FEDERAL ELECTION COMMISSION

# RECORD

December 1992 999 E Street NW Washington DC 20463 Volume 18, Number 12

## 800 LINE

### DEBT RETIREMENT BY CANDIDATE COMMITTEES

At the end of an election cycle, the Commission receives questions from candidate committees on how to deal with campaign debts. This article responds to those questions. For additional information, call the FEC's Information Services Division at 800/424-9530 or 202/219-3420.

#### Continuous Reporting of Debts

**Does an authorized committee have to keep reporting even if its only activity is debt retirement?** Yes. Committees must continue reporting until all debts and obligations have been extinguished and the committee has terminated. 11 CFR 102.3 and 104.11(a). (Termination is discussed later in this article.)

#### Accepting Post-Election Contributions

**May an authorized committee accept contributions after an election to retire debts for that election?** Yes, campaigns may receive contributions after the election to retire debts, but they should remember three general rules:

- o First, such contributions are still subject to the limits and the prohibitions of the Federal Election Campaign Act (the Act), even if the candidate lost the election and does not plan to run for a future federal office. This means that the contributions must come from permissible sources and, when added to other contributions from the same donor for that election, the contributions may not exceed the donor's contribution limit. 11 CFR 110.1(b)(1), 110.2(b)(1), 110.4(a), 110.9(a), 114.2(b) and 115.2.
- o Second, contributions made after an election to retire debts must be specifically designated for that election by the contributor, who may note the

(continued on page 8)

## REGULATIONS

### TWO-DAY HEARING ON MCFL RULEMAKING

On October 14 and 15, the Commission held a public hearing on proposed regulations governing communications by corporations and labor organizations.

The proposed amendments to 11 CFR Part 114 would implement the Supreme Court's interpretation of 2 U.S.C. §441b in FEC v. Massachusetts Citizens for Life, Inc. (MCFL) as well as subsequent court decisions (Faucher v. FEC and FEC v. National Organization for Women).

(continued)

TABLE OF CONTENTS

Section 441b prohibits corporations and labor organizations from making contributions or expenditures in connection with federal elections. In MCFL, the Court limited the prohibition on expenditures to expenditures for public communications that contain "express advocacy" (i.e., expressly advocate the election or defeat of a clearly identified candidate). The rulemaking would accordingly revise the regulations on communications by business and nonprofit corporations and by labor unions.

In addition, the Commission sought comments on alternative definitions of express advocacy under 11 CFR Part 109.1/ The proposed definitions were a major focus of numerous written comments and remarks made at the hearing.

Many nonprofit groups also commented on proposed regulations that would implement the MCFL ruling permitting certain kinds of nonprofit corporations to make independent expenditures.2/ The comments addressed the proposed criteria for determining which organizations would qualify for this exemption.

The Commission received 31 written comments on the proposed rules and heard testimony from representatives of 25 organizations, including the American Council on Education, American University, the Anti-Defamation League of B'Nai B'Rith, the National Association of Realtors, the National Right to Life Committee, Inc., the National Right to Work Committee, Inc., the National Organization for Women and Planned Parenthood Federation of America. Representatives of third-party Presidential campaigns testified on proposed rules concerning nonpartisan candidate debates.

In drafting the final regulations, the Commission will review all written comments and testimony.

A transcript of the hearing is available from the FEC's Public Records Office; the cost is $26.00. The written comments are also available at a cost of 5 cents per page. For further ordering information, call 800/424-9530 (ask for Public Records) or 202/219-4140.

[1]These definitions incorporated aspects of two other court decisions, Buckley v. Valeo and FEC v. Furgatch.

[2]Independent expenditures are expenditures for express advocacy communications made without consultation or coordination with any candidate's campaign. The proposed regulations also considered another Supreme Court decision on MCFL-type corporations, Austin v. Michigan Chamber of Commerce.

## PUBLIC FUNDING

### COMMISSION DENIES EXTENSION OF TIME FOR REPAYMENT BY GEPHARDT COMMITTEE

On October 22, the Commission denied a request by the Gephardt for President Committee, Inc., for a second extension of time to repay 1988 matching funds to the U.S. Treasury.

Most of the repayment—$118,944—was due in June 1992. (An additional repayment of $2,628 was included as an addendum to the final audit report on August 4, 1992.) The Commission granted the Committee's first request for a 90-day extension, which moved the repayment date to September 28. The second request asked the Commission to establish a repayment schedule beginning December 1. Although the Commission has, in the past, granted some requests to make repayments in monthly installments, the agency denied the Gephardt request for several reasons that distinguished it from earlier situations.

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800/424-9530 202/219-3420 202/219-3336 (TDD)

First, the request was submitted late, three days—rather than the required seven days—before the repayment was due. See 11 CFR 9038.4(c). Moreover, the Committee failed to explain why the request was late.

Second, the Committee did not make any repayments to the U.S. Treasury even though it was notified of the $118,944 repayment on May 21, 1992, and had been aware of a potential repayment obligation since October 1989, when the Commission approved the interim audit report. (That report included a preliminary repayment calculation of $166,362.)

Finally, Congressman Gephardt had the option of transferring funds from his Congressional committee to the Gephardt for President Committee to make the repayment. (As of September 30, 1992, the Congressional committee had $621,000 in cash on hand and no debts.) Rejecting the Committee's contention that the transfer would be prohibited because Congressman Gephardt was a candidate for two different federal offices during overlapping election cycles, the Commission pointed out that the two committees were involved in different election cycles (1988 and 1992) and that the transfer would therefore have been permissible. See 11 CFR 110.3(c)(4); compare 11 CFR 110.3(c)(5).

The Commission notified the Committee that the repayment was due within 10 days after notification of the agency's decision. However, because $2,628 of the repayment was added at a later date, the Commission allowed the Committee until December 8 to repay that amount.

The Committee repaid the entire repayment amount ($121,572) on November 9.

**HEARING ON REPAYMENT BY JACKSON CAMPAIGN**

At an October 28 open hearing, counsel for Jesse Jackson's 1988 Presidential campaign urged the Commission to reduce the amount of primary matching funds the campaign must repay to the U.S. Treasury. The Jackson campaign received over $8 million in primary matching funds.

(In the final audit report, the Commission made an initial determination that the campaign repay $310,906. However, it now appears that the repayment may be reduced to $150,694, based on additional documentation submitted by the campaign on June 30, 1992, in response to the initial repayment determination.)

The campaign's counsel, Robert Bauer, discussed several repayment issues but focused mainly on the repayment required for undocumented disbursements.

(Disbursements lacking sufficient documentation of how public funds were spent are considered nonqualified campaign expenses. A ratio formula is applied to such expenses to determine what portion was paid with public funds, as opposed to private contributions, and must therefore be repaid to the U. S. Treasury. After reviewing the additional records submitted on June 30, FEC audit staff found that the campaign still failed to provide sufficient documentation for $381,723 in disbursements, resulting in a pro rata repayment of $118,356.)

Mr. Bauer argued that the campaign had met the documentation requirements for many of the disbursements in question. He also stated that the Jackson campaign relied heavily on volunteers rather than professional consultants and that the Commission, in evaluating the documentation, should consider the grassroots nature of the campaign.

The agency will consider Mr. Bauer's remarks when making a final determination.

**NOVEMBER MATCHING FUND PAYMENTS1/**

| Candidate | November Payment | Cumulative Total |
|---|---|---|
| **Republicans** | | |
| Patrick Buchanan | $ 273,793 | $ 4,635,287 |
| George Bush | 440,884 | 10,118,252 |
| **Democrats** | | |
| Larry Agran | 0 | 269,692 |
| Jerry Brown | 0 | 4,239,405 |
| Bill Clinton | 0 | 12,536,135 |
| Tom Harkin | 17,818 | 1,996,723 |
| Bob Kerrey | 61,977 | 2,071,863 |
| Paul Tsongas | 58,632 | 2,909,205 |
| Douglas Wilder | 0 | 289,027 |
| **New Alliance Party** | | |
| Lenora Fulani | 56,438 | 1,936,472 |
| **Natural Law Party** | | |
| John Hagelin2/ | 100,000 | 100,000 |
| **Total** | **$1,009,541** | **$41,102,060** |

1/ Candidates have requested $843,908 for the December payment.

2/ The Commission approved Dr. Hagelin's eligibility to receive matching funds on October 15. The $100,000 payment represents his threshold submission to qualify for matching funds ($5,000 raised in each of 20 states).

# STATISTICS

**MID-OCTOBER NATIONAL PARTY ACTIVITY**

Republicans lead Democrats in federal account fundraising by $95 million at the end of June. By October 14, 20 days before the general election, that lead dropped to $79 million. Even so, as of October 14, 1992, the Republican national committees had raised $164.4 in total federal receipts for the 1992 cycle compared with the $85 million raised by the Democratic committees.

An October 27 press release provides further data on the federal account activity of national party committees through mid-October and comparable statistics for previous election cycles.

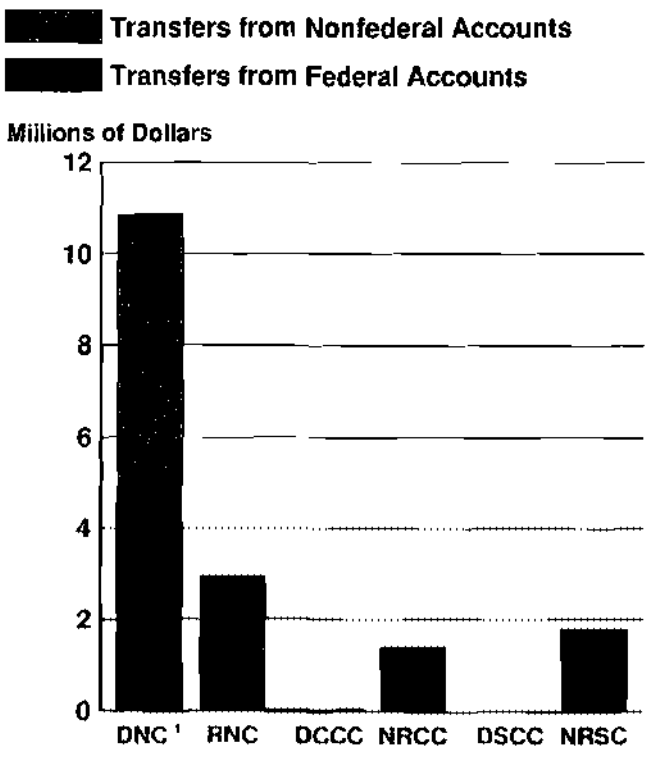
The release also includes information on the nonfederal accounts of the national party committees for the current cycle, the first cycle when these committees were required to report their nonfederal activity. Nonfederal accounts contain "soft money"--money raised outside the limits and prohibitions of the federal campaign law. Soft money is used to influence state and local elections and to pay for the nonfederal portion of activity that influences both federal and nonfederal elections, such as voter drives, party administration and fundraising, and activities that support both federal and nonfederal candidates.

To order the release, call 800/424-9530 (ask for Public Records) or 202/219-4140.

The accompanying graphs show both federal and nonfederal activity of the national parties.

## National Party Committees: Transfers to State Party Committees

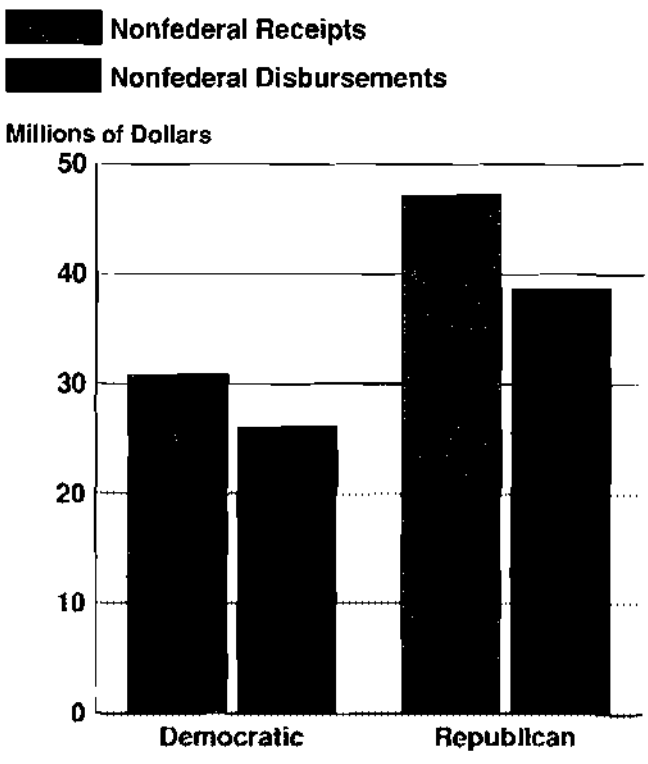
**January 1991 Through October 14, 1992**




[1] Abbreviations are as follows:
DNC—Democratic National Committee
RNC—Republican National Committee
DCCC—Democratic Congressional Campaign Committee
NRCC—National Republican Congressional Committee
DSCC—Democratic Senatorial Campaign Committee
NRSC—National Republican Senatorial Committee

## National Party Committees:[1] Nonfederal Account Receipts and Disbursements

**January 1991 Through October 14, 1992**



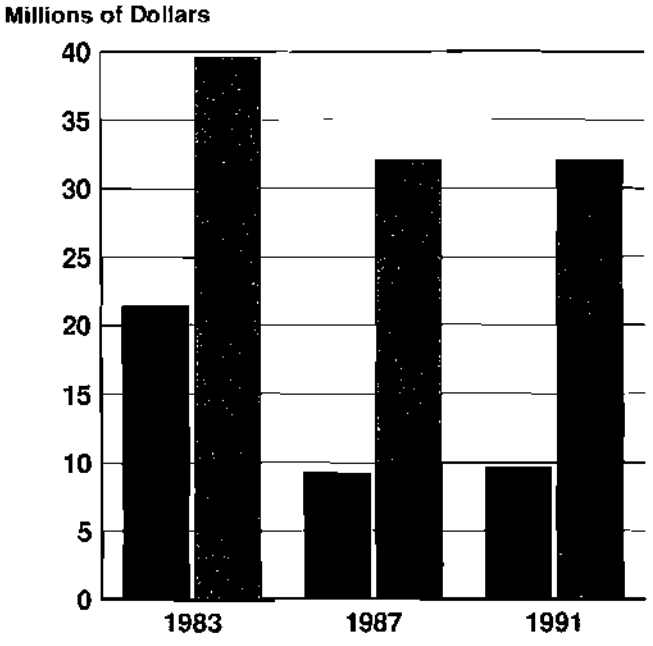

[1] Graph shows the aggregate activity of each party's three national-level committees (the national committee, and the House and Senate campaign committees).

## Federal Account Receipts of DNC and RNC:[1] Comparison of Presidential Election Cycles

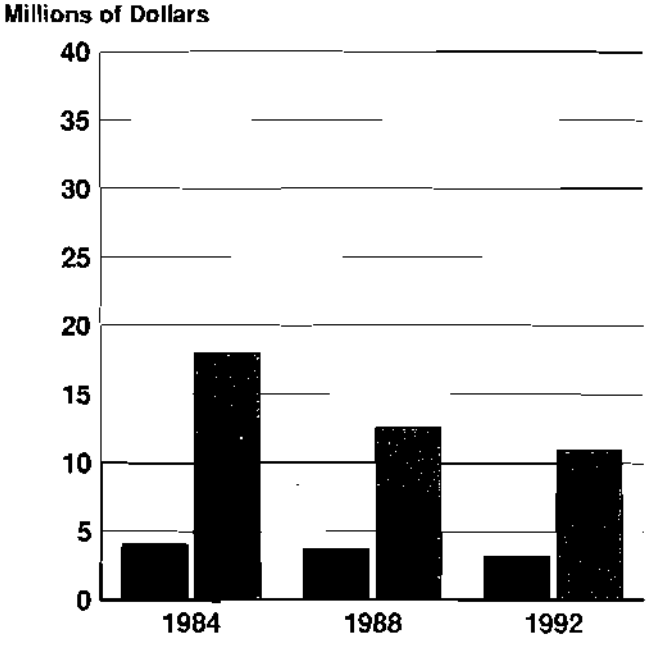
DNC Federal Receipts

RNC Federal Receipts

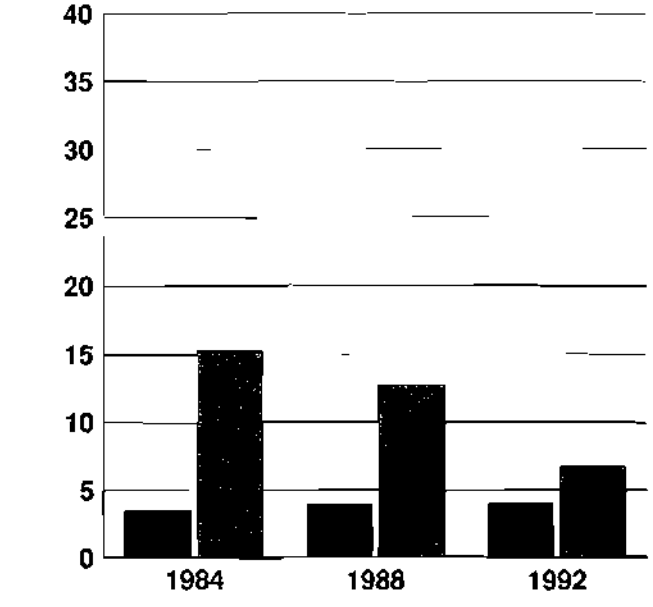
### 1. Year Before Election Year



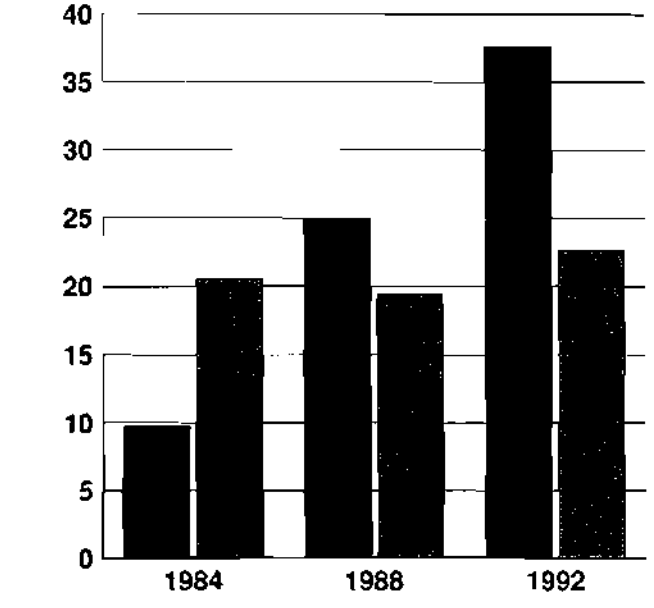

### 2. January Through March of Election Year




### 3. April Through June of Election Year




### 4. July Through 20 Days Before Election Day




[1] DNC is the Democratic National Committee; RNC is the Republican National Committee.

# 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 1992-38**
Loan from Presidential campaign's compliance fund to public funding account to cover cash shortfall until Secret Service reimbursements are received. (Requested by the Clinton/Gore Campaign; Date Made Public: October 28, 1992; Length: 2 pages)

**AOR 1992-39**
Coordinated party expenditure limit for Georgia runoff election. (Requested by the National Republican Senatorial Committee; Date Made Public: November 9, 1992) (See alternative disposition, below.)

**AOR 1992-40**
Company's payment of commissions to party committees for recruiting customers for discounted long-distance phone services. (Requested by Leading Edge Communications; Date Made Public: November 13, 1992)

**AOR 1992-41**
Membership organization's plan for seeking new members and soliciting them. (Requested by the Insurance Coalition of America; Date Made Public: November 19, 1992)

**ALTERNATE DISPOSITION OF AOR**

**AOR 1992-39**
(See AORs, above.) On November 19, 1992, the Commission failed to approve an advisory opinion by the required four votes.

**AO 1992-33: In-Kind Donations from Prohibited Sources for Allocated Activities**

The Democratic and Republican National Party Committees may accept in-kind donations of goods and services from corporations and other prohibited sources in connection with two categories of allocable expenses: (1) administrative activities and (2) fundraising programs that collect both federal and nonfederal funds. (Expenses for these activities are allocable under 11 CFR 106.5(a)(2)(i) and (ii).) However, to ensure that the prohibited funds represented in such a donation are not used to pay for the federal share of the expense--even for a short time--the federal account must transfer the federal share of the value of the goods or services to the nonfederal account in advance or on the day the donation is received. Alternatively, to avoid the practical difficulties of handling same-day transfers and multiple in-kind donations, the committee may pre-pay or escrow the federal portion of anticipated in-kind donations by making an advance bulk transfer from the federal account to the nonfederal account.

Under the escrow or pre-payment alternative, the committee must first make good faith estimates of the amount of in-kind donations it expects to receive and then transfer sufficient funds from the federal account to cover the federal share of the donations. The committee may make bulk transfers rather than separate transfers for each anticipated in-kind donation. The committee may later transfer funds from the nonfederal account to the federal account to adjust for any overpayments of the federal share.

Under either payment method, the committee must report the receipt of in-kind contributions and the transfers from the federal account on Schedules H3 and H4. The opinion provides detailed reporting instructions and sample forms.

This opinion is specifically limited to administrative and fundraising expenses. It does not apply to the receipt of in-kind donations from prohibited sources for other categories of allocable expenses (i.e., generic voter drives, or candidate support or exempt party activities that benefit both federal and nonfederal candidates).

Date Issued: October 14, 1992; Length: 10 pages, including sample forms.

**AO 1992-37: Radio Talk Show Host as Candidate**

Randall A. Terry may continue to host a daily radio talk show while running as a House candidate for the 23rd Congressional District in New York. His radio employment will not result in prohibited corporate contributions from the production company or from the radio stations or network carrying the show, based on the following representations made by Mr. Terry: That the show does not air in the 23rd District, that he will not use the show to promote or raise funds for his candidacy and that his campaign ads will not be run during the

show. The Commission interpreted these representations to include a commitment by Mr. Terry to refrain from attacking his opponent or soliciting contributions or airing ads for those purposes during his show.

Noting that this advisory opinion was based on the facts and representations specific to this case, the agency stated that the opinion was not meant to modify or reverse previous opinions in this area. See AO 1992-5 and opinions cited therein.

The Commission expressed no opinion as to any ramifications of communications law, which is outside its jurisdiction.

Commissioner Lee Ann Elliott wrote a concurring opinion. Date Issued: October 30, 1992; Length: 8 pages, including concurring opinion.

## COURT CASES

**REPUBLICAN PARTY OF KENTUCKY v. FEC**

On October 26, 1992, the U.S. District Court for the District of Columbia dismissed this suit without prejudice, as stipulated by both parties. (Civil Action No. 91-1064 (SSH).) The Republican Party of Kentucky had filed suit alleging that the FEC had failed to act on the administrative complaint the Party had filed in October 1990. The complaint alleged that the Democratic Party of Kentucky had exceeded the limits on contributions and party expenditures.

In stipulating to the dismissal of the suit, both parties agreed to the following terms:

- o During the next 18 months, the Republican Party of Kentucky will not file a new action alleging that the FEC failed to act on the administrative complaint.
- o Every six months, the Party will have access to a chronology of actions the FEC has taken on the complaint.
- o The court's September 1991 protective order will remain in effect until the FEC has taken final action on the complaint. Under the protective order, any information on the complaint that is released to the Party must remain confidential, and all court filings related to the complaint must be retained under seal.

**TRINSEY v. FEC, ET AL.**

On October 27, 1992, the U.S. District Court for the Eastern District of Pennsylvania dismissed a suit filed by John H. Trinsey, Jr., a 1992 Presidential candidate. (Civil Action No. 91-8041.) He had brought suit against 49 of the 50 states (all except New Hampshire) as well as the District of Columbia and Guam, seeking a declaration that the ballot access laws in South Dakota (where allegedly he was denied access to the primary ballot) and the other jurisdictions were unconstitutional. He also asked the court to bar the payment of matching funds to 1992 candidates until he was permitted to gain ballot access.

The court granted defendants' motions to dismiss the suit, noting that the U.S. District Court in South Dakota dismissed, with prejudice, a virtually identical suit filed by Mr. Trinsey. The court further noted that the Eighth Circuit Court of Appeals upheld the South Dakota court's dismissal after carefully considering Mr. Trinsey's claim (Trinsey v. Hazeltine, Civil Action No. 92-1394, September 2, 1992). On this basis, the Pennsylvania district court dismissed the suit even though some of the defendants had not yet filed their motions.

**FEC v. MID-AMERICA CONSERVATIVE POLITICAL ACTION COMMITTEE**

On October 30, 1992, the U.S. District Court for the Northern District of Iowa ordered the Mid-America Conservative PAC and its treasurer to pay a $10,000 civil penalty for failing to file several reports on time. (Civil Action No. C90-2093.) The court also permanently enjoined defendants from late filing of future reports.

The decision was based on a settlement agreement between both parties. Under the settlement procedures, defendants agreed to submit an offer of settlement to the Commission but also agreed to accept the FEC's final determination. The Commissioners unanimously voted to reject the defendants' proposal and to accept an alternative agreement submitted by the FEC's General Counsel. Defendants then objected to the agreement because the Commissioners had not considered the matter in a public session.

In granting the FEC's motion to enforce the settlement agreement, the court pointed out that the Commission had followed its usual procedures in considering and voting on the agreement. The court also noted that defendants could have specified that the agency follow special procedures but did not do so.

# 800 LINE

(continued from page 1)

election (e.g., "1992 general") right on the check or in a signed statement accompanying the contribution. 11 CFR 110.1(b)(2)(i) and (b)(4); 110.2(b)(2)(i) and (b)(4).

- Finally, contributions designated for debt retirement may not exceed the campaign's net debts outstanding for that election. 11 CFR 110.1(b)(3); 110.2(b)(3). If a contribution exceeds the amount of net debts, the committee must either refund it or ask the contributor to redesignate it for another election.

**How do we calculate the campaign's net debts outstanding?** Net debts outstanding consist of unpaid debts incurred with respect to the election minus cash on hand.

- Total unpaid debts include the estimated cost of raising funds to liquidate outstanding debts and, in the case of a terminating committee, estimated winding-down costs.
- Cash on hand consists of currency, deposited funds, traveler's checks, certificates of deposit, treasury bills and amounts owed to the committee in the form of credits, refunds, returns and receivables (or a reasonable estimate of the collectible amount). 11 CFR 110.1(b)(3)(ii).

A campaign must keep adjusting its net debts outstanding as additional funds are received and spent.[1] 11 CFR 110.1(b)(3)(iii).

## Selling Assets

**May a committee sell off its assets in order to raise money to pay its debts?** Yes. However, the entire amount paid is usually considered a contribution, subject to the prohibitions and limits of the Act. 11 CFR 100.7(a)(2); AOs 1991-34 and 1990-3. The Commission has, however, recognized narrow exceptions to this general rule.

**What are these exceptions?** Under the circumstances described below, the sale of a committee asset does not result in a contribution, and the proceeds are not subject to the Act's limits and prohibitions, as long as the item is sold at the "usual and normal charge":

- The isolated sale of a committee asset if the asset was purchased or developed for the committee's own particular use, rather than as a fundraising item, and the asset has an ascertainable market value. AOs 1989-4 and 1986-14. A mailing list developed by the committee might be considered such an asset.
- The sale of campaign equipment or leftover campaign supplies by candidate committees that wish to terminate and plan to use the proceeds for debt retirement. See AOs 1992-24 and 1990-26.

Remember that, under either of these exceptions, a contribution is avoided only if the purchaser pays no more than the "usual and normal charge," as defined under 11 CFR 100.7(a)(1)(iii).

## Receiving Outside Support

**May a party committee help pay a committee's campaign debts?** Yes, a party committee may contribute directly to the campaign (subject to the contribution limits, of course). If the contributions are made after the election, they must be properly designated. 11 CFR 110.1(b)(4) and 110.2(b)(4). Alternatively, the party committee may pay the candidate's creditors. Payments to creditors may be considered in-kind contributions to the candidate (subject to the contribution limits) or, in the case of general election candidates, the payments may be regarded as coordinated party expenditures on behalf of the candidate (subject to the special limits of 2 U.S.C. §441a(d).)[2] 11 CFR 110.7.

**May a committee join with other committees in an effort to retire debts?** Yes. Committees that want to retire their debts may form a joint fundraising committee. Committees should follow the joint fundraising regulations at 11 CFR 102.17 or, in the case of Presidential primary campaigns receiving matching funds, 11 CFR 9034.8.

**May a corporation pay for a fundraising event designed to retire a debt from a past campaign?** No. Payments to sponsor a fundraising event for a candidate are

[1] See illustration in the Explanation and Justification to the cited regulations, 52 FR 762, January 9, 1987.

[2] Local party committees may not make coordinated party expenditures without the prior written authorization of the national or state committee. 11 CFR 110.7(a)(4) and (c).

considered contributions to the candidate. Contributions and expenditures by corporations are prohibited, even if made to help retire campaign debts.

### Using the Candidate's Personal Funds

**May candidates use their personal funds to help pay off debts?** Yes. House and Senate candidates are not limited in the amount of personal funds they may spend on their own campaigns. 11 CFR 110.10(a). A Presidential candidate receiving public funds, however, may contribute no more than $50,000 to his or her own campaign. 11 CFR 9003.2(c) and 9035.2.

**May the campaign repay the candidate for personal funds loaned to the campaign?** Yes, but only if the funds were originally reported as loans from the candidate. As a general rule, personal funds that are donated by the candidate (as distinct from loaned) may not later be converted to a loan. A refund of such a donation would represent the conversion of excess campaign funds to the candidate's personal use, which is prohibited. 2 U.S.C. §439a; 11 CFR 113.2(d); AOs 1991-9, 1987-1 and 1977-58.

### Using Funds from Another Committee Established by the Candidate

**May a candidate transfer funds from his or her nonfederal campaign committee to his or her federal campaign committee to retire debts?** Yes, provided that none of the funds transferred violate the limits or prohibitions of the Act. Moreover, such transfers may trigger registration and reporting obligations for the nonfederal campaign committee. See 11 CFR 110.3(c)(5) for further information.

Note that the Commission has approved regulations that would prohibit transfers from nonfederal campaign committees, although these regulations are not yet effective.3/ See the September 1992 Record, page 1. Further developments will be announced in future issues.

**May a candidate committee retire debts by using funds transferred from another federal committee authorized by the same candidate for a different election cycle?** Yes, as long as:

- The candidate is not actively seeking election to more than one federal office; and
- The committee making the transfer has no net debts outstanding. 11 CFR 116.2(c)(2).

For further information, including the application of contribution limits to funds contained in such transfers, see 11 CFR 110.3(c)(4) and (5). Note that publicly funded Presidential campaigns are subject to further restrictions. See AOs 1990-11 and 1988-5.

Note also that the Commission has proposed regulations that would amend the current regulations on transfers between federal campaign committees. See the September 1992 Record, page 2. Future issues will provide further information on this rulemaking.

### Assigning Debts

**May one authorized committee assign its debts to another authorized committee of the same candidate in order to terminate?** Yes, under certain conditions.

- First, the committee assigning the debts must qualify as a "terminating committee," that is, a committee that receives contributions and makes expenditures only for the purpose of paying debts and winding-down costs.
- Second, the assigning committee must not have any cash on hand or assets to pay any part of its debts and must have been organized for an election already held.4/ 11 CFR 116.1(a) and 116.2(c)(3).

Moreover, both the assigning committee and the committee receiving the debts must follow special notification rules.

**What are these special rules?** The assigning committee must notify each creditor in writing of the name and address of the committee that will receive the debts. This notification must be made at least 30 days before the assignment takes place. Once the debts are assigned, the committee may terminate.

The committee that receives the assigned debts must notify the Commission

(continued)

3 Before a regulation becomes effective, it must be before Congress for 30 legislative days. 2 U.S.C. §438(d). In the case of the nonfederal transfer rulemaking, the 102nd Congress adjourned before 30 legislative days had elapsed; therefore, the regulations must be resubmitted to the 103rd Congress for a new legislative review period.

4 Special rules apply to Presidential candidate committees receiving public funds. See 11 CFR 116.2(c)(3).

in writing that it has assumed the obligation to pay the debts and to report both the debts and the contributions received to retire them. 11 CFR 116.2(c)(3)(i) and (ii).

**Terminating the Committee; Settling Debts**

**When may a committee terminate and stop filing reports?** A committee may file a termination report if:

- o It has paid, settled or otherwise extinguished all its debts (11 CFR 102.3 and 116.2(c)(i));
- o Has ceased raising or spending funds (11 CFR 102.3);
- o Does not have any funds or assets available to pay debts owed by a committee authorized by the same candidate if that committee is unable to pay its debts (11 CFR 116.2(c)(ii)); and
- o Is not involved in an ongoing enforcement matter.

Note that if a candidate has authorized more than one committee for the same election, the principal campaign committee may not terminate until the other authorized committees have also met the qualifications for termination. 11 CFR 102.3(b).

Upon filing an acceptable termination report, the committee may stop reporting.

**What if a committee has debts?** A committee may extinguish its debts by settling them for less than the amount owed, but the committee must qualify as a "terminating committee" (one that receives contributions and makes expenditures only for the purpose of paying debts and winding-down costs). 11 CFR 116.1(a) and 116.2(a)(1). Furthermore, the committee must file a debt settlement plan that is subject to Commission review. 11 CFR 116.7(a).

**What is a debt settlement plan?** A debt settlement plan gives pertinent information on all of the committee's debts and its agreements with creditors to settle some or all of them for less than the amount owed. The committee must postpone paying creditors the agreed-upon amounts for debts that are being settled until after the Commission has reviewed the debt settlement plan. See 11 CFR 116.7 for procedures on filing debt settlement plans on FEC Form 8.

Once the committee has settled or otherwise extinguished all of its outstanding debts and the Commission has reviewed the debt settlement plan, the committee may pay the creditors the settlement amounts and then file its termination report.

**Does the unpaid amount of a settled debt result in a contribution from the commercial vendor?**[5] Not under the following conditions:

- o Credit was initially extended by the vendor in the ordinary course of business with terms substantially the same as those extended to nonpolitical debtors of similar risk and with debts of similar size;
- o The committee undertook all reasonable efforts to satisfy the outstanding debt (e.g., through fundraising, reducing overhead costs or liquidation of assets);
- o The commercial vendor made the same efforts to collect on the debt as those made to collect from a nonpolitical debtor in similar circumstances (e.g., late fee charges, referral to a debt collection agency, litigation); and
- o The committee submitted a debt settlement statement on FEC Form 8 for Commission review in accordance with 11 CFR 116.7. 11 CFR 100.7(a)(4) and 116.4(a)-(c).

**Bankruptcy**

**How should a committee handle debts discharged through bankruptcy?** If a candidate or committee is released from debts through a bankruptcy court decree pursuant to Chapter 7, the committee must include in a debt settlement plan the court order as well as a list of the obligations from which the committee is released. 11 CFR 116.7(g). Although a political committee may not be eligible for a Chapter 7 discharge, the Commission will treat an authorized committee's debts as settled for purposes of the Federal Election Campaign Act if the candidate received a Chapter 7 discharge that applies to the committee's debts.

**Disputed Debts**

**What should a committee do about disputed debts?** Commission regulations define a disputed debt as a bona fide disagreement between the creditor and the committee as to the existence of a debt or the amount owed. If something of value was

[5] A commercial vendor is any business or individual who provides the goods or services in question to a candidate or political committee in the usual and normal course of business. 11 CFR 116.1(c).

provided to the committee, the committee must continue to report the following information until the dispute is resolved:

- o The amount the committee admits it owes;
- o The amount the creditor claims is owed; and
- o Any amounts the committee has paid the creditor.

The committee may note in its report that disclosure of the disputed debt is not an admission of liability or a waiver of the committee's claims against the creditor.

In the case of a "terminating committee," the committee must describe in its debt settlement plan any disputed debts and the committee's efforts to resolve them. 11 CFR 116.10.

### Unpayable Debts

**What if a committee cannot pay a debt because the creditor can't be located or has gone out of business?** The committee must continue to report the debt until it has been outstanding at least two years. At that point, the committee may request a Commission determination that the debt is unpayable. The committee must submit its request in writing, following procedures described in 11 CFR 116.9. (A terminating committee must include the request in its debt settlement plan.) Once the committee receives FEC notification that the debt is unpayable, it may list the debt as unpayable on its next report and thereafter cease reporting the debt.

### Debt Liability

**May the candidate, treasurer or committee members be held personally liable for debts owed by the committee?** The Act and FEC regulations do not govern personal liability for payment of committee debts. Debt claims and liabilities are generally governed by state law. AOs 1989-2, 1979-1 and 1975-102.

**PUBLIC APPEARANCES**

12/3-6 The Council of State Governments
Des Moines, Iowa
John Surina, Staff Director

## REPORTS

### GEORGIA RUNOFF ELECTION FOR SENATE SEAT

Georgia held a Senate runoff election on November 24. The runoff was required under Georgia law because none of the candidates in the November 3 general election received a majority vote. The top two vote-getters in that election (the major party nominees) were candidates in the runoff.

A pre-election report for the runoff was not required due to time constraints. However, committees of the runoff candidates were required to file 48-hour notices on contributions. A post-general election report, due December 3, was also required.

The runoff candidates had a separate contribution limit for the election. 11 CFR 110.1(j)(1) and 110.2(i)(1); see also 11 CFR 100.2(d)(2). However, there was no additional $17,500 limit for contributions by the Republican or Democratic national committees and Senatorial campaign committees, since that limit applies to the entire election year. See 110.2(e).

The Commission was unable to decide whether a separate coordinated party expenditure limit applied to this election. See "Alternate Disposition of AOR," page 6.

# 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 October 26 and November 9, 1992. 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 3339**
**Respondents:** Senator Ben Bagert Committee to Put Louisiana First, Carroll M. Chiasson, treasurer
**Complainant:** FEC initiated
**Subject:** Excessive contributions
**Disposition:** $1,650 civil penalty

**MUR 3488**
**Respondents:** (a) Dembrow for Congress Committee, Robert E. Creager, treasurer (MD); (b) Emily Gray (MD)
**Complainant:** Sean Hagan (MD)
**Subject:** Disclaimer
**Disposition:** (a) Reason to believe but took no further action; sent admonishment letter; (b) no reason to believe

**MUR 3654**
**Respondents:** Laughlin for Congress - 88, Everet Kennemer III, treasurer (TX)
**Complainant:** FEC initiated
**Subject:** Failure to file 48-hour notices on time
**Disposition:** Reason to believe but took no further action

**FEC PUBLISHES NONFILERS**

The Commission recently cited the committees of the candidates listed below for failing to file reports. The names of authorized committees that fail to file reports are published pursuant to 2 U.S.C. §438(a)(7). Enforcement actions against nonfilers are pursued on a case-by-case basis.

| Candidate | Office Sought | Report Not Filed |
|---|---|---|
| Genis | Senate/CA | Pre-General |
| Hudson | Senate/GA | Pre-General |
| Morrow | Senate/UT | Pre-General |
| Sellers | Senate/AL | 3rd Quarter<br>Pre-General |
| Anthony[1]/ | House-OK/06 | Pre-General |
| Cain | House-TX/30 | 3rd Quarter<br>Pre-General |
| Conboy | House-MA/09 | Pre-General |
| Davis | House-CA/29 | Pre-General |
| Donnelly | House-WA/06 | Pre-General |
| Gaddy | House-TX/21 | Pre-General |
| Golar | House-NY/06 | 3rd Quarter<br>Pre-General |
| Hayes | House-AR/01 | Pre-General |
| Herbert | House-CA/51 | Pre-General |
| Johnson | House-TX/30 | Pre-General |
| Lee | House-IL/19 | Pre-General |
| Meek | House-FL/17 | Pre-General |
| Montgomery | House-MO/01 | Pre-General |
| O'Hara | House-MS/05 | Pre-General |
| Pierson | House-IN/04 | Pre-General |
| Seagraves[1]/ | House-OR/05 | Pre-General |
| Shaver | House-IN/02 | Pre-Genreal |
| Solomon | House-NJ/01 | Pre-General |
| Sturges[1]/ | House-PA/17 | Pre-General |
| Tyler[1]/ | House-NC/01 | Pre-General |
| Valencia | House-CA/50 | Pre-General |
| Walker | House-IL/01 | Pre-General |

[1]Committees of these candidates filed their reports after the deadline for publication as nonfilers.

# INDEX

The first number in each citation refers to the "number" (month) of the 1992 Record issue in which the article appeared; the second number, following the colon, indicates the page number in that issue.



(continued)

# PUBLICATIONS

**CAMPAIGN FINANCE BROCHURE SERIES**

The FEC's Information Services Division distributes a series of free brochures to help candidates, political committees and the general public comply with the federal campaign finance law and get the most out of the agency's services. Each brochure summarizes a different aspect of the law or FEC resources. To order, fill out the form below and mail it to the FEC.

Name: _____

Street Address: _____

City/State & Zip Code: _____

Check the brochures you want and mail to: Federal Election Commission, Information Services Division, 999 E Street, NW, Washington, DC 20463

___ **The $1 Tax Checkoff** answers questions taxpayers may have when deciding whether to check "yes" or "no" to the 1040 tax-form question: Do you want $1 of your federal tax to go to the Presidential Election Campagin Fund?

___ **Public Funding of Presidential Elections** gives a brief history of the Presidential public funding program--including the $1 tax checkoff for the Presidential Election Campaign Fund--and an explanation of how the process works.

___ **Using FEC Campaign Finance Information** explains how to gather information about the financial activity of candidates and political committees. It describes the FEC's computer indexes and suggests ways to use them.

___ **Sale and Use of Campaign Finance Information** discusses the legal and illegal uses of information contained in reports and statements filed with the FEC. The brochure also explains what steps a committee may take to ensure that its individual contributors are not solicited illegally.

___ **10 Questions from Candidates** answers questions on the law most frequently asked by candidates and candidate committees.

___ **Advisory Opinions** explains how individuals and committees may seek guidance from the Commission by requesting advisory opinions (AOs). An AO is an official Commission response to a question concerning the application of the law to a specific activity.

___ **Filing a Complaint** explains how to register a formal complaint with the Commission concerning a possible violation of the law. The brochure also describes how complaints are processed.

___ **Candidate Registration**

___ **Committee Treasurers**

___ **Contributions**

___ **Corporate/Labor Communications**

___ **Corporate/Labor Facilities**

___ **Independent Expenditures**

___ **Political Ads and Solicitations**

___ **State/Local Elections and Federal Law**

___ **Trade Associations**

___ **Volunteer Activity**

**CHANGE OF ADDRESS**

**Political Committees**

Treasurers of registered political committees automatically receive the Record. A change of address by a political committee (or any change to information disclosed on the Statement of Organization) must, by law, be made in writing on FEC Form 1 or by letter. The treasurer must sign the amendment and file it with the Secretary of the Senate, the Clerk of the House or the FEC (as appropriate) and with the appropriate state office.

**Other Subscribers**

Record subscribers who are not registered political committees should include the following information when requesting a change of address:

- o Subscription number (located on the upper left hand corner of the mailing label);
- o Name of the subscriber;
- o Old address; and
- o New address.

Subscribers (other than political committees) may correct their addresses by phone as well as by mail.

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