

Record

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Federal Election Commission

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Commissioners

1996 Chairman and Vice Chairman Elected

On December 7, 1995, the Commission unanimously elected Lee Ann Elliott as FEC Chairman and John Warren McGarry as FEC Vice Chairman. Mrs. Elliott, who was the 1995 Vice Chairman, succeeds Danny L. McDonald as Chairman.

Before her original appointment, Mrs. Elliott was vice president of Bishop, Bryant & Associates, a political consulting firm. Prior to that, she was an executive of the American Medical Political Action Committee. Mrs. Elliott was on the board of directors of the American Association of Political Consultants and on the board of the Chicago Area Public Affairs Group, of which she is a past president. She was also a member of the Public Affairs Committee of the U.S. Chamber of Commerce. She is a recipient of the Award for Excellence in Serving Corporate Public Affairs from the National Association of Manufacturers.

A native of St. Louis, Mrs. Elliott graduated from the University of Illinois. She also completed Northwestern University's Medical Association Management Executive

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A Message from FEC Chairman Lee Ann Elliott

This year will be a busy Presidential election year but the FEC will continue to focus on its primary goal of *service* to the regulated community.

We urge you to take advantage of the many services we offer. If you have a question about any phase of the Act or our regulations, please call an information specialist on our toll line: 800/424-9530. Your question will receive prompt attention.

If you file with us, contact your analyst in the Reports Analysis Division. He or she can help you with reporting problems. This is particularly important if you receive a Request For Additional Information.

FEC publications on many phases of the election process are available to you by mail or by Flashfax. Call Flashfax at 202/501-3413 to request the publication you want and it will be faxed to you quickly; this service operates 24 hours a day, 7 days a week.

A high priority for the FEC in 1996 is preparing for electronic filing. We have commissioned a study to help us plan for a comprehensive program. We are moving ahead on our internal computer capabilities and hope to be fully computerized shortly. We are making every effort to be more efficient and user friendly.

We welcome your comments and suggestions.



Commissioners

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Program and is a Certified Association Executive.

Newly elected Vice Chairman McGarry has extensive experience in the federal election process. Before his appointment to the FEC, Mr. McGarry served as special counsel on elections to the Committee on House Administration and as chief counsel to the U.S. House of Representatives' Special Committee to Investigate Campaign Expenditures. Prior to his work with Congress, Mr. McGarry was assistant attorney general for Massachusetts, serving as trial attorney and appellate advocate.

After graduating cum laude from Holy Cross College, Mr. McGarry did graduate work at Boston University and earned a J.D. degree from Georgetown University Law School. ♦

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Court Cases

Chamber of Commerce of the U.S.A., et al. v. FEC

On November 14, 1995, the U.S. Court of Appeals for the District of Columbia reversed the district court's dismissal of this case (see page 1 of the December 1994 *Record*) and ordered the court to issue appellants appropriate declaratory relief.

This case involved the FEC's regulatory definition of "member." FEC regulations allow membership organizations to use their corporate funds to send political communications and solicitations, but only to their administrative and executive personnel and to persons who qualify as "members" under federal election law.¹ To qualify as a "member" under FEC regulations a person must have a significant financial interest in the organization, or pay regular dues and possess the right to vote either directly or indirectly for at least one representative in the organization's highest governing body, or possess the right to vote for all members of the organization's highest governing body. 11 CFR 114.1(e)(2).

Background

In 1976, FEC regulations defined an organization's "members" as "all persons who are currently satisfying the requirements for membership" in the organization. 11 CFR 114.1(e). In subsequent years, court decisions and advisory opinions established that political communications and solicitations financed with corporate monies could only be sent to persons who have a significant financial or organizational attachment to the membership organization.

In 1993, the FEC adopted new rules to reflect these precedents.

¹ This is an exception to the general ban on the use of corporate money in connection with federal elections. 2 U.S.C. §441b.

These rules clarified that a person will be considered a "member" for purposes of the Act if that person:

- Has some significant financial attachment to the organization beyond the mere payment of dues, such as a significant investment or ownership stake; or
- Is obligated to make regular dues payments and has the right to vote, either directly or indirectly, for at least one representative in the membership organization's highest governing body; or
- Is entitled to vote directly for all who sit on the organization's highest governing body. 11 CFR 114.1(e)(2).

When these new regulations took effect, the Chamber of Commerce of the U.S.A. and the American Medical Association (AMA) submitted Advisory Opinion Requests (AORs) 1994-4 and 1994-12 to the Commission, asking about the "member" status of their members. The Commission responded to the AORs by stating that the six Commissioners could not reach a consensus on the status of more than 200,000 Chamber members and nearly 45,000 AMA members; these persons paid dues to their respective organizations but lacked voting rights. See the August 1994 *Record*, Alternative Disposition AOR 1994-4 on page 8 and AO 1994-12 on page 6.

Not satisfied with this result, the Chamber and the AMA challenged the FEC's revised definition of "member" in the U.S. District Court for the District of Columbia. That court ruled that:

- The case was not ripe for review because neither plaintiff had suffered harm by the rule;
- Plaintiffs lacked standing to bring this suit because the rule did not present a reasonable threat of prosecution to them; and
- The FEC's definition of "member" was entitled to deference because it was a permissible construction of that term by the Commission.

Chevron U.S.A. v. Natural Resources Defense Council (467 U.S. 837, 1984).

Appeals Court Decision

The court of appeals found that the Chamber and the AMA did have standing to argue their case before the court: "In the last federal election, appellants, not surprisingly, felt constrained to alter their prior practice—they ceased political communications with those constituents who did not qualify as 'members' under the Commission's new rule. And counsel for the Commission agreed . . . that he would not advise the Chamber and the AMA to ignore the rule." Thus, the issue brought before the court was ripe for review because it caused both the Chamber and the AMA harm.

Further, the Chamber and the AMA had standing to bring this suit because, although an FEC enforcement decision had not been issued against them, there was a credible threat of enforcement if they chose to ignore the regulation. Additionally, the possibility that appellants' First Amendment rights were chilled by the FEC's regulations conferred standing upon appellants. *Virginia v. American Booksellers*.

The court found that the FEC's rules presented "serious constitutional difficulties" because they precluded "appellants from communicating on political subjects with thousands of persons, heretofore regarded by the Commission as members." Thus, although the court did not disagree with the district court's conclusion that the FEC was entitled to deference under the *Chevron* doctrine, the court reasoned that the conflict between the rules and the First Amendment warranted judicial review.

At issue here, in the court's view, was whether the FEC's rule accorded with the Supreme Court's opinion in *FEC v. National Right to Work Committee* (459 U.S. 197, 1982). There, the Court ruled that

"members of nonstock corporations were to be defined . . . by analogy to stockholders of business corporations and members of labor unions . . . [which] suggest[ed] that some relatively enduring and independently significant financial or organizational attachment is required . . ."

The appeals court concluded that the FEC's new rule did not square with the Supreme Court's opinion in *NRWC*: "[I]mplicit in the Commission's rule is the view that dues, no matter how high, are not by themselves a manifestation of a significant financial attachment." The court said that the FEC's position reads the disjunctive "or" between "financial" and "organizational" as if the Supreme Court had used the conjunctive "and."

Furthermore, the court held that, "It is . . . quite illogical to regard someone who has one share of stock in a public corporation, which can be sold in minutes, as more significantly attached to the organization than a person or entity who pays \$1000 or even \$100,000 (as is the case for some Chamber members) in annual dues."

The court also criticized the rule's voting requirement. It noted that the nearly 45,000 AMA members in question are subject to sanction by the organization should they violate the organization's Principles of Medical Ethics. "It might be thought, that for a professional, placing oneself in such a position is the *most* significant organizational attachment."

Lastly, the court noted that the rule treats some labor unions and federated rural electric cooperatives differently, exempting them from its new definition of "member." The court noted that this question had not been squarely presented on appeal, but stated that it was not satisfied with the FEC's claim that the separate treatment was consistent with the Act's legislative history. Without further elaboration, the court stated, it "would determine

that these exemptions make the regulation arbitrary and capricious."

U.S. Court of Appeals for the District of Columbia (94-5339), D.Ct.No. 94-2184, November 14, 1995. ♦

Center for Responsive Politics v. FEC

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

The Center for Responsive Politics (CRP) and its executive director, Ellen Miller, brought this suit alleging that the FEC acted contrary to law when, in a recent rulemaking (60 FR 31854, June 16, 1995), it failed to repeal regulations that permit publicly funded Presidential candidates to accept private contributions for their general election legal and compliance fund.

The court ruled that the CRP and Mrs. Miller lacked standing to bring this suit. Neither the CRP nor Mrs. Miller suffered harm that could be directly traced to the FEC's action. Additionally, neither one was qualified to bring suit since their alleged injury was outside the statute's "zone of interest" in this case.

U.S. Court of Appeals for the District of Columbia, 95-1464, November 9, 1995. ♦

New Litigation

Maine Right to Life Committee, et al. v. FEC

The Maine Right to Life Committee (MRLC) and Mr. Hugh T. Corbett ask the court to issue declaratory judgments that the FEC's new definition of "express advocacy" at 11 CFR 100.22(b) is unconstitutional because, they allege, it chills the speech of MRLC and prevents Mr. Corbett from receiving information he wants—both guaranteed

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Court Cases

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rights under the First Amendment. MRLC also argues that 11 CFR 100.22(b) is vague and thus allows the FEC to exceed its statutory authority, making 11 CFR 100.22(b) unconstitutional under the Fifth Amendment as well.

Plaintiffs ask the court to enjoin the FEC from enforcing this regulation against MRLC.

Background

According to the complaint filed with the court, MRLC is a nonprofit membership corporation established for the purpose of advocating pro-life stances. Mr. Corbett is a U.S. citizen who wishes to receive MRLC's newsletter, *Life for ME*, despite not being an MRLC member.

Life for ME is distributed to all MRLC members and is made available to the general public. The October 1994 edition of *Life for ME* contained articles that set forth state and federal candidates' positions on abortion and discussed the importance of the November 1994 general election.

Defining Express Advocacy

The Federal Election Campaign Act (the Act) prohibits corporations from making expenditures in connection with federal elections. 2 U.S.C. §441b.

In *FEC v. Massachusetts Citizens for Life (MCFL)* (479 U.S. 238, 1986), the Supreme Court ruled that, for the purposes of this statutory prohibition on corporate expenditures, the term "expenditure" must be interpreted to mean a payment for a communication that expressly advocates the election or defeat of a clearly identified candidate. The Court cited the examples of express advocacy that it had listed in *Buckley v. Valeo*: "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote

against," "defeat," "reject." Only those corporate expenditures that included express advocacy, the Court concluded, were subject to the expenditure prohibition at §441b.

The challenged regulation in this case, 11 CFR 100.22(b), includes in its definition of "express advocacy" the phrases listed in *Buckley* plus any communication that, taken as a whole and with limited reference to external events, can only be interpreted by reasonable persons as expressly advocating the election or defeat of a clearly identified candidate or group of candidates.

Challenges to 11 CFR 100.22(b)

Plaintiffs in this case challenge the legality of 11 CFR 100.22(b) on a number of grounds.

First, they contend that *Buckley* specifically prohibits an interpretation of "express advocacy" based on the audience's understanding of the message. The FEC's definition at 11 CFR 100.22 relies in part on a reasonable person's interpretation of the message.

Second, plaintiffs argue that the regulation, by stating that the communication should be viewed as a whole, grants the FEC the leeway to interpret the meaning of a communication based on more than its mere language. *Buckley*, plaintiffs argue, requires explicit words of advocacy to be present in order for a communication to be subject to the §441b prohibition.

Third, plaintiffs challenge the FEC's assertion that communications that advocate actions such as donating time or money to candidates constitute express advocacy. Plaintiffs argue that *Buckley* referred only to communications that advocate action at the ballot box.

Fourth, plaintiffs contest the FEC's assertion that communications commenting on a candidate's character, qualifications or accomplishments may constitute express advocacy if, when viewed in

context, they can have no other reasonable meaning. The *Buckley* decision, argue plaintiffs, does not sanction this approach.

Fifth, plaintiffs contend that, by not clarifying what is meant by "limited reference to external events," the regulation is unconstitutionally vague.

Finally, plaintiffs argue that 11 CFR 100.22(b) restricts MRLC's right to produce newsletters and candidate surveys because the organization does not qualify for the exemptions from the prohibition on corporate expenditures found at 11 CFR 114.10. In that provision, adopted at the same time as 100.22(b), a nonprofit corporation may be exempt from the ban, for the purposes of making independent expenditures,¹ if it satisfies a series of criteria, one of which is having a policy of not accepting donations from corporations and labor organizations. MRLC has accepted corporate donations and intends to continue doing so.

Plaintiffs conclude that 11 CFR 100.22(b) empowers the FEC to use its discretion in a discriminatory and arbitrary way. Plaintiffs contend this has a chilling effect on their speech since the regulation does not draw a distinct line between what the FEC would deem legal and what it would consider a violation of 11 CFR 100.22.

U.S. District Court for the District of Maine, 95-261-B, November 22, 1995. ♦

¹ An independent expenditure is an expenditure made without any coordination with a candidate's campaign for a communication which expressly advocates the election or defeat of a clearly identified candidate for federal office. The FEC added the exemption at 11 CFR 114.10 in accordance with the MCFL decision, which held that qualified nonprofits are allowed to make independent expenditures.

FEC v. DSCC (95-2881)

The FEC brings this suit before the court alleging that the Democratic Senatorial Campaign Committee (DSCC) violated 2 U.S.C. §441a(h) and 11 CFR 110.2(e) by making \$17,500 in excessive contributions to the 1992 campaign of U.S. Senator Wyche Fowler, Jr., from Georgia. The FEC requests that the court assess a \$17,500 civil penalty for this violation, as provided for in 2 U.S.C. §437g(a)(6)(B).

This matter arose out of the 1992 Georgia election for U.S. Senator. Under Georgia law, unless a candidate garners a majority of the general election vote, the top two general election vote getters faceoff in a runoff election. This situation occurred in 1992. The DSCC contributed \$17,500 to Senator Fowler's campaign before the general election and then contributed another \$17,500 after the general election when Senator Fowler advanced to the runoff election. Under 2 U.S.C. §441a(h) and 11 CFR 110.2(e), national committees of a political party share one \$17,500 contribution limit per Senate candidate per election cycle.

The FEC, after investigating a complaint (MUR 3701) on this matter, filed by the National Republican Senatorial Committee, found probable cause to believe that the DSCC exceeded its contribution limit under 2 U.S.C. §441a(h) and 11 CFR 110.2(e). The FEC was unable to reach an agreement with the DSCC to resolve this matter and so filed this suit.

U.S. District Court for the Northern District of Georgia, Atlanta Division, 95-2881, November 7, 1995. ♦

Reports

Reports Due in 1996

This article on filing requirements for election year 1996 is supplemented by the reporting tables that follow.

It is the responsibility of the committee treasurer to file required reports on time. To assist treasurers, the Commission sends committees FEC reporting forms and notices of upcoming reporting deadlines.

For further information on reporting or to order extra reporting forms, call the FEC: 800/424-9530 or 202/219-3420.

All Committees: Year-End Reports Covering 1995 Activity

All committees must file a 1995 Year-End report due January 31, 1996.

Authorized Committees of Candidates

1996 House and Senate Candidates. Authorized committees of 1996 House and Senate candidates file the following reports:

- Quarterly reports;¹
- A pre-primary report;
- Pre- and post-general election reports (if the candidate participates in the general election); and
- 48-hour notices on contributions of \$1,000 or more received after the 20th day, but more than 48 hours, before the day of each election in which the candidate participates. These notices are due within 48

¹ Note that an authorized committee of a 1996 candidate must file on a quarterly basis in 1996 even if the candidate withdraws before participating in the primary. However, such a committee would not have to file a pre-primary report (or other election reports) unless the candidate's name remained on the ballot.

hours of the committee's receipt of the contribution. 11 CFR 104.5(a)(1) and (f).²

Note: Committees are required to file election reports and 48-hour notices even if the candidate is unopposed in the election. Moreover, these reporting requirements still apply even if a primary or general election is not held because the candidate is unopposed or received a majority of votes in the previous election. However, no report is required for a primary election that is not held because the candidate was nominated by a caucus or convention,³ for which a pre-election report would have already been filed. See 11 CFR 110.1(j).

Other House and Senate Candidates. Committees authorized by House and Senate candidates who ran or intend to run in a year other than 1996 file on a semiannual basis. 11 CFR 104.5(a)(2).

Presidential Candidates. All committees authorized by Presidential candidates must file on either a monthly or a quarterly schedule. 11 CFR 104.5(b)(2).

A Presidential committee wishing to change its filing schedule should notify the Commission in writing.

Presidential committees active in the 1996 race that have received contributions or made expenditures aggregating \$100,000 or that anticipate this level of activity file

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² Since 48-hour notices do not have to be signed by the treasurer, they may be sent by mailgram, telegram or telefacsimile (fax) machine in order to meet the 48-hour requirement. AO 1988-32. Fax numbers for: the Clerk of the House—202/225-7781; Secretary of the Senate—202/224-1851; FEC—202/219-3880 (see page 8, footnote 4 regarding possible point of entry change). Note: Other reports and statements may not be faxed.

³ A pre-convention report is required only if the convention has authority to nominate. See 11 CFR 100.2(e).

Reports

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on a monthly basis. If the candidate runs in the general election, the campaign must file pre-and post-general election reports in lieu of the monthly reports due in November and December.

Presidential committees active in the 1996 race with financial activity under \$100,000 file on a quarterly basis. They must also file pre- and post-election reports for the elections they run in.

Presidential committees retiring debts from previous campaigns may

file on either a monthly or a quarterly schedule.

PACs and Party Committees

PACs (separate segregated funds and nonconnected committees) and party committees that filed on a semiannual basis during 1995 now file on a quarterly basis. Monthly

Guide to 1996 Reporting

All committees must also file a 1995 year-end report, due January 31, 1996.

Required Reports

Type of Filer	Semiannual	Quarterly	Monthly	Pre-Primary ¹	Pre-General	Post-General
House and Senate Campaigns of 1996 Candidates		✓		✓	✓	✓
Other House and Senate Campaigns	✓					
Presidential Campaigns ² Anticipating Activity of at least \$100,000			✓		✓	✓
Presidential Campaigns ² With Activity less than \$100,000		✓		✓	✓	✓
PACs and Party Committees Filing Monthly			✓		✓	✓
PACs and Party Committees Filing Quarterly ³		✓		✓	✓	✓

¹ Category also includes pre-convention and pre-runoff reports.

² Presidential committees that wish to change their filing frequency during 1996 should notify the Commission in writing.

³ PACs and party committees that filed on a semiannual basis in 1995 file on a quarterly basis in 1996. To avoid the need to file pre-primary and pre-runoff reports, these committees may change to monthly filing if they first notify the Commission in writing. Committees may change filing frequency only once a year. 11 CFR 104.5(c).

⁴ A reporting period begins with the close of books for the last report filed and ends with the closing date for the applicable report.

filers continue on the monthly schedule. PACs and party committees may, however, change their filing schedule, as explained later in this section.

Note that all PACs, whichever schedule they follow, are subject to the 24-hour filing requirement for last-minute independent expenditures (also explained later).

Quarterly Filers. A PAC or party committee that files on a quarterly basis must additionally file a post-general election report. 11 CFR 104.5(c)(1)(i) and (iii).

Quarterly filers may also have to file pre-convention, pre-primary, pre-runoff and pre-general election reports. The requirement to file a pre-election report is triggered if the committee makes a contribution or expenditure in connection with the election during the applicable reporting period. 11 CFR 104.5(c)(1)(ii). A reporting period begins the day after the close of books for the last report filed and continues through the close of books for the pre-election report.

Note that, although the FEC sends committees notices of upcoming reporting deadlines for quarterly reports and general election reports, the agency does not send PACs or party committees pre-election reporting notices for Congressional conventions, primaries or runoffs.

Monthly Filers. Unlike quarterly filers, PACs and party committees filing on a monthly basis do not file pre-election reports for conventions, primaries or runoff elections. They must, however, file pre- and post-general election reports and a Year-End report, which are filed in lieu of October, November and December monthly reports. 11 CFR 104.5(c)(3).

Changing the Filing Schedule. PACs and party committees filing on a quarterly schedule may change to a monthly schedule in order to avoid having to file pre-convention, pre-primary and pre-runoff reports. The committee must first notify the
(continued on page 8)

1995 Year-End Report

Note: All committees file this report.

Report	Period Covered	Filing Date ¹
Year-End	Closing date of last report through 12/31/95	January 31, 1996

1996 Monthly Reports

Report	Period Covered	Filing Date ¹
January	January 1-31	February 20
February	February 1-29	March 20
March	March 1-31	April 20
April	April 1-30	May 20
May	May 1-31	June 20
June	June 1-30	July 20
July	July 1-31	August 20
August	August 1-31	September 20
September	September 1-30	October 20
Pre-General ³	October 1-16	October 24
Post-General	Oct. 17-Nov. 25	December 5
Year-End	Nov. 26-Dec. 31	January 31, 1997

1996 Quarterly Reports²

Report	Close of Books	Filing Date ¹
1st Quarter	March 31	April 15
2nd Quarter	June 30	July 15
3rd Quarter	September 30	October 15
Year-End	December 31	January 31, 1997

Pre- and Post-Election Reports for November 5 General Election²

Report	Close of Books	Filing Date ¹
Pre-General ³	October 16	October 24
Post-General	November 25	December 5

¹ Reports sent by registered or certified mail must be postmarked by the filing date (except in the case of the pre-general election report; see footnote 3). Reports sent by other means must be received by the filing date. 11 CFR 104.5(e).

² House candidates should be aware that legislation is currently being considered to change where they file—from the Clerk of the House to the FEC. All registered candidate committees will receive prior notices instructing them where to file.

³ If sent by registered or certified mail, the pre-general must be postmarked by October 21.

Reports

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Commission in writing. The notification should accompany a report filed under the committee's current reporting schedule. A committee may change its filing frequency only once a year. 11 CFR 104.5(c).

24-Hour Reports on Independent Expenditures. Any PAC (including a monthly filer) that makes independent expenditures in connection with any election (convention, primary, runoff, general) may have to file a 24-hour report. This report is required when a committee makes independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours, before the day of the election. The report must be filed within 24 hours after the expenditure is made. For more information on the 24-hour reporting requirement, see 11 CFR 104.4(b) and (c) and 104.5(g). See also "Where to File" (below) for special filing requirements.

Where to File

Committee treasurers must file FEC reports with the appropriate federal and state filing offices. Please note that:

- The addresses for the federal offices (FEC, Clerk of the House and Secretary of the Senate) appear in the instructions to the Detailed Summary Page of FEC Forms 3 and 3X.
- A list of state filing offices is available from the Commission.

House and Senate Candidate Committees. Principal campaign committees file with the Clerk of the House or the Secretary of the Senate, as appropriate. 11 CFR 105.1 and 105.2.⁴

⁴House candidates should be aware that legislation is currently being considered to change where they file—from the Clerk of the House to the FEC. All registered candidate committees will receive prior notices instructing them where to file.

The principal campaign committee must also file a copy of every report and statement (including 48-hour notices) with the filing office of the state in which the candidate seeks election. 2 U.S.C. §439(a)(2)(B); 11 CFR 108.3.

Presidential Candidate Committees. Principal campaign committees of Presidential candidates file with the FEC. 11 CFR 105.3.

The principal campaign committee must also file a copy of each report and statement with the filing office of each state in which the committee makes expenditures. 2 U.S.C. §439(a)(2)(A); 11 CFR 108.2.

Candidate Committees with More Than One Authorized Committee. If a campaign includes more than one authorized committee, the principal campaign committee files, with its own report, the reports prepared by the other authorized committees as well as a consolidated report (FEC Form 3Z or page 5 of FEC Form 3P, as appropriate). 11 CFR 104.3(f).

PACs and Party Committees. Generally PACs and party committees file with the FEC. There are, however, exceptions:

- Committees supporting only House candidates file with the Clerk of the House;
- Committees supporting only Senate candidates file with the Secretary of the Senate; and
- PACs file 24-hour notices disclosing independent expenditures on behalf of House and Senate candidates with the Clerk of the House and the Secretary of the Senate, as appropriate. 11 CFR 104.4(c) and 104.5(g).

PACs and party committees must also file a copy of each statement and report with the appropriate state filing office:

- Committees making contributions or expenditures in connection with House and Senate candidates file

in the state in which the candidate seeks election. The committee is required to file only that portion of the report applicable to the candidate (e.g., the Form 3 Detailed Summary Page and the schedule showing the contribution or expenditure). 2 U.S.C. §439(a)(2)(B); 11 CFR 108.3.

- Committees making contributions or expenditures in connection with Presidential candidates file in the states in which the Presidential committee and the donor committee have their headquarters. 11 CFR 108.4.
- Committees making independent expenditures on behalf of Presidential candidates (including those disclosed in 24-hour notices) file in the state in which the expenditure is made. 11 CFR 104.4(c)(1), 104.5(g) and 108.2. ♦

Federal Register

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

1995-21

11 CFR 110: Communications Disclaimer Requirements; Final Rule Correction (60 FR 61199, November 29, 1995)

1995-22

Schedule of Submission Dates for Statements of Net Outstanding Campaign Obligations Required of 1996 Presidential Candidates Post Date of Ineligibility (60 FR 61700, December 1, 1995)

1995-23

11 CFR 100, 102, 109, 110 and 114: Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates; Final Rule (60 FR 64260, December 14, 1995)

Pre-Election Reporting Dates: 1996 Primary and Runoff Elections

State or Territory	Election Day	Close of Books [†]	Registered/Certified Mailing Date [‡]	Filing Date [‡]
*Alabama	June 4 Runoff: June 25	May 15 June 5	May 20 June 10	May 23 June 13
*Alaska	August 27	August 7	August 12	August 15
American Samoa ¹	November 5 Runoff: November 19	October 16 October 30	October 21 November 7 ^Δ	October 24 November 7
Arizona	September 10	August 21	August 26	August 29
*Arkansas	May 21 Runoff: June 11	May 1 May 22	May 6 May 27 [◊]	May 9 May 30
California	March 26	March 6	March 11	March 14
*Colorado	August 13	July 24	July 29	August 1
Connecticut ²	September 10	August 21	August 26	August 29
*Delaware	September 7	August 18	August 23	August 26
District of Columbia	May 7	April 17	April 22	April 25
Florida	September 3 Runoff: October 1	August 14 September 11	August 19 September 16	August 22 September 19

* States holding 1996 Senate elections.

[†] This date indicates the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered and, if applicable, before the individual became a candidate.

[‡] Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

^Δ The mailing date is the same as the filing date because the computed mailing date would fall one day before the primary was held.

[◊] Note that the last day for a registered/certified postmark is a federal holiday, when post offices are closed. The report should therefore be postmarked before that date.

¹ In American Samoa, if a runoff is not held, the November 5 election is considered the general election, and a post-general election report is therefore required. If a runoff is held, the November 19 election is considered the general election, with the post-general reporting dates as follows: close of books, December 9; mailing/filing date, December 19.

² In Connecticut, each party will hold a convention (dates not available yet) that has the authority to nominate a candidate; pre-convention reporting is therefore required. If a candidate is so nominated at a convention, and the nomination is not challenged, the nominee does not participate in the primary and has no contribution limit or reporting requirements for the primary. 11 CFR 110.1(j)(4); see also AO 1982-49.

State or Territory	Election Day	Close of Books [†]	Registered/Certified Mailing Date [‡]	Filing Date [‡]
*Georgia	July 16 Runoff: August 6	June 26 July 17	July 1 July 22	July 4 [°] July 25
Guam	September 7	August 18	August 23	August 26
Hawaii	September 21	September 1	September 6	September 9
*Idaho	May 28	May 8	May 13	May 16
*Illinois	March 19	February 28	March 4	March 7
Indiana	May 7	April 17	April 22	April 25
*Iowa ³	June 4	May 15	May 20	May 23
*Kansas	August 6	July 17	July 22	July 25
*Kentucky	May 28	May 8	May 13	May 16
*Louisiana	September 21 General: November 5 ⁴	September 1 October 16	September 6 October 21	September 9 October 24
*Maine	June 11	May 22	May 27 [°]	May 30
Maryland	March 5	February 14	February 19 [°]	February 22
*Massachusetts	September 17	August 28	September 2 [°]	September 5
*Michigan	August 6	July 17	July 22	July 25
*Minnesota	September 10	August 21	August 26	August 29

* States holding 1996 Senate elections.

[†] This date indicates the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered and, if applicable, before the individual became a candidate.

[‡] Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

[°] Note that the last day for a registered/certified postmark is a federal holiday, when post offices are closed. The report should therefore be postmarked before that date.

[°] Note that the filing date is a federal holiday. Because filing dates are not extended when they fall on nonworking days, the report should be received by the appropriate filing offices by July 3, the Wednesday before (or sent by registered or certified mail and postmarked by that date).

³ In Iowa, a party may, under certain circumstances, have the option of holding a convention to nominate a candidate for the general election. In that case, a pre-convention report would be required instead of a pre-primary report.

⁴ A post-general election report is also required. Note that if a candidate is unopposed in the general election, his or her committee nevertheless has a contribution limit for the general and is required to file pre- and post-general election reports. 11 CFR 110.1(j)(3) and AO 1984-54.

State or Territory	Election Day	Close of Books [†]	Registered/Certified Mailing Date [‡]	Filing Date [‡]
*Mississippi	March 12 Runoff: April 2	February 21 March 13	February 26 March 18	February 29 March 21
Missouri	August 6	July 17	July 22	July 25
*Montana	June 4	May 15	May 20	May 23
*Nebraska	May 14	April 24	April 29	May 2
Nevada	September 3	August 14	August 19	August 22
*New Hampshire	September 10	August 21	August 26	August 29
*New Jersey	June 4	May 15	May 20	May 23
*New Mexico	June 4	May 15	May 20	May 23
New York	September 10	August 21	August 26	August 29
*North Carolina	May 7 Runoff: June 4	April 17 May 15	April 22 May 20	April 25 May 23
North Dakota	June 11	May 22	May 27 [◇]	May 30
Ohio	March 19	February 28	March 4	March 7
*Oklahoma	August 27 Runoff: September 17	August 7 August 28	August 12 September 2 [◇]	August 15 September 5
*Oregon	May 21	May 1	May 6	May 9
Pennsylvania	April 23	April 3	April 8	April 11 ⁵
Puerto Rico	GOP primary: March 3 Democratic primary: March 10	February 12 February 19	February 17 February 24	February 20 February 27
*Rhode Island	September 10	August 21	August 26	August 29
*South Carolina	June 11 Runoff: June 25	May 22 June 5	May 27 [◇] June 13 [△]	May 30 June 13

* States holding 1996 Senate elections.

[†] This date indicates the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered and, if applicable, before the individual became a candidate.

[‡] Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

[△] The mailing date is the same as the filing date because the computed mailing date would fall one day before the primary was held.

[◇] Note that the last day for a registered/certified postmark is either a federal holiday or a Sunday, when post offices are closed. The report should therefore be postmarked before that date.

⁵ The April quarterly report is waived for committees filing the Pennsylvania pre-primary report. See 11 CFR 104.5(a)(1)(iii)(C) and (c)(1)(i)(C).

State or Territory	Election Day	Close of Books [†]	Registered/Certified Mailing Date [‡]	Filing Date [‡]
*South Dakota	June 4 Runoff: June 18	May 15 May 29	May 20 June 6 ^Δ	May 23 June 6
*Tennessee	August 1	July 12	July 17	July 20 [◊]
*Texas	March 12 Runoff: April 9	February 21 March 20	February 26 March 25	February 29 March 28
Utah ⁶	June 25	June 5	June 10	June 13
Vermont	September 10	August 21	August 26	August 29
*Virginia ⁷	June 11	May 22	May 27 [◊]	May 30
Virgin Islands	September 10 Runoff: September 24	August 21 September 4	August 26 September 12 ^Δ	August 29 September 12
Washington	September 17	August 28	September 2 [◊]	September 5
*West Virginia	May 14	April 24	April 29	May 2
Wisconsin	September 10	August 21	August 26	August 29
*Wyoming	August 20	July 31	August 5	August 8

* States holding 1996 Senate elections.

[†] This date indicates the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered and, if applicable, before the individual became a candidate.

[‡] Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

^Δ The mailing date is the same as the filing date because the computed mailing date would fall one day before the primary was held.

[◊] Note that the last day for a registered/certified postmark is a federal holiday, when post offices are closed. The report should therefore be postmarked before that date.

[◊] Note that the filing date is a Saturday. Because filing dates are not extended when they fall on nonworking days, the report should be received by the appropriate filing offices by July 19, the Friday before (or sent by registered or certified mail and postmarked by the mailing date).

⁶ In Utah, pre-convention reporting is required for the Republican convention on May 4 (close of books, April 14; mailing date, April 19; filing date, April 22), the Libertarian convention on May 11 (close of books, April 21; mailing date, April 26; filing date, April 29), the Democratic convention and the Independent Patriot Party convention (dates for the latter two conventions are not available yet). A candidate receiving at least 70 percent of the convention vote becomes the party's nominee and does not participate in the primary. In that case, the nominee has no contribution limit or reporting requirements for the primary. 11 CFR 110.1(j)(4); see also AOs 1992-25 and 1978-30.

⁷ In Virginia, each party within a Congressional District decides whether to hold a primary or a convention. If a convention is held, pre-convention reporting is required. Information on convention dates for House races is not yet available. With respect to the Senate races, the Democrats will hold a convention on June 8 (reporting dates: close of books, May 19; mailing date, May 24; filing date, May 27, which is Memorial Day—see footnote [◊] above). The Republicans will hold a primary on June 11 (reporting dates shown in table).

Public Funding

Public Funding Shortfall in Early 1996

Since February 1995, the *Record* has reported on the possibility of a cash flow problem in early 1996 that would affect matching fund payments to this year's Presidential candidates.¹ The anticipated shortfall now seems certain, with the latest estimates predicting matching payments of 58.5¢ per certified dollar. This is only a temporary cash flow problem, however, and the

¹ See page 2 of the February 1995 Record and page 1 of the November 1995 Record.

fund should recover by spring, at which time all certified candidates will receive all of their entitlements.

The accompanying table shows latest figures available. The cash flow problem can be attributed mostly to three factors:

- The front loading of this year's primary fundraising was unprecedented (\$38 million in entitlements for January 1996 compared to \$6 million for January 1992);
- The taxpayer checkoff increase from \$1 to \$3 did not take effect until 1994; and
- Current U.S. Treasury regulations require that monies for the general election be set aside before any primary election disbursements are made. ♦

Status of Presidential Election Campaign Fund

	As of 10/95	Estimates for 1/96
Fund balance:	\$145,916,195	\$146,638,502
Balance set aside:	\$124,280,064	\$124,280,064*
Balance available for primary candidates:	\$ 21,636,131	\$ 22,358,438
Certified submissions:	\$ 26,013,826	\$ 38,222,569**
Shortfall:	\$ 4,377,695	\$ 15,864,131

* This includes set-asides for general-election payments and for an inflation adjustment for the \$24,048,000 in payments made in July 1995 to the Democratic and Republican national party committees to fund their 1996 conventions.

** This \$38,222,569 figure includes certified submissions received through November 1, 1995, and the submission requests received since then, which have yet to be certified by the FEC.

Regulations

Commission Revises Disclaimer Rules

Revised disclaimer rules at 11 CFR 110.11(a) were published in the Federal Register, accompanied by an Explanation and Justification, on October 5, 1995 (60 FR 52069).¹ They became effective on December 20, 1995 (60 FR 65515).

The FEC requires disclaimers on communications that expressly advocate the election or defeat of a clearly identified federal candidate, or solicit contributions, through any form of public political advertising. In most instances the disclaimer must state both who paid for the communication and whether it was authorized by any candidate or authorized committee. Such communications dispersed over the Internet or other technologies not explicitly mentioned in the rules are subject to these regulations. See Advisory Opinions 1995-9 and 1995-35.

The changes in the rules address:

- Disclaimers for coordinated party expenditures;
- When a mailing constitutes "direct mail" for disclaimer purposes;
- Which exempt activities require disclaimers;
- Disclaimers on items that are part of a package; and
- What constitutes a "clear and conspicuous" disclaimer.

Coordinated Party Expenditures

Disclaimers on communications paid with coordinated party expenditures must identify the committee that actually paid for the communication, regardless of whether the committee is spending against its

(continued on page 14)

¹ A correction notice to the rules' preamble was published in the Federal Register on November 29, 1995 (60 FR 61199). This correction did not alter the actual text of the rules.

Regulations

(continued from page 13)

own limit or against an amount assigned to it by another committee. 11 CFR 110.11(a)(2)(i).

When a coordinated party expenditure is made before the date of the party's nomination, the communication need only state who paid for it; no authorization statement is required. 11 CFR 110.11(a)(2).

“Direct Mailing” Definition

A direct mailing is a form of general public political advertising that requires a disclaimer. The revised rules define “direct mailing,” for disclaimer purposes only, to be any mailing of more than 100 substantially similar pieces of mail. 11 CFR 110.11(a)(3).

Exempt Party Activities and Coattail Support

Exempt state and local party activities (slate cards, campaign materials and phone banks for Presidential nominees)(11 CFR 100.8(b)(10), (16) and (18)) and communications that fall under the coattail exemption (11 CFR 100.8(b)(17)) are now required to carry a “paid for” disclaimer. Being exempt from the contribution and expenditure limits does not exempt these communications from the disclaimer requirement. 11 CFR 110.11(a)(4).

Exempt Items

Some communications are exempt from the disclaimer requirement for practical reasons. For instance, small items and wearing apparel such as T-shirts and baseball caps and certain small administrative items need not carry a disclaimer. The latter two have been added to the list at 11 CFR 110.11(a)(6).

“Clear and Conspicuous”

Disclaimers must be clear and conspicuous. The revised rules state that a disclaimer is not clear and conspicuous if it is hard to read or if it is placed so as to be easily overlooked. 11 CFR 110.11(a)(5).

Items as Part of Package

Each item that would require a disclaimer if distributed separately must carry a disclaimer, even if it is part of a package of materials. 11 CFR 110.11(a)(5)(ii).

Televised Communications

The FEC's revised disclaimer rules incorporate the Federal Communication Commission's disclaimer-size requirements. Televised political advertisements must carry a written disclaimer that appears in letters equal to or greater than four percent of the vertical picture height. This disclaimer must be on the screen for a duration of four seconds. 11 CFR 110.11(a)(5)(iii).

Ordering Copies of the Final Rule

Copies of the final rule and the explanation and justification (60 FR 52069) along with other related Federal Register notices may be obtained by either calling the FEC at 800/424-9530 or through the FEC's automated Flashfax system: dial 202/501-3413 and request document 231. ♦

Advisory Opinions

AO 1995-38 Corporate Vendor and Nonconnected PAC With Common Officer

The Entrepreneurs Fund (the Fund), a nonconnected PAC, may contract with Washington Policy Associates (WPA) for management and fundraising services provided all business is billed at the usual and normal charge. The fact that WPA's president is the treasurer of the Fund does not preclude this arrangement.

Jeffrey C. Smith, WPA's president, and a number of private individuals intend to form the Fund for the purpose of supporting federal

candidates from both parties who support policies favorable to entrepreneurs. Mr. Smith states that WPA's arrangement with the Fund “would be exactly the same as the one WPA has with its [other clients].”

The Federal Election Campaign Act (the Act) and FEC regulations do not preclude arrangements between political committees and corporate vendors solely because the vendor is owned or controlled by a committee officer. Indeed, past advisory opinions (AOs) have permitted arrangements resembling the one posed by Mr. Smith. See AOs 1995-8, 1994-8, 1992-24 and 1991-37.

In the present case, the Fund intends to pay WPA for its services on a monthly retainer basis. Such payment must reflect the usual and normal charges for all services provided. Similarly, if WPA extends credit to the Fund, the credit extension must be made in WPA's ordinary course of business and under terms similar to those offered by WPA to debtors of similar risk and size.

The Commission expressed no opinion regarding the tax ramifications of Mr. Smith's proposed arrangement as these issues are not within the Commission's jurisdiction.

Date Issued: November 30, 1995;
Length: 3 pages. ♦

Advisory Opinion Requests

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

AOR 1995-44

Applicability of 48-hour notice requirement to each Presidential primary and caucus (Forbes for President; November 28, 1995; 3 pages plus 6-page attachment)

AOR 1995-45

Ballot access expenditures made by publicly funded Presidential candidate as qualified campaign expenditures (Dr. John Hagelin; November 29, 1995; 2 pages)

AOR 1995-46

Personal-use rules as applied to the purchase of a candidate's autobiography (Friends of Senator D'Amato; December 6, 1995; 3 pages. ♦

Alternative Disposition of Advisory Opinion Requests

AOR 1995-39

Requester, Los Angeles County Republican Central Committee, withdrew this AOR, which posed questions with respect to the disaffiliation of county and state party committees. ♦

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 release of October 6 and November 8, but it does not include three MURs in which the Commission took no action. Files on closed MURs are available for review in the Public Records Office.

MUR 2561

Respondents: (a) Michael Schaefer (CA); (b) Friends of Schaefer, Michael Schaefer, treasurer (CA); (c) Mary E. Huerta (NV); (d) Charles Schwab and Co., Inc. (CA); (e) Jay R. DeMiranda (CA)

Complainant: FEC initiated (RAD)

Subject: Excessive contribution; corporate contribution; failure to continuously report debt; failure to file Statements of Candidacy and Organization timely; failure to file disclosure reports timely

Disposition: (a-b) Probable cause to believe, litigation initiated May 1991 and final judgment issued April 1992: \$3,000 civil penalty and injunction;

(c) reason to believe, but took no further action; (d-e) took no action

MUR 3471

Respondents: Harvey Gantt for Senate Campaign Committee, Bobby T. Martin, treasurer (NC)
Complainant: FEC initiated (RAD)
Subject: Excessive contributions; corporate contributions; failure to file 48 hour reports
Disposition: \$25,000 civil penalty

MURs 3620/3617/3658/4010

Respondents: (a) Democratic Senatorial Campaign Committee, Donald J. Foley, treasurer (DC); (b) Abrams Committee (FKA Abrams '92), Lawrence B. Buttenwieser, treasurer (NY); (c) Feinstein for Senate '94, Michael J. Barrett, treasurer (CA); (d) Sanford for Senate Committee, Alton G. Buck, treasurer (NC); (e) Senator Dianne Feinstein (CA); (f) Yeakel for Senate Committee, Sidney D. Rosenblatt, treasurer (PA); (g) The Kamber Group (DC); (h) Lynn Cutler (DC)
Complainants: National Republican Senatorial Committee (DC) (3620/3658/4010); U. S. Senator John Seymour Committee (CA) (3617)
Subject: Failure to report earmarked contributions; excessive contributions; corporate contribution
Disposition: (a-d) \$75,000 civil penalty; (b-d) reason to believe, but took no further action (receipt of excessive contributions; failure to report receipt of earmarked contributions); (e-f) no reason to believe; (g-h) reason to believe, but took no further action (corporate contribution)

MUR 3832

Respondents: Nassau County Democratic Committee, David Kremer, treasurer (NY)
Complainant: Congressman David A. Levy, Levy for Congress Committee (NY)
Subject: Failure to register and report; corporate contributions; disclaimers
Disposition: \$4,800 civil penalty; committee to register and report

MUR 3886/Pre-MUR 290

Respondents: (a) Herbert F. Collins (MA); (b) Bush-Quayle '92 Primary Committee, Inc., and Bush-Quayle '92 Compliance Committee, Inc., J. Stanley Huckaby, treasurer of both (VA)
Complainants: Herbert F. Collins (MA) (Pre-MUR 290); Center for Responsive Politics (DC) (3886)
Subject: Exceeding the annual \$25,000 contribution limit (1992); excessive contributions
Disposition: (a) \$20,000 civil penalty; (b) no reason to believe

MUR 3944

Respondents: (a) Congressman Daniel E. Hamburg (CA); (b) Committee to Elect Dan Hamburg, Ted Loring, treasurer (CA); (c) The Hamburg Trust, Steve Hamburg, trustee (MO); (d) Mendocino Book Company et al. (CA); (e) Carrie Hamburg (CA); (f) Bill Graham Presents et al. (CA); (g) Bonnie Raitt, Jackson Browne and Holly Near (CA)
Complainant: National Republican Congressional Committee (DC)
Subject: Personal use of campaign funds; excessive contributions; corporate contributions; disclaimers
Disposition: (a) Reason to believe, but took no further action (excessive contributions; personal use of campaign funds); (b) reason to believe, but took no further action (excessive contributions; personal use of campaign funds; certain corporate contributions); (c) reason to believe, but took no further action (excessive contributions); (d) reason to believe, but took no further action (corporate contributions); (a-d) sent admonishment letters; (e) no reason to believe; (f-g) no reason to believe

MUR 4192

Respondents: (a) President William J. Clinton (DC); (b) Clinton for President Committee, J.L. "Skip" Rutherford, treasurer (AR); (c) Clinton/Gore '92 General

(continued on page 16)

Compliance

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Election Compliance Fund, J.L. “Skip” Rutherford, treasurer (AR)
Complainants: Alan Gottlieb et al. (WA) and (NY)
Subject: Transfer of certain contributions received by primary committee to general election compliance fund; submission of inaccurate statement of net outstanding campaign obligations
Disposition: (a-c) Failed to find reason to believe (transfer of certain contributions received by primary committee to general election compliance fund); (a-b) failed to find reason to believe (submission of inaccurate statement of net outstanding campaign obligations)

MUR 4206

Respondents: American Portland Cement Alliance Political Action Committee, Richard C. Creighton, treasurer (DC)
Complainant: FEC initiated (RAD)
Subject: Failure to file disclosure reports timely
Disposition: \$3,675 civil penalty

MUR 4226

Respondents: Common Language America PAC, George W. Wilson Jr., treasurer (MD)
Complainant: FEC initiated (RAD)
Subject: Failure to file disclosure reports
Disposition: Reason to believe, but took no further action

MUR 4228

Respondents: Coopers & Lybrand PAC, Allen J. Weltman, treasurer (DC)
Complainant: FEC initiated (RAD)
Subject: Failure to file disclosure reports timely
Disposition: \$3,900 civil penalty

MUR 4231

Respondents: Communications Satellite Corporation (COMSAT); COMSATPAC, James M. Carroll, treasurer (MD)
Complainant: FEC initiated (RAD)
Subject: Failure to file disclosure reports timely
Disposition: \$850 civil penalty ♦

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