

# Record

July 1995

Federal Election Commission

Volume 21, Number 7

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## Conferences

### FEC to Hold '95 Conferences in San Antonio, San Francisco and Washington, DC

FEC conferences offer basic and advanced workshops on the federal campaign finance law and provide attendees the opportunity to discuss problems and questions with FEC Commissioners and staff, and representatives of the Internal Revenue Service. For 1995, the FEC has scheduled the following regional conferences for candidates, party committees and PACs:

- San Antonio, TX, September 7-8, at the La Mansion del Rio Hotel, \$110 per night (210/225-2581 or 800/531-7208 or in TX 800/292-7300). Conference fee: \$140.\* In addition to FEC workshops, representatives of the Texas Ethics Commission will present a workshop on Texas campaign finance law.
- San Francisco, CA, October 23-24, at the Miyako Hotel, \$99 per night (415/922-3200 or 800/533-4567). Conference fee: \$145.\* In addition

*(continued on page 2)*

\* This fee includes the cost of all conference materials and three meals (two continental breakfasts and a lunch).

## Budget

### FEC Vice Chairman Addresses Budget Cuts Before the Senate

On May 18, Vice Chairman Lee Ann Elliott, as chair of the FEC's Finance Committee, spoke before a Senate subcommittee in defense of the FEC's \$29 million FY '96 budget request. She also argued against a then pending \$1.4 million FY '95 rescission; President Clinton has since vetoed the \$16.4 billion rescissions package that included this FY '95 cut.

In presenting the FEC's case, Vice Chairman Elliott noted that despite an explosive growth in campaign spending, the agency:

- Closed a record number of enforcement cases in the first 3 months of 1995;
- Increased the number of transactions coded per employee to 112,000; and
- Reduced the average data-coding time for reports by 38 percent in one year.

In closing, Vice Chairman Elliott said, "[For '96 we] estimate [federal] campaign disbursements will go up another 20 percent to \$2.25 billion. Our budget request, however, seeks only a modest \$1.9 million increase."

Vice Chairman Elliott testified a second time, this time before the Senate Committee on Rules and Administration, on June 15. ♦

## Conferences

(continued from page 1)

to FEC workshops, representatives of the California Fair Political Practices Commission will present a workshop on California campaign finance law.

The FEC also plans to hold two PAC conferences in Washington, D.C.: one specifically geared to corporations and labor organizations; the other geared to trade associations and membership organizations. Details on these conferences will appear in future *Record* issues as they become available.

To receive registration materials for either the San Antonio or San Francisco conference, call: 800/424-9530 or 202/219-3420. ♦

### 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)

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## Compliance

### MUR 2884 Presidential Candidate Bruce Babbitt to Pay \$21,000 Civil Penalty

Governor Bruce Babbitt<sup>1</sup> and the Babbitt for President committee, his principal campaign committee during his 1988 bid for the Democratic Presidential nomination, agreed to pay a \$21,000 civil penalty for the following violations:

- Misstating the amount of cash on hand and total receipts and disbursements for 1988, a violation of 2 U.S.C. §434(b)(1), (2) and (4);
- Accepting an \$8,000 excessive in-kind contribution from an individual and from Babbitt for Arizona, Governor Babbitt's state committee, a violation<sup>2</sup> of 2 U.S.C. §§441a(f) and 434(b); and
- Accepting \$7,011 in excessive contributions from individuals, a violation of 2 U.S.C. §441a(f).

The financial misstatements were substantial, including understatements of 1988 total receipts and disbursements by \$61,156 and \$170,635, respectively. Although these misstatements were inadvertent errors resulting from a large influx of contributions and a sudden reduction in campaign staff, all campaigns, especially Presidential campaigns accepting public funding, are required to devote the necessary resources to fulfill their reporting obligations.

2 U.S.C. §441a(1)(A) limits the amount a person may contribute to a

candidate's committee to \$1,000 per election. Under the Federal Election Campaign Act (the Act), Babbitt for Arizona is considered a person. 2 U.S.C. §431(11). Governor Babbitt's Presidential campaign received free of charge from Babbitt for Arizona and an individual a mailing list they had bought for \$10,000. In effect, then, Babbitt for Arizona and the individual made a \$10,000 contribution, \$8,000 in excess of their limits as established at 2 U.S.C. §441a(1)(A).

Similarly, Babbitt for President accepted 24 contributions totaling \$7,011 from individuals who had already exhausted their per election limit. ♦

### MUR 4016/4076 Coverdell Senate Committee to Pay \$32,000 for Excessive Contributions and Improper Reporting of Earmarked Contributions

The Coverdell Senate Committee, active in Georgia's 1992 U.S. Senate race, agreed to pay a \$32,000 civil penalty for the following violations:

- Failing to report \$81,600 in contributions as earmarked and failing to disclose the conduits for those funds, in violation of 11 CFR 110.6(c)(2);
- Accepting excessive contributions totaling \$65,936, in violation of 2 U.S.C. §441a(f); and
- Failing to accurately report contributions, in violation of 2 U.S.C. §434(a)(1).

Earmarked contributions are contributions that a candidate receives from his or her supporters through a conduit. 2 U.S.C. §441a(a)(8). When accepting earmarked contributions, committees must identify the conduit and disclose the total

<sup>1</sup> Before his Presidential bid, Governor Babbitt was the Governor of Arizona.

<sup>2</sup> When this enforcement matter was initiated, it was legal for candidates to transfer funds and assets from their nonfederal to their federal committees. This changed on July 1, 1993, when the Commission prescribed 11 CFR 110.3(d), making such transfers illegal.

amount received from the conduit, the date of receipt of such contribution and contributor information (name, address, employer, amount of contribution) for each earmarked contribution. 11 CFR 110.6(c)(2). The Coverdell committee received \$81,600 in earmarked contributions from the National Republican Senatorial Committee and Campaign America. Instead of reporting these contributions as explained above, the committee reported them as direct contributions and did not reveal the identity of the conduits. In addition to paying the civil penalty, the committee had to amend its reports to identify all earmarked contributions and the conduits which delivered them.

2 U.S.C. §441f prohibits candidate committees from accepting more than \$1,000 per election from any one person. The Coverdell committee accepted excessive contributions totaling \$65,936 from 95 persons<sup>1</sup> who had already exhausted their \$1,000 per election limit. These excessive contributions were not clearly evident because the committee failed to report these contributions accurately in its original reports. Once the committee amended the reports, the violations came to light.

Although the committee refunded approximately \$42,000 of this total, such remedial action was not taken within the 60-day grace period established at 11 CFR 103.3(b)(3). The committee had to refund the remaining amount to the contributors or to the U.S. Treasury. ♦

*(Compliance continued on page 11)*

<sup>1</sup> This group included 94 individuals and 1 non-multicandidate political committee (political committees are considered persons under 2 U.S.C. §431(11)). It should be noted that had this committee been a multicandidate committee, its per election limit would have been \$5,000 instead of \$1,000.

## Public Funding

### Alexander, Buchanan and Dole Declared Eligible For Matching Funds

On May 31, the FEC certified three 1996 Presidential candidates as eligible to receive public matching funds. The certifications of Governor Lamar Alexander, Mr. Patrick Buchanan and Senator Robert Dole bring the total number of 1996 candidates certified to four; they join Senator Phil Gramm, who was certified on March 20, 1995.

To establish eligibility for the Presidential public funding program, a candidate must submit documentation showing that he or she has raised in excess of \$5,000 in matchable contributions in each of at least 20 states. Only contributions received from individuals, and only up to \$250 of a contributor's total, are matchable. This threshold submission is reviewed by the FEC's Audit Division. The candidate must also certify that he or she will abide by spending limits, use funds for campaign-related expenses only, agree to an FEC audit and otherwise comply with the election law.

Once Presidential candidates establish eligibility for matching funds, they may submit additional contributions for matching fund consideration on a monthly basis. See the schedule of submission and certification dates on the right. The federal government will match an eligible campaign's matchable contributions on a dollar-for-dollar basis. ♦

### Matching Fund Submission and Certification Dates for '96

Candidates for the Presidency in 1996 who are eligible to receive public funding may submit contributions for matching funds only on the submission dates listed in the accompanying chart. For each submission date, candidates may present

one submission and one resubmission. After reviewing the submissions and resubmissions, the Commission forwards a certification for payment to the U.S. Treasury. The Treasury, in turn, generally makes payments within 48 hours of the certification date for each submission.

A campaign need not wait for a submission date to present a threshold submission—the original submission a campaign presents in order to establish eligibility for matching funds. Threshold submissions may be submitted at any time.

To establish eligibility for public funding, a Presidential candidate must collect \$5,000 in matchable contributions in each of 20 states. Matchable contributions include only contributions from individuals, and no more than \$250 of any one individual's contributions may be applied to the \$5,000 threshold. ♦

Submission	Certification
<i>1995</i>	
May 1	December 27
June 1	December 27
July 3	December 27
August 1	December 27
September 1	December 27
October 2	December 27
November 1	December 27
December 1	December 27
<i>1996</i>	
January 2	January 30
February 1	February 28
March 1	March 28
April 1	April 29
May 1	May 30
June 3	June 27
July 1	July 30
August 1	August 29
September 3	September 27
October 1	October 30
November 1	November 27
December 2	December 30
<i>1997</i>	
January 2	January 30
February 3	February 27
March 3	March 28

*(Public Funding continued on page 4)*

## Public Funding

(continued from page 3)

### Hearing on Bush-Quayle '92 Repayment Determinations

In a May 17, 1995, oral presentation, counsel for the Bush-Quayle '92 Primary Committee, the Bush-Quayle '92 General Committee and the Bush-Quayle '92 Compliance Committee challenged the Commission's initial repayment determinations. In the final audit reports, the Commission determined:

- That the primary committee had to repay \$195,224 to the U.S. Treasury, representing the pro rata portion of nonqualified expenses it paid; and
- That the primary committee had to repay \$485,631 to the U.S. Treasury for public funds received in excess of its entitlement.

### Nonqualified Campaign Expenses

In the final audit report, the Commission determined that after the last 1992 primary and caucus but before the GOP nomination, the primary committee incurred expen-

ditures that at least in part benefited the general committee. These included payments for polling, focus group surveys, direct mail, list rentals, shipping and materials, print media services, leased office space and equipment. The Commission allocated half of these expenses to the primary committee and half to the general committee, thus arriving at the \$195,224 pro rata repayment figure for nonqualified campaign expenses.

Counsel for the committees argued, however, that the Commission's approach represented a departure from a precedent it had established in its audit of the Reagan Bush '84 Primary Committee and in Advisory Opinions 1975-9 and 1978-99. The Commission's actions in those instances, counsel claimed, served to establish a bright line test; according to this test, expenses incurred for materials and services used before the date of the nomination are qualified primary election expenses. Counsel said dividing the expenditures in question between the committees represented an unprecedented break with the bright line standard; instead of classifying an expense based on the date the materials and services were used, the Commission split it based on the extent to which the materials and services were related to the primary and general election efforts.

Additionally, counsel maintained that even under this approach, these expenses should be regarded as primary expenses because they were part of an overall effort to shore up support for the candidate's nomination at the GOP convention.

### Excess Matching Funds

Counsel noted that should the Commission accept the above arguments and determine that the nonqualified campaign expenses were actually qualified, then it would find that the primary committee did not receive matching funds in excess of entitlement.

The committees were given 5 business days following the date of the oral presentation in which to submit any documentation they wished to add to the hearing record. The committees submitted additional materials on May 24. The Commission will consider the contents of the hearing record in arriving at a final repayment determination figure, which will be set forth in a publicly released Statement of Reasons. ♦

### Final Repayment for Wilder for President Set at \$21,738

On May 4, 1995, the Commission made a final determination that Governor L. Douglas Wilder and the Wilder for President Committee, his 1992 Presidential campaign, must repay \$21,738 to the U.S. Treasury. This sum is comprised of an \$11,515 repayment representing a pro rata portion of nonqualified campaign expenses and a \$10,223 repayment for matching funds received in excess of entitlement.

This determination reduces the initial repayment figure of \$31,058 (\$12,026 for nonqualified campaign expenses and \$19,032 for matching funds received in excess of entitlement) contained in the final audit report. The reduction was the result of adjustments in the amount of nonqualified expenses incurred by the committee and the valuation of some of its computer assets. See page 6 of the June 1994 *Record* for a summary of the final audit report, and page 3 of the December 1994 *Record* for a summary of the subsequent public hearing.

### Adjusted Nonqualified Campaign Expenses

The final audit report determined that the committee had to repay all of the public funds it used to cover the expense of a personal trip Governor Wilder took to New York City. Since this expense was not campaign related, the use of public

## Federal Register

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

### 1995-7

Schedule of Matching Fund Submission and Certification Dates for 1996 Presidential Candidates (60 FR 21522, May 2, 1995)

### 1995-8

11 CFR 104, 110 and 114: Repeal of Obsolete Rules (60 FR 31381, June 15, 1995)

### 1995-9

11 CFR 106, 9002-9039: Public Financing of Presidential Candidates (60 FR 31854, June 16, 1995)

money could not be justified. Governor Wilder, however, subsequently reimbursed the committee \$2,785 for the cost of his trip, thus eliminating it as a campaign expense altogether. The Commission adjusted the repayment determination for nonqualified campaign expenses accordingly.

Additionally, the committee submitted documentation demonstrating that certain expenses should be reclassified as qualified campaign expenses. Among these expenses were \$2,392 for a staff member's campaign-related travel and \$457 in Federal Express charges for campaign-related mailings.

In light of the reduction in the committee's repayment obligation, the Commission determined that \$990 in other expenses were not entirely paid for with private funds, as previously thought; the use of public funds for these nonqualified campaign expenses increased the committee's repayment obligation. This \$990 brought the committee's net total in nonqualified expenses to \$40,429, giving rise to a pro rata repayment of \$11,515.

### Excess Matching Funds

A reduction in the sum of non-qualified expenses has the effect of reducing the sum of matching funds received in excess of entitlement. In the present case, the latter sum was further reduced by a revaluation of computer equipment.

During the campaign, the committee had purchased computer equipment under lease agreements that included a prepayment of \$2,755. At campaign's end, the committee gave some of this equipment to campaign workers. The final audit included the computer lease prepayment in valuing the equipment upon acquisition, but excluded it in valuing the equipment upon disposition. This had the effect of leaving the committee with an asset it could not liquidate. The Commission, therefore, revalued the

equipment so that its value at the time of disposition included the amount paid for the lease prepayment.

The reduction in the sum of nonqualified expenses and the revaluation of the committee's capital assets reduced the sum of matching funds received in excess of entitlement to \$10,223. ♦

## Publications

### FEC Issues 1994 Annual Report

Early last month the FEC issued its 20th annual report, chronicling its activities in 1994 and documenting the increasing demand on Commission resources that has resulted from record levels of federal campaign activity.

*Annual Report 1994* includes:

- A discussion of legal issues that the Commission faced in 1994;
- An accounting of the Commission's achievements in 1994;
- A comprehensive chart on the audits of 1992 Presidential campaigns;
- Legislative recommendations submitted to Congress by the Commission in 1994;
- Charts and statistical tables depicting campaign finance activity and Commission operations during the 1994 election cycle;
- An overview of the public funding program; and
- A monthly chronology of events in 1994.

Free copies of the *Annual Report 1994* are available through the FEC's Information Division. Call 800/424-9530 and press 1 at the prompt or call 202/219-3420. ♦

## Motor Voter

### California Presents Implementation Plan

On May 4, 1995, the U.S. District Court for the Northern District of California approved the State of California's plan to implement the National Voter Registration Act (NVRA).

This plan was submitted on March 17, 1995, in accordance with a March 2, 1995, court order. That court order was issued as a result of California Governor Pete Wilson's constitutional challenge to the NVRA; California argued that the NVRA was an unfunded federal mandate. The court, however, upheld NVRA's constitutionality and required the State of California to submit to the court a plan for implementing the NVRA. See page 1 of the May 1995 *Record* for a summary of the court's decision, and page 7 of the February 1995 *Record* for a summary of Governor Wilson's suit. ♦

### Need FEC Material in a Hurry?

Use the FEC's Flashfax service to obtain FEC material fast. It operates 24 hours a day, 7 days a week. Over 300 FEC documents—reporting forms, brochures, FEC regulations—can be faxed almost immediately. See page 13 for an article on new materials now available through Flashfax.

To order documents, use a touch tone phone to dial 202/501-3413 and follow the instructions. A complete menu of Flashfax documents appears on pages 13-15. Flashfax menus can also be obtained by calling the system and entering document number 411 at the prompt.

# Statistics

## Congressional Financial Activity Climbs to a New High

During the 1994 election cycle—January 1, 1993, through December 31, 1994—federal congressional candidates raised a total of \$740.6 million and spent a total of \$724 million, both record highs. The totals include special elections as well as the activity of all candidates who participated in 1994 primary and general elections. These amounts represent a 12 percent increase in receipts and a 6 percent increase in expenditures over the previous 2-year cycle.

These record highs are the result of increased financial activity by Republicans, which more than overcame declines in the activity of their Democratic counterparts. Republicans raised \$385.3 million and spent \$371 million for the '94 cycle, representing increases over the 1992 cycle of \$92.7 million and 71.8 million, respectively. Democratic receipts and expenditures, meanwhile, declined by \$11.1 million and \$26.8 million, respectively.

An April 28 FEC press release details this and other information on financial activity during the '94 cycle. To receive a copy of the release, call 800/424-9530 (and press 3 at the prompt) or 202/219-4140. ♦

### Key:

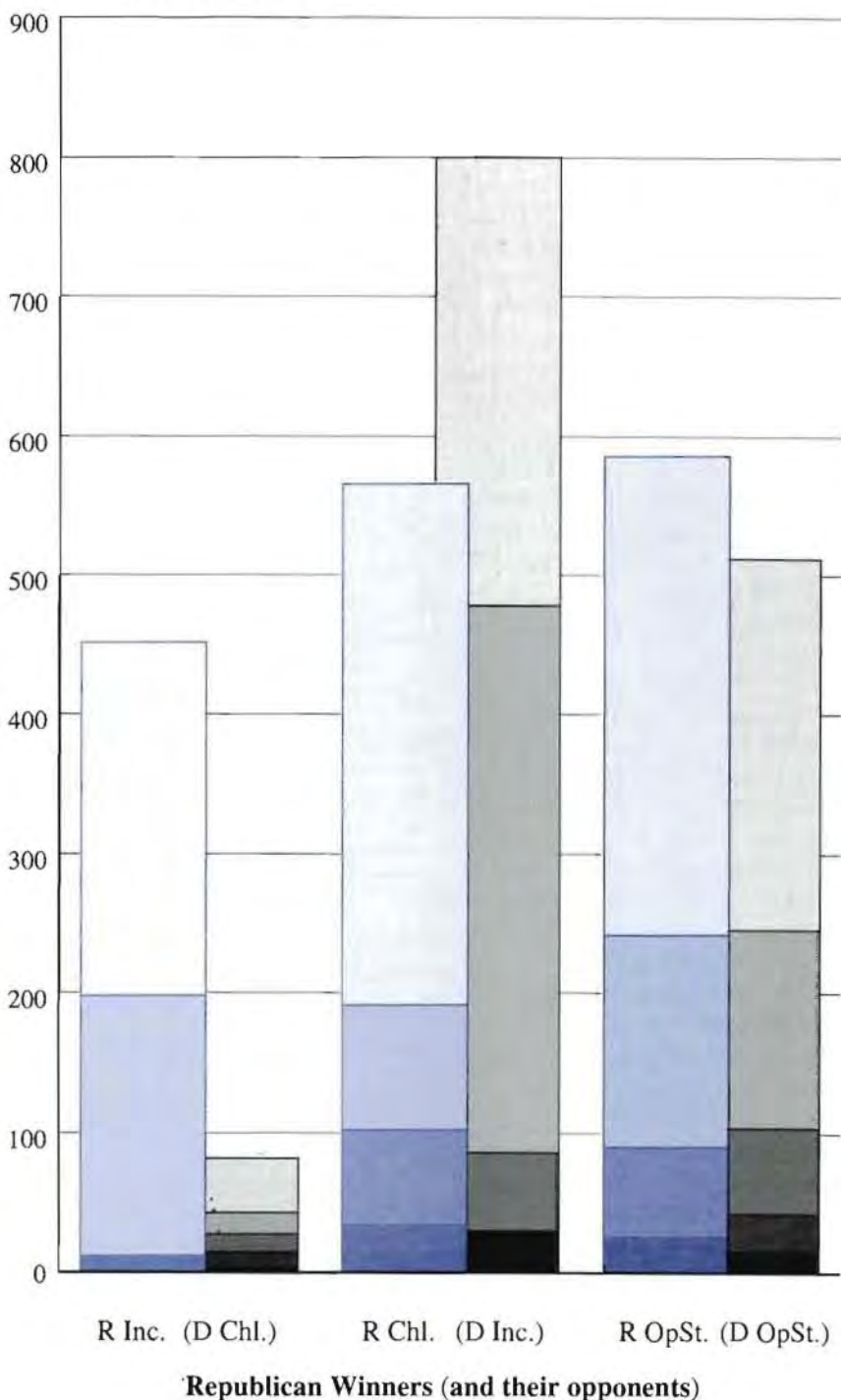
- D = Democrat
- R = Republican
- Inc. = Incumbent
- Chl. = Challenger
- OpSt. = Open Seat

Winners	Opponents
Individuals	
PACs	
Party	
Candidate	
Other	

## Typical Support Received by '94 House Winners

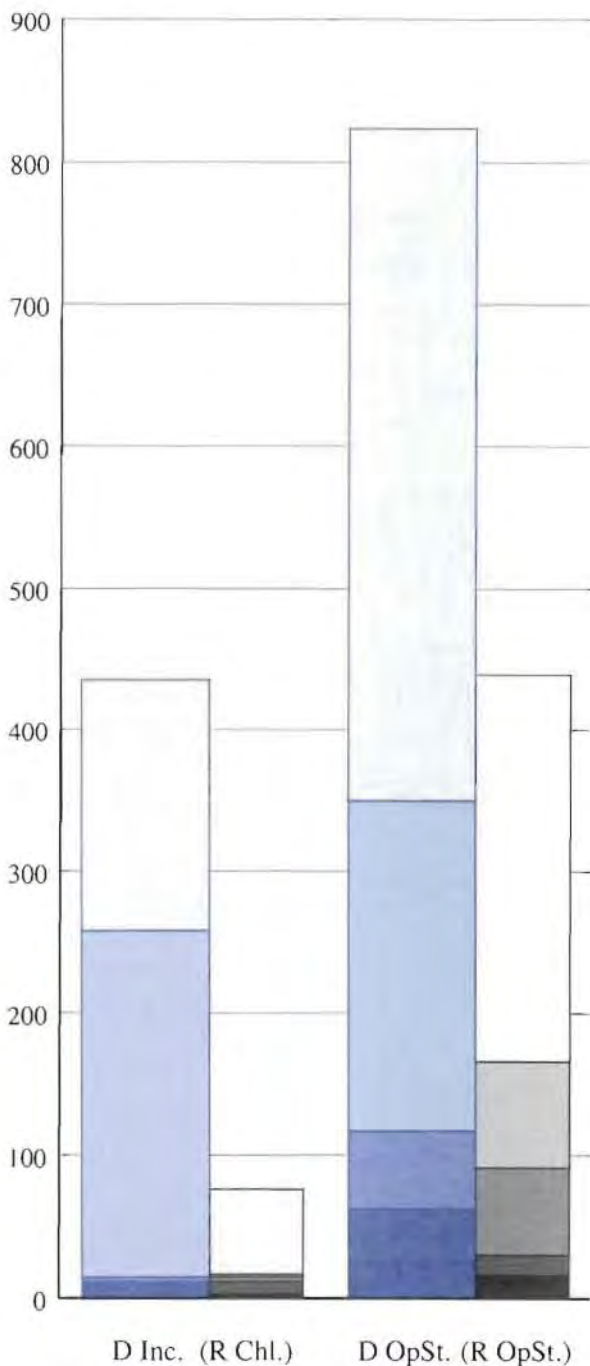
These graphs are based on median support figures. Median figures are used here to convey the typical support received from various sources by different types of campaigns.<sup>1</sup> The blue bars depict the support<sup>2</sup> from each source typically received by the 1994 House winners. Winners are broken down by party and candidate type—incumbent, challenger, open seat. The gray bars represent the typical support received by their opponents. For instance,

Thousands of Dollars



Republican challengers who won in 1994 (second blue bar) typically received about \$375,000 from individuals, while the Democratic incumbents they unseated typically received \$322,000 from individuals (second gray bar). In 1994 not a single Democratic challenger won; a blue bar for this type of candidate is therefore absent. To see the support from each source typically received by Democratic challengers, refer to the first gray bar, which is adjacent to the blue bar for Republican incumbent winners. These bar graphs are provided here as a supplement to the April 28 FEC press release on Congressional fundraising. ♦

Thousands of Dollars



<sup>1</sup> Each bar segment represents the median amount of support received from that source by that type of candidate. Please be aware that the resulting overall bars represent the sum of these medians and not the median total support received by each candidate type. Therefore, it is useful to compare the individual segments with each other, but not to draw inferences from a comparison of the overall bars.

<sup>2</sup> Support includes contributions and loans to the candidate and coordinated expenditures made on his/her behalf by the party.

### FEC Reports on Political Party Activity

During the 1994 election cycle—January 1, 1993, through December 31, 1994—the two major parties reported less financial activity than they did during the previous election cycle. But, when compared to the 1990 cycle, the previous cycle without a Presidential election, 1994's party activity saw increases in both receipts and disbursements.

Taken collectively, the Republican National Committee, the National Republican Senatorial Committee, the National Republican Congressional Committee and Republican state and local party committees raised \$245.6 million and made disbursements totalling \$234.7 million during the '94 cycle. Although an 8 percent decrease from 1992, these figures represent a 19 percent fundraising increase and a 10 percent spending increase over 1990.

Similarly, taken collectively, the Democratic National Committee, the Democratic Senatorial Campaign Committee, the Democratic Congressional Campaign Committee and Democratic state and local party committees raised \$139.1 million and spent \$137.8 million during the '94 cycle. These totals are about 20 percent lower than the 1992 totals, but compared with 1990, they show a 62 percent increase in receipts and a 52 percent increase in disbursements.

Following the pattern of past election cycles, Republican party committees received a larger portion of their money from individuals than did the Democrats. Republicans received \$212 million in contributions from individuals, representing 86 percent of total Republican receipts. Individuals gave \$94.7 million to Democratic party committees, representing 68 percent of total Democratic receipts.

PAC support continued to favor Democrats. Democratic party

(continued on page 8)

Democratic Winners (and their opponents)

**Statistics**

(continued from page 7)

committees received \$12.8 million in PAC money, representing 9 percent of their total receipts. Republican party committees received \$4.8 million in PAC monies, representing 2 percent of their total.

This past election cycle was the second 2-year period in which the

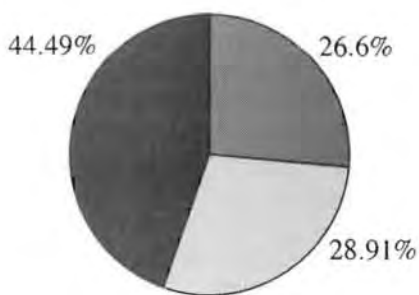
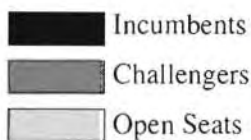
FEC compiled "soft money" figures. Republican national party committees raised \$59.4 million and spent \$55.4 million in soft money, increases of 15 and 11 percent, respectively, over the '92 cycle. Their counterparts in the Democratic party raised \$46.9 million and spent \$47.8 million in soft money, increases of 27 and 36 percent, respectively, over the '92 cycle.

An April 13, 1995, press release contains this and other information on the financial activity of the two major parties. To receive a copy of the release, call 800/424-9530 (and press 3 at the prompt) or 202/219-4140.

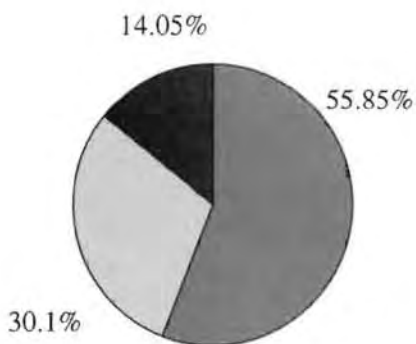
The pie charts on this page show the distribution of party support to different types of candidates. These charts were created using figures contained in pages 4 and 5 of the press release. ♦

**Party Support of '94 Congressional Candidates by Type of Campaign**

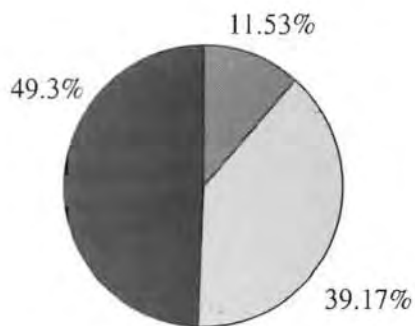
(Includes coordinated party expenditures.)



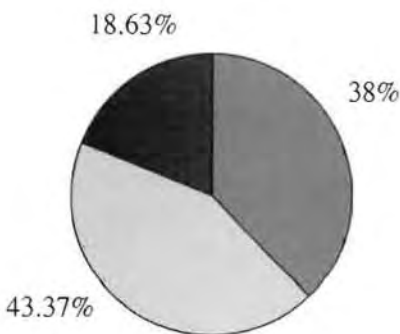
**House Democrats**  
(\$9.8 million)



**House Republicans**  
(\$10.8 million)



**Senate Democrats**  
(\$13.6 million)



**Senate Republicans**  
(\$12 million)

**Court Cases**

**Albanese v. FEC**

On April 20, 1995, the U.S. District Court for the Eastern District of New York dismissed this case because plaintiffs lacked standing to bring this suit. Plaintiffs have since filed a notice of appeal with the U.S. Court of Appeals for the Second Circuit.

**Background**

This suit was brought by Mr. Sal Albanese, who chose not to challenge Representative Susan Molinari in 1994 after his unsuccessful attempt to unseat her in 1992, and on behalf of a number of his supporters.

In their original suit, plaintiffs challenged the constitutionality of the federal electoral system on the grounds that it financially handicapped campaigns to unseat an incumbent, thus discouraging potential candidacies. In an amended complaint, they specifically challenged the constitutionality of the Federal Election Campaign Act (the Act)—alleging that it authorizes the use of private monies in federal elections—and the franking privileges enjoyed by incumbents. See page 9 of the September 1994 *Record* for a summary of plaintiffs' suit.



### Three-Part Test for Standing

In determining that plaintiffs lacked standing to bring this suit, the court applied the three-part test for standing; this test requires plaintiffs to identify (1) an actual injury that (2) is caused by the challenged act and (3) is likely to be redressed by the relief requested. The court found that plaintiffs in this case failed all three parts of this test.

Plaintiffs failed the first part because plaintiffs represented a potential candidate and supporters of his would-be campaign, rendering their alleged injury "abstract and conjectural." For instance, their alleged injury that large contributors diminish the influence of those who can not give as much was "abstract and remote" in this case since the campaign that plaintiffs wished to support did not exist.

Plaintiffs failed the second part because, since their alleged injury was theoretical, they could not provide tangible evidence that the injury was caused by the Act. The court noted, "We will never know how much money might have been contributed to [Albanese's campaign] and how successful he might have been at the polls . . ." The court further stated that, "Albanese opted not to participate in the election process; he was not prevented from doing so." The alleged injuries, therefore, were not traceable to the Act.

Lastly, plaintiffs failed the third part because their suggested remedy—to declare the Act unconstitutional—would not redress the injury. The court stated, "[If] plaintiffs' goal is to eliminate the contribution of private funds to politicians and thereby level the electoral playing field, declaring the [Act]—a statute which *limits* such contributions—unconstitutional cannot be said to redress plaintiffs' injury."

Additionally, the court cited *Buckley v. Valeo* as a legal prece-

dent upholding the constitutionality of the Act, and several other court decisions similarly upholding the constitutionality of the franking statute.

In closing, the court declared that it was outside its jurisdiction to address the plaintiffs' grievance, and that plaintiffs had to seek relief through the legislative and executive branches of government: "To the extent that the plaintiffs believe that a modification of the process would enhance its integrity, they must make the case for the validity of that belief with the political branches of our government. For just as fundamental to the political order of this democracy is the doctrine of separation of powers and the limited jurisdiction conferred upon the federal judiciary within that political order."

U.S. District Court for the Eastern District of New York, No. CV 94-3299, April 20, 1995. ♦

### FEC v. Populist Party, et al.

On April 20, 1995, the U.S. District Court for the District of Columbia issued a consent order and judgment stating that defendants violated the Federal Election Campaign Act (the Act) by making and accepting corporate and excessive contributions in 1984, and ordering defendants to pay a \$20,000 civil penalty for these violations.

Specifically, the court, by agreement of the parties involved, determined that:

- Liberty Lobby, Inc., and Cordite Fidelity, Inc., violated 2 U.S.C. §441b(a), which prohibits the use of corporate money in connection with federal elections, by providing services (in-kind contributions) to the Populist Party in the amount of \$268,056 and \$82,346, respectively;
- Mr. Willis A. Carto, the director of both corporations and treasurer of the Populist Party, violated 2 U.S.C.

§441b(a) by consenting to the provision of the corporate services mentioned above;

- Mr. Blayne Hutzel, comptroller of both corporations, violated 2 U.S.C. §441b(a) by accepting corporate services, loans and payments valued at \$352,903 on behalf of the Populist Party;
- The Populist Party violated 2 U.S.C. §441b(a) by accepting the above corporate contributions and other corporate contributions, for a total of \$368,303 in illegal corporate money;
- The Populist Party violated 2 U.S.C. §441a(f), which prohibits committees from accepting contributions in excess of established limits, by accepting contributions from individuals in excess of their annual limit of \$5,000 per party committee;
- The Populist Party violated 2 U.S.C. §441a(a)(1)(A) and (C) by making excessive contributions to the Maureen Salaman for Vice President Committee and the Bob Richards for President Committee; and
- The Bob Richards for President committee violated 2 U.S.C. §441a(f) by accepting \$9,756 in excessive contributions from the Populist Party.

U.S. District Court for the District of Columbia, No. 92-0674(HHG), April 20, 1995. ♦

### Dukakis v. FEC Simon v. FEC

On May 5, 1995, the U.S. Court of Appeals for the District of Columbia Circuit ruled that in both these cases the FEC was time barred from imposing repayment obligations on the plaintiffs. Both plaintiffs did not receive an initial repayment determination within the 3-year statute of limitations. 26 U.S.C. §9038(c). The FEC's actions in these matters were therefore reversed.

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## Court Cases

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### Background

Both Governor Michael Dukakis and Senator Paul Simon made bids for the 1988 Democratic Presidential nomination. Both of them received public funding for their campaigns. Pursuant to 26 U.S.C. §9038(a), the FEC conducted audits of both campaigns. The 3-year statute of limitations was triggered on July 20, 1988, the day the Democratic National Convention nominated Governor Dukakis for President. Final audit reports containing initial repayment determinations were issued on December 9, 1991, for Dukakis and on October 22, 1991, for Simon. These initial determinations were not finalized until February 25, 1993, for Dukakis and March 4, 1993, for Simon; the Commission determined that the Dukakis and Simon campaigns owed the U.S. Treasury \$491,282 and \$412,162, respectively. See page 10 of the April 1993 *Record* for a discussion of the Commission's final repayment determinations.

### The 3-Year Statute of Limitations

26 U.S.C. §9038(c) states: "No notification [of repayment] shall be made by the Commission . . . with respect to a matching payment period more than 3 years after the end of such period." The FEC contended that the interim audit report, issued in both cases within 3 years of the date of the nomination, was sufficient notice to obligate plaintiffs to make the repayments. To bolster this argument, the FEC reminded the court that, in accordance with the decision in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, the court must defer to an agency's reasonable interpretation of the statute it administers.

The court concluded that deference was not required in this case because *Chevron* requires a court to

defer to an agency only in cases where the statute at hand is ambiguous on the issue in dispute. The court found no ambiguity in either of these cases: "Subsection §9038(b) requires that the Commission notify the candidate of the amount which he is to pay to the Secretary. The interim audit report does not even purport to notify the candidate of any such amount."

The court cited 11 CFR 9038.2, which states that the inclusion of a preliminary repayment calculation in an interim audit report is optional, as grounds on which to dismiss the notion that the interim report fulfilled the FEC's obligation under the statute of limitations. Further, the court noted that when the Commission issued rules making the interim audit report a mandatory part of the audit process, it included in its Explanation and Justification language stating that: "[Preliminary] calculations will not . . . be considered as the Commission's initial repayment determination . . ."

The court also dismissed the FEC's reliance on a 1991 amendment to its regulations, 11 CFR 9038.2(a)(2), that explicitly states that the interim audit report constitutes notification for purposes of the 3-year statute of limitations. "[No] such administrative action by the Commission can override the plain mandate of the legislation," said the court.

Additionally, the court held that, although the statute does not explicitly say so, the 3-year notification period implicitly applies to the repayment of surplus campaign funds when the candidate disputes that a surplus exists, as well as to the repayment of nonqualified campaign expenses and excessive payments. 26 U.S.C. §9038(b)(1), (2) and (3). Thus, in the case of Governor Dukakis, who disputed the audit's finding that he had a surplus, the Commission was required to notify him of the amount due within the 3-year period.

U.S. Court of Appeals for the District of Columbia Circuit, No. 93-1219 (Dukakis) and No. 93-1252 (Simon), May 5, 1995. ♦

## Audits

### Bennett For Senate Audit Report

An FEC audit of the Bennett For Senate committee (the committee) found that the committee had misstated its financial activity, misrepresented loans, accepted apparently prohibited and excessive contributions, and apparently failed to file 48-hour notices on time. The committee served as the principal campaign committee for Senator Robert F. Bennett's 1992 bid for the office of U.S. Senator from Utah.

This audit was conducted pursuant to 2 U.S.C. §438(b), which authorizes the Commission to conduct audits of any political committee whose reports fail to meet the threshold level of compliance set by the Commission. Subsequent to a final audit report, the FEC may choose to pursue unresolved issues in an enforcement matter.

### Misreporting Loans and Financial Activity

The audit found that the committee's disclosure reports overstated its receipts and disbursements by \$281,397 and \$254,403, respectively. Additionally, the committee inaccurately reported loan receipts and repayments. The committee has filed amended reports to correct these inaccuracies. 2 U.S.C. §434(b)(1), (2), (3)(E), (4) and (5)(D).

### Prohibited Contributions

The audit questioned the legality of several transactions involving the committee, the candidate and the Franklin Quest Co. (The candidate is a former president and CEO of

this corporation.) The final audit report cited apparent violations of the corporate ban, which makes it illegal to use corporate money in connection with a federal election. 2 U.S.C. §441b(a) and (b)(2). These potential violations are individually discussed below.

**Consulting Fee.** Shortly before his candidacy, Senator Bennett left Franklin Quest and entered into a consulting agreement with the corporation. Franklin Quest paid \$43,750 per month to Senator Bennett's consulting firm, and was the firm's only client. The committee failed to provide proof that these monthly payments were for bona fide services rendered to the corporation by the candidate. The payments, therefore, may have resulted in an illegal corporate contribution to the committee.

**Consulting Fee Advance.** In January 1992, Senator Bennett received a three-month advance from Franklin Quest on the monthly consulting fee. Of this \$131,250 advance, \$80,000 was transferred to the committee. The advance may have resulted in an illegal corporate contribution to the committee.

**Corporate Stock Used to Guarantee a Bank Loan.** Senator Bennett drew \$200,000 for his campaign from a \$385,000 line of credit he secured by using his Franklin Quest stock as collateral. Franklin Quest made a separate agreement with the bank to purchase the collateral in case of default. The audit report opined that this stock repurchase agreement may constitute a form of security for the loan. Franklin Quest, therefore, may have acted as a loan guarantor, and, under federal election law, a guarantee of a bank loan is considered a contribution equal to the amount outstanding on the loan. Therefore, an illegal corporate contribution may have been made.

### Excessive Contributions

The audit revealed that the committee received \$19,450 in contributions that were made in

violation of the established contribution limits. The committee has submitted copies of refund checks for each of the questioned contributions. 2 U.S.C. §§441a(a) and 441f.

Additionally, the audit found that a committee staff member had exceeded his contribution limit by paying for committee expenses. A staff member may pay his or her own campaign-related travel expenses without making a contribution if the committee reimburses that staff member within the grace period allowed by law.<sup>1</sup> This grace period, however, does not apply to other expenses incurred by staff on behalf of the committee. In the present case, the staff member incurred nontravel expenses, and such expenses count against a staff member's contribution limit. Although he was later reimbursed, he had at one point aggregate contributions of \$22,206 in excess of his limit. 2 U.S.C. §441a(a)(1)(A) and 11 CFR 116.5(b).

### 48-Hour Notices

2 U.S.C. §434(a)(6) requires committees to report within 48 hours those contributions of \$1,000 or more that it receives during the period between 20 days and 48 hours before the election. The committee could not furnish documentation showing that the required 48-hour notices for 37 contributions comprising \$649,000 were filed on time.<sup>2</sup> ♦

<sup>1</sup> *The method of payment used by a staff member to pay for his or her campaign travel determines how soon the committee must reimburse that individual. If a credit card is used, then the committee has 60 days in which to reimburse the staff member. If some other method of payment is used, the committee has 30 days in which to reimburse the staff member.*

<sup>2</sup> *It should be noted that the fact that \$600,000 of this amount was contributed by Senator Bennett himself does not lessen the amount the committee was obligated to report; the 48-hour notice provision applies to all contributions, including those from the candidate.*

## Compliance

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### 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 April 27, May 11 and 19, and June 6, but it does not include the 1 MUR in which the Commission took no action. Files on closed MURs are available for review in the Public Records Office.

#### MUR 2884

**Respondents:** (a) Babbitt for President, Ronnie Lopez, treasurer (AZ); (b) Hattie Babbitt (AZ); (c) Iowa Democratic Party (Federal Division); (d) Richard J. Dennis (IL)

**Complainant:** FEC initiated  
**Subject:** Excessive contributions; inaccurate and incomplete reporting  
**Disposition:** (a) \$21,000 civil penalty (excessive contributions; reporting); (b) reason to believe but took no further action (excessive contributions); (c-d) no probable cause to believe (excessive contributions; reporting)

#### MURs 3325/3249

**Respondents:** (a) Democratic Senatorial Campaign Committee, Donald J. Foley, treasurer (DC); (b) various party committees and individuals

**Complainant:** Ellen S. Miller, Executive Director, Center for Responsive Politics (DC)  
**Subject:** Exceeding the \$25,000 annual contribution limit; inaccurate reporting of receipts; excessive contributions; deposit of nonfederal funds in federal account  
**Disposition:** (a-b) various, including civil penalties ranging from \$250 to \$4,500 and totaling \$21,250

#### MURs 3505/3560/3569

**Respondents** (in PA except (d)):  
(a) Representative Ron Klink;  
(b) Citizens for Ron Klink (formerly  
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## Compliance

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known as Ron Klink for Congress), Jeanne Brimmeier, treasurer; (c) Linda Klink and Frank Trigona; (d) Westinghouse Broadcasting Company, Inc. (DC); (e) R & W Oil Products; et al.

**Complainants:** Gerald Weaver (DC) (3505); Ann Hoskin, et al. (PA) (3560 and 3569); National Republican Congressional Committee, Maria Cino, Executive Director (DC) (3569)

**Subject:** Failure to file Statements of Candidacy and Organization on time; failure to file report; inaccurate and incomplete reporting; failure to file 48-hour notice; excessive contributions; corporate contributions

**Disposition:** (a) Reason to believe but took no further action (Statement of Candidacy); no reason to believe (corporate contributions from Westinghouse); sent admonishment letter; (b) reason to believe but took no further action (Statement of Organization; reporting; corporate contributions from R & W, et al.); no reason to believe (48-hour notice; excessive contributions; corporate contributions from Westinghouse); sent admonishment letter; (c) no reason to believe (excessive contributions); (d) no reason to believe (corporate contributions); (e) reason to believe but took no further action (corporate contributions); sent admonishment letters

### MUR 3810

**Respondents** (all in CT): (a) Senator Christopher J. Dodd; (b) Friends of Chris Dodd, Frank N. Zullo, treasurer; (c) Congressman Sam Gejdenson; (d) Sam Gejdenson Re-Election Committee, Patricia Tedisco-Lagrega, treasurer; (e) Congressman Gary A. Franks;

(f) Franks Congress Committee (1992), Patrick J. Basile, treasurer  
**Complainant:** Robert Fromer (CT)  
**Subject:** Failure to report contributor information ("best efforts")  
**Disposition:** (a-e) No reason to believe; (f) reason to believe but took no further action; sent admonishment letter

### MUR 3946

**Respondents** (all in MO): (a) Friends of Marsha Murphy, Marsha Murphy, treasurer; (b) Murphy for County Executive Committee, treasurer; (c) Marsha Murphy  
**Complainant:** Randall D. Grady (MO)  
**Subject:** Inaccurate and incomplete reporting; use of nonfederal funds; disclaimer  
**Disposition:** (a) Reason to believe but took no further action (reporting; nonfederal funds); no reason to believe (disclaimer); (b) reason to believe but took no further action (nonfederal funds); (c) no reason to believe

### MUR 3954

**Respondents** (all in NY): (a) Committee to Re-Elect Susan Molinari, Michael Petrides, treasurer; (b) Republican Pro-Choice Political Action Committee, Robert M. Pennoyer, treasurer; (c) Chitoor Govindaraj; et al.  
**Complainant:** FEC initiated  
**Subject:** Excessive contributions; partnership contribution  
**Disposition:** (a) Reason to believe but took no further action; sent admonishment letter; (b-c) reason to believe but took no further action (excessive contributions); sent admonishment letters

### MURs 4016 and 4076

**Respondents:** Coverdell Senate Committee, Marvin H. Smith, treasurer (GA)

**Complainant:** FEC initiated  
**Subject:** Excessive contributions (4016); failure to report contributions accurately (4016); failure to report earmarked contributions and conduits properly (4076)  
**Disposition:** \$32,000 civil penalty

### MUR 4129

**Respondents:** Hayes Dent for Congress Committee, Philip C. Williams, treasurer (MS)  
**Complainant:** FEC initiated  
**Subject:** Failure to file 48-hour notice (candidate guarantee of loan)  
**Disposition:** \$4,000 civil penalty

### MUR 4168

**Respondents:** Friends of Fields (formerly known as Fields for Senate), Kathryn A. Wood, treasurer (TX)  
**Complainant:** FEC initiated  
**Subject:** Failure to file 48-hour notice (candidate guarantee of \$100,000 loan)  
**Disposition:** \$13,000 civil penalty

### MUR 4174

**Respondents:** New Hampshire Democratic State Committee, Keith Regli, treasurer  
**Complainant:** FEC initiated  
**Subject:** Failure to file report on time  
**Disposition:** \$3,300 civil penalty

### MUR 4177

**Respondents:** (a) Monzer Hourani (TX); (b) Bonnie Brownlow Davis (TX); (c) Hatch Election Committee, Stanley R. de Waal, former treasurer (UT); (d) Richard Lynn Deneve (TX), et al.  
**Complainant:** Referral by Department of Justice  
**Subject:** Excessive contributions; contributions in the names of others  
**Disposition:** (a) \$10,000 civil penalty; (b) \$ 1,000 civil penalty; (c) Reason to believe, but took no further action (excessive contribu-

tion); (d) Reason to believe, but took no further action (contributions in the name of another)

**MUR 4181**

**Respondents:** International Union of Operating Engineers Local 94 Political Action Committee,

Michael A. Carney, treasurer (NY)

**Complainant:** FEC initiated

**Subject:** Failure to file reports on time

**Disposition:** \$2,000 civil penalty

**MUR 4191**

**Respondents:** AutoZone, Inc., Committee for Better Government, John Pontius, treasurer (TN)

**Complainant:** FEC initiated

**Subject:** Failure to file reports on time

**Disposition:** \$1,000 civil penalty

**MUR 4197**

**Respondents** (all in WI): (a) Joe Checota; (b) Joe Checota for Senate Campaign, Edith Peters, treasurer; (c) Universal Medical Buildings

**Complainant:** FEC initiated

**Subject:** Corporate contributions; use of corporate facilities; corporate solicitation

**Disposition:** (a-c) Reason to believe but took no further action; sent admonishment letters; notified employee contributors

**MUR 4202**

**Respondents:** (a) African Americans for a Better America PAC, Alric B. Nembhard, treasurer (NY); (b) M.R. Beal & Company (NY); (c) MRB Securities Corporation (DE)

**Complainant:** FEC initiated

**Subject:** Corporate contributions; contributions by federal government contractor; failure to file reports

**Disposition:** (a-c) Reason to believe but took no further action; sent admonishment letters ♦

## Advisory Opinions

### Advisory Opinion Requests

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

**AOR 1995-16**

Status of third party's committee as national party committee (U.S. Taxpayers Party; May 16, 1995; 7 pages plus 51-page attachment)

**AOR 1995-17**

Soliciting members of a trade association (National Association of Realtors; May 25, 1995; 3 pages plus 44-page attachment)

**AOR 1995-18**

Use of campaign funds to commission portrait of former Congressional Committee Chairman (Congressman James A. Leach; May 26, 1995; 1 page)

**AOR 1995-19**

Responsibilities of PAC and treasurer upon discovering acceptance of prohibited contributions made in the name of another (Indian-American Leadership Investment Fund; June 1, 1995; 3 pages)

**AOR 1995-20**

Use of campaign funds to pay airfare for candidate's infant children (Congressman Tim Roemer; June 1, 1995; 1 page)

**AOR 1995-21**

Receipt and reporting of funds awarded to committee through litigation (Larson for Life for U.S. Senate; June 5, 1995; 1 page plus 8-page attachment)

**AOR 1995-22**

Reporting reimbursements of allocable expenditures (Democratic Congressional Campaign Committee; June 5, 1995; 3 pages plus 49-page attachment) ♦

## Information

### New Flashfax Materials on '96 Presidential Election and the Electoral System

Two new items on the '96 Presidential election and three new items on the U.S. electoral system have been added to the Flashfax menu. They are listed below by their Flashfax identification numbers.

- 428. The Electoral College
- 429. Organizational Structure of the American Election System
- 430. Primary Functions of an Election System
- 650. 1996 Preliminary Presidential Primary and Caucus Dates
- 652. Selected Campaign Finance Figures

Flashfax is a quick and easy way to order FEC materials. Simply call 202/501-3413 on a touch tone phone and, at the prompt, enter the Flashfax number of the document you wish to order. For example, enter 411 at the prompt to receive a full menu of documents available through Flashfax. The Flashfax system operates 24 hours a day, 7 days a week. For your convenience, the full Flashfax menu is provided below. ♦

### Flashfax Menu

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 telephone number. The documents will be faxed shortly thereafter.

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- 626. 1994 Year-End PAC Count
- 627. 1993-94 Congressional
- 628. 1993-94 National Party
- 629. 1993-94 PAC Finances

**1996 Presidential Election**

- 650. 1996 Preliminary Presidential Primary and Caucus Dates
- 651. Selected Campaign Names and Addresses
- 652. Selected Campaign Finance Figures

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- 101. Part 101, Candidate Status and Designations
- 102. Part 102, Registration, Organization and Recordkeeping by Political Committees
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- 106. Part 106, Allocations of Candidate and Committee Activities
- 107. Part 107, Presidential Nominating Convention, Registration and Reports
- 108. Part 108, Filing Copies of Reports and Statements with State Offices
- 109. Part 109, Independent Expenditures
- 110. Part 110, Contribution and Expenditure Limitations and Prohibitions

- 111. Part 111, Compliance Procedure
- 112. Part 112, Advisory Opinions
- 113. Part 113, Excess Campaign Funds and Funds Donated to Support Federal Officeholder Activities
- 114. Part 114, Corporate and Labor Organization Activity
- 115. Part 115, Federal Contractors
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## 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.

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