21, 1991)

PUBLIC APPEARANCES

9/18-10/6 Supreme Soviet of the Russian Republic
International Foundation for Electoral Systems
The Brookings Institution
Moscow, USSR
Commissioner Danny L. McDonald

9/20-22 National Republican Institute for International Affairs
Moscow, USSR
Commissioner Thomas J. Josefiak
Robert A. Dahl, Executive Assistent to Mr. Josefiak

10/4-5 American Bar Association
Prouts Neck, Maine
Vice Chairman Joan D. Aikens

11/1-3 Center for the Study of the Presidency
Richmond, Virginia
Commissioner Lee Ann Elliott

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 July 19 and 30 and August 2, 12, 16 and 26, 1991. 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 1472
Respondents: (a) American International Demographic Services, Inc., Ernest Halter, President (VA); (b) Working Names, Inc., Meyer Cohen, President (MD); (c) American Legislative Exchange Council (DC)
Complainant: Lawrence J. Halloran, Legal Counsel, National Republican Congressional Committee (DC)
Subject: Improper use of contributor information
Disposition: (a) U.S. District Court: $3,500 civil penalty; (b) $2,500 civil penalty; (c) no reason to believe (case closed in 1986)

MUR 2270/2259/2233/2231
Respondents: (a) Nevada Republican Party/ Nevada Republican State Central Committee-Federal Account, Kevin G. Higgins, treasurer (NV); (b) Jim Santini for Senate, J. Glen Sanford, treasurer (NV); (c) National Republican Senatorial Committee, Rodney A. Smith, treasurer (DC)
Complainants: John N. Schroeder, Chairman, Democratic Party of Washoe County (NV) (2231); Evan J. Wallach (NV)(2270/2259/2233)
Subject: Excessive coordinated expenditures; disclaimers
Disposition: (a) $25,000 civil penalty; (b) and (c) no reason to believe

MUR 2611
Respondents: Arizona Republican Party, David L. Hanna, treasurer (AZ)
Complainant: FEC initiated
Subject: Deposit of impermissible funds into federal account
Disposition: $1,000 civil penalty

MUR 2679
Respondents: (all located in IL) (a) Davis for Congress Committee; (b) Jack Davis; (c) Mark R. Tezak; (d) Robert J. Tezak
Complainant: Martin J. Gleason (IL)
Subject: Excessive contribution; disclaimer
Disposition: (a) Reason to believe but took no further action; (b) no reason to believe; (c) and (d) reason to believe but took no further action

MUR 2708
Respondents: (a) Friends of Congressman Sikorski, Deanna Peterson, treasurer (MN); (b) Congressman Gerry Sikorski (MN)
Complainant: Raymond C. Ploetz (MN)
Subject: Failure to disclose contributions; failure to file report amendments with Secretary of State
Disposition: (a) $2,250 civil penalty; (b) no reason to believe

MUR 3041
Respondents: (all located in NJ) (a) Kirk W. Conover; (b) Conover for Congress '88, Michael S. Warner, treasurer; (c) 1988 Republican Campaign Committee c/o Cape May County Republican Organization, Mary Louise McCall, treasurer; (d) Atlantic County Republican Committee, William H. Ross, III, tresurer
Complainant: FEC initiated
Subject: Excessive contributions; failure to file Statements of Candidacy and Organization; failure to register and report; contributions made from account containing corporate contributions
Disposition: (a)-(d) Reason to believe but took no further action

MUR 3063
Respondents: (a) Bonker for Senate Committee, Gary Gayton, treasurer (WA); (b) Omniservices, Inc. (WA)
Complainant: FEC initiated
Subject: Erroneous reporting; excessive contributions; improper transfer; corporate contribution
Disposition: (a) $1,500 civil penalty; (b) reason to believe but took no further action

MUR 3065
Respondents: Federal Express Corporation PAC, A. Doyle Cloud, Jr., treasurer (TN)
Complainant: FEC initiated
Subject: Misreported contributions; excessive contribution
Disposition: $1,000 civil penalty

MUR 3129
Respondents: Agenda for the 90's, Douglas Shorenstein, treasurer (CA)
Complainant: FEC initiated
Subject: Excessive contributions; acceptance and deposit of nonfederal funds; failure to identify a contributor
Disposition: $5,500 civil penalty

MUR 3146
Respondents: (a) Nita Lowey for Congress, Aaron Eidelman, treasurer (NY); (b) Representative Nita Lowey (NY)
Complainant: Aldo Vitagliano (NY)
Subject: Failure to file 48-hour notices
Disposition: (a) $3,500 civil penalty; (b) no reason to believe

MUR 3147
Respondents: National Republican Senatorial Committee, James L. Hagen, treasurer (DC)
Complainant: Linda Burkhart (WY)
Subject: Improper requests for contributor information
Disposition: No reason to believe

MUR 3178
Respondents: (a) Handgun Control, Inc. (DC); (b) Handgun Control Political Action Committee, Edward O. Welles, treasurer (DC)
Complainant: Absalom F. Jordan, Jr. (VA)
Subject: Solicitations

(continued)

Disposition: Complaint dismissed

MUR 3196
Respondents: Tom Christo for U.S. Senate, Inc., Jon Howell, treasurer (NH)
Complainant: FEC initiated
Subject: Excessive contributions; failure to amend Statement of Organization on time
Disposition: $1,000 civil penalty

MUR 3224
Respondents: Fred Lockwood for Congress, Rick A. Morehouse, treasurer (NE)
Complainant: FEC initiated
Subject: Failure to file 48-hour notices on time
Disposition: $1,500 civil penalty

MUR 3233
Respondents: Committee to Elect "Duke" Cunningham, Kenneth Burnell Batson, treasurer (CA)
Complainant: FEC initiated
Subject: Failure to file 48-hour notices on time
Disposition: $1,900 civil penalty

MUR 3247
Respondents: Friends of Butler Derrick, Lynne J. Richardson, treasurer (VA)
Complainant: FEC initiated
Subject: Failure to file 48-hour notice
Disposition: Reason to believe but took no further action

MUR 3250
Respondents: Mangini for Congress, James E. Rafferty, treasurer (NJ)
Complainant: FEC initiated
Subject: Failure to file 48-hour notices
Disposition: $1,500 civil penalty

MUR 3253
Respondents: Everly for Congress, David Everly, treasurer (MO)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: Reason to believe but took no further action

MUR 3255
Respondents: Friends of Hugh D. Shine for U.S. Congress, Jack Nelson, treasurer (TX)
Complainant: FEC initiated
Subject: Failure to file 48-hour notice on time
Disposition: $3,350 civil penalty

MUR 3259
Respondents: Gephardt for Congress Committee, John R. Tumbarello, treasurer (MO)
Complainant: FEC initiated
Subject: Failure to file 48-hour notices
Disposition: $1,750 civil penalty

MUR 3265
Respondents: Friends of Phil McConkey, Ted Resnick, treasurer (NJ)
Complainant: FEC initiated
Subject: Failure to file 48-hour notices
Disposition: $1,000 civil penalty

MUR 3267
Respondents: Committee to Elect Ralph Waite to Congress, Cliff Shinn, treasurer (CA)
Complainant: FEC initiated
Subject: Failure to disclose original source of loan; failure to file 48-hour notices
Disposition: Reason to believe but took no further action

MUR 3275
Respondents: Aetna Life and Casualty Company Political Action Committee, Timothy A. Holt, treasurer (CT)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: $400 civil penalty

MUR 3276
Respondents: American Consulting Engineers Political Action Committee, Howard M. Messner, treasurer (DC)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: $500 civil penalty

MUR 3278
Respondents: Amoco Employees' Political Action Committee, Jacqueline A. Anderson, treasurer (DC)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: $250 civil penalty

MUR 3280
Respondents: Bell Atlantic Corporation Political Action Committee, Cynthia Worthman, treasurer (PA)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: $625 civil penalty

MUR 3290
Respondents: Hudson Valley Political Action Committee, Marilyn Enison, treasurer (NY)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: $1,240 civil penalty

MUR 3291
Respondents: International Chiropractors Political Action Committee, Bruce E. Nordstrom, treasurer (VA)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: $375 civil penalty

MUR 3292
Respondents: Investment Management Political Action Committee of the Investment Company Institute, C. Richard Pogue, treasurer (DC)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: $500 civil penalty

MUR 3294
Respondents: Local 401 Iron Workers Political Action Fund, Joseph J. Dougherty, treasurer (PA)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: $400 civil penalty

MUR 3296
Respondents: MAPCO Employees Political Action Committee, James J. Davis, treasurer (OK)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: $600 civil penalty

MUR 3301
Respondents: Occidental Oil and Gas Corporation PAC (AKA Cities Service Oil & Gas Corporation PAC), Howard C. Frank, treasurer (OK)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: $725 civil penalty

MUR 3302
Respondents: Pacific Enterprises Political Assistance Committee, George P. Williams, treasurer (CA)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: $650 civil penalty

MUR 3303
Respondents: Pacific Mutual Life Insurance Company Political Action Committee, Robert G. Haskell, treasurer (CA)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: $375 civil penalty

MUR 3306
Respondents: San Franciscans for Good Government, Russell S. Holdstein, treasurer (CA)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: Reason to believe but took no further action

MUR 3307
Respondents: Shoney's Political Action Committee, Fred E. McDaniel, Jr., treasurer (TN)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: $375 civil penalty

MUR 3319
Respondents: Hannoch Weisman Political Action Committee, Richard K. Weinroth, treasurer (NJ)
Complainant: FEC initiated
Subject: Excessive contributions
Disposition: $900 civil penalty

MUR 3320
Respondents: Connecticut Carpenters Legislative Improvement Committee, John Cunningham, treasurer (CT)
Complainant: FEC initiated
Subject: Failure to file reports on time
Disposition: $750 civil penalty

MUR 3322
Respondents: Clay Campaign Committee, Pearlie I. Evans, treasurer (MO)
Complainant: FEC initiated
Subject: Failure to file 48-hour notices
Disposition: $1,750 civil penalty

MUR 3327
Respondents: Brooklyn Democrats Federal Campaign Account, Gerald P. Garson, treasurer (NY)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: $500 civil penalty

MUR 3329
Respondents: Freeze Voter, Richard Mark, treasurer (DC)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: $500 civil penalty

MUR 3330
Respondents: IBEW 349 Electro-PAC, Bryan Rappaport, treasurer (FL)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: $1,800 civil penalty

MUR 3332
Respondents: Virginia Bankpac, Walter C. Ayers, treasurer (VA)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: $600 civil penalty

MUR 3333
Respondents: Warehouse Employees Union Local 169 Political Action Committee, William J. Nolen, treasurer (PA)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: $500 civil penalty

MUR 3337
Respondents: Barney Frank for Congress Committee, Doris Breay, treasurer (MA)
Complainant: FEC initiated
Subject: Failure to file 48-hour notices
Disposition: $3,450 civil penalty

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The first number in each citation refers to the "number" (month) of the 1991 Record issue in which the article appeared; the second number, following the colon, indicates the page number in that issue.

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