

Record

April 1995

Federal Election Commission

Volume 21, Number 4

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Budget

FEC Argues Against \$2.8 Million Rescission for FY '95, Requests \$29 Million for FY '96

The FEC is seeking a \$29 million appropriation for FY '96. This request comes on the heels of a proposal passed by the House Appropriations Committee to rescind \$2.8 million of the FEC's \$27.1 million FY '95 budget.

"Such a measure would compromise the FEC's mission to safeguard the integrity of the electoral process," said FEC Chairman Danny L. McDonald. "If this rescission becomes law, both the FEC and the American public would lose the hard-fought strides made in disclosure and compliance."

The FEC's recent accomplishments include:

- Instituting a prioritization system to handle the increase in enforcement matters filed with the FEC.
- Streamlining the audit process, enabling the FEC to complete audits of 1992 Presidential campaigns within two years—twice as fast as in 1988.
- Improving customer service by providing more campaign finance information more quickly than ever before; 15,000 public and

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Compliance

The \$25,000 Annual Contribution Limit

The Commission has stepped up its enforcement of the \$25,000 annual limit. An individual may not make contributions to federal candidates, party committees and PACs aggregating in excess of \$25,000 per year. 2 U.S.C. §441a(a)(3). In 1994, the Commission entered into nine conciliation agreements involving violations of this limit. The agreements provided for civil penalties totaling \$163,179.

A Sampling of Last Year's \$25,000 Limit MURs

MUR 3892. John D. Murchison, Jr., made \$50,000 in total federal contributions for 1992 and \$32,250 for 1993. Mr. Murchison stated that he misunderstood how the annual limit was applied. In a conciliation agreement, Mr. Murchison agreed to pay a \$28,000 civil penalty for this infraction.

MUR 3899. D. Lloyd Wilson made \$52,500 in total federal contributions for 1992. Mr. Wilson stated that he was unaware of any limits on contributions to national campaigns and that none of the solicitors advised him of the annual limit. In a conciliation agreement, Mr. Wilson agreed

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Budget

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media inquiries were handled per month in 1994.

These improvements were made in the face of the heavy work load that accompanied the increases in the number of candidates who ran for office (up 34 percent in 1994 from 1990), the amount of money raised and spent in federal elections (up 54 percent from 1990), the number of complaints filed (up 45 percent) and the number of requests for campaign finance information (up 17 percent).

"We are already straining our resources to fulfill our duty to the public and enforce federal election laws," said the Chairman. He added that the rescission would adversely impact:

- The quality service provided to the public;
- The timely certification of matching funds for 1996 Presidential candidates;

Federal Election Commission
999 E Street, NW
Washington, DC 20463

800/424-9530
202/219-3420
202/501-3413 (Flashfax Service)
202/219-3336 (TDD)

Danny L. McDonald, Chairman
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- The public disclosure of campaign finance information;
- The availability of guidance and assistance to the regulated community;
- The publication of informational and educational materials;
- The development of electronic filing; and
- The modernization of the FEC's computer systems.

Lee Ann Elliott, Vice Chairman and head of the FEC's Finance Committee, testified before Congress that, "Any budget reductions now will completely jeopardize the Commission's ability to keep pace with campaign finance activity."

For 1996, Elliott predicted, "another record election cycle for campaign spending."

In presenting the FEC's FY '96 budget, she dispelled the notion of the FEC as an inefficient bureaucracy, pointing out that the FEC "has reduced the time and staff required to certify and process matching fund submissions for Presidential candidates for every election since 1980. . . . [T]he Commission closed 73 [enforcement] cases in the first three months of FY '95."

She also praised the efficiency of each FEC division, noting, for instance, that the Reports Analysis Division, with a staff of roughly 40 individuals, "in the four months of peak election activity in 1994, reviewed an average of 4,400 reports per month."

In addition to the proposed rescission, the FEC has been advised that the Survey and Investigations Staff of the Appropriations Committee is undertaking a review of the FEC's management and operations.

"I welcome this review and believe that it will demonstrate that the FEC meets its mandate effectively and efficiently," said Chairman McDonald. ♦

Compliance

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to pay a \$15,000 civil penalty for this and another infraction.

MUR 3925. Michael L. Keiser made \$94,750 in total federal contributions for 1990. Mr. Keiser stated that he was unaware of the \$25,000 limit and that he was told by some solicitors that the contributions were for nonfederal accounts. In a conciliation agreement, Mr. Keiser agreed to pay a \$28,000 civil penalty for this and other infractions.

MUR 3928. Roy H. Cullen made \$26,275 in total federal contributions for 1989 and \$44,900 for 1990. Mr. Cullen stated that he had intended that half of each year's total be attributed to his wife. In a conciliation agreement, Mr. Cullen agreed to pay a \$9,000 civil penalty for this and another infraction.

How the \$25,000 Limit is Applied

The \$25,000 limit is applied in two different ways, depending on the recipient of the contribution.

Contributions made to a candidate. These contributions count toward the contributor's \$25,000 limit for the year in which the candidate's election is held. For example, a contribution made in 1993 to a Senate candidate's 1994 campaign counts against the contributor's \$25,000 limit for 1994. Similarly, a contribution made in 1995 to help retire the debt of a 1994 campaign also counts against the contributor's \$25,000 limit for 1994.

Contributions made to a PAC or a party committee. A contribution to a federal PAC or a federal party committee counts toward a contributor's \$25,000 limit for the year in which the contribution is made. Contributions to PACs and parties that are earmarked for a specific candidate with respect to a particular election, however, are treated as contributions to that candidate and count toward the \$25,000 limit for the year in which the candidate's election is held, as described in the previous paragraph.

Tips on Avoiding Common Pitfalls

Accidental violations of the \$25,000 annual limit can be avoided by taking a few precautions. For example, contributors who intend to make a joint contribution should make sure that the signatures of both spouses appear on the check. In this way, they can avoid the violation that occurred in MUR 3928 (above).

Another common pitfall occurs when a PAC or party committee places contributions intended for a nonfederal account into a federal account, as occurred in MUR 3925 (above). Contributors should write on the check that the contribution is for a nonfederal account to clearly indicate their intention.

A free brochure dedicated exclusively to the \$25,000 annual limit is available through the FEC's automated Flashfax service. To have this brochure faxed to you, use a touch tone phone to dial 202/501-3413 and enter 325 as the document number for this brochure when prompted. Alternatively, free copies are available through the mail by writing:

Federal Election Commission
Information Division
999 E Street, NW
Washington, DC 20463 ♦

MURs Released to the Public

Listed below are summaries of FEC enforcement cases (Matters Under Review or MURs) recently released for public review. This listing is based on the FEC press release of February 10. Files on closed MURs are available for review in the Public Records Office.

MUR 3676

Respondents: (a) Stupak for Congress, Janet Gregorich, treasurer (MI); (b) Clinton/Gore '92 Committee, Robert Farmer, treasurer (AR)
Complainant: Michigan Republican State Committee
Subject: Disclaimer; independent expenditure; engaging in activity

outside the scope of a principal campaign committee

Disposition: (a) Insufficient number of votes to find reason to believe; (b) insufficient number of votes to take no action

MUR 3966/Pre-MUR 279

Respondents: (a) KMS Fusion, Inc. (MI); et al., (b)-(l)

Complainant: Referral by Defense Contract Audit Agency (VA)

Subject: Corporate contributions; contributions by government contractor; contributions in name of another

Disposition: No probable cause to believe

MUR 3970

Respondents: Citizens for Bacchus '92, Jack Oppenheimer, treasurer (FL)

Complainant: FEC initiated

Subject: Failure to file 48-hour notices; excessive contributions

Disposition: \$9,500 civil penalty

MUR 3990

Respondents: (a) Minnesota \$\$ Million, Nina Rothchild, treasurer; et al., (b)-(c)

Complainant: National Republican Senatorial Committee (DC)

Subject: Excessive contributions

Disposition: No reason to believe

MUR 4046

Respondents: (a) Representative C. Donald Johnson (GA); (b) Don Johnson for Congress, Robert E. Ridgeway, Jr., treasurer (GA)

Complainant: K. G. Watson (GA)

Subject: Disclaimer

Disposition: No reason to believe

MUR 4141

Respondents: Real Estate Investment Trust Political Action Committee (REITPAC), Mark O. Decker, treasurer (DC)

Complainant: FEC Initiated

Subject: Failure to file reports on time

Disposition: \$18,050 civil penalty; Commission agreed to reduced penalty of \$9,000 ♦

Public Funding

1992 Clinton Primary Election Campaign to Repay Treasury \$1.3 Million

On February 13, 1995, the Commission made a final determination that President William J. Clinton and his 1992 Presidential primary election campaign repay \$1,342,728 in public funds to the U.S. Treasury. Additionally, the Commission made a final determination that President Clinton and his committee pay \$40,859 to the U.S. Treasury for stale-dated checks.

The final repayment figure is based on the committee's Statement of Net Outstanding Campaign Obligations (NOCO) as well as expenses which the Commission determined to be nonqualified. 11 CFR 9032.9, 9033.11(a) and 9034.5(a). The NOCO statement contains a self evaluation of the committee's financial position on the candidate's date of ineligibility, including the fair market value of its capital assets, amounts owed to the committee and the amount it owed to vendors and other payees. ♦

Audits

Tsongas '92 Primary Committee Audit

On December 28, 1994, the Commission released the final audit report on the Tsongas Committee, Inc., Senator Paul Tsongas's principal campaign committee during his 1992 bid for the Democratic Presidential nomination. The report contains an initial determination that the committee repay \$10,567 in public funds used for nonqualified-campaign expenses. The report also

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Audits

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requires the committee to pay \$64,163 in connection with its receipt of excessive contributions. The total due to the U.S. Treasury is \$74,730.

Excessive Loans

Nicholas Rizzo, the committee's principal fundraiser, acting as an agent of the campaign, solicited and accepted \$794,000 in campaign loans, most of which he diverted to his personal use.¹ These loans were made by eight individuals who exceeded their contribution limits by \$790,750. Mr. Rizzo deposited these loans into an account he opened in the committee's name (the Andover account) and into his personal and business accounts.

These loans were treated as contributions in the final audit report. But because of the circumstances the Commission did not require the committee to make any payments to the U.S. treasury with respect to these monies.

The committee disputed the report's findings, claiming that Mr. Rizzo was not acting as a committee agent when he collected the funds, that the funds were not contributions, that the Andover account was not a committee account and that the committee had been unaware of Mr. Rizzo's activity.

Excessive Contributions from Individuals and a Partnership

In addition to the loans discussed above, the committee received \$64,163 in excessive contributions, of which \$29,314 had been collected by Mr. Rizzo and deposited into the Andover account. The Commission rejected the committee's argument that these funds were not contributions because they were embezzled.

The committee also argued that the audit report incorrectly characterized \$21,500 as a partnership contribution. This amount, the committee maintained, was not contributed by a partnership, which has a \$1,000 per election contribution limit, but by the individual partners, each of whom has a \$1,000 per election contribution limit. The Commission did not find this argument persuasive; the checks were drawn on the partnership's account.

Excessive Contributions from Advances and Extended Credit

The committee did not provide any documentation to refute the interim audit report's finding that it had accepted \$60,844 in excessive contributions resulting from staff advances. Nor did the committee submit evidence to refute that same report's finding that it had accepted \$13,591 in excessive contributions resulting from an extension of credit by a law partnership outside the partnership's normal course of business, and that it had accepted \$6,295 in excessive contributions from each of the two partners in the law firm.

Misstatement of Financial Activity

The committee misstated its financial activity in reports filed with the FEC in 1991 and 1992. Subsequently, the committee filed amended reports for 1992. The financial misstatements for 1991 were in large part a consequence of Mr. Rizzo's embezzlement activity. The committee disputed the characterization of these monies as contributions and therefore argued that their disclosure was not its responsibility.

Excessive Press and U.S. Secret Service Reimbursements

The final audit report found that the committee had received excessive reimbursements for travel services it provided to members of the press and the U.S. Secret

Service. The committee had to refund these excess amounts, totaling \$15,262 for members of the press and \$4,471 for the U.S. Secret Service.

Nonqualified Campaign Expenses

The audit report identified \$693,212 worth of nonqualified campaign expenditures paid through the Andover account. Because of the circumstances, the Commission did not seek a repayment for these nonqualified expenditures.

The report also found that the committee had spent campaign funds totaling \$74,531 in connection with attendance at the Democratic National Convention—a nonqualified campaign expense. The Commission made an initial determination that the committee repay the U.S. Treasury \$10,567, representing the portion of these expenses that were paid for with public funds. ♦

Court Cases

FEC v. NRSC (93-1612)

On February 24, 1995, the U.S. District Court for the District of Columbia partially granted the National Republican Senate Committee's (NRSC) motion for summary judgment. The FEC is precluded from recovering monetary penalties in this action because the 5-year statute of limitations expired before this suit was filed. The statute of limitations, however, does not apply to injunctive and declaratory relief.

Background

The FEC alleges that the NRSC violated the Federal Election Campaign Act (the Act) by making unlawful excessive contributions of \$183,563 to the Jim Santini for Senate Committee and by failing to disclose these contributions to the FEC. These alleged violations occurred

¹ Mr. Rizzo received a 52-month sentence in a federal penitentiary for his embezzlement activities.

between November 1985 and November 1986. An administrative complaint was filed with the FEC on January 9, 1987. On March 10, 1992, the FEC found probable cause to believe that the NRSC had violated the Act. Attempts to reach conciliation failed. This led the FEC to file this suit on April 21, 1993, 7 years after the violations allegedly occurred and 6 years after the administrative complaint was filed.

Statute of Limitations

"Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued." 28 U.S.C. §2462.

This statute applies in all instances except those involving other statutes in which Congress specifically included another time limitation. The court ruled that the Act does not contain such an alternative statute of limitations. Accordingly, the court applied the 5-year limit to this case.¹

In applying §2462, the court determined that the statute of limitations started running from the date of the alleged violations—the period between November 1985 and November 1986. Since the time between the dates of the violations and the date the FEC filed this case with the court exceeded the 5-year statute of limitations, the FEC may not pursue the imposition of civil penalties.

This case will proceed so that the court may determine appropriate injunctive and declaratory relief. ♦

¹ This conclusion is inconsistent with the U.S. District Court for the Central District of California's denial of defendant's motion to dismiss in *FEC v. Williams*. In that case, Mr. Larry Williams argued that because the 5-year statute of limitations in §2462 had expired, the court should dismiss the case. The court rejected this motion without issuing an opinion. *FEC v. Williams*, No. CV 93-6231 ER.

FEC v. Williams

On January 31, 1995, the U.S. District Court for the Central District of California granted the FEC's motion for summary judgment and denied the defendant's motion for summary judgment.¹ The court ordered Larry R. Williams to pay \$10,000 in civil penalties and enjoined him for 10 years from making contributions in the name of another and exceeding the \$1,000 individual contribution limit to a federal candidate. Mr. Williams has filed an appeal.

The Facts of the Case

Jack Kemp's 1988 Presidential campaign had a fundraising program which enabled anyone who contributed \$1,000 to purchase a Super Bowl ticket for \$100 from the Philadelphia Eagles. Mr. Williams, a campaign fundraiser at the time, purchased 40 tickets from the Eagles at the \$100 special price and then offered them to employees and friends in exchange for a \$1,000 contribution to the campaign. He then advanced or reimbursed 22 of his employees and friends \$1,000 each to make a contribution to the Kemp campaign.

Additionally, Mr. Williams contributed \$1,694 on his own behalf to the Kemp campaign.

District Court Ruling

Mr. Williams argued that the *FEC v. NRA Political Victory Fund* ruling² precluded the FEC from pursuing this case because the

¹ Previously, Mr. Williams had moved to dismiss this case pursuant to the 5-year statute of limitations in 28 U.S.C. §2462. The court dismissed this motion without issuing an opinion.

² In the *NRA* case, the Court of Appeals for the District of Columbia concluded that the presence of the ex officio members on the Commission violated the separation of powers principle. See page 2 of the December 1993 Record for a summary of this decision. The Commission has since reconstituted itself so as to exclude the ex officios from its body.

structure of the agency violated the separation of powers doctrine.

The court denied the defendant's motion because the court did not believe that the presence of the ex officio members on the Commission rendered the Commission's actions unconstitutional under the separation of powers doctrine. The court reasoned that this doctrine was not violated because the ex officio members did not "hold an 'Office Under the United States'" and because the ex officios merely exercised an advisory role and could not vote on Commission action. In its opinion, the court disagreed with the reasoning in the *FEC v. NRA Political Victory Fund* decision, and cited the decisions of the Court of Appeals for the Ninth Circuit in *Lear Siegler, Inc. v. Lehman* and *Commodities Futures Trading Commission v. Schor* in support of its conclusion.³

Further, the court stated that even if the presence of the ex officio members were deemed unconstitutional, the de facto officer doctrine established in *Buckley v. Valeo* applied and the case could continue. In *Buckley v. Valeo*, the Supreme Court accorded validity to the FEC's past actions even though the composition of the Commission in 1976 violated the separation of powers doctrine.

Lastly, the court rejected the defendant's arguments that the Act was unconstitutionally vague, that the FEC waived its right to impose a civil penalty by not pursuing its claims in bankruptcy court or that

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³ Citing *Lear Siegler*, the court found that Congress did not usurp an executive function by placing the ex officio members on the Commission because the ex officio members did not vote. Additionally, quoting the *Schor* decision, the court held that the presence of the ex officio members on the Commission did not impermissibly undermine the executive branch's role.

Court Cases

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the defendant suffered prejudice as a result of an excessive delay in the prosecution of this action.

The court concluded that Mr. Williams committed the following violations of the Federal Election Campaign Act:

- *Contributions in the name of another.* It is illegal to make a contribution in the name of another. Mr. Williams violated this provision of the law when he advanced or reimbursed \$1,000 to 22 contributors. 2 U.S.C. §441f; and
- *Exceeding the \$1,000 contribution limit for individuals.* It is illegal for an individual to give more than \$1,000 per election to any federal candidate. Mr. Williams made \$28,694 in contributions to a single candidate, exceeding his legal limit (11 CFR 110.1(b)(1)).

U.S. District Court for the Central District of California, No. CV 93-6321-ER (BX), January 31, 1995. ♦

Fulani v. FEC (94-1593)

On February 9, 1995, the U.S. Court of Appeals for the District of Columbia dismissed this case.

Dr. Fulani and her principal campaign committee for the 1994 Presidential race had asked the court to review an FEC decision to conduct an investigation into the campaign's finances pursuant to the public funding statute. 26 U.S.C. §9039(b). See page 9 of the October 1994 *Record* for a summary of the plaintiff's petition for review.

The court dismissed the case because the action in question was not a final agency action and was therefore not subject to judicial review under 26 U.S.C. §9041(a), as previously construed by the court. ♦

Robertson v. FEC

On February 3, 1995, the U.S. Court of Appeals for the District of Columbia partially denied the petitioner's request for review of the FEC's final repayment determination; the court did grant the petition with respect to one of four disputed expenditures. The court also rejected petitioner's constitutional and statutory challenges.

Petitioner Marion (Pat) Robertson was an unsuccessful candidate for the 1988 Republican Presidential nomination. Petitioner's campaign received more than \$10 million from the FEC-administered Presidential public funding program.

The FEC audits all campaigns which receive public funding and may seek a pro rata repayment for any expenditures that are in excess of statutory limits, that are not qualified campaign expenses, or that lack sufficient documentation to verify their campaign-related purpose.

After an audit and a public hearing, the FEC determined that petitioner was obligated to repay \$290,793 in public funds. At issue were:

- Expenditures made in excess of the limit for the Iowa primary;
- Expenditures made in excess of the limit for the New Hampshire primary;
- Funds claimed to have been transferred between the campaign's national and state accounts; and
- Expenditures made in connection with the candidate's attendance at the 1988 Republican National Convention.

The FEC's Repayment Determination

The court examined the four expenditures in question and arrived at the following decisions with respect to each.

Iowa limit. Petitioner argued that \$14,000 of a \$20,000 deposit for telephone service in Iowa should not

be counted against his Iowa expenditure limit because it was later refunded to the committee. The court found, however, that the FEC had reasonably concluded that the evidence provided by Robertson's campaign committee did not establish that the refund was attributable to this Iowa deposit.

Transfer of funds. Petitioner claimed that \$17,000 purportedly transferred from the campaign's national account to its state accounts was incorrectly characterized as nonqualified expenditures. Petitioner did not present any supporting documentation to verify that this money actually had been deposited in the campaign's state accounts or had been spent on qualified campaign expenses. The court found the FEC's demand for such documentation to be reasonable.

Attendance at the 1988 Republican National Convention. Petitioner argued that \$74,000 in costs associated with his attendance at the convention, after he had withdrawn from the campaign, constituted valid winding down costs for which he could receive public funding. In support of this position, he argued that video and audio recordings of his speech at the convention were offered as an inducement in a fundraising mailing to retire his campaign debt. The FEC rejected this line of reasoning and the court concurred.

New Hampshire limit. Petitioner claimed that a \$120,000 fundraising mailing was incorrectly allocated to the state's limit. FEC regulations provide that fundraising expenses need not be allocated to a state's expenditure limit unless incurred within 28 days of the state's primary. Petitioner presented dated checks showing that the postage had been purchased more than 28 days before the primary, and an affidavit from a campaign official asserting that the mailing had preceded the 28-day period. The Commission concluded that it could not be

determined that the mailing had actually been sent before the 28-day period and therefore attributed its cost to the New Hampshire limit. The court reversed the Commission's finding on this issue because the Commission did not address what the court deemed to be unopposed evidence presented by plaintiff.

The Constitutional Challenge: Ex Officiis

Petitioner's challenge was based on the court's decision in *FEC v. NRA Political Victory Fund* (see page 1 of the February 1995 *Record*). In that case, the court held that the Commission's composition violated the principle of separation of powers because it included two nonvoting, ex officio members appointed by Congress. Petitioner argued that despite the Commission's subsequent removal of those members from its body and its ratification of all actions it had undertaken in petitioner's case up to that point, the FEC's proceedings in this case remained unconstitutional.

The court concluded that petitioner was estopped from challenging the constitutionality of the Commission's composition because he had already accepted \$10 million in public funds authorized by the very Commission he now argued was unconstitutional.

"[A] party wishing to make such a challenge must do so before it accepts and spends federal funds—not after, as a ploy to avoid its part of a bargain," the court stated in its opinion.

Statutory Challenge: Statute of Limitation

Petitioner based this challenge on a provision of the statute that required the Commission to issue petitioner a notice of a repayment determination within 3 years of the 1988 Republican nomination. Within that time frame, petitioner received a preliminary repayment calculation (contained in the FEC's interim audit report), which an FEC

regulation says is sufficient to satisfy the 3-year requirement.

The court declined to resolve petitioner's challenge to the adequacy of the notification he received within 3 years. The FEC had concluded that petitioner had waived his right to address this issue because he had not raised it until his public hearing. Under the Commission's rules, such an issue must be raised in a candidate's written comments submitted to the Commission before the public hearing.

The court found that the FEC was within its rights in enforcing its own procedures in this manner. The court "cannot conclude that . . . the Commission's interpretation [of its regulations] is unreasonable."

U.S. Court of Appeals for the District of Columbia, No. 93-1698, February 3, 1995. ♦

Rove v. Thornburgh

The U.S. Court of Appeals for the Fifth Circuit ruled that the Federal Election Campaign Act (the Act) does not immunize a federal candidate, under state law, from personal liability for the debts of his unincorporated campaign committee. Karl Rove & Company may, under the laws of Pennsylvania and Texas, pursue monetary redress for unpaid campaign debts from Richard Thornburgh, a candidate for the U.S. Senate in a 1991 special election.

[Although the FEC was not a party to this suit, this case is summarized here because of the decision's relevance to federal campaigns.]

Background

In the course of his 1991 campaign, Mr. Thornburgh's unincorporated committee contracted with Rove & Company for mail solicitation services. A balance of \$169,732 for these services remained outstanding after the election. Rove & Company brought suit against Mr. Thornburgh, his committee and the committee's treasurer. The district

court found Mr. Thornburgh and his committee jointly and severally liable for breach of contract under the laws of Pennsylvania and Texas, but dismissed the claim against the committee treasurer for lack of personal jurisdiction.

Court of Appeals Decision

Mr. Thornburgh brought this appeal, arguing that the Act preempts state law and immunizes federal candidates from personal liability. He cited 2 U.S.C. §453 in support of this motion:

"The provisions of this Act, and the rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office."

In rejecting this argument, the court noted that: §453 has had a historically narrow reading; that the FEC, in Advisory Opinion 1989-2, has deferred to state law in matters concerning liability for campaign debts; and that the Act does not address the issue of candidate liability for campaign debts anywhere in its provisions.

The court stated, "Although we recognize that Congress has constructed a somewhat analogous—and anomalous—legal regime to shield candidates from liability for violations of [the Act], absent express direction from that branch, we decline to extend further such an apparently inequitable rule."

The court noted that federal candidates can protect themselves from personal liability in most states by incorporating their principal campaign committees, by stipulating in contracts that the candidate is not personally liable or by taking both steps.

U.S. Court of Appeals, No. 93-8451, November 30, 1994. ♦

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Court Cases

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New Litigation

DSCC v. FEC (95-0349)

Plaintiff Democratic Senatorial Campaign Committee (DSCC) asks the court to order the FEC to take action with respect to a complaint it filed on May 14, 1993 (MUR 3774). MUR 3774 concerns alleged improprieties by the National Republican Senatorial Committee (NRSC), specifically the alleged contribution of "soft money" to other groups to influence U.S. Senate elections.¹

In its MUR complaint, plaintiff alleged that the NRSC funneled \$187,000 in "soft money" to several nonparty groups, which then undertook activities to influence Georgia's November 24, 1992, U.S. Senate runoff election.

Plaintiff filed a second MUR complaint with the FEC on February 22, 1994, alleging more of this sort of activity, including a \$175,000 "soft money" contribution made by the NRSC to the National Right to Life Committee just weeks before the 1994 elections.

Plaintiff therefore asks the court to:

- Rule that the FEC's failure to take timely action on MUR 3774 is contrary to 2 U.S.C. §437g(a)(8)(C);
- Order the FEC to complete an investigation of the matters contained in MUR 3774 within 30 days of this court's order; and
- Impose any and all penalties grounded in violations alleged in MUR 3774.

U.S. District Court for the District of Columbia, No. 95-0349, February 22, 1995. ♦

¹ "Soft monies" are funds raised and spent outside the limits and prohibitions of the federal election law. This includes contributions that exceed federal limits and corporate and/or labor organization treasury funds. Such monies cannot legally be used in connection with federal elections, but can be used for other purposes.

Advisory Opinions

AO 1995-1 Respondents and the Confidentiality Provisions

Respondents in MUR 3938 may disclose in whole or in part any response they made to the FEC with regard to the complaint itself. Doing so would not compromise the confidentiality of any unreleased materials in the MUR file as provided under 2 U.S.C. §437g(a)(12) and 11 CFR 111.21.

This conclusion does not extend to information relating to any notification of findings issued by the Commission or any action taken by the Commission in an investigation. See Advisory Opinion 1994-32. Nor does it affect the Commission's right to withhold information from public disclosure pursuant to its investigatory or other privileges. 11 CFR 4.5(a)(1) through (7)(vi).

A MUR file becomes a matter of public record once the Commission closes the case.

Issued: February 10, 1995;
Length: 4 pages. ♦

AO 1995-3 Running Simultaneous Senate and Presidential Campaigns

Senator Phil Gramm may simultaneously run a U.S. Senate reelection campaign and a Presidential campaign. The Gramm '96 Committee (the Senate committee) and the Phil Gramm for President Committee (the Presidential committee) will maintain completely separate operations, staffs and facilities. The committees will not transfer funds between each other, nor will they make loans to each other. They will each cover their own expenses.

This arrangement fulfills the requirements at 11 CFR 110.8(d)(1) and (2), and 110.3(c)(5). Although the regulations at 11 CFR 110.8(d)(3) allow dual campaigns to share personnel and facilities, Senator Gramm's committees may not take advantage of this provision. This is because it is anticipated that his Presidential committee will receive public funding.

Contribution Limits

Under the proposed arrangement, where the operations of the two campaigns are entirely separate, both committees may raise funds concurrently for their respective campaigns. Contributors have separate limits for each campaign. For instance, an individual may give up to \$1,000 to Senator Gramm's Senate committee per election and another \$1,000 to the Presidential committee for the primary election process. Contributors must designate in writing which candidacy each contribution is meant for. Additionally, neither committee is permitted to make transfers, loans or contributions to, or make expenditures on behalf of, the other committee. 11 CFR 110.1(f)(3).

Public Funding

None of the funds received via the public funding program may be used to influence the Senate campaign.

It is also important to note that even if Senator Gramm ceases to actively campaign for one or the other office, funds may not be transferred between the campaigns, since the Presidential committee will have chosen to receive federal matching funds. 11 CFR 110.3(c)(5)(iii).

Date Issued: February 16, 1995;
Length: 3 pages. ♦

AO 1995-5 Use of Contributor Lists Derived from FEC Reports

The Tax Reform Immediately Committee (TRIM) for New York's 14th District may not use mailing lists derived from FEC reports to distribute a packet of materials that include solicitations for financial support of its operations.

The 14th district TRIM committee is part of a network of TRIM committees that advocate "lower taxes through less government." The TRIM committee planned to compile a mailing list by copying the names and addresses of individual contributors from reports filed with the FEC by Representative Carolyn B. Maloney. Ms. Maloney represents New York's 14th district. TRIM proposed using the list to send individuals an "educational packet," consisting of a cover letter, a TRIM bulletin and a copy of Article 1, Section 8, of the U.S. Constitution, listing the areas of jurisdiction of the U.S. Congress.

This packet would not contain an endorsement of any candidate or party. The TRIM bulletin would contain articles critical of government spending and a chart listing and characterizing Ms. Maloney's votes on specific tax and spending bills. The bulletin would also contain an order form for 100 copies of the TRIM bulletin for \$10. Additionally, the order form would contain a request for donations to help TRIM distribute its bulletin.

Under the Federal Election Campaign Act (the Act), it is illegal to sell or use information on individual contributors copied from FEC reports for solicitation or commercial purposes. 2 U.S.C. §438(a)(4) and 11 CFR 104.15(a). The offer to sell copies and the request for donations preclude TRIM's proposed activity under the Act.

The advisory opinion noted that TRIM had not asked whether the cost of distributing its proposed

packet would be reportable or, if TRIM were incorporated, whether it would constitute a prohibited expenditure under the Act. The Commission, therefore, did not address these issues.

Date: March 2, 1995; Length: 4 pages. ♦

Advisory Opinion Requests

Advisory opinion requests (AORs) are available for review and comment in the Public Records Office.

AOR 1995-7

Personal liability of former Congressional candidate for bank loan used for 1992 campaign. (Key Bank of Alaska; March 7, 1995; 3 pages plus 13 page-attachment)

AOR 1995-8

Campaign lease of office owned by candidate and of equipment owned by candidate's professional corporation. (Bart Stupak; March 10, 1995; 1 page)

AOR 1995-9

Use of Internet by nonconnected committee to solicit contributions. (NewtWatch; March 10, 1995; 5 pages plus 16-page attachment)

AOR 1995-10

Application of the Federal Election Campaign Act to dispute between current and former treasurer of candidate committee over custody of committee records. (Helms for Senate; March 16, 1995; 3 pages plus 28-page attachment)

AOR 1995-11

Classification of limited liability company as a person for purposes of making lawful contributions under the Federal Election Campaign Act. (Hawthorn Group, L.C.; March 17, 1995; 5 pages plus 4-page attachment) ♦

Alternative Disposition of Advisory Opinion Requests

AOR 1994-38

The Commission could not reach agreement by the required four-vote majority on whether federal disclosure requirements preempt those of California with regard to the reporting of an expenditure made by the Lucille Roybal-Allard for Congress committee in connection with a state ballot issue—California's Proposition 187. See Agenda Document #95-16. ♦

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To order any of these documents, 24 hours a day, 7 days a week, call **202/501-3413** on a touch tone phone. You will be asked for the numbers of the documents you want, your fax number and your regular number. The documents will be faxed shortly thereafter.

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