Record

February 1995 *Federal Election Commission* *Volume 21, Number 2*

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Public Funding

FEC Completes Title 26 Audits Within Election Cycle

In 1994, the FEC completed all audits related to the 1992 Presidential election cycle within two years of the election, a feat that was last achieved in 1981. Streamlined procedures, simplified regulations and an increase in FEC staff helped reduce the amount of time it took to finish the audits.

By law, the FEC is required to audit every committee (established for the primaries, the conventions or the general election) which received public financing under Title 26 of the U.S. Code.

The following changes improved the turnaround time:

- Limits on extensions of time for committees to submit comments on audit findings;
- Access to committees' computerized data;
- Requiring an inventory of committees' campaign records prior to starting field work; and
- Specific due dates for the provision of campaign records during audit field work.

Additionally, final audit reports now include all audit findings; prior to 1992, particular findings were removed from final audit reports on

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Court Cases

FEC v. NRA Political Victory Fund

On December 6, 1994, the Supreme Court ruled that the FEC lacks standing to independently bring a case under Title 2 of the U.S. Code before the Supreme Court. In future cases, the FEC must seek authorization from the U.S. Solicitor General if it wishes to represent itself in Title 2 cases. (No. 93-1151.)

Background

This decision brings to an end the FEC's legal efforts to enforce a finding that the NRA contributed corporate monies to its separate segregated fund, the NRA Political Victory Fund. (Corporations are prohibited sources of contributions under 2 U.S.C. §441b(a).) In November 1991, the U.S. District Court for the District of Columbia had ruled in favor of the FEC and had imposed a $40,000 penalty on the defendants (see the January 1992 *Record* for a summary of the district court's decision). On appeal, the U.S. Court of Appeals for the District of Columbia reversed the district court's ruling on the grounds that the FEC's two nonvoting, *ex officio* members, the Secretary of the Senate and the Clerk of the

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Public Funding

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committees involved in enforcement actions.

During December meetings, the Commission approved the last five of the nineteen audits from the 1992 Presidential election cycle:

- The Tsongas primary election audit (total amount sought: $74,730);
- The Bush/Quayle primary election audit (total amount sought: $841,850);
- The Bush/Quayle general election audit (total amount sought: $29,775);
- The Clinton primary election audit (total amount sought: $1,383,587); and
- Clinton/Gore general election audit (total amount sought: $254,546).

The Bush and Clinton audits are summarized in this issue. The Tsongas audit will be summarized in a future issue of the *Record.* ✦

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Presidential Election Campaign Fund Forecast

The Presidential Election Campaign Fund (the fund) is expected to cover total payments for both the 1996 and 2000 Presidential elections, thanks to the 1994 increase in the tax checkoff amount from $1 to $3.

There exists, however, the possibility of a cash flow problem in the early months of 1996, which could result in partial payments to primary candidates. In such an event, candidates would presumably have to make up the difference with some form of bridge loans secured by the remaining entitlement for that period and repay those loans out of their March or April payments.

This potential problem exists for two reasons. First, the fund will not have had time to build up a reserve by 1996 and, second, the demand for funds in the early months of 1996 is expected to be greater than it was in 1992. With regard to the fund's reserves, by January 1996 the fund will have had the benefit of the tax checkoff increase for only two years (1994 and 1995). Although the fund's overall balance in January 1996 will be enough to cover first round payments to primary candidates, U.S. Treasury regulations require that monies for the general election and the conventions be set aside before making such disbursements. The money will be there, but it won't be available to primary election candidates.

The FEC anticipates a greater demand on the fund in the early months of 1996 than ever before. Recently, a number of large states have rescheduled their primaries for the first quarter of 1996, and it is expected that candidates will raise matching funds early in order to compete in these primaries. The fund is expected to recover by spring of 1996, once the 1996 tax payments begin to flow in.

For the Presidential race in the year 2000, on the other hand, the fund will have had the benefit of four years' worth of $3 checkoff receipts. The fund is expected to easily provide public monies for that election.

This analysis is based on the following information:

- The fund's balance at the end of 1994 was about $101 million.
- Next year's receipts are expected to range between $69 million and $72 million.
- Projected entitlements in the two grant categories for the 1996 Presidential race are $24,879,000 for conventions and $124,400,000 for general election candidates.
- Between $21 million and $24 million are expected to be available for the payments to 1996 primary candidates. If first round entitlements exceed the fund's resources, the U.S. Treasury will make payments on a pro-rata basis, using whatever funds are available in January and February 1996, after having set aside monies for the conventions and general election.
- The primary spending limit for the next Presidential race is estimated to be around $31 million. ✦

Audits

Bush-Quayle '92 Primary Committee Audit

On December 29, 1994, the Commission released the final audit report on the Bush-Quayle Primary Committee. The report set the committee's payment and repayment[1]

[1] *If the committee does not dispute the initial determination of the repayment within 30 days, the repayment amount becomes final and is payable within 90 days of the initial determination. 11 CFR 9038.2(c) and (d).*

obligation to the U.S. Treasury at $841,850.

The findings of the report are summarized below.

General Election Expenditures

The primary committee incurred $807,249 in expenses which appeared to be nonqualified because they benefited the general election campaign. The Commission made an initial determination that the committee repay the U.S. Treasury $195,224—the pro rata portion of the nonqualified expenses that was paid with federal matching funds. (The formula for determining the repayment is explained at 11 CFR 9038.2(b)(2)(iii).) Alternatively, this matter would be resolved if the general election committee reimbursed $807,249 to the primary committee.

Matching Funds Received in Excess of Entitlement

The primary committee received $485,631 more than it was entitled to in public matching funds. The committee is required to pay this amount to the U.S. Treasury.

Unresolved Excessive Contributions

The committee had $141,801 in unresolved excessive contributions from individuals. Although the committee issued refund checks in a timely manner, a year later virtually none of the checks had yet been cashed. The committee paid $141,801 to the U.S. Treasury.

Disclosure of Contributor's Occupation and Name of Employer

A sample review of the committee's reports revealed that the committee failed to report the occupation and name of employer for 56 percent of the items tested. Furthermore, language in several of the committee's solicitations failed to meet the "best efforts" standard for notifying the contributor that the reporting of the information is required by law. The committee contended that it had met the "best efforts" standard and therefore did not contact its contributors or file amended reports.

Use of Corporate Aircraft

The committee did not pay two corporations in advance for the use of their aircraft, as required by law.

Excessive Contributions Resulting from Staff Advances

An individual made an excessive contribution by advancing $12,598 for campaign travel and expenses for himself and others. The committee failed to reimburse the individual within the time frame specified by law. The committee argued that the time frame did not apply in this instance because the individual was a commercial vendor who typically received payment for such expenses. The committee did not, however, present adequate documentation to support this assertion.

Reporting of Debts and Obligations

The committee failed to disclose obligations of $1,767,548 owed to vendors. Although the committee disagreed with the finding, it filed amended reports to correct this problem.

Use of Government Conveyance for Campaign Travel

The committee appeared to have underpaid the U.S. Air Force by $259,636 for use of its aircraft in the course of campaigning. The committee presented documentation demonstrating that under the circumstances the committee reimbursed the Air Force on a reasonable basis.

Stale-Dated Committee Checks

A total of $19,194 in checks issued by the committee were not cashed. The committee made a payment equal to this amount to the U.S. Treasury. ✦

Bush-Quayle '92 General Committee and Compliance Fund Audit

On December 29, 1994, the Commission released the final audit report on the Bush-Quayle General Committee and the Bush-Quayle Compliance Committee.[1] The report set the general committee's payment and repayment[2] obligation to the U.S. Treasury at $21,109. The compliance fund's obligation to the U.S. Treasury was set at $8,666.

The findings of the report are summarized below.

Primary Election Committee Expenditures

The primary committee made $807,249 in expenses which appeared to benefit the general election campaign, and therefore appeared to be nonqualified. This matter would be resolved if the general election committee reimbursed the primary committee. The Commission made an initial determination that unless this is done, the primary committee must repay the U.S. Treasury $195,224—the pro rata portion of the nonqualified expenses that was paid with federal matching funds. (The formula for determining the repayment is explained at 11 CFR 9038.2(b)(2)(iii).)

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[1] *Presidential campaigns receiving federal funding are permitted to establish compliance funds, which are special accounts used to pay for specified expenses, including legal and accounting expenses incurred solely to comply with the campaign finance law. Compliance funds are funded with private contributions. Compliance fund spending does not count against the expenditure limits that apply to federally funded campaigns.*

[2] *If the committee does not dispute the initial determination of the repayment within 30 days, the repayment amount becomes final and is payable within 90 days of the initial determination. 11 CFR 9007.2(c) and (d).*

Audits

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Expenditure Limitations

The general committee exceeded its spending limitation by $553,258. The Commission suggested that the compliance fund reimburse this amount to the committee, thereby eliminating the excessive expenditures, and provide the FEC supporting documentation.

Use of Government Conveyance for Campaign Travel

The general committee appeared to have underpaid the U.S. Air Force by $545,345 for use of its aircraft in the course of campaigning. The committee presented documentation demonstrating that under the circumstances the committee had reimbursed the Air Force on a reasonable basis.

Reporting of Debts and Obligations

The general committee failed to disclose obligations of $1,052,098 owed to 24 vendors. The compliance fund failed to disclose that it owed $235,587 to eight vendors. The general committee and the compliance fund disagreed with this finding, but filed amended reports to correct this problem.

Disclosure of Contributor's Occupation and Name of Employer

A sample review of the compliance fund's reports revealed that the fund failed to report the occupation and name of employer for 68 percent of the items tested. Furthermore, language in several of the fund's solicitations failed to meet the "best efforts" standard for notifying the contributor that the reporting of this information is required by law. The compliance fund contended that it had met the "best efforts" standard and therefore did not contact its contributors or file amended reports.

Gain on Insurance Settlement

The general committee received a $5,495 insurance payment for the loss of a $5,745 computer it had leased from a vendor. The general committee then bought the vendor a replacement computer for $3,409. The general committee paid the U.S. Treasury the $2,086 insurance payment balance, as required by FEC regulations.

Stale-Dated Committee Checks

A total of $19,023 in checks issued by the general committee and $8,666 made out by the compliance fund were not cashed. The committee and the fund abided by the requirement to make a payment equal to these amounts to the U.S. Treasury. ✦

Clinton '92 Primary Committee Audit

On December 29, 1994, the Commission released the final audit report on the Clinton for President Committee, President Clinton's 1992 primary committee. The report set the committee's payment and repayment[1] obligation to the U.S. Treasury at $1,383,587.

The findings of the report are summarized below.

Misstatement of Financial Activity

Initially, the committee overstated its 1992 receipts and disbursements by $116,489 and $322,476, respectively, and understated its 1992 ending cash by $206,717. Later, in July 1993, the committee filed amended reports to correct this problem.

[1] *If the committee does not dispute the initial determination of the repayment within 30 days, the repayment amount becomes final and is payable within 90 days of the initial determination. 11 CFR 9038.2(c) and (d).*

Itemization of Receipts

The committee failed to itemize a number of in-kind contributions and contributions from individuals. The committee filed amended reports in July 1993 to correct this problem.

Disclosure of Contributor's Occupation and Name of Employer

A sample review of the committee's reports revealed that the committee failed to report the occupation and name of employer for 49 percent of the items tested. Furthermore, language in several of the committee's solicitations failed to meet the "best efforts" standard by not explicitly notifying the contributor that the reporting of the information is required by law and, in some cases, by failing to request the name of employer from contributors. The committee filed amended reports in July 1993 to correct this problem.

Itemization of Refunds and Rebates

The committee failed to identify various press organizations and the Secret Service as the sources of more than $2.5 million in travel reimbursements paid to the committee through a billing and collection service provided by a travel agent. The committee also failed to itemize $11,898 in other refunds and rebates. The committee filed amended reports in July 1993 and October 1994 to correct these problems, though continuing to argue that further disclosure was not required for amounts received from the press and the Secret Service.

Excessive Contributions Resulting from Staff Advances

The committee received seemingly excessive contributions from five individuals totaling $58,482.

Contributions, Extensions of Credit by Commercial Vendors and Use of Corporate Facilities

The committee received $246,162 in seemingly excessive or prohibited contributions resulting from advances, use of corporate facilities and extensions of credit made outside the ordinary course of business.

Nonqualified Campaign Expenses

The Commission made an initial determination that the committee repay the U.S. Treasury $270,384 for the following nonqualified campaign expenses:

- Overpayments to vendors;
- General election expenditures made for equipment, facilities, polling, direct mail, media services and other miscellaneous expenses; and
- Staff bonuses, an unexplained settlement, traveler's cheques and other nonqualified expenses.

Matching Funds Received in Excess of Entitlement

The Commission made an initial determination that the candidate repay $1,072,344 to the U.S. Treasury, representing matching funds that exceeded entitlement. The Commission arrived at this figure based on an analysis of the primary committee's Statement of Net Outstanding Campaign Obligations, relevant post-convention contributions and matching funds received after the convention. The Commission made this determination after being unable to reach a consensus on the staff's recommendation that the repayment to the U.S. Treasury be $3.4 million. The Commission could not agree on this matter because it could not decide on the designation status of contributions received after the convention.

Stale-Dated Committee Checks

A total of $40,859 in checks issued by the committee were not cashed. The Commission determined that the committee had to pay the U.S. Treasury the value of these stale-dated checks. ✦

Clinton/Gore '92 General Committee and Compliance Fund Audit

On December 29, 1994, the Commission released the final audit report on the Clinton/Gore '92 Committee, which served as President Clinton's 1992 general election committee, and the campaign's compliance fund.[1] The report set the committee's payment and repayment[2] obligation to the U.S. Treasury at $254,546.

The findings of the report are summarized below.

Disclosure

The compliance fund failed to adequately disclose the name and employer of its contributors, and did not demonstrate best efforts to obtain this information. Subsequently, however, the compliance fund filed amended reports to correct this problem.

In addition, the general committee failed to adequately disclose refunds and rebates, and debts and obligations. Later the committee filed amended reports correcting the information on refunds and rebates.

Funds from Non-Allowable Sources

The compliance fund received seemingly impermissible transfers from President Clinton's primary committee. The primary committee also seems to have paid for some fundraising expenses that benefited the compliance fund as a result of a disproportionate allocation of costs to the primary committee involving a common vendor. The compliance fund disagreed with these findings. The Commission could not reach agreement on the designation status of contributions received by the primary committee and transferred to the compliance fund after the convention and, correspondingly, on whether or not to require the compliance fund to return $1,353,397 to the primary committee.

Extension of Credit as a Possible Prohibited Contribution

The general committee received an extension of credit by a vendor. The committee demonstrated that this was done in the normal course of business and was therefore not a prohibited contribution.

Prohibited Contributions

The general committee received seemingly prohibited contributions in the form of donated equipment, polling services it did not pay for, deposits from unknown sources, and amended contracts that benefited the committee. The committee demonstrated that some of these were legally permissible. Apparent prohibited contributions of $112,100 remain, however, and the committee is to repay this amount to the U.S. Treasury.

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[1] *Presidential campaigns receiving federal funding are permitted to establish compliance funds, which are special accounts used to pay for specified expenses, including legal and accounting expenses incurred solely to comply with the campaign finance law. Compliance funds are funded with private contributions. Compliance fund spending does not count against the expenditure limits that apply to federally funded campaigns.*

[2] *If the committee does not dispute the initial determination of the repayment within 30 days, the repayment amount becomes final and is payable within 90 days of the initial determination. 11 CFR 9007.2(c) and (d).*

Audits

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Nonqualified Campaign Expenses

The Commission made an initial determination that the committee repay the U.S. Treasury $78,625 for nonqualified campaign expenses, including duplicate payments and noncampaign-related payments, such as payments for lost vehicles.

Expenditure Limitation

The general committee made expenditures totaling $267,840 in excess of the spending limitations. The compliance fund is to reimburse this amount to the committee, thereby eliminating the excessive amount and the need to make a repayment to the U.S. Treasury.

Income Earned by the General Committee

The general committee earned income from federal funds, mainly from deposits in an interest bearing escrow account. The Commission made an initial determination that the committee pay $6,646 to the U.S. Treasury.

Stale-Dated Committee Checks

A total of $57,175 in checks issued by the committee and the compliance fund were not cashed. The committee and the fund are to pay the U.S. Treasury the value of these stale-dated checks. ✦

Need FEC Material in a Hurry?

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Court Cases

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House, sat on the Commission in violation of the Constitution's separation of powers (see the December 1993 *Record* for a summary of the appeals court's decision).

Following the appeals court's decision, the Commission took several steps to ensure the uninterrupted enforcement of the federal election law. The agency:

- Reconstituted itself as a six-member body, comprising only those commissioners appointed by the President;
- Ratified, in its reconstituted form, the regulations, forms, advisory opinions, audits, compliance matters and litigation issued and/or initiated by the former Commission; and
- Filed a petition for a writ of certiorari with the Supreme Court.

Supreme Court Decision

The FEC's petition to the Supreme Court was filed within the 90-day filing period mandated by law, but it was filed without the authorization of the Solicitor General. The Court contrasted the language at 2 U.S.C. §437d(a)(6) with that of 26 U.S.C. §§9010(d) and 9040(d) to reach the conclusion that the FEC lacked standing to bring this case. The Title 2 statute empowers the FEC "to . . . appeal any civil action . . . to enforce the provisions of the" Federal Election Campaign Act. It fails, however, to explicitly provide the FEC with the authority to file a writ of certiorari or otherwise conduct litigation before the Supreme Court. By contrast, the Court stated, the Title 26 statute does specifically provide the FEC with the authority "to petition the Supreme Court for certiorari to review" judgments in actions to enforce the Presidential election fund laws. The Court interpreted the discrepancy in the language of these two statutes to indicate congressional intent to restrict the FEC's independent litigating authority at the Supreme Court level to those matters involving the Presidential election laws.

The Court rejected the Commission's argument that, in the past, it had represented itself before the High Court. The Court pointed out that none of those cases had challenged the FEC's standing to petition the Court for a writ of certiorari.

Although the Solicitor General authorized the FEC's petition, this action came months after the 90-day filing period had closed—"too late in the day to be effective."

The FEC's petition for a writ of certiorari, therefore, was dismissed for want of jurisdiction. The action leaves standing the ruling of the court of appeals. ✦

Freedom Republicans, Inc., v. FEC

On December 7, 1994, the U.S. District Court for the District of Columbia dismissed this case, as instructed on remand by the Court of Appeals, which had taken notice of the Supreme Court's October 3, 1994, denial of the appellees' petition for writ of certiorari.

The Freedom Republicans brought this case before the court, alleging that the Republican Party's delegate-selection process and system of nonvoting, minority "auxiliaries" discriminated on the basis of race, in violation of Title VI of the Civil Rights Act. See page 3 of the March 1994 *Record* for an in-depth discussion of the case.

U.S. District Court for the District of Columbia, No. 92-0153 (CRR), December 7, 1994. ✦

Whitmore and Quinlan v. FEC, et al.

On December 9, 1994, the U.S. District Court for the District of Alaska dismissed this case, in which the plaintiffs challenged the constitutionality of permitting federal candidates for the Alaska at-large seat in the U.S. House of Representatives to accept contributions from individuals and PACs residing outside of Alaska.

Joni Whitmore was the Green Party's 1994 candidate for U.S. House Representative from Alaska. She refused out-of-state contributions throughout her campaign. James Quinlan is a resident of Alaska. Plaintiffs argued that the Federal Election Campaign Act (the Act) permitted out-of-state contributions, which violated their constitutional rights, hurt Ms. Whitmore's candidacy and diluted Mr. Quinlan's vote this past election. (See the September 1994 *Record*, page 9, for further discussion of the plaintiffs' arguments.)

The court found that the plaintiffs lacked standing to bring this case against the defendants because they did not demonstrate injury-in-fact or causation, or that the relief they sought would redress the alleged injury.

An injury-in-fact must affect a plaintiff in a personal and individual way. The court deemed Ms. Whitmore's alleged injury to be hypothetical and speculative. The court found no evidence to suggest that Ms. Whitmore would have fared better in the election if out-of-state contributions had been prohibited. As to the allegation that the Act injures Mr. Quinlan by depriving him of his right to equal protection and to be governed by a republican form of government, the court said there was no injury-in-fact because all candidates were free to solicit and receive contributions.

To show causation, a plaintiff's injury must be traceable to the challenged action of the defendant. The court stated that Ms. Whitmore failed to present any facts indicating that the government had caused non-Alaskans to contribute to her opponents, prevented her from soliciting such contributions or prevented non-Alaskans from contributing to her. The Act, the court found, does not treat the plaintiffs any differently than other American citizens.

Lastly, the court stated that there was no evidence to show that prohibiting her opponents from accepting out-of-state contributions would redress Ms. Whitmore's injury; the effect of out-of-state contributions on her campaign was wholly speculative.

The court said " . . . to accomplish the result plaintiffs seek, the court would have to add to [the Act] a prohibition [on] nonresident contributions, which it is not permitted to do. . . . [R]egulation of federal elections is more appropriately committed to the legislature, not to the judiciary."

Plaintiffs filed an appeal with the Court of Appeals on December 22, 1994.

U.S. District Court for the District of Alaska, Civil Action No. A94-289 CIV(JWS), December 8, 1994. ✦

Lytle v. FEC

On December 13, 1994, the U.S. District Court for the Middle District of Tennessee dismissed this case without prejudice due to plaintiff's failure to attend the December 9 initial case management conference.

Terry L. Lytle, an independent U.S. Senate candidate, had asked the court to find it unconstitutional for U.S. Senate candidates in Tennessee to accept contributions from out-of-state sources. See page 10 of the January 1994 *Record* for a further discussion of Mr. Lytle's case.

U.S. District Court for the Middle District of Tennessee, No. 3-94-0946, December 13, 1994. ✦

New Litigation

FEC v. Rick Montoya, et al.

The FEC asks the court to find that the defendants violated the terms of the conciliation agreement they entered into in March 1994 (MUR 3444), and to order them to pay $3,000, as stipulated in the agreement, plus interest calculated from May 15, 1994, until the date on which the amount is paid in full. Additionally, the FEC asks the court to impose a $5,000 civil penalty on the defendants for failing to comply with the terms of the agreement.

U.S. District Court for the District of Columbia, No. 94-2675, December 13, 1994.

Wilson, et al. v. U.S.A., et al.

Plaintiffs in this case ask the court to declare that the National Voter Registration Act is unconstitutional and to enjoin the defendants from enforcing it, unless Congress appropriates complete funding for its implementation.

The State of California and its governor, Pete Wilson, allege that the Act violates the Tenth Amendment by impinging on the state's sovereign right to allocate its budgetary resources as it determines. The Tenth Amendment states that powers not delegated to the federal government and not prohibited to the states by the Constitution are reserved to the states.

The plaintiffs estimate the cost of implementing the Act in California to equal or exceed $20 million. These costs are associated with the preparation of a National Voter Registration Form, the processing and distribution of this form, assistance to citizens in completing the form, the modification of the state's driver's license application form, and other costs associated with other obligations imposed upon state agencies by the National Voter Registration Act. Although the

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federal government is expected to cover a portion of the costs, the amount of federal assistance has not yet been determined, and it is not expected to fully cover all expenses.

U.S. District Court for the Northern District of California, No. C94-4364VRW, December 20, 1994. ✦

Federal Register

Federal Register notices are available from the FEC's Public Records Office.

1994-18
11 CFR Parts 9003–9038: Public Financing of Presidential Primary and General Election Candidates; Extension of Comment Period (59 FR 64351, December 14, 1994)

1994-19
11 CFR Part 8: National Voter Registration Act; Technical Amendment, Final Rule (59 FR 64560, December 15, 1994)

1995-1
11 CFR Part 110: Communications Disclaimer Requirements; Notice of Public Hearing (60 FR 4114, January 20, 1995)

1995-2
11 CFR Parts 9003-9038 Public Financing of Presidential and General Election Candidates; Notice of Public Hearing (60 FR 4114, January 20, 1995)

1995-3
11 CFR Part 1: Privacy Act of 1974; New and/or Revised Systems of Records; Notice of Effective Date (60 FR 4165, January 20, 1995)

1995-4
11 CFR Part 1: Privacy Act; New Exempt System of Records; Final Rule (60 FR 4072, January 20, 1995)

Regulations

Public Hearing on Proposed Changes to Public Funding Rules

The FEC will hold a public hearing on proposed changes to the regulations governing the public funding of Presidential primary and general election candidates on February 15. It will take place at 10 a.m. in the Commission meeting room on the ninth floor of the FEC building at 999 E Street, NW, Washington, D.C. The hearing is being held in response to comments received on the Notice of Proposed Rulemaking published in the Federal Register last October 6 (59 FR 51006).

The proposed regulations raise a variety of issues, including negligent handling of public funds, reimbursement for the use of government aircraft and several proposals affecting the Commission's audit process. See the November 1994 *Record* for a more detailed description of the proposed rules.

The Commission is also considering a petition for rulemaking filed by the Center for Responsive Politics. The petition urges the Commission to repeal the rules permitting a publicly financed general election candidate to establish a separate legal and accounting compliance fund, which can be used for specified expenses and can accept private contributions.

Notice of the hearing was issued in the Federal Register (60 FR 4114, January 20, 1995). Copies of this notice and the proposed regulations notice may be ordered from the FEC's Public Records Office. Call 800/424-9530 (then press 3 if using a touch tone phone) or 202/219-4140. ✦

Communications Disclaimer Requirements

The FEC will hold a public hearing on proposed changes to the disclaimer regulations for campaign communications on March 8 at 10 a.m. in the Commission meeting room, located on the ninth floor of the FEC building at 999 E Street, NW, Washington, D.C. The hearing is being held in response to comments received on the Notice of Proposed Rulemaking published in the Federal Register last October 5 (59 FR 50708).

The proposed rules include a proposal to presume that all communications by candidate committees and party committees that mention a candidate constitute express advocacy and therefore require a disclaimer. Further the proposed rules would require oral disclaimers to accompany oral communications and solicitations. The rules also contain proposed definitions for "direct mail" and for the "clear and conspicuous" disclaimer display requirement. For further details on the proposed rules, refer to the article on the regulations appearing on the front page of the November 1994 *Record.*

Notice of this hearing was issued in the Federal Register (60 FR 4114, January 20, 1995). Requests to testify must be received in writing by the FEC on or before February 22. Persons requesting to testify must accompany their request with written comments on the proposed rules if such comments were not previously filed. Requests to testify and any accompanying comments must be addressed to Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW, Washington, DC 20463.

Copies of the public hearing notice and the proposed regulations notice may be ordered from the FEC's Public Records Office. Call 800/424-9530 (then press 3 if using a touch tone phone) or 202/219-4140. ✦

New FEC System of Records Under Privacy Act

A new system of records became effective on January 20. A notice on this matter appeared in the October 27 Federal Register (59 FR 53946). This notice was accompanied by a notice of proposed rulemaking to exempt a new records system, "Inspector General Investigative Files," from certain provisions of the Privacy Act of 1974. The FEC did not receive any comments on either notice.

The rules exempting the "Inspector General Investigative Files" from disclosure under certain circumstances will become effective on February 21, 1995 (60 FR 4072, January 20, 1995). The Inspector General's office has substantial investigatory and enforcement authority that would be compromised if these records were not protected from routine disclosure. ✦

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Administrative Termination

This article, written for authorized committees of candidates, explains administrative termination procedures. Administrative termination can occur in two ways: a committee may be granted a request to be administratively terminated or the Commission may, at its own initiative, administratively terminate a committee.

This is the final article in a series of three articles on debt retirement, debt settlement and termination by candidate committees. The first article, "Retiring Campaign Debts," was published in the November 1994 issue. The second article, "Candidate Committee Termination and Debt Settlement," was published in the December 1994 issue.

If you have any questions after reading this article, call the information Division at 800/424-9530 (press 1 if using a touch tone phone) or 202/219-3420.

Criteria for Administrative Termination

An authorized committee that wishes to terminate but cannot reach settlement agreements with its creditors may ask the FEC for administrative termination. 11 CFR 102.4. (Committees without debt need only have their termination report approved by the FEC to terminate. See the second article in this series in the December 1994 *Record*, page 1.)

A committee is not eligible for administrative termination if it is:

- Involved in any matter before the Commission (such as a MUR, litigation or an audit); or
- An authorized committee of a federal candidate who is currently seeking election.

Otherwise, the Commission will consider the following factors when determining a committee's eligibility for administrative termination:

- The committee's aggregate reported financial activity in one year is less than $5,000.
- The committee's reports disclose no receipt of contributions for the previous year.
- The committee's last report disclosed minimal expenditures.
- The committee's primary purpose for filing its reports has been to disclose outstanding debts and obligations.
- The committee's last report disclosed that the debts owed to the committee were not substantial.
- The committee's outstanding debts and obligations do not appear to present a possible violation of the Federal Election Campaign Act's (the Act's) contribution prohibitions or limitations.
- The committee's outstanding debts and obligations exceed the total of the committee's reported cash-on-hand balance.

11 CFR 102.4(a) and FEC Directive 45.

Procedures for Requesting Administrative Termination

When requesting administrative termination, the committee's treasurer should set forth the committee's eligibility in writing, based on the factors listed above. In addition, with respect to each outstanding debt listed on the last report, the committee's request should describe:

- The terms and conditions of the initial extension of credit;
- Steps taken by the committee to repay the debt; and
- Efforts made by the creditors to obtain payment.

Requests should be addressed to the Commission's Reports Analysis Division.

Once the Commission completes its review of the request, the committee will be sent a written notification of the Commission's approval or disapproval. Committees must continue to file regular reports until the administrative termination request has been approved. Directive 45.

FEC-Initiated Administrative Termination

Periodically, the FEC reviews its data bases to identify committees that appear eligible for administrative termination in an effort to purge inactive committees from the FEC's computer records.

Committees that qualify will receive a notice informing them that they will be administratively terminated. Those committees not wishing to terminate must submit to the FEC a written statement so stating within 30 days of receipt of the administrative termination notice.

For more information, see FEC Directive 45. ✦

Advisory Opinions

Advisory Opinion Requests

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

AOR 1994-40
Fulfilling FEC requirements for preserving records by using microfilm instead of paper. (Alliance for American Leadership; December 21, 1994; 2 pages)

AOR 1995-1
MUR respondents' selected disclosure of their responses to a complaint. (Arthur Block, January 4, 1995, 3 pages plus 3-page attachment)

AOR 1995-2
Application of definition of member to individuals holding seats on commodities exchange that are beneficially owned by member firms. (NYMEX and NYMEX PAC, January 5, 1995, 6 pages)

AOR 1995-3
Simultaneous fundraising by one candidate for dual candidacy (Senate and Presidency). (Friends of Phil Gramm '96, January 11, 1995, 3 pages)

AOR 1995-4
Purchase of leased car by PAC established by retired Congressman. (Congressman Douglas Applegate, January 13, 1995, 1 page plus 10-page attachment) ✦

Alternative Disposition of Advisory Opinion Requests

AOR 1994-14
The Commission closed this AOR without issuing an opinion because necessary facts were not submitted. The request was made by the Tsakanikas for U.S. Congress/ District 19 Committee and concerned the ownership of credit card points earned by the candidate by using his credit card for campaign expenses. ✦

Compliance

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 releases of December 8, 20 and 22, but it does not include the 45 MURs in which the Commission took no action. Files on closed MURs are available for review in the Public Records Office.

MUR 2619/Pre-MUR 240
Respondents (all in CA):
(a) Antonovich for Senate Committee, Thomas B. Silver, treasurer; (b) Michael Antonovich; (c) Aetna Equity Financing Company, Inc., Abraham Spiegel, president (successor to Remington Investments, Incorporated)
Complainant: FEC initiated; Department of Justice referral
Subject: Corporate contributions; failure to disclose loan properly and timely; excessive contributions; failure to refund general election contributions within reasonable time; inaccurate reporting
Disposition: (a) and (b) $37,000 civil penalty; refund of $5,322.50 in contributions to contributors or U.S. Treasury; amendment of reports; (c) $15,000 penalty

MUR 2991
Respondents: (a) NRA Political Victory Fund, Grant A. Wills, treasurer (DC); (b) National Rifle Association–Institute for Legislation Action (DC)
Complainant: FEC initiated
Subject: Corporate contributions
Disposition: (a) and (b) Probable cause to believe; litigation initiated; Supreme Court dismissed case for lack of jurisdiction in 1994

MUR 3472
Respondents: (a) People for Boschwitz 1990, Scott Johnson, treasurer (MN); (b) Ester Schneerson (NY); (c) Abraham Barber (NY); (d) St. Paul Companies Inc. Volunteer Committee for Good Federal Government, Karen L. Himle, treasurer (MN); (e) Perry Mendel (AL)
Complainant: FEC initiated
Subject: Excessive contributions; reporting undesignated contributions as designated before receiving written redesignations from contributors
Disposition: (a) $16,500 civil penalty; (b) $750 civil penalty; (c) $500 civil penalty; (d) and (e) reason to believe but took no further action

MUR 3540
Respondents: (a) Prudential Securities, Inc. (NY); et al. (b)–(j)
Complainant: FEC initiated
Subject: Corporate contributions (use of corporate facilities and personnel for federal candidate fundraising)
Disposition: (a) $550,000 civil penalty; (b)–(j) reason to believe but took no further action; sent admonishment letters

MUR 3541/Pre-MUR 260
Respondents: (a) Vincent C. Schoemehl, Jr. (MO); (b) Citizens for Schoemehl Committee, Nancy Rice, treasurer (MO); (c) John M. Suarez (MO); (d) Jose Antonio Boveda, Tippins Development, Ltd. (Spain); et al. (e)-(g)
Complainant: Carnahan for Governor Campaign (MO)
Subject: Contributions by foreign nationals
Disposition: (a) and (b) $10,000 civil penalty; (c) $7,000 civil

penalty; (d) $7,000 civil penalty; (e)–(g) reason to believe but took no further action

MUR 3852
Respondents: (a) Friends of Marjorie Margolies-Mezvinsky, Betsy Klein, treasurer (PA); et al. (b)-(j)
Complainant: National Republican Congressional Committee (DC)
Subject: Corporate contributions
Disposition: (a)-(j) No reason to believe

MUR 3855
Respondents: (a) Friends of Andrea Seastrand for Congress Committee, Pete Agalos, treasurer (CA); et al. (b)-(d)
Complainant: Stephen P. Anderson (CA)
Subject: Use of state campaign funds for federal campaign; failure to register and report; excessive contributions
Disposition: (a)-(d) No reason to believe

MUR 3937
Respondents: (a) Friends of Andrea Seastrand for Congress Committee, Pete Agalos, treasurer (CA); et al. (b)-(d)
Complainant: Mike Stoker for Congress Committee (CA)
Subject: Use of state campaign funds for federal campaign; failure to register and report; excessive contributions
Disposition: (a)-(d) No reason to believe

MUR 4084
Respondents: Republican State Committee of Delaware, Thomas J. Shopa, treasurer
Complainant: FEC initiated
Subject: Failure to file report on time
Disposition: $2,400 civil penalty ✦

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The first number in each citation refers to the "number" (month) of the 1995 *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.

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.