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Table of Contents

Publications

- 1 FEC Releases New Campaign Guide for Candidates
- 2 Updated Edition of FEC Regulations Now Available
- 11 Order Form

Court Cases

- 1 FECA Preempts Minnesota Campaign Finance Statute
- 5 Common Cause v. FEC (92-2538)
- 5 Khachaturian v. FEC
- 6 FEC v. Political Contributions Data
- 7 New Litigation

Conferences

- 2 San Francisco Conference, September 30 – October 1

Regulations

- 3 FEC Seeks Comments on Proposed Enforcement Regulations

Public Appearances

- 4 FEC Staff Member to Visit Harrisburg, PA, August 19 and 20

- 7 Advisory Opinions

Compliance

- 8 MUR 3234: Party Committee Solicitation Triggers Federal Committee Status
- 8 MURs Released to the Public
- 8 Federal Register

- 11 Index

- 12 Notice on Subscription Renewal

Publications

FEC Releases New Campaign Guide for Candidates

The Commission recently published a new edition of the *Campaign Guide for Congressional Candidates and Committees*. Written in clear language, the Guide is intended to be a primary source of information on the steps that House and Senate candidate committees must take to comply with the federal campaign finance law, from registration through termination.

The revised Guide features:

- New and revised material based on regulations and advisory opinions issued since the previous edition (July 1988); updated topics include transfers, foreign nationals, best efforts and amended reports.
- An expanded sample forms section that includes Schedule C-1 (Bank Loans) and Form 8 (Debt Settlement);
- An index to help the reader locate topics.

Copies of the Guide will automatically be mailed to treasurers of authorized candidate committees (delivery may take up to three weeks). The FEC urges treasurers to order additional free copies for campaign

(continued on page 2)

Court Cases

FECA Preempts Minnesota Campaign Finance Statute

The U.S. Court of Appeals for the Eighth Circuit recently held that the Federal Election Campaign Act (FECA) preempted the Minnesota Congressional Campaign Reform Act in its entirety. The court's June 17, 1993, decision in *John Vincent Weber, et al. v. William M. Heaney, et al.*, affirmed a district court holding. The Commission was an *amicus curiae* in the litigation.

Background

Under the Minnesota Congressional Campaign Reform Act, U.S. House and Senate candidates on the general election ballot may choose to limit their campaign expenditures to specified amounts. A contributor to these candidates can then receive up to a \$50 refund from the state. If one candidate agrees to the limit but the major party opponent does not, neither candidate is subject to the spending limit, but the first candidate is entitled to a public funding grant from the state. Violations of the voluntary expenditure limit are subject to civil penalties of up to four times the amount of the excess spending.

(continued on page 5)

Publications

(continued from page 1)

staff responsible for fundraising, recordkeeping or reporting. All readers are welcome to order free copies, using the form on page 11.

Because the Guide includes citations to FEC regulations, readers may also wish to order the new *11 CFR* (see below). ♦

Updated Edition of FEC Regulations Now Available

An updated edition of FEC regulations, the *11 CFR*, was recently published by the Office of the Federal Register. All treasurers of political committees should be receiving their copies from the FEC in about three weeks. Anyone else may order free copies by using the form on page 11.

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The new edition includes regulatory revisions that became effective during 1992¹ and one that became effective in 1993:

- The ban on transfers from a candidate's nonfederal campaign to his or her federal campaign (11 CFR 110.3(d)). The prohibition became effective July 1, 1993. Any nonfederal funds remaining from pre-July transfers had to be removed from the federal campaign account by July 30. For more information, see the *June Record*, page 4.
- The ban on the use of candidate names in the names of special projects and other communications sponsored by unauthorized committees (11 CFR 102.14(a)). This new regulation became effective November 4, 1992.
- The revisions to the regulations on the allocation of federal and nonfederal expenses (11 CFR 106.5 and 106.6). The revised rules add a nonfederal point to the ballot composition ratio used by party committees; expand to 70 days the time during which a nonfederal account may transfer funds to pay the nonfederal share of a joint expense; and allow 60 days after a fundraising program for adjustments to the ratio. The revisions became effective June 19, 1992.
- New regulations that explain procedures for filing petitions for rulemakings (11 CFR Part 200). The effective date was September 4, 1992.
- Interim rules on ex parte communications (11 CFR Part 201), effective December 9, 1992.
- The repeal of the regulations on honoraria, effective January 15, 1992. Legislation enacted in August 1991 prohibits any federal officeholder or employee from accepting

¹ Although effective in April 1992, revised rules on bank loans were included in the previous edition of the 11 CFR. See 11 CFR 100.7(b)(11)(i)-(ii), 100.8(b)(12)(i)-(ii) and 104.3(d)(1)-(3).

honoraria, thus ending the FEC's jurisdiction in this area. The repeal of honoraria regulations corresponds to the 1991 repeal of the honoraria provision in the Federal Election Campaign Act (2 U.S.C. §441i). ♦

Conferences

San Francisco Conference September 30 – October 1

The FEC's first conference for the 1994 election cycle will be held in San Francisco and will offer workshops for candidate committees, party committees, and corporate and labor PACs and their connected organizations.¹ To place your name on a mailing list to receive registration materials for the 1-and-1/2 day conference, call 800/424-9530 or 202/219-3420.

At the conference, FEC Commissioners and staff will present workshops on the federal campaign finance law. In addition, representatives of the Internal Revenue Service and the California Political Fair Practices Commission will be on hand to answer questions.

The \$135 fee for the conference covers three meals (two continental breakfasts and a lunch) and a reception. The conference will be held at the Hotel Nikko San Francisco (415/394-1111). To receive the group rate of \$120 per night, notify the hotel that you will be attending the FEC conference. ♦

¹ The FEC will hold a November conference in Washington, DC, for corporations, trade associations, labor organizations and their PACs. Call the FEC to place your name on the mailing list.

Regulations

FEC Seeks Comments on Proposed Changes to Enforcement Regulations

The Commission is seeking public comment on proposed changes to its enforcement regulations (11 CFR Part 111). The Notice of Proposed Rulemaking also requests comments on several proposed additions to the regulations.

Comments, which must be in writing, are due September 24 and should be addressed to Susan E. Propper, Assistant General Counsel, 999 E Street, NW, Washington, DC 20463. Anyone wishing to testify at the public hearing on this rulemaking, scheduled for October 20, should so indicate in their comments.

Copies of the Notice of Proposed Rulemaking, published in the Federal Register on July 8 (58 FR 36764), may be ordered at a cost of 5¢ per page. Call 800/424-9530 (ask for Public Records) or 202/219-4140.

Proposed Changes

The draft regulations propose changes in the areas listed below. (Citations are to 11 CFR Parts 102 and 111.)

- Termination of committee's registration and reporting obligations (102.3)
- Liability of candidates and committee treasurers (111.27)
- Confidentiality and public disclosure of enforcement matters (111.22 and 111.23)
- Sources of funds used to pay penalties; reporting (111.20)
- Computation of time for enforcement-related deadlines (111.2 and 111.6)
- Extensions of time (111.26)
- Procedures for filing and amending complaints and for notifying respondents (111.4 and 111.5)
- Reason to believe findings; letters of admonishment; reconsideration of

reason to believe findings (111.8, 111.9 and 111.10)

- Investigations, including subpoenas and depositions (111.10, 111.12, 111.13 and 111.15)
- Referrals of knowing and willful violations to the Attorney General of the United States (111.19)
- Civil suits, including notifications to complainants and respondents (111.21)
- Representation by counsel (111.25)

Highlights of Changes

Several of the proposed changes are summarized below.

Committee Termination. The draft rules would incorporate a current FEC policy under which a political committee's reporting obligation ends only when it receives a letter from the FEC stating that its termination report has been accepted. The amendment would also clarify that termination is precluded when a committee is involved in an enforcement matter, audit or litigation with the FEC or when it has not yet satisfied the terms of a conciliation agreement.

Liability of Treasurers and Candidates. This new section would explain the legal liability of candidates and current and former treasurers, in both their official and individual capacities.

Under the proposed rules, if the agency found reason to believe or probable cause to believe a violation had occurred, the current treasurer would be named in the findings, whether or not the violation took place during his or her tenure. The treasurer would be named only in his or her official capacity. Comments are sought on whether it would be preferable to make findings against candidates, former treasurers or other persons if the alleged violations occurred before the current treasurer took office.

The FEC could take action against a treasurer for failing to carry out the legal responsibilities imposed on a treasurer (e.g., filing reports, maintaining records). In such cases, both

the committee and the treasurer would be liable for the full amount of any civil penalty imposed by the court. If the committee was insolvent or unwilling to pay the penalty, the treasurer would be personally liable for the payment.

A candidate or treasurer could be found individually liable if he or she had personal knowledge of, or was actively involved in, an alleged violation.

Complaints Made Public. New language would specifically permit the Commission to make complaints public. The agency believes this new policy is consistent with the legislative history of the confidentiality provision (2 U.S.C. §437g(a)(12)). The agency requests comments on whether the public file should also include the responses of the persons alleged to have committed the violations. The agency will continue to keep ongoing investigations confidential, however, as required by the statute.

The proposed rules would also allow the Commission to provide information on the status of the complaint to the complainant, who would have to agree not to disclose any of the information. This proposal would reduce the need for complainants to file suit against the agency simply to find out what action the Commission has taken on their complaints. See 2 U.S.C. §437g(a)(8)(A).

Under another proposal, respondents could waive their privileges of confidentiality.

Sources of Funds to Pay Penalties; Reporting. The proposed rules would permit impermissible funds—i.e., funds not complying with the limitations and prohibitions of the Federal Election Campaign Act—to be used to pay civil and criminal penalties. However, these funds could not be deposited in a political committee's account and would have to be reported as "other receipts" and "other disbursements" in itemized memo

(continued on page 4)

Regulations

(continued from page 3)

entries, regardless of amount. Permissible funds received expressly and exclusively to pay civil penalties would have to be deposited in the committee's account and would also have to be itemized, regardless of amount, as "other receipts" and "other disbursements."

Complaints Based on News Stories. The proposed rules would establish that the Commission does consider complaints based on news stories when sufficient facts are presented. Comments are sought on whether, in the case of an FEC-generated case based on a news story, the respondents should have an opportunity to reply before the Commission decides whether to find reason to believe a violation has occurred.

Time Limits and Extensions of Time. The proposed rules would explain how response time is computed when an enforcement-related action is subject to a deadline. Under the draft rules, the Commission would not routinely grant extensions of time. A person would have to apply for an extension of time at least 5 days before the deadline (3 days, to request an extension for motions on subpoenas and orders) and would have to show good cause for the extension. Absent extraordinary circumstances, the Commission would not consider a late-filed brief.

Subpoenas. The proposed rules would clarify that, before challenging an FEC subpoena or order in the courts, the respondent must file a timely motion to quash or modify the subpoena or order with the FEC. Comments are sought on whether to lengthen the time for filing motions to quash subpoenas.

Violations of Conciliation Agreements. The proposed rules would make clear that the Commission may authorize suit for a violation of a conciliation agreement, such as the failure to pay a civil penalty. The

proposed rules would also reflect that the agency may take action against both the committee and the treasurer who signed the agreement, and may ask the court to impose an additional penalty.

Topics Under Consideration

The Commission is seeking comments on whether certain topics should be covered in the regulations:

- Enforcement hearings
- Notification to candidates of enforcement actions involving their authorized committees
- Refiled complaints; failure to raise issues in a complaint
- The agency record when compliance matters proceed to litigation
- Statements of reason
- Investigatory materials provided to respondents
- Faxed documents

Highlights of Topics

Some of the topics are summarized below; also listed are some of the questions the Commission has raised for comment.

Hearings. The Commission is considering the possibility of conducting hearings in enforcement matters and seeks comments on several questions that arise: Should hearings be held in all cases or just certain cases, for example, those involving possible knowing and willful violations? At what point in the enforcement process should hearings be held? Who should have the opportunity to testify? Should testimony be compelled? What topics should be addressed? The Commission notes that hearings could increase expenses for both the Commission and the respondents and could prolong the enforcement process.

Notification to Candidates. Currently when a case involves an authorized committee, the candidate is sent a courtesy copy of the complaint or, in the case of an internally generated matter, the reason to believe findings. Should the Commission send candidates additional

documents, such as the General Counsel's briefs and proposed conciliation agreements? The confidentiality provisions and the attorney/client privilege may not permit such disclosure if the candidate is not named as a respondent.

Refiled Complaints. The Commission seeks comments on a provision that would preclude complainants from the same complaint after it has been dismissed unless it provides new evidence. Comments are also sought on whether to treat a complainant's failure to raise an issue in a complaint or an amended complaint as a waiver of the complainant's right to raise the issue in a later court suit.

Statements of Reasons. The Commissioners issue statements of reasons when a complaint is partially or entirely dismissed because the Commission could not reach a four-vote majority on whether to take action. Comments are sought on whether the regulations should explain the procedures used for issuing statements of reasons.

Faxed Documents. Comments are sought on the feasibility of the FEC's accepting faxed copies of documents that do not require an original signature, such as responses to complaints and designations of counsel. A backup hard copy would later be required. ♦

FEC Staff Member to Visit Harrisburg, PA, August 19 and 20

Dorothy Yeager, an FEC public affairs specialist, will visit Harrisburg, Pennsylvania, August 19 and 20, to help candidates and party committees understand and comply with the federal campaign finance law. Representatives of candidate and party committees wishing to schedule a meeting with Ms. Yeager should call her at 800/424-9530 or 202/219-3420.

Court Cases

(continued from page 1)

The FECA "supersede[s] and preempt[s] any provision of state law with respect to election to Federal office." 2 U.S.C. §453. The FEC addressed the Minnesota preemption question in AO 1991-22, requested by three members of the Minnesota delegation to the U.S. Congress. The Commission concluded that the Campaign Reform Act sought to regulate an area under the sole authority of federal law and was therefore preempted. The requesters, seeking the same ruling from the courts, filed suit against the state officials responsible for enforcing the Campaign Reform Act.

District Court Decision

In deciding whether the FECA preempted the Minnesota Act, the U.S. District Court for the District of Minnesota found that §453 and its legislative history were too ambiguous to provide much guidance and therefore looked to the FEC's interpretation of §453 in its regulations. (11 CFR 108.7 provides, in part, that federal law supersedes state law in the area of expenditure limitations.) The court found that "this regulation is probably the most persuasive evidence that section 453 was intended to preempt all state laws purporting to regulate congressional campaign expenditures." The court noted that the regulation passed Congressional review in 1977. "Thus, the Court infers that this regulation, because it was tacitly approved by Congress, represents a valid interpretation of Congressional intent." The court also accorded deference to the Commission's conclusion in AO 1991-22.

On June 11, 1992, the court held that the Minnesota Campaign Reform Act was preempted in its entirety based on the FEC's interpretation of §453. The court permanently enjoined Minnesota from implementing or enforcing the Act.

Court of Appeals Decision

Concluding that §453 was susceptible to more than one reading, the court of appeals nevertheless held that "under every plausible reading of §453, the Campaign Reform Act falls squarely within the boundaries of the preempted domain."

Like the district court, the court of appeals was persuaded by the FEC preemption regulation: "We find this duly authorized regulation is a further express preemption of the Campaign Reform Act."

The court rejected appellants' argument that the regulation was not applicable to voluntary expenditure limits. The court even questioned whether the limits were "truly voluntary" in light of the benefits bestowed on those who complied with them and the penalties imposed on those who did not. ♦

Common Cause v. FEC (92-2538)

On March 30, 1993, the U.S. District Court for the District of Columbia Circuit approved an agreement between Common Cause and the FEC to suspend this litigation. In light of that agreement, the court dismissed the suit. The case may, however, be reopened in October.

In its suit, Common Cause claimed that the FEC had failed to take required action on its administrative complaint filed in December 1990. The complaint alleged that the National Republican Senatorial Committee (NRSC) had made excessive contributions and expenditures in connection with the 1988 Montana Senate race and had failed to report them accurately. The complaint also alleged that the Montana Republican Party had violated the law by participating in the NRSC's alleged violations.

Common Cause and the FEC agreed to suspend litigation for six months, at the end of which time the FEC is to report on its efforts to resolve the complaint. Under the

court's dismissal order, if Common Cause is not satisfied with the Commission's actions on the complaint, the parties have until October 30 to reopen the litigation. After that date, the matter will automatically be dismissed with prejudice. ♦

Khachaturian v. FEC

On May 17, 1993, the U.S. District Court for the Eastern District of Louisiana dismissed this case, ruling that Jon Khachaturian failed to raise a substantial constitutional challenge to the \$1,000 contribution limit as applied to his independent candidacy. The district court had previously certified the constitutional questions to the U.S. Court of Appeals for the Fifth Circuit. That court, however, concluded that the certification was premature and remanded the case to the district court with instructions to determine whether certification was merited. The district court found that it was not.

Mr. Khachaturian has appealed the dismissal.

Background

Mr. Khachaturian was an independent candidate for the U.S. Senate in Louisiana's 1992 open primary. His suit, filed shortly before the election, contended that the \$1,000 limit on contributions from individuals (2 U.S.C. §441a(a)(1)(A)) discriminated against his candidacy because it prevented him from raising sufficient funds to compete effectively against the incumbent major-party candidate.¹ He said that he had contribution

(continued on page 6)

¹ Mr. Khachaturian had made similar claims in an advisory opinion request in which he asked for an exemption from the \$1,000 limit on constitutional grounds. In its response, AO 1992-35, the Commission said that it did not have jurisdiction to rule on the constitutionality of the limit but noted that the Supreme Court had upheld the limit in *Buckley v. Valeo*.

Court Cases

(continued from page 5)

pledges of \$200,000 but could only accept \$75,000 under the limit.

The district court certified his constitutional questions to the court of appeals in accordance with 2 U.S.C. §437h.²

(Mr. Khachaturian also asked the court to prohibit the FEC from enforcing the \$1,000 limit against him and to order Louisiana's Secretary of State to place his name on the general election ballot even if he lost the primary. The court denied the motion.)

Remand by Court of Appeals

The court of appeals remanded the case to the lower court with instructions to determine whether Mr. Khachaturian's challenge was frivolous in light of *Buckley v. Valeo*. In that decision, the Supreme Court upheld the \$1,000 contribution limit as constitutional on its face and rejected claims that it discriminated against independent and minor-party candidates. In order for Mr. Khachaturian to present a plausible challenge to the \$1,000 limit as applied to his candidacy, the court of appeals said that he would at least have to provide factual support for his argument that "the \$1,000 limit had a serious adverse effect on the initiation and scope of his candidacy." *Khachaturian v. FEC*, 980 F2d 330, 331 (5th Cir. 1992) (en banc).

Dismissal by District Court

The district court said that Mr. Khachaturian "fail[ed] to come even close" to alleging facts suggesting that amounts in excess of the \$1,000 limit would have affected the outcome of the election. The court concluded:

"The law is clear...that the \$1,000 campaign contribution limit applies to minor party candidates....As a matter of law, the plaintiff fails to raise a colorable constitutional claim." The court therefore granted the FEC's motion to dismiss. (No. 92-3232, Section F) ♦

FEC v. Political Contributions Data, Inc. (PCD)

Reversing a district court decision, the U.S. Court of Appeals for the Second Circuit, on June 17, 1993, found that the FEC was liable for payment of PCD's attorney's fees because the agency's position on the "sale or use" restriction was not "substantially justified."

The court instructed the district court to determine the appropriate award of fees and expenses.

The FEC has asked for a rehearing or a rehearing *en banc*.

Background

The first two decisions in this litigation (the merits phase) ruled on the FEC's interpretation of the "sale or use" restriction at 2 U.S.C. §438(a)(4). That provision prohibits anyone from copying information on individual contributors from FEC reports and selling the information or using it "for the purpose of soliciting contributions or commercial purposes."

The FEC filed suit against PCD claiming that the corporation had violated the "commercial purposes" prohibition through its sale of contributor lists compiled from FEC reports.

In 1990, the U.S. District Court for the Southern District of New York found that the FEC's interpretation of "commercial purpose" was reasonable and granted summary judgment to the agency.¹

The court of appeals, however, reversed that decision in a 1991 ruling. The court held that PCD's sale of contributor lists was permissible. In the court's view, certain safeguards in PCD's lists (i.e., the absence of street addresses and phone numbers and the inclusion of a warning against the prohibited use of listed information) ensured that the lists would be used for informative, rather than commercial, purposes. The court further found that the FEC's interpretation of §438(a)(4) was "unreasonable" and in conflict with the broad disclosure purpose of the Federal Election Campaign Act. The court instructed the district court to dismiss the case. The Commission did not seek Supreme Court review of the decision.

PCD applied to the district court for an award of \$55,022 in attorney's fees and other expenses pursuant to the Equal Access to Justice Act (EAJA). In a July 1992 ruling,² the district court denied the application on the basis that it had been filed late. Even if it had been filed on time, the court held, the application would have to be denied because the FEC's position on the merits was "substantially justified" for EAJA purposes. PCD appealed.

Court of Appeals Ruling on Attorney's Fees

In its June 1993 decision, the three-judge court of appeals found that PCD had filed its application for attorney's fees within 30 days of the "final judgment," as required under the EAJA. The court said that, in this instance, the date of "final judgment" was the last day the Commission could have applied for a writ of *certiorari* with the Supreme Court.

The court of appeals also reversed the district court's ruling that the FEC's position was "substantially

² Section 437h states: "The district court immediately shall certify all questions of constitutionality of this [Federal Election Campaign] Act to the United States court of appeals for the circuit involved, which shall hear the matter sitting *en banc*."

¹ Federal Election Commission v. Political Contributions Data, Inc., 753 F.Supp. 1122 (S.D.N.Y. 1990), rev'd, 943 F.2d 190 (2d Cir. 1991).

² Federal Election Commission v. Political Contributions Data, Inc., 807 F.Supp. 311 (S.D.N.Y. 1992), rev'd, No. 92-6240 (2d Cir. June 17, 1993).

justified" under the EAJA. (Attorney's fees must be awarded to the prevailing nongovernment party unless the court finds the position of the federal agency to have been "substantially justified." 28 U.S.C. §2412(d)(1)(A).)

The court found that the ruling on the merits by the earlier court of appeals panel, which found the FEC's interpretation to be "unreasonable," precluded the current panel from finding the agency's position "substantially justified" under the EAJA. "This is so," the court reasoned, "because the legal standards which governed the merits phase of this litigation are precisely those to be applied to the EAJA question."³ ♦

New Litigation

Democratic Senatorial Campaign Committee (DSCC) v. FEC (93-1321)

The DSCC asks the court to find that the FEC's dismissal of its complaint was contrary to law and to direct the agency to take expedited action on the allegations.

The DSCC alleged that the National Republican Senatorial Committee (NRSC) had exceeded the coordinated party expenditure limit (§441a(d) limit) in connection with the 1992 Georgia general election. Although the FEC's General Counsel had recommended that the Commission find reason to believe the NRSC had overspent the limit, the Commission, in a 3-3 vote, failed to approve the motion. With no likelihood of breaking the tie, the Commission closed the file.

The DSCC claims that the FEC should have pursued the case and that the dismissal was inconsistent with the statute and with FEC advisory opinions.

U.S. District Court for the District of Columbia, Civil Action No. 93-1321, June 25, 1993.

Dukakis v. FEC Simon v. FEC

In these two cases,¹ petitioners challenge Commission repayment determinations. Both Michael Dukakis and Senator Paul Simon received primary matching funds for their 1988 Presidential campaigns. The FEC's final repayment determinations require the Dukakis Committee to return \$491,282 to the U.S. Treasury and the Simon Committee to return \$412,163.

Contending that the FEC failed to notify them of their repayment obligations within the three-year statutory deadline, petitioners ask the court whether the FEC is time-barred from requiring any repayment.

Although each suit raises other issues unique to its case, petitioners filed a joint motion asking the court to consolidate the two cases, since the ruling on the late-notification issue could resolve the cases without need to examine the other issues, should the court rule in the petitioners' favor. The court denied the motion on June 23, 1993, but agreed to schedule the cases on the same day and before the same panel of judges.

U.S. Court of Appeals for the District of Columbia Circuit, Civil Action No. 93-1219; March 19, 1993 (Dukakis); Civil Action No. 93-1252; April 2, 1993 (Simon). ♦

Advisory Opinions

Advisory Opinion Requests

The requests for advisory opinions (AORs) listed below are available for review and comment in the FEC's Public Records Office.

AOR 1993-10

Use of excess campaign funds by unsuccessful candidate. (Antonio J. Colorado; June 28, 1993; 6 pages)

AOR 1993-11

Disposition of funds transferred from nonfederal campaign committee to 1988 general election legal and compliance fund of publicly funded Presidential campaign. (Dukakis-Bentsen Committee; June 29, 1993; 3 pages)

AOR 1993-12

Contributions by native American tribe (unincorporated), which enters into "self-determination" contracts with federal agency and also charters commercial enterprises that may have future federal contracts. (Mississippi Band of Choctaw Indians; July 2, 1993; 2 pages)

AOR 1993-13

Use of former Senator's excess campaign funds for scholarship program. (Wyche Fowler for Senate Campaign Committee; July 8, 1993; 2 pages)

AOR 1993-14

Application of state campaign finance law to federal account of state party committee and to contributors to that account. (Rhode Island Democratic State Committee; July 13, 1993; 3 pages plus attachments)

AOR 1993-15

Status of funds raised by Presidential committee to defray legal fees in connection with Department of Justice investigation of committee's fundraising consultant. Tsongas Committee, Inc.; July 13, 1993; 5 pages plus attachments) ♦

³ The court relied on *Oregon Natural Resources Council v. Madigan*, 980 F.2d 1330 (9th Cir. 1992).

¹ Michael S. Dukakis and Dukakis for President Committee, Inc. v. FEC and Paul Simon and Paul Simon for President Committee, Inc. v. FEC.

Compliance

MUR 3234 Party Committee Solicitation Triggers Federal Committee Status

In MUR 3234, a party committee became a federal political committee by spending over \$1,000 for a solicitation featuring a U.S. Senate candidate. The committee's failure to register and report as a federal political committee, to include a disclaimer in the solicitation and to comply with the federal restrictions on contributions resulted in a \$30,000 civil penalty.

The committee, which nominated candidates for both federal and nonfederal office, was registered as a party organization with a state government but not with the FEC. Its solicitation was part of a newspaper advertisement that featured a picture of an incumbent Senator (a candidate for reelection) and criticized his stance on a specific issue. The ad said that residents of the state "should be represented in Washington by men and women who support our values—not oppose them." In requesting contributions, the ad pledged "to be your voice" and to let the Senator and like-minded incumbents "know that we remember how they voted" on the issue discussed in the ad. The committee paid over \$42,000 for the ad and later spent about \$3,500 for a direct mail solicitation with similar content.

The Commission determined that the party committee had become a federal political committee when it made expenditures in excess of \$1,000 for the newspaper ad. This determination was based on the fact that the ad solicited money to be used to influence federal elections and on 11 CFR 102.5(a)(3). Under that regulation, a party committee solicitation that mentions a federal candidate is presumed to be for the purpose of influencing a federal election, and

contributions resulting from such solicitations are subject to the limitations and prohibitions of the Federal Election Campaign Act.

The committee's failure to register as a federal political committee and to file regular reports was a violation of 2 U.S.C. §§433(a) and 434(a).

The committee also violated §441d(a) by failing to publish the required disclaimer in its solicitations. ("Paid for by [name of committee] and not authorized by any candidate or candidate's committee.") Federal law requires disclaimers on all publicly advertised solicitations for contributions.

Finally, the party committee received and spent contributions that were permissible under state law but prohibited or excessive under federal law, a violation of §§441a and 441b(a).

Under the terms of the conciliation agreement, the party committee agreed to pay the \$30,000 penalty; to register and file reports as a federal political committee; and to comply with the accounting and allocation procedures for federal and nonfederal activity (11 CFR 102.5(a) and 106.5). ♦

Federal Register

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

1993-15

Filing Dates for Texas Special Runoff Election (58 FR 29413, May 20, 1993)

1993-16

Compliance Procedures: 11 CFR Parts 4, 5, 102 and 111; Notice of Proposed Rulemaking (58 FR 36764, July 8, 1993)

MURs Released to the Public

Listed below are FEC enforcement cases (Matters Under Review or MURs) recently released for public review. The list is based on the FEC press releases of May 28, June 21, 23 and 29, and July 12 and 19, 1993. Files on closed MURs are available for review in the Public Records Office.

MUR 2598

Respondents: (a) Texas Republican Congressional Committee, Henry Santamaria, treasurer; (b) Texans for Beau Boulter, Donald H. Wills, treasurer; (c) Friends of Dick Arme, Rick Woolfolk, treasurer (TX)

Complainant: FEC initiated (audit for cause)

Subject: Excessive and prohibited contributions; failure to disclose or forward earmarked contributions; contribution from nonfederal account; failure to disclose complete and accurate debt information

Disposition: (a) \$40,000 civil penalty; (b) \$250 civil penalty; (c) \$1,500 civil penalty

MUR 2765

Respondents: (a) Missouri Republican State Committee—Federal Account, Harvey Tettlebaum, treasurer; (b) Southeastern Missouri University Foundation; (c) Danforth for Senate, Melvin Bahle, treasurer (MO); (d) Southeast Missouri State University; (e) Friends of Bill Emerson, John Janssen, treasurer (MO); (f) Bush—Quayle '88, Inc., Stanley Huckaby, treasurer (DC); (g) George Bush for President, Inc., Stanley Huckaby, treasurer (DC); (h) Quayle for Vice President—1988, William Neale, treasurer (DC); (i) Congressman William Emerson (MO)

Complainant: Janet Smith (MO)
Subject: Campaign rally; in-kind, excessive and prohibited contributions

Disposition: (a) Probable cause to believe; attempted to conciliate but took no further action; (b) reason to believe; attempted pre-probable cause

conciliation but took no further action; (c)-(e) reason to believe but took no further action; (f) took no action; (g)-(i) no reason to believe

MUR 3212

Respondents: Durenberger '94 Volunteer Committee, Delwyn Olson, treasurer (MN)

Complainant: FEC initiated
Subject: Excessive contributions; failure to file 48-hour notices
Disposition: \$12,000 civil penalty

MUR 3385

Respondents: Bush-Quayle '88, J. Stanley Huckaby, treasurer (VA)
Complainant: FEC initiated (Presidential audit)
Subject: Overcharging press and Secret Service on air transportation
Disposition: \$10,000 civil penalty (and press reimbursement of \$133,818)

MUR 3439/3370

Respondents (all in MA): (a) Gerry E. Studds; (b) Studds for Congress Committee, Margaret D. Xifaras, treasurer; (c) Massachusetts Democratic State Committee-Federal Funds Account, Ronald M. Shaich, treasurer
Complainant: Leon J. Lombardi, chairman, Massachusetts Republican Party (3370); Jon L. Bryan (3439)
Subject: Disclaimer; Statement of Organization; coordinated party expenditures; incomplete contribution identification

Disposition: (a) No reason to believe; (b) reason to believe but took no further action; (c) \$6,500 civil penalty

MUR 3455

Respondents: (a) Waffle House, Inc., Joe W. Rogers, president (GA); (b) Coverdell Senate Committee, Marvin Smith, treasurer (GA)
Complainant: James D. Hogan, Jr. (GA)
Subject: Corporate contributions; fundraising solicitation
Disposition: Reason to believe but took no further action (sent admonishment letter)

MUR 3465

Respondents: Committee to Elect Bradley, Gerald A. Bradley, treasurer (IL)
Complainant: FEC initiated
Subject: Failure to file 48-hour notices
Disposition: \$2,000 civil penalty

MUR 3483

Respondents: (a) George Bush (TX); (b) Bush-Quayle '92 Primary Committee, J. Stanley Huckaby (DC); (c) KXIC Radio (IA); (d) U.S. Small Business Administration (DC)
Complainant: Gerald B. Wetlaufer (IA)
Subject: In-kind contributions
Disposition: (a)-(d) No reason to believe

MUR 3527

Respondents: (a) Cincuentenario Partido Popular Democratico (PR); (b) Anita Perez Ferguson (CA); (c) Anita for Congress, Marcelline Curran, treasurer (CA)
Complainant: Kevin Sweeney (CA)
Subject: Excessive contribution; inaccurate disclosure; failure to designate principal campaign committee within time limits
Disposition: (a) Reason to believe but took no further action; (b)-(c) \$1,000 civil penalty

MUR 3528

Respondents: (a) Mike Synar (OK); (b) Mike Synar for Congress Committee, Gene Moffitt, treasurer (OK)
Complainant: W.A. Edmondson
Subject: Failure to submit employer and occupation information for certain contributions
Disposition: (a) No reason to believe; (b) \$2,000 civil penalty

MUR 3542

Respondents: (a) Buffa for Congress '92, Betty Presley, treasurer (CA); (b) Greensburgh Group (CA)
Complainant: Gene Ferguson, campaign manager, Congressman Dana Rohrabacher (CA)
Subject: Failure to report debts; corporate and excessive contributions

Disposition: (a)-(b) No reason to believe

MUR 3545

Respondents: Charles A. Forrest, III (MI)
Complainant: Megan Jane O'Neill (MI)
Subject: Confidentiality
Disposition: No reason to believe

MUR 3547

Respondents: The Democratic Party of Arkansas Federal Account, Greg B. Brown, treasurer
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: \$1,200 civil penalty

MUR 3551

Respondents: (a) Committee to Elect Bea Herbert, Janet Van Boxtel, treasurer (CA); (b) Beatrice Herbert
Complainant: Stephen B. Thorne (CA)
Subject: Disclaimer; failure to file disclosure statements
Disposition: (a) Reason to believe but took no further action (disclaimer); no reason to believe (disclosure); (b) no reason to believe

MUR 3573

Respondents (all in MI): (a) Committee to Elect Megan O'Neill, Leonard C. Gorz, treasurer; et al. (b)-(d)
Complainant: Charles A. Forrest, III (MI)
Subject: Corporate and excessive contributions; improper reporting; failure to file reports at state level
Disposition: (a) Reason to believe but took no further action (disclosure at state level); no reason to believe (other allegations); (b)-(d) no reason to believe

MUR 3576

Respondents: Linda Bean for Congress Committee, James W. Gorman, treasurer (ME)
Complainant: Maine Democratic State Committee, Jo Karr, chairman
Subject: Failure to file report

(continued on page 10)

Compliance*(continued from page 9)*

Disposition: Reason to believe but took no further action; sent admonishment letter

MUR 3588

Respondents: (a) Les AuCoin For Senate Committee, Clinton W. Cook, treasurer (OR); (b) Realtors Political Action Committee, Dale Colby, treasurer (IL); (c) Les AuCoin (OR)

Complainant: Oregon Republican Party

Subject: Independent expenditures

Disposition: (a)-(c) No reason to believe

MUR 3605

Respondents: (a) Committee to Elect Andy Johnson, Andrew E. Johnson, treasurer (FL); (b) WVOJ Radio (FL)

Complainant: Rodney G. Gregory, general counsel, Friends of Corinne Brown (FL)

Subject: In-kind contributions

Disposition: (a) Reason to believe but took no further action; send admonishment letter; (b) no reason to believe

MUR 3615

Respondents: (a) Clinton/Gore '92 Committee, Robert A. Farmer, treasurer (AR); (b) WJXT-TV (FL)

Complainant: Don Brewer Jr., chairman, Duval County Republican Executive Committee (FL)

Subject: In-kind contributions

Disposition: (a)-(b) Reason to believe but took no further action

MUR 3624

Respondents: (a) Bush-Quayle '92 Primary Committee, J. Stanley Huckaby, treasurer (DC); (b) Bush-Quayle '92 General Committee, J. Stanley Huckaby, treasurer (DC); (c) WBT Radio (NC)

Complainant: Walter H. Shapiro (NC)

Subject: In-kind contributions

Disposition: (a)-(c) No reason to believe

MUR 3660

Respondents: Flower & Garden Magazine (MO)

Complainant: Dr. Philip W. Ogilvie (DC)

Subject: In-kind contributions

Disposition: No reason to believe

MUR 3706

Respondents (all in PA): (a) Lynn Yeakel; (b) Lynn Yeakel for U.S. Senate Committee, Sidney

Rosenblatt, treasurer; et al. (c)-(f)

Complainant: William D. White (PA)

Subject: In-kind contributions

Disposition: (a)-(f) No reason to believe

MUR 3709

Respondents: (a) Lynn Yeakel; (b) Lynn Yeakel for U.S. Senate

Committee, Sidney Rosenblatt, treasurer; et al. (c)-(s)

Complainant: William D. White (PA)

Subject: In-kind contributions

Disposition: (a)-(s) No reason to believe

MUR 3710

Respondents: (a) Arlen Specter (PA); (b) Citizens for Arlen Specter, Stephen J. Harmelin, treasurer (PA);

(c) WPXI-TV (PA)

Complainant: William D. White (PA)

Subject: In-kind contributions

Disposition: (a)-(c) No reason to believe

MUR 3729

Respondents: Friends of Cliff Stearns, Frank Stafford, treasurer (FL)

Complainant: Phil A. Denton (FL)

Subject: Failure to file reports

Disposition: No reason to believe

MUR 3737

Respondents: Auction Markets PAC of the Chicago Board of Trade, George Sladoje, treasurer (IL)

Complainant: FEC initiated

Subject: Excessive contributions; incomplete disclosure

Disposition: \$4,500 civil penalty

MUR 3739

Respondents: Bob Krueger Campaign, Nina Guinn, treasurer (TX)

Complainant: Jay Velasquez, National Republican Senatorial Committee (DC)

Subject: Disclaimer

Disposition: No reason to believe

MUR 3743

Respondents: Friends of Dan Miller, Mary Cathryn Haller, treasurer (FL)

Complainant: FEC initiated

Subject: Failure to file 48-hour notices

Disposition: \$3,000 civil penalty

MUR 3745

Respondents: (a) Mark Neumann (WI); (b) Citizens for Neumann '93, Gail E. Hansen, treasurer (WI)

Complainant: Genie Norris, executive director, Democratic Congressional Campaign Committee (DC)

Subject: Failure to designate principal campaign committee within time limits

Disposition: (a)-(b) Reason to believe but took no further action

MUR 3753

Respondents: Zenkich for Congress Committee, Elias R. Zenich, Jr., treasurer (IL)

Complainant: FEC initiated

Subject: Failure to file 48-hour notices

Disposition: \$2,900 civil penalty

MUR 3755

Respondents: Jerry Huckaby Re-Election Committee, James Moore, treasurer (VA)

Complainant: FEC initiated

Subject: Failure to file 48-hour notices

Disposition: \$4,000 civil penalty

MUR 3762

Respondents: Friends of Blackstock for Congress, Elaine Blackstock, treasurer (OK)

Complainant: FEC initiated

Subject: Failure to file 48-hour notices

Disposition: Reason to believe but took no further action

MUR 3773

Respondents: Deloitte & Touche Federal PAC, Wade Williams, treasurer (DC)
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: \$850 civil penalty

MUR 3777

Respondents: Committee to Elect Dr. James Lewis to Congress, Margaret Z. Beard, treasurer (AL)
Complainant: FEC initiated
Subject: Failure to file 48-hour notices
Disposition: Reason to believe but took no further action (sent admonishment letter) ♦

Index

The first number in each citation refers to the "number" (month) of the 1993 *Record* issue in which the article appeared. The second number, following the colon, indicates the page number in that issue.

Advisory Opinions

- 1992-38: Loan from Presidential campaign's legal and compliance fund to public funding account, 1:6
- 1992-40: Commissions earned by state party committees, 2:5
- 1992-41: Solicitation of members, 3:3
- 1992-42: Bank deposit lost in mail, 3:3
- 1992-43: Preemption of state law's fundraising restrictions, 3:4
- 1992-44: Qualifying as national party committee, 6:5
- 1993-1: Campaign's rental of storage unit from candidate, 4:8
- 1993-2: Application of party spending limits to Texas special runoff, 4:9

- 1993-3: Retroactive reallocation of 1991-92 activity, 5:1
- 1993-4: Electronic payment of bills through computer, 6:5
- 1993-5: 1992 contributions misplaced at post office, 6:6
- 1993-6: Use of excess funds by former House member, 7:6

Court Cases

- FEC v. _____**
- America's PAC, 4:10
 - International Funding Institute, 1:2; 5:2
 - Miller, 6:8
 - National Republican Senatorial Committee (93-0365), 6:8
 - People & Politics, Inc., 3:3
 - Political Contributions Data, Inc., 8:6
- _____ v. FEC**
- Common Cause (92-0249 (JHG)), 4:10
 - Common Cause (92-2538), 1:8; 8:5
 - Democratic Senatorial Campaign Committee (93-1321), 8:7
 - Dukakis, 8:7
 - Khachaturian, 8:5
 - LaRouche (92-1100), 6:8
 - LaRouche (92-1555), 1:8
 - National Rifle Association (92-5078), 4:10
 - Simon, 8:7
 - Spannaus (91-0681), 6:7
 - White (93-771), 6:8
- U.S. Senator John Seymour Committee v. Dianne Feinstein, 1:8**
- Weber, et al. v. Heaney, et al., 8:1**

(See articles on pages 1 and 2.)



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Reporting

- Last-minute contributions: 48-hour reporting, 4:7
- Reporting problems, letter to new candidates, 4:8
- Schedule for 1993, 1:3; 6:1
- Special elections in California, Mississippi, Ohio, Texas and Wisconsin, 3:1; 4:7; 6:4

800 Line Articles

- Credit card contributions, 5:5
- Party committee allocation: carrying debts from previous election cycle, 2:7
- \$25,000 annual limit, 4:2

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