FEDERAL ELECTION COMMISSION

RECORD

May 1992 999 E Street NW Washington DC 20463 Volume 18, Number 5

PUBLIC FUNDING

FEC CHAIRMAN PREDICTS 1996 SHORTFALL

In an April 3 press conference, Chairman Joan D. Aikens announced that, although the Presidential Election Campaign Fund will narrowly avoid a shortfall for this year's Presidential elections, the Fund will definitely run out of money for the 1996 elections unless Congress takes action. The FEC estimates that, without a legislative change in the mechanism for funding the elections, the 1996 shortfall will run between $75 and $100 million.

Chairman Aikens said a shortfall was inevitable due to a "fatal flaw" in the public funding program: The taxpayer checkoff on federal income tax returns--the sole source of public funding for Presidential elections—has remained at one dollar since its inception in 1973; by contrast, payouts to candidates and convention committees are indexed for inflation. For example, this year's Democratic and Republican nominees in the November election will each receive $55.2 million in public funds—more than double the $21.8 million each candidate was paid in 1976. The Commission has alerted Congress to the need for legislative change if the public funding system is to survive.

The Chairman also explained why a 1992 shortfall, predicted earlier by the FEC, has been averted.

First, 1992 requests for matching funds have been much lower than in previous election cycles; thus far, candidates have received only $17 million. This is partly the result of the candidates' late start and the small number of candidates--only nine—that have qualified for matching funds.

Second, more money was available for matching fund payments than the FEC had anticipated. Inflation was lower than previously estimated, leaving more money available for matching funds once public funds were set aside for the major party nominees, whose grants are indexed to inflation. Additionally, checkoff receipts for tax returns processed during the first two months of this year totaled $5.5 million, $1.6 million more than last year. The Chairman said it was too early to tell whether this was due to increased public awareness or merely to more taxpayers filing early.

Chairman Aikens released information on checkoff participation for tax returns

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filed last year. The first question on the federal tax form is: "Do you want $1 to go to the Presidential Election Campaign Fund?" Nationally, 19.5 percent of returns filed in 1991 had the "yes" box checked. While participation reached a high of 28.7 percent for returns filed in 1980, it has hovered at about 20 percent in recent years. State-by-state statistics for returns filed in 1991 showed that Hawaii had the highest participation rate (32 percent) and Idaho, the lowest (9 percent). (Call the FEC for information on specific states.)

The press conference was also held to urge the 40 million Americans who had yet to file their tax returns to "make an informed choice" when answering the checkoff question. "Taxpayers typically check a box or leave it blank based on misconceptions, not facts," the Chairman said. "Whether they check 'yes' or 'no,' we want taxpayers to make an informed choice." To educate taxpayers on the checkoff during the recent tax season, the FEC sponsored a nationwide public awareness program that featured media public service announcements as well as a toll-free checkoff hotline to order a free brochure explaining the Presidential Fund.

"We want taxpayers to know that Presidential candidates who accept these public funds must limit their campaign spending," the Chairman said. She also stressed that the funds can only be used for legitimate campaign expenses.

Chairman Aikens pointed out that checking "yes" does not change the filer's tax obligation or reduce his or her refund; it simply directs that one dollar of U.S. Treasury money be used for Presidential elections.

APRIL MATCHING FUND PAYMENTS

On March 30, the Commission certified over $4 million in matching fund payments to eight candidates. The U.S. Treasury made the payments early in April. As of the April payment, 1992 Presidential primary candidates have received $16.8 million in matching funds, as shown in the table. Candidates have requested $5.8 million for the May payment.

Matching Fund Payments

	April Payment	Cumulative Total
Republicans		
Patrick Buchanan	$1,043,306	$ 2,091,035
George Bush	666,877	4,901,097
Democrats		
Jerry Brown	306,798	857,506
Bill Clinton	$1,112,939	3,169,803
*Tom Harkin	185,721	1,734,407
*Bob Kerrey	357,738	1,624,380
*Paul Tsongas	347,647	1,093,389
*Douglas Wilder	0	289,027
New Alliance Party		
Lenora Fulani	143,693	1,033,094
Totals	**$4,164,719**	**$16,793,739**

*These candidates have withdrawn from the Presidential race. Governor Wilder withdrew on January 8, Senator Kerrey on March 6, Senator Harkin on March 9 and former Senator Tsongas on March 19.

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

Joan D. Aikens, Chairman
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Walter J. Stewart, Secretary of the Senate, Ex Officio Commissioner
Donnald K. Anderson, Clerk of the House of Representatives, Ex Officio Commissioner

REGULATIONS

PROPOSED REGULATIONS ON TRANSFERS FROM CANDIDATE'S NONFEDERAL CAMPAIGN

On April 15, the Commission published a Notice of Proposed Rulemaking seeking comments on a proposed regulation on transfers from a candidate's state or local campaign to his or her federal campaign (57 FR 13054). The current regulations at 11 CFR 110.3(c)(6) allow a nonfederal campaign to make such transfers as long as the transferred funds do not contain contributions that are impermissible under the Act (i.e., "soft money".) The proposed rule responds to a petition for rulemaking filed by Congressman William Thomas (R/CA). His petition alleges that the regulations fail to prevent nonfederal campaigns from using impermissible funds to raise permissible contributions that are then transferred to federal campaigns.

The Commission also seeks comments on a number of related questions and alternative approaches, described below. Interested parties are welcome to raise other issues that the Commission should address. Comments must be received by May 15 and should be addressed to Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW, Washington, DC 20463.

Should the Commission decide to promulgate a new rule on nonfederal campaign transfers, it would not become effective until the next election cycle.

Exclusion of Contributions Raised with Impermissible Funds

The proposed regulation would require a nonfederal campaign to exclude a contribution from the amount transferred if it resulted from a fundraising activity financed with funds prohibited under the Act. The Commission is also considering an amendment that would require the federal campaign, when reporting the receipt of a nonfederal transfer, to certify that the transferred contributions were raised using permissible funds.

Partial Impermissible Funding. The agency seeks comments on certain practical questions raised by the proposed rule. If a fundraising activity was only partially paid for with impermissible funds, should all the contributions received from that fundraiser be ineligible for transfer to the candidate's federal campaign? Or should only a portion be ineligible based on the percentage of permissible funds used to finance the fundraising activity?

If the percentage approach were adopted, how should the candidate determine what percentage of fundraising expenses was paid with permissible funds if multiple disbursements for the fundraiser were made over several days? Should the candidate examine the cash on hand on each disbursement date to determine the percentage? What if, on a given disbursement day, the ratio of permissible to impermissible funds in the account is lower than the ratio of permissible to impermissible funds ultimately received from the fundraising activity? Should the candidate be allowed to offset lower ratios on some disbursement days with higher ratios on other disbursement days, thereby maximizing the amount of permissible funds eligible for transfer?

Alternative: Prohibit All Nonfederal Transfers. Recognizing the difficulty of demonstrating that transferred contributions were raised with permissible funds, the Commission is seeking comments on an alternative proposal that would prohibit all transfers of funds from nonfederal to federal campaigns.

Contributor Authorizations

The proposed rule would require a nonfederal campaign to inform contributors of its intention to transfer their contributions to the candidate's federal campaign. The nonfederal campaign would have to exclude from the transfer the contributions of any contributor who did not provide a written authorization for the transfer. The notice also seeks comment on a second approach that would allow the nonfederal campaign to transfer a contribution as long as the contributor did not object.

Nonfederal Campaign's Segregation of Permissible Funds

Some nonfederal campaigns may choose to set up separate accounts for permissible and impermissible funds in order to simplify the recordkeeping process for future transfers to a federal campaign. Under such circumstances, should the activity be seen either as election-influencing activity that may trigger federal candidate status under 11 CFR 100.3 or as testing-the-waters activity under 11 CFR 100.7(b)(1)?

(Regulations continued next page)

PROPOSED REGULATIONS ON DISCLAIMER NOTICES AND SPECIAL FUNDRAISING PROJECTS

The Commission recently published a Notice of Proposed Rulemaking seeking comments on draft regulations that address two areas of change: (1) the disclaimer notice required on solicitations by unauthorized committees; and (2) the use of a candidate's name in the name of an unauthorized committee's fundraising project. (Unauthorized committees are those not authorized by a candidate, such as party committees and PACs).

The proposed rules, summarized below, were published in the Federal Register on April 15 (57 FR 13056). Comments are due on May 15 and should be addressed to Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW, Washington, DC 20463.

Disclaimers by Unauthorized Committees

Under the current disclaimer regulations, when an unauthorized committee solicits funds for itself through general public advertising but does not advocate the election or defeat of any candidate, the disclaimer must simply state who paid for the communication. See 11 CFR 110.11(a)(1)(iv)(A). The proposed rule would additionally require the disclaimer to state whether the communication was authorized by any candidate or candidate's committee, even if the solicitation did not mention any candidate. This additional disclaimer requirement, however, would not apply to solicitations by national party committees.

The proposed change would conform the regulation with 2 U.S.C. §441d(a)(3).

Use of Candidate's Name in Special Project Name

While an unauthorized committee is prohibited from using a candidate's name in the committee's registered name, the committee may solicit contributions for itself under a special project name that includes the name of a candidate, such as "Americans for John Doe." Concerned that the public could misinterpret these solicitations to mean that contributions would be going to the candidate, the Commission has proposed the following rules to minimize the potential for confusion in this situation.

- A new regulation under 110.11(a)(1)(iv) would require the disclaimer to state the name of the committee paying for the solicitation and whether the special project has been authorized by the candidate named in the project title or any other candidate. (For example: "Paid for by the XYZ Committee. Not authorized by John Doe or any other federal candidate.")
- Under proposed 102.14(d), the committee would have to return or refund any checks received in response to the solicitation if they were not made payable to the committee's registered name.

The Commission also seeks comments on related issues:

- Whether the regulations should treat party committees differently, given a party's interest in using a candidate's name in a fundraising event for another candidate or for general party fundraising;
- Whether the use of a candidate's name in the name of a special project should be banned unless the candidate gives permission; and
- Whether the regulations should specify the size and placement of the proposed disclaimer notice.

CORPORATE/LABOR CONFERENCE WASHINGTON, DC, MAY 21-22

This one and one-half day conference will focus on the campaign finance law's requirements for corporations, trade associations, labor organizations and their PACs. Call the FEC to receive a conference invitation (800/424-9530 or 202/219-3420).

The conference will be held at the Washington Court Hotel, 525 New Jersey Avenue, NW, Washington, DC 20001-1527; 202/628-2100. (When making reservations, notify the hotel that you will be attending the FEC conference).

The $105 registration fee must be postmarked by May 7 to avoid a $10 late fee. The fee includes materials, breakfasts, lunch and refreshments.

LEGISLATION

FEC RECOMMENDS CHANGES TO ELECTION LAW

On April 3, the Commission sent its 1992 legislative recommendations to the President and the Congress. The document asked Congress to consider making several changes to the Federal Election Campaign Act and the public funding statutes. The Commission believes that the recommendations, if adopted, would enhance the agency's ability to administer and enforce the law. Included in the package of 36 recommendations were three new proposals.

- **$25,000 Annual Limit.** The FEC suggested that an individual's contribution to a candidate should count against the $25,000 annual limit for the calendar year in which the contribution is made rather than the year of the candidate's election. This would eliminate confusion and inadvertent violations when individuals make contributions in the current year for elections to be held in future years or make contributions to retire the debts of elections held in previous years.
- **Incomplete Contributor Information.** To address the recurring problem of reports lacking complete contributor information, the FEC recommended that committees be required to make an additional request for any missing information after a contribution is received. The request would have to state that the committee was required to disclose the information under federal law. The Commission also suggested that contributors be made liable for submitting information that they know to be false.
- **Honoraria Technical Amendment.** Because the Commission has no jurisdiction over honoraria transactions occurring after August 14, 1991, the date when 2 U.S.C. §441i was repealed, the Commission asked Congress to delete honoraria from the list of definitions of what is not a contribution (2 U.S.C. §431(8)(B)(xiv)).

Of the remaining recommendations, submitted in previous years, several sought changes in the public funding program. One of these alerted Congress to the projected 1996 shortfall in the Presidential Election Campaign Fund, stressing that legislative action is essential to preserve the public funding system (see page 1). The agency also asked Congress to amend the matching fund program by imposing stricter eligibility requirements and by eliminating the state-by-state spending limits.

1992 SUMMARY OF STATE CAMPAIGN FINANCE LAWS

Recently published by the FEC's Clearinghouse on Election Administration, Campaign Finance Law 92 contains summaries of the campaign finance laws in each state with citations to the relevant state code. It also includes quick reference charts listing each state's reporting requirements, contribution and solicitation restrictions and expenditure limitations.

To purchase a copy, list the title and stock number (052-006-00052-0) and enclose a $28 check made payable to the Superintendent of Documents. Send the order to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

For further information on this and other Clearinghouse publications, call 800/424-9530 (ask for the Clearinghouse) or call the office directly at 202/219-3670.

PUBLICATIONS

1992 DISCLOSURE DIRECTORY AVAILABLE

The FEC recently released the 1992 edition of the Combined Federal/State Disclosure Directory, a guidebook listing the state and federal offices responsible for disclosing reports and information in a number of areas.

- Campaign finance
- Personal finances of officials and candidates
- Public financing
- Spending on state initiatives and referenda
- Lobbying
- Candidates on the ballot
- Election results
- Voting accessibility
- Election-related enforcement actions
- Corporate registrations

The directory identifies office supervisors and other individuals knowledgeable in the subject areas. Fax numbers are also listed.

A limited number of copies are available free of charge. To order, call 800/424-9530 and ask for Public Records or dial the office directly at 202/219-4140.

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 1992-12
Candidate's ownership of campaign van after campaign is over. (Requested by LaRocco for Congress; Date Made Public: March 26, 1992; Length: 4 pages)

AOR 1992-13
Loans to law firm of attorney considering becoming a candidate. (Requested by James M. Blackburn; Date Made Public: April 9, 1992; Length: 13 pages)

AOR 1992-14
Candidate's instructions on use of excess campaign funds in event of his death. (Requested by Congressman Dan Burton; Date Made Public: April 21, 1992; Length: 1 page)

ALTERNATE DISPOSITION OF ADVISORY OPINION REQUEST

AOR 1991-30: Tax Exempt Corporation's Lobbying Communications to Contributors Listed on FEC Reports

Requested on behalf of Citizens for a Sound Economy, Inc. On April 2, the Commission failed to approve an advisory opinion by the required four votes. See Agenda Documents #91-104 and #92-43.

ADVISORY OPINION SUMMARIES

AO 1991-32: Charges for Incorporated Consultant's Fundraising Services

CEC, Inc., a new campaign fundraising company, plans to develop a highly responsive donor list by sending out an initial solicitation to identify individuals who indicate a willingness to support the company's future clients: nonincumbent Republican candidates with conservative views. CEC's goal in developing the donor list is to reduce fundraising costs by increasing the rate of return per fundraising letter. Based on the expected success rate of the donor list and attempts to reduce operating costs, CEC intends to offer its services at "materially lower" fees than other consultants.

CEC's charges--especially considering expected losses during its first years, possible subsidies from company directors and waivers of their salaries--raise the issue of whether the company will be charging less than the normal charge and thus making prohibited contributions to its candidate clients.

Other aspects of CEC's proposed operations also raise the issue of prohibited contributions: the content of the initial solicitation; the recruitment of potential candidates as clients; the underpayment of political advisors; and the use of affiliated companies' services. While certain of these activities will not result in corporate contributions or expenditures, others are more problematic; in some instances, the Commission lacked sufficient information to make a determination.

Initial Solicitation

Using names purchased or acquired from other sources, CEC plans to send out an initial mailing asking readers for permission to include their names on CEC's donor list for future solicitations on behalf of specific candidates to be selected by CEC.

Certain wording in the initial mailing could be interpreted as promoting an electoral result (i.e., the request that readers consider future solicitations for as-yet-to-be-named conservative Republican nonincumbents), thus raising the question of whether the communication expressly advocates the election of clearly identified candidates. Corporate express advocacy messages communicated beyond the restricted class are prohibited under 2 U.S.C. §441b. In this case, however, the communication will ultimately be paid by CEC's client campaigns, since charges will

include an amortized portion of the mailing costs and other start-up costs. The initial solicitation is thus part of a commercial venture--an attempt to charge less by realizing a high rate of return for clients rather than an attempt to advocate support of candidates. Therefore, no corporate expenditures will result.

Recruiting Potential Candidates as Clients

In recruiting candidates as clients for its services, CEC representatives may meet with announced candidates and with individuals interested in becoming candidates. This activity will not result in prohibited contributions to announced candidates since the company will not provide anything of value to them but will merely describe its services. Recruitment of individuals who are "testing the waters," however, could involve an effort to persuade the individuals to become candidates, which would be a prohibited use of corporate funds. See 11 CFR 100.7(b)(1) and 100.8(b)(1). The Commission did not express any opinion on this issue, lacking additional information on recruitment communications.

CEC proposes to use informal advisors, both to evaluate candidates and potential candidates and to recruit those chosen by CEC. Although advisors may not receive full compensation for their time, their uncompensated services will not result in contributions to candidates because the selection and recruitment efforts are aimed at the solicitation of business rather than influencing campaigns. If, however, advisors were to persuade potential candidates to run, in-kind contributions would result, both from the advisors (in the amount of their uncompensated services) and from CEC (in the amount reimbursed to advisors for out-of-pocket expenses).

CEC's underpayment of informal advisors may also call into question the company's charges to clients, discussed later in this summary.

Candidate Solicitation Activities

CEC's solicitation letters on behalf of candidate clients will appear on company letterhead and will be signed by a company officer. (The letter will explain that the contributions should be sent directly to the candidate's campaign.) The use of company letterhead represents something of value to the candidate but, as the mailing is a commercial activity, fully paid in advance by the client, it does not represent a corporate contribution. This conclusion is qualified by whether CEC charges the usual and normal charge.

As direct mail pieces, the letters must include a disclaimer: Paid for by (name of client campaign). 11 CFR 110.11(a)(1).

CEC's Fees: Usual and Normal Charge

CEC will charge each client an advance fee possibly in the range of $5,000 to $10,000 to cover costs directly related to the solicitation letters. It will also collect a fee estimated at between 5 and 7 percent of total contributions realized from CEC's solicitation for the client. This charge will cover the company's day-to-day operating costs. CEC charges will include a portion of the company's start-up costs. (Such costs will be amortized and included in the budget projections for the next several years.) Due to start-up costs, the company anticipates that it will operate at a loss during its first years.

To avoid making prohibited contributions to its candidate clients, CEC must charge no less than the "usual and normal charge" for its services, i.e., the prevailing commercially reasonable rate. 11 CFR 100.7(a)(1)(iii)(B). Lacking information on normal industry practice, the Commission was unable to make a definitive determination as to whether CEC charges will be "usual and normal." The Commission, however, did consider the basis for the lower fees.

CEC bases its low percentage charge (between 5 and 7 percent) on the expected high rate of return from the donor list. This percentage may result in client fees equal to those charged by other companies, should CEC's projected high returns materialize. However, actual proceeds may not meet projections. Furthermore, CEC's percentage may be substantially less than fees charged by other direct mail companies (see AO 1979-36).

CEC's low fees are also based on reduced operating costs, partly achieved by using temporary employees and by paying outside consultants considerably less than the value of their services. Moreover, to compensate the company for initial losses its first years, at least one company officer may, if necessary, provide additional working capital and agree to a salary waiver.

In view of the company's policy to charge "materially" less than other consultants, however, company losses (particularly over a long term), infusions of capital to compensate for the loss, salary waivers--or any combination of the three--would raise the rebuttable presumption that CEC was charging less than the usual and normal charge. To avoid making

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prohibited contributions, CEC should ensure that charges for services and time provided to each client are commercially reasonable and that start-up costs are properly and reasonably amortized.

Use of Affiliated Company's Services

CEC, owned by Edgar Prince, plans to use office space, financial services and charter aircraft services provided by three other corporations owned by Mr. Prince. CEC will pay the usual and normal charges, paying office rent on a monthly basis and the other charges within 30 days of the billing date. These arrangements will not result in corporate contributions. Moreover, no contribution would result even if CEC were to pay less than the usual and normal charge or if billing or payment were extended beyond a commercially reasonable time, unless the services related to specific campaigns. However, such practices could indicate that CEC's charges for its own services are less than the usual and normal charge.

(Date Issued: March 13, 1992; Length: 17 pages)

AO 1992-3: Corporation's Payment of Benefits for Employee/Candidate on Unpaid Leave

Reynolds Metal Company may pay fringe benefits for an employee on unpaid leave to pursue a federal candidacy because the benefits will be paid under a preexisting company policy that applies to all employees and because the period covered is relatively brief--31 days.

Under FEC rules, a corporation may not pay fringe benefits, such as health and life insurance and retirement, for an employee on leave without pay to participate in a federal campaign. 11 CFR 114.12(c)(1). However, under the circumstances presented—the preexisting general policy and the limited extension of benefits—Reynold's payment of fringe benefits will not be a prohibited contribution to the employee's campaign but, rather, may be considered a form of compensation payable to the employee as "other earned leave time" under section 100.7(a)(3)(iii). By contrast, see AO 1976-70, where the corporation did not have a preexisting policy.

Commissioner Scott E. Thomas filed a concurring opinion. (Date Issued: March 11, 1992; Length: 7 pages, including concurring opinion)

AO 1992-5: Candidate's Appearance in Cable Public Affairs Programs

Congressman James P. Moran may appear in two public affairs forums televised on local cable stations in his district. The programs will not result in contributions to his 1992 reelection campaign because their content will be restricted to a discussion of public issues, with no mention of his campaign.

An activity involving or referring to a federal candidate results in a contribution or expenditure by the financial sponsor if the activity includes the solicitation or acceptance of contributions to the candidate's campaign or the express advocacy of any candidate's election or defeat; an activity may also be considered campaign related even without those two elements. See, for example, AOs 1992-6, 1990-5 and 1988-27.

Neither of the series featuring Congressman Moran includes any solicitations, express advocacy or campaign promotion. Therefore, no contribution will result. (For a similar opinion on a candidate's appearance in a radio public affairs series, see AO 1977-42.)

Any issues arising from the Communications Act, Federal Communications Commission rules or House of Representative rules are outside the FEC's jurisdiction. (Date Issued: March 13, 1992; Length: 3 pages)

AO 1992-8: Tax Seminars as Fundraising Mechanism

Congressman William H. Orton may conduct educational seminars on tax and banking laws as a fundraising technique for his reelection campaign. He plans to use the appropriate disclaimer in his promotional brochure, which will clearly inform the reader that the seminar fee is a contribution to his campaign. His campaign will treat all proceeds as contributions, and all related expenses as expenditures. The activity is permissible because the law does not curtail the fundraising methods a campaign may use as long as the activity complies with all relevant FEC regulations. However, any ramifications under the tax laws or the rules of the House of Representatives are outside the Commission's jurisdiction. (Date Issued: April 3, 1992; Length: 3 pages)

COURT CASES

NEW LITIGATION

FEC v. Populist Party (92-0674)

The FEC asks the court to declare that defendants violated the law's prohibitions and limits on contributions. In addition to the Populist Party (a political committee), the FEC names the following defendants: Liberty Lobby, Inc.; Cordite Fidelity, Inc. (wholly owned by Liberty Lobby); the Bob Richards for President Committee, Washington, DC (not authorized by any candidate); Willis A. Carto, as treasurer of the two committees and individually (he is a director of the two corporations); and Blayne E. Hutzel individually (he is the controller of the corporations and the Populist Party).

The FEC asks the court to find that:

- Liberty Lobby and Cordite Fidelity made corporate contributions totaling $350,404 to the Populist Party.
- Mr. Carto consented to the making of the above contributions.
- The Populist Party and Mr. Carto, as treasurer, knowingly accepted $368,304 in corporate contributions from Liberty Lobby, Cordite Fidelity, the Committee to Defend Liberty Lobby and Seipold & Sasser, an incorporated law firm;
- Mr. Hutzel knowingly accepted those contributions (except $15,400 contributed by the law firm);
- The Populist Party and Mr. Carto, as treasurer, knowingly accepted $35,000 from individuals in excess of the contribution limits;
- The Populist Party and Mr. Carto, as treasurer, made $28,333 in excessive contributions to the Maureen Salaman for Vice President Committee and $64,756 in excessive contributions to the Bob Richards for President Committee (DC); and
- Bob Richards for President Committee (DC) and Mr. Carto, as treasurer, knowingly accepted $9,756 in excessive contributions from the Populist Party.

The FEC further requests that the court assess a civil penalty; order the committees and Mr. Carto to refund the excessive and prohibited contributions; and permanently enjoin all defendants from further similar violations.

U.S. District Court for the District of Columbia, Civil Action No. 92-0674, March 19, 1992.

REPORTS

CHANGE IN PRIMARY DATES FOR OHIO AND SOUTH CAROLINA

The Ohio legislature has postponed the May 5 Congressional primary to June 2. In South Carolina, a federal court rescheduled the primary from June 9 to August 25; the runoff has also been rescheduled from June 23 to September 8. The Ohio and South Carolina pre-election reporting dates that appeared in the January issue are therefore incorrect. The new reporting dates are shown below.

OHIO PRIMARY, JUNE 2

Close[1] of Books	Reg./Cert. Mailing Date[2]	Filing Date
May 13	May 18	May 21

SOUTH CAROLINA PRIMARY AND RUNOFF

August 25 Primary

Close[1] of Books	Reg./Cert. Mailing Date[2]	Filing Date
August 5	August 10	August 13

September 8 Runoff

Close[1] of Books	Reg./Cert. Mailing Date[2]	Filing Date
August 19	August 27[3]	August 27

[1]This date is the end of the reporting period. If the committee is new and has never reported before, its first report must cover all activity through this date, including pre-registration activity and, if applicable, any activity that occurred before the individual became a candidate.

[2]Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

[3]The mailing date is the same as the filing date because the computed mailing date would fall one day before the primary was held.

AUDITS

FINAL AUDIT REPORT ON 1988 ROBERTSON CAMPAIGN

On March 26, 1992, the Commission approved the final audit report on Americans for Robertson, Inc. The Committee was the Rev. Pat Robertson's 1988 Presidential campaign committee. Based on audit findings, the Commission made an initial determination that the Committee must repay $388,544 in public funds to the U.S. Treasury. Mr. Robertson had received $10.4 million in matching funds.

The Committee has 30 days to dispute the repayment amount. The Commission will consider any response from the Committee when making a final determination.

The Commission's initial determinations and significant audit findings are summarized below.

Spending in Excess of Expenditure Limits

Overall Limit. The final audit report found that the Committee had exceeded the overall spending limit by $1.025 million. Included in this amount was approximately $570,000 in apparent in-kind contributions from two corporations that provided computer equipment and charter airplane services to the Committee. (Auditors identified certain linkages between the corporations and the candidate. For example, the airplane primarily used by the campaign was owned by Airplanes Inc., a subsidiary of CBN Continental Broadcasting Network Inc., of which Mr. Robertson was the director and former president.)

FEC auditors calculated that, of the $1.025 million in excessive expenditures incurred by the Committee, $659,970 was paid when the Committee's account contained matching funds and was therefore potentially subject to pro rata repayment.

State Expenditure Limits. The final audit report also found that the Committee had incurred expenses that exceeded the Iowa and New Hampshire expenditure limits by a total of $1.142 million. Reducing this amount by debts that had not yet been paid, auditors determined that $1.110 million was subject to pro rata repayment.

Repayable Amount. The Commission based its repayment determination on the larger of the amounts subject to pro rata repayment--the $1.110 spent in excess of the state limits. Applying the formula used to calculate what portion of that amount represented public funds, as opposed to private contributions (i.e., the pro rata portion), the Commission made an initial determination that the Committee repay $338,632.

Nonqualified Campaign Expenses

The audit report found that the Committee had incurred $163,569 in nonqualified campaign expenses such as tax penalties and undocumented transfers. The initial repayment determinations on these findings totaled $49,912, the pro rata portion of these expenses.

Press Travel Reimbursements

FEC Auditors discovered that the Committee had apparently received excessive reimbursements from media firms for press travel. The Commission approved a recommendation that, absent a showing to the contrary, the Committee repay the firms $105,635.

CORRECTION TO BUSH REPAYMENT DETERMINATION

The April Record article on the George Bush for President Committee final audit report stated that the Committee had to repay $79,235 in public funds, but that total failed to include an additional $33,845 repayment for stale-dated committee checks. The correct repayment amount is therefore $113,080. The Bush Committee has repaid the entire amount to the U.S. Treasury.

FEDERAL REGISTER

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

1992-3
11 CFR Parts 9034, 9036 and 9037: Matching Fund Submission and Certification Procedures for Presidential Primary Candidates; Final Rules; Correction to Announcement of Effective Date (from November 6 to November 7, 1991) (57 FR 6665, February 27, 1992)

1992-4
11 CFR Part 106: Allocation of Federal/Nonfederal Expenses; Final Rule; Transmittal to Congress (57 FR 8990, March 13, 1992); Correction (57 FR 11137, April 1, 1992)

1992-5
11 CFR Parts 100 and 104: Loans From Lending Institutions to Candidates and Political Committees; Final Rule; Announcement of April 2 Effective Date (57 FR 11262, April 2, 1992)

1992-6
11 CFR Parts 102 and 110: Special Fundraising Projects by Political Committees; Notice of Proposed Rulemaking (57 FR 13056, April 15, 1992)

1992-7
11 CFR Part 110: Transfers of Funds from State to Federal Campaigns; Notice of Proposed Rulemaking (57 FR 13054, April 15, 1992)

PUBLIC APPEARANCES

5/11 Hope College
Washington, DC
Kathlene C. Martin, Information Services Division

5/15 Minnesota Institute of Legal Education
Minneapolis, Minnesota
N. Bradley Litchfield
Associate General Counsel for Policy

5/18 International Institute of Municipal Clerks
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