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Correction

The heading of one reporting table in the January *Record* was incorrect. The heading on page 5 should have read: "1994 Monthly Reports" (not "1993 Monthly Reports"). The reporting dates within the table were correct.

Conferences

Upcoming Conferences in Washington, New Orleans and Pittsburgh

The FEC will hold a conference for candidate committees on February 11 in Washington, DC. The agency will also hold two regional conferences, a March conference in New Orleans and an April conference in Pittsburgh.

The conferences offer basic and advanced workshops on the federal campaign finance law and provide an opportunity to discuss problems and questions with FEC Commissioners and staff.

For more information, or to order registration materials for any of the conferences, call the FEC: 800/424-9530 or 202/219-3420.

Washington, DC, Conference for Candidate Committees

On Friday, February 11, the FEC will hold a day-long conference designed to help candidates and campaign staff comply with the federal election laws. In addition, representatives from the Internal Revenue Service and the Congressional ethics committees will brief attendees on the applicable tax laws and House and Senate rules, respectively. The Hatch Act will be

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Advisory Opinions

AO 1993-18 Corporate Plan to Foster Political Participation

Southwestern Bell Corporation (SBC) and its subsidiaries may institute a program to encourage employees and stockholders to volunteer on behalf of candidates' campaigns, but may not offer the program to retirees or to the general public.

SBC and its subsidiaries plan to ask every candidate running for a particular office how volunteers could best help with his/her campaign, whom the volunteers should contact and when they would be needed. The companies would then disseminate this information via written communications or through candidate information booths set up in company locations. Other SBC companies might invite candidates on a nonpartisan basis to make appearances at company locations, at which time the company would provide the relevant volunteer information.

The federal election law prohibits corporate contributions and expenditures in connection with federal elections. 2 U.S.C. §441b(a);

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Conferences

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covered by a representative from the Office of Special Counsel.

If space allows, the FEC will accept on-site registrations from 8:00 to 8:30 the morning of the conference. A \$10 late fee will be added to the \$105 conference fee. (The \$10 fee will be added to all registrations received after January 28.) The conference fee covers materials, breakfast (continental) and lunch.

The conference will be held at the Washington Hilton and Towers, 1919 Connecticut Avenue, NW, Washington, DC 20009 (202/797-5820). To receive the group rate of \$125 per night for a single room, notify the hotel that you will be attending the FEC conference.

New Orleans and Pittsburgh Regional Conferences

The New Orleans and Pittsburgh conferences will include workshops for candidates, PACs and party

committees. Each 1½ day conference will feature FEC Commissioners and staff, and tax experts from the IRS.

The New Orleans conference will be held March 14-15, at the Omni Royal Orleans. The Pittsburgh conference is set for April 28-29, at the Pittsburgh Vista Hotel.

The \$115 registration fee for each conference covers three meals (two continental breakfasts and a lunch) and a reception. ♦

Court Cases

New Litigation

Francis Froelich v. FEC

Plaintiffs seek a declaratory judgment that the Federal Election Campaign Act (FECA) is unconstitutional to the extent that it allows House and Senate candidates to solicit and accept contributions from out-of-state donors. The plaintiffs also ask the court to declare the contributions from out-of-state donors unconstitutional, and to prohibit further acceptance of such contributions by the announced U.S. Senate candidates from Virginia, who are named in the suit.

The suit alleges that out-of-state campaign contributions deny citizens the representation guaranteed under the Constitution. Specifically, the plaintiffs contend that out-of-state contributions impermissibly influence the election of Senators, and may subsequently divide the loyalties of those Senators. This, they argue, violates:

- The 17th Amendment's guarantee that two senators from each state are "elected by the people thereof;"
- Article 5's provision that each state's citizens shall have "equal suffrage in the Senate;" and

- The Constitution's separation of powers doctrine, which ensures a balanced representation of interests.

If the court determines that the 17th Amendment's "elected by the people thereof" does not apply to campaign contributions, the plaintiffs contend that Article 1, Section 4—which permits Congress to regulate "The Time, Places and Manner of holding elections..."—should likewise not apply to contributions. If that were the case, the plaintiffs argue, the FECA would be unconstitutional to the extent that it regulates such contributions.

U.S. District Court for the Eastern District of Virginia Alexandria Division, Civil Action No. 93-1610-A, December 20, 1993. ♦

Audits

FEC Releases Audit Report on '92 Host Committee

On November 10, 1993, the Commission approved the final audit report on the New York '92 Host Committee, Inc.—the host committee for the 1992 Democratic convention. (Host committees are established by cities hosting Presidential nominating conventions to encourage commerce and to project a favorable image of the city to convention attendees. Unlike party convention committees, host committees do not receive public funds.)

The audit report's findings included:

- Apparent prohibited contributions from two businesses outside the New York metropolitan area, which the committee subsequently refunded;
- Possible commingling of funds for "convention expenses" and "host

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Published by the Information
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expenses," which ultimately proved to be permissible; and

- Failure to disclose the actual value for certain in-kind contributions received and the source of interest income; the Commission required the committee to amend its reports accordingly.

The final audit report includes an executive summary of the Commission's findings. This is the first time that the agency has included such a summary in a final audit report. The agency believes that the summary will make the audit report more accessible to the public.

The New York '92 report is the second final audit report from the 1992 election that the FEC has released. The first was the audit report on the Agran for President '92 committee, approved by the Commission on June 8, 1993. ♦

Special Elections

Oklahoma Special Elections

Oklahoma has scheduled the following special elections to fill the 6th Congressional District seat formerly held by Glenn English, who resigned:

- March 8 Primary
- April 5 Runoff
- May 10 General.

Candidates and committees who plan to participate in the special elections should call the FEC for information on reporting requirements (800/424-9530 or 202/219-3420). ♦

Advisory Opinions

(continued from page 1)

11 CFR 114.2(b). Corporations may, however, make partisan and nonpartisan communications, subject to certain restrictions. 11 CFR 114.3 and 114.4.

Since the communications contemplated by SBC companies would not favor one candidate over another, the rules governing nonpartisan communications would apply. Under those rules, a corporation may communicate with its employees and stockholders, and with the general public, provided the corporation follows specific guidelines. 11 CFR 114.4.

Nonpartisan communications to the general public, as defined in FEC regulations, are limited to: voter registration and get-out-the-vote information; distribution of official registration or voting materials; voting records not prepared for the purpose of influencing an election; voter guides; and nonpartisan candidate debates. 11 CFR 114.4(b), (c) and (e). The volunteer information SBC companies plan to obtain and distribute does not fall within these categories.¹ In particular, the information does not qualify as a voter guide because it includes strategic campaign information regarding candidates' need for volunteer services and the preferred timing of those services. 11 CFR 114.4(b)(5). As a result, the SBC companies may not offer the volunteer information to the general public.

The regulations at 11 CFR 114.4 do not identify company retirees as a separate group, distinct from the general public, so retirees may not receive the information either.

¹ Prior consultation with and receipt of information from candidates' campaigns will compromise the ability of an SSF of the SBC companies to make independent expenditures on behalf of these campaigns. 11 CFR 109.1(a) and (b)(4)(i)(A).

The rules on nonpartisan communications to corporate employees and stockholders permit an additional class of communication—nonpartisan candidate (or party) appearances. Under 11 CFR 114.4(a)(2), a corporation may invite a candidate to address its employees and stockholders, provided other candidates for the same office who request to appear are given the same opportunity and the organization (including employees, stockholders and the SSF) does not endorse or oppose any candidate or solicit contributions for the candidate in conjunction with his/her appearance. The elements of the SBC plan are similar to the safeguards for nonpartisan communications. While the information on how and when to volunteer may assist candidates' campaigns, such information, along with the other elementary information to be conveyed, may be provided as part of a nonpartisan appearance. Consequently, the SBC companies may offer the volunteer information program to their employees and stockholders.

Commissioners Joan D. Aikens and Lee Ann Elliott filed concurring opinions. Date Issued: December 9, 1993; Length: 8 pages plus two 2-page concurrences. ♦

AO 1993-20 Purchase and Distribution of Candidate Biography

The Campbell Victory Fund (Senator Ben Nighthorse Campbell's principal campaign committee) may purchase copies of Senator Campbell's biography at a discount, and distribute them as gifts to former campaign staff and volunteers.

Discounted Purchase

The incorporated publisher of the biography plans to sell 100 copies of the book to the campaign committee at half price.

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Advisory Opinions

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The federal election law prohibits corporate contributions and expenditures in connection with federal elections. 2 U.S.C. §441b(a). Under FEC regulations, the terms "contribution" and "expenditure" include "the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services." 11 CFR 100.7(a)(1)(iii).

In Advisory Opinions (AOs) 1992-24 and 1987-24, however, the Commission concluded that complimentary items or discounts that were available to others on equal terms or were offered as part of a pre-existing business relationship did not result in contributions. Since the half-price discount offered to the Campbell campaign is available to other similarly-situated customers, the discount is not a prohibited corporate contribution from the publisher.

Distribution

The Campbell campaign plans to distribute copies of the biography as a "thank you" to supporters and volunteers who helped with the Senator's campaign.

The Commission has, in a number of AOs, approved distribution plans similar to the one proposed by the Campbell campaign because they were campaign related. (See, for example, AOs 1983-53 and 1980-12.)

As a rule, the Commission affords each campaign wide discretion in determining how best to expend its resources, barring only those expenditures that represent a prohibited conversion of excess campaign funds to personal use.¹ 2 U.S.C. §439a; 11 CFR 113.2. In AO 1981-2, the Commission stated

that costs for activities that had "an election influencing purpose, either retrospective or prospective" constituted expenditures. In accordance with these precedents, the Campbell Victory Fund may offer copies of the Senator's biography as gifts to former staff and volunteers.

Date Issued: December 9, 1993;
Length: 3 pages. ♦

AO 1993-21 Preemption of Ohio Law

The federal election law preempts an Ohio statute that effectively prohibits the transfer of tax-checkoff funds from a "separate segregated account" to an allocation account, as prescribed in the FEC's allocation regulations.

Background

Under Ohio law, each political party receives a share of the proceeds from the state's income tax checkoff. The parties must deposit these checkoff funds into a "separate segregated account," and may not commingle them with any other party funds. Checkoff funds may only be used to support party activities, including the party's administrative and get-out-the-vote expenses. The funds may not be used to further the election or defeat of any particular candidate or to pay a party debt incurred as the result of an election.

Expenditures for administrative and get-out-the-vote activities and other, similar expenditures permissible under state law are subject to the FEC's allocation rules. Those rules require committees that maintain separate federal and nonfederal accounts to allocate certain shared federal/nonfederal expenses according to specific formulas. 11 CFR 106.5 and 106.6. With regard to shared expenses, committees have two payment options under the allocation rules:

- They may use their federal account to pay a shared expense and transfer in the appropriate amount of nonfederal funds; or
- They may transfer the appropriate amounts of federal and nonfederal funds into an allocation account established solely to pay shared expenses.

The Ohio Republican Party's use of the allocation account resulted in commingling federal and nonfederal funds. Since Ohio state law prohibits the commingling of tax-checkoff funds, but limits the use of those funds to expenses that are subject to the FEC's allocation rules, there is a conflict between state and federal law.

Preemption

The Federal Election Campaign Act (FECA) and FEC regulations "supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. §453; 11 CFR 108.7(a). Specifically, federal preemption extends to "the organization and registration of political committees supporting Federal candidates, disclosure of receipts and expenditures by Federal candidates and political committees, and the limitation on contributions and expenditures regarding Federal candidates and political committees." 11 CFR 108.7(b). Therefore, federal law preempts the Ohio provision that purports to bar the transfer of tax-checkoff funds from the party's "separate segregated account" to its allocation account. Consequently, the Ohio Republican Party may transfer tax-checkoff funds into its allocation account in accordance with FEC rules. However, nothing in the FECA or FEC rules prevents the state from auditing the use of state revenues to ensure compliance with state laws.

Tax-Checkoff Funds

Furthermore, in keeping with Commission precedent, the party may treat tax-checkoff funds as

¹ Senator Campbell receives no royalties or profits from the sale of the book.

federal dollars, applicable to the federal share of the allocable expenses.¹ The Commission noted that the tax-checkoff funds, though not contributions, did not exceed the FECA's limits and were derived from permissible federal sources, i.e. revenues generated by designations made by individual taxpayers.

Date Issued: December 10, 1993; Length: 8 pages. Commissioner Trevor Potter submitted a dissenting opinion (4 pages). ♦

Advisory Opinion Requests

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

AOR 1993-24

Effect of revised membership rules on SSF solicitations. (National Rifle Association; December 16, 1993; 1 page plus attachments)

AOR 1993-25

Preemption of state law limiting contributions by lobbyists to federal candidates who hold state office. (Robert T. Welch; December 22, 1993; 2 pages) ♦

Compliance

MUR 3619 Post-Election Contributions Exceed Campaign Debt

The Hoosiers for Tim Roemer committee agreed to pay a \$3,900 civil penalty for failing to refund or seek redesignation of post-election contributions that exceeded the campaign's net debts outstanding, in violation of 2 U.S.C. §441a(f).

Under FEC regulations, a candidate may accept contributions for a particular election after it has been held, but only to the extent that the contributions do not exceed the campaign's net debts outstanding and only if the contributions have been designated by the contributors for that election.¹ 11 CFR 110.1(b) and 110.2(b). A campaign's net debts outstanding consist of unpaid debts incurred with respect to the election minus cash on hand. Should a campaign receive designated post-election contributions exceeding its outstanding debt, it must refund them or ask the contributors to redesignate their contributions for another election within 60 days.

The Roemer committee accepted \$15,768 in post-general election contributions that exceeded its net debts, and failed to refund or seek redesignation of them. The committee contended that the violation, which dates back to the 1990 election, resulted from its misunderstanding of the debt retirement rules. Subsequently, the committee refunded the contributions, paid its civil penalty and took steps to ensure that the violation did not occur again. ♦

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 release of January 4, 1994. Files on closed MURs are available for review in the Public Records Office.

MUR 3619

Respondents: Hoosiers for Tim Roemer Committee, John R. Gildea, treasurer (IN)

Complainant: FEC initiated (audit for cause)

Subject: Excessive contributions
Disposition: \$3,900 civil penalty

MUR 3740

Respondents: (a) Congressman Dan Rostenkowski (IL); (b) Rostenkowski for Congress, Leo V. Magrini, treasurer (IL); (c) America's Leaders' Fund, Stanley Harrison, treasurer (DC); (d)-(x) (20 other respondents)

Complainant: Dick Simpson (IL)
Subject: Authorized candidate committee's affiliation with leadership PAC; corporate contributions; failure to register and report

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

MUR 3823

Respondents: Republican Party of Dade County, Jorge Rodriguez-Chomat, treasurer (FL)

Complainant: FEC initiated (audit for cause)

Subject: Excessive contributions; allocation of expenses; failure to identify contributors adequately (best efforts)

Disposition: Reason to believe but took no further action ♦

¹ An undesignated contribution made after an election counts against the donor's limit for the candidate's next election. 11 CFR 110.1(b)(2)(ii).

¹ See, for example, AO 1991-14.

Regulations

Status of FEC Regulations Projects

The Commission is in the midst of a particularly active regulatory period with more than a dozen ongoing projects on its docket. The chart below provides information regarding some of those projects.

In addition to those listed in the chart, future projects include:

- **Disclaimer Notices** (11 CFR 110.11) – draft Notice of Proposed Rulemaking (NPRM) scheduled for Commission consideration on January 27;
- **Recordkeeping and Reporting** (11 CFR Parts 102 and 104) – drafting NPRM;
- **Coordinated Party Expenditures** (11 CFR 110.7) – finalizing draft NPRM;
- **Allocation of Travel Expenses** (11 CFR 106.3) – drafting NPRM; and

- **Loans on Brokerage Accounts** – researching whether to draft NPRM.

Additional information on the status of FEC regulations may be obtained by requesting Agenda Document #93-101 from the FEC's Public Records Office. Call toll-free 800/424-9530 or locally 202/219-4140. ♦

Selected Current Regulatory Projects

Regulations	Most Recent FR ¹ Notice	Comment Due Date	Public Hearing	Status
National Voter Registration Act (11 CFR Part 8)	Advance NPRM ² 9/30/93 58 FR 51132	11/1/93		Draft NPRM to be considered soon (see Nov. 93 Record)
Personal Use of Campaign Funds (11 CFR Parts 100 and 113)	NPRM 8/30/93 58 FR 45463	11/15/93	1/12/94	Comments and testimony under review (see Jan. 94 Record)
Unauthorized Use of Candidate's Name (11 CFR 102.14)	NPRM 12/15/93 58 FR 65559	1/31/94		Comments under review (see Jan. 94 Record)
Compliance Procedures (11 CFR Part 111)	NPRM 7/8/93 58 FR 36764	9/24/93	10/20/93	Comments and testimony under review (see Dec. 93 Record)
Corporate/Labor Communications – MCFL (11 CFR Part 114)	NPRM 7/29/92 57 FR 33548	8/18/92	10/14-15/92	Recommendations regarding final rules expected soon (see Dec. 92 Record)
Ex Parte Communications (11 CFR Part 201)	Revised Interim Rules, 11/10/93 58 FR 59642	12/10/93	4/1/93	Comments under review (see Dec. 93 Record)
National Nominating Conventions (11 CFR Part 9008)	NPRM 8/12/93 58 FR 43046	9/17/93	10/27/93	Recommendations regarding final rules expected soon (see Dec. 93 Record)

¹ Federal Register.

² Notice of Proposed Rulemaking.

Task Force to Study Impact of Allocation Rules

On December 9, 1993, the Commission voted to create a task force to evaluate the efficacy of the agency's rules for allocating shared federal/nonfederal expenses. The task force will pass its findings on to the Commission. The Commission, in turn, will consider whether to amend the allocation regulations, after the 1994 election cycle.

In the interim, committees are reminded that they must fully comply with the existing allocation rules. The Commission previously recognized the 1992 election cycle as an adjustment period, during which the Commission generally accepted good faith efforts to comply with the allocation rules. That adjustment period has expired. The Commission now plans to enforce the regulations strictly.

Committees that need assistance in complying with the allocation rules are encouraged to avail themselves of the many information resources the FEC offers. Committees may direct their reporting questions to the Reports Analysis Division (202/219-3580), and other inquiries to the Information Division (202/219-3420). Callers may reach both offices toll-free at 800/424-9530. Those who wish to remain anonymous should contact the Information Division. Copies of the special Allocation Supplement to the *Record* (revised December 1992) are also available upon request. ♦

Index

The first number in each citation refers to the "number" (month) of the 1994 *Record* issue in which the article appeared. The second number, following the colon, indicates the page number in that issue. For example, "1:4" means that the article is in the January issue on page 4.

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- Registration by candidates and their committees, 1:14

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:

- Subscription number (located on the upper left corner of the mailing label);
- Subscriber's name;
- Old address; and
- New address.

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