Record

August 1997 *Federal Election Commission* *Volume 23, Number 8*

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Publications

Official Results for 1996 Federal Elections Published

The FEC has released *Federal Elections 96*, a 167-page publication containing the official primary, run-off and general election results for the 1996 Presidential and congressional elections. This is the eighth edition of this biennial series, and it is designed to provide an historical record of federal election results.

For each state, the publication lists the names of candidates on the ballot, write-in candidates, party affiliations and the number and percentage of votes each candidate received as provided by state election officials.

The publication is available for review at many state election offices. This edition is also available at the FEC's web site—http://www.fec.gov. For more information or to obtain a copy of *Federal Elections 96*, call the Public Records office at 1/800-424-9530 (press 3) or at 202/219-4140. ✦

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Clifton v. FEC

On June 6, the U.S. Court of Appeals for the First Circuit declared invalid two parts of the FEC's regulations that govern publication of voter guides and voting records by corporations and labor organizations. The court declared the voting record regulation at 11 CFR 114.4(c)(4) invalid only insofar as the FEC may purport to prohibit mere inquiries to candidates and the voter guide regulation at 11 CFR 114.4(c)(5) invalid only insofar as it limits contact with candidates to written inquiries and replies and imposes an equal space and prominence restriction.

The plaintiffs petitioned the court for a rehearing in this case, but that petition was denied on June 27. The FEC filed a petition for rehearing and suggestion for rehearing en banc on July 21.

Background

Robin Clifton and co-plaintiff Maine Right to Life Committee, Inc. (MRLC), initiated this lawsuit in March 1996, asking the court to find that the FEC's regulations governing the use of corporate treasury funds to prepare and distribute voter guides and voting records to the

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public were unconstitutional. 11 CFR 114.4(c)(4) and (5). MRLC is a nonprofit membership corporation that advocates pro-life stances, and Mr. Clifton is a Maine voter who receives the group's publications.

FEC regulations prohibit corporations from distributing voting records to the public if the materials expressly advocate the election or defeat of a clearly identified federal candidate. Even without such express advocacy, any decisions on content and distribution of the voting records may not be coordinated with a candidate or political party. Furthermore, in the case of voter guides that are prepared after receiving written responses from the candidate to questions posed by the corporation or labor organization, the regulations require that:

- Contact with the candidate be limited to written questions and written answers;
- Each candidate be given the same prominence and space in voting guides; and
- The publications not contain an "electioneering message."

The district court invalidated the regulations, stating that they regulate issue advocacy and, therefore, go beyond the Commission's authority. See page 1 of the July 1996 Record.

The FEC contended that its regulations (11 CFR 114.4(c)(4) and (5)) enforced 2 U.S.C. §441b, which prohibits corporate contributions in connection with any federal election. According to the court, the FEC maintained that a "voting record or voter guide…that fails to comply with its regulations is either a contribution or can be banned in the interests of preventing prohibited contributions."

Appeals Court Rejects Commission Argument

The appeals court found that to avoid First Amendment concerns, it would construe 2 U.S.C. §441b narrowly. Under this construction, both the Commission's restriction on oral contact between MRLC and candidates and its insistence that voter guides provide equal space to candidates were unlawful.

The appeals court found that the FEC's requirement of equal space was a "content-based" restriction because it would affect the content of the MRLC's voting guides. The court said that "[T]here is a strong First Amendment presumption against content-affecting government regulation of private citizen speech, even where the government does not dictate the viewpoint." The court cited a case where the Supreme Court struck down Florida's "right of reply" statute, which guaranteed political candidates equal space to reply to criticism printed in the *Miami Herald*.[1]

With regard to the Commission's requirement that contact between corporations and candidates be limited to written communications when such corporations are preparing voter guides, the court said that the regulation treads "heavily upon the right of citizens, individual or corporate, to confer and discuss public matters with their legislative representatives or candidates for such office." The court said that such a ban on communications served as a "handicap" for discourse between legislators—and would-be legislators—and those they wish to represent.[2]

With respect to both regulations, the court rejected the FEC's argument that such restrictions were justified to prevent illegal corporate contributions to candidates. While the court acknowledged the Commission's legitimate concern with uncovering prohibited contributions, it said that the agency should be able to investigate such impermissible actions through its enforcement proceedings.

The court did not take up MRLC's challenge to the regulation concerning "electioneering message" and instead referred the matter back to the district court. MRLC's challenge concerned the FEC's regulations at 11 CFR 114.4(c)(5)(ii)(D) and (E), which

[1] Miami Herald Publishing Co. v. Tornillo, *418 U.S. 241, 256 (1974).*

[2] *In a dissenting opinion, Senior Circuit Judge Hugh H. Bownes wrote that the written-contact-only regulation does not infringe on the First Amendment. Citing* Buckley v. Valeo, *the judge said that the Supreme Court had acknowledged that some governmental interests outweigh the possibility of constitutional infringement. He wrote: "At this stage of American history, it should be clear to every observer that the disproportionate influence of big money is thwarting our freedom to choose those who govern us. This sad truth becomes more apparent with every election. If preventing this is not a compelling governmental interest, I do not know what is."*

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state that certain kinds of voter guides—those that are prepared after receiving written responses from candidates—must not include an "electioneering message" or "'score or rate the candidates' responses in such a way as to convey an electioneering message." MRLC had argued that these regulations were unconstitutionally vague. The court concluded that it would not decide this matter because, at the district court level, there had been inadequate briefing as to the content, purpose and severability of these regulations.

U.S. Court of Appeals for the First Circuit, 96-1812; U.S. District Court for the District of Maine, 96-66-P-H. ❖

FEC v. DSCC (95-2881)

On July 7, the U.S. District Court for the Northern District of Georgia, Atlanta Division, ordered the Democratic Senatorial Campaign Committee (DSCC) to pay a $175 penalty for violating the Federal Election Campaign Act (the Act) during the 1992 senatorial race in Georgia. The sum amounts to 1 percent of the DSCC's violation of $17,500.

The court ruled in January that the DSCC had violated 2 U.S.C. §441a(h) when it gave the $17,500 to a senatorial candidate's runoff election after having already contributed the same amount to that candidate during the primary and general elections. See page 2 of the March 1997 Record.

In determining an appropriate penalty, the court considered these four factors:

- Good or bad faith actions by the defendant,
- Injury to the public resulting from the defendant's conduct,
- Ability of the defendant to pay the penalty and
- Vindication of the FEC's authority.

The court found that the DSCC did act in good faith because it had believed that it was acting lawfully when it made the second $17,500 contribution. The court also determined that the second contribution did no harm to the public. While the FEC had argued that "any violation of the [Act's] limits undermines a public perception of integrity of the election process," the court disagreed with such a blanket assertion. It also found that the FEC did not require vindication in this case and noted that the DSCC's ability to pay did not justify assessing it with a large penalty, which is what the FEC had requested.

In its deliberations, the court also considered the penalty negotiated with the National Republican Senatorial Committee in a conciliation agreement for a violation of a different provision of the Act—2 U.S.C. §441d—in connection with the same election. That penalty amounted to 1 percent of the approximately $500,000 violation, or $5,000.

U.S. District Court for the Northern District of Georgia, Atlanta Division, 95-2881. ❖

DSCC v. FEC (96-2184)

On May 30, the U.S. District Court for the District of Columbia granted the Democratic Senatorial Campaign Committee's (DSCC's) motion for summary judgment in this case and ordered the FEC to take action, within 30 days, on the committee's administrative complaint filed in 1993 against the National Republican Senatorial Committee (NRSC). The court also stated that if the FEC failed to take action within 30 days, then the DSCC could initiate its own lawsuit against the NRSC pursuant to 2 U.S.C. §437g(a)(8)(C).

Background

The DSCC initially filed a lawsuit against the FEC after the agency failed to act within 120 days on its administrative complaint alleging that the NRSC had made illegal "soft money" expenditures to influence a Senate election in Georgia. 2 U.S.C. §437g(a)(8)(A). The DSCC said that the NRSC had funneled the money through various nonprofit organizations that were known to be closely aligned with the Republican Party.

When the FEC failed to take action, the DSCC filed suit in court (DSCC I). In April 1996, the district court of the District of Columbia granted summary judgment in favor of the DSCC, holding that the FEC's failure to act was contrary to law (see page 5 of the July 1996 Record). The court reasoned that the FEC had not taken any meaningful action until almost 600 days after the complaint was filed. While admonishing the agency to take action expeditiously, the court did not set up a time table for the FEC to complete its investigation, following the tradition of deference that courts generally give to law enforcement agencies in exercising their prosecutorial prerogatives. The court warned the FEC, however, that, should it fail to act in a reasonable time, "the need for additional judicial intervention may well be compelling." In a second suit, filed by the DSCC in November 1996 (DSCC II), the court ordered the FEC to file monthly status reports on its progress in the investigation (see page 2 of the January 1997 Record).

Arguments from Both Sides

After waiting an additional four months and nearing the five-year statute of limitations for this case, the DSCC filed this motion for summary judgment, citing the FEC's "near glacial pace" in the investigation and arguing again that the agency's actions were contrary to law.

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The FEC contended that it was moving forward with the investigation of the DSCC's complaint and that it was "conducting a careful and deliberate investigation of constitutionally sensitive and factually complex issues arising from a national party's payments to independent issue advocacy groups." The FEC also argued that, without sufficient time to conduct a thorough investigation, its five commissioners would not be able to make an informed decision as to whether there was probable cause to believe that a violation of the Act had occurred. The FEC added that certain witnesses were challenging the Commission's discovery requests.

District Court Decision

The standard for evaluating administrative delay is whether an agency has acted reasonably and in a manner that is not arbitrary or capricious.[1] To measure this, the courts use several criteria described in *Rose v. FEC* and *Telecommunications Research & Action Center v. FCC*. See page 5 of the July 1996 Record for a list.

Using those criteria, the court concluded that the FEC's delay—taking more than four years from when the administrative complaint was filed and nearly two years from the Commission's "reason to believe" determination to decide whether there was probable cause to believe a violation of the Act had occurred—was unreasonable.

The court said that the FEC could no longer claim that the U.S. Supreme Court's decision in *Colorado Republican Federal Campaign Committee v. FEC* complicated its investigation.[2] The court also cited the impending five-year mark for the case, and said that litigation delays resulting from motions to quash FEC subpoenas were foreseeable and provided no acceptable excuse for the delay.

The court concluded that the FEC's failure to investigate and make a "probable cause" determination in a reasonable time frame was contrary to law under 2 U.S.C. §437g(a)(8)(C). It ordered the Commission to conform its conduct with the court's declaration within 30 days. Subsequently, on June 20, the Commission appealed this decision to the U.S. Court of Appeals for the District of Columbia Circuit.

U.S. District Court for the District of Columbia, 96-2184. ❖

On Appeal?

FEC v. Christian Action Network

The U.S. Court of Appeals for the Fourth Circuit **denied** the Commission's petition for a rehearing and its suggestion for a rehearing en banc. The appeals court had granted a request from the Christian Action Network that the FEC pay its attorney fees in this case. See page 5 of the May 1997 Record.

Minnesota Citizens Concerned for Life v. FEC

The U.S. Court of Appeals for the Eighth Circuit **denied** a petition from the FEC for a rehearing of this case and a suggestion for a rehearing en banc. The court had affirmed a lower court decision and concluded that key provisions of the Commission's regulations governing qualified nonprofit corporations were unconstitutional. See page 2 of the July 1997 Record.

See *Clifton v. FEC* on page 1 and *DSCC v. FEC* (96-2184) on page 3 for additional information on appeals to FEC court cases. ❖

Compliance

MUR 4286 Corporation Pays Penalty for Reimbursing Contributions by Employees

General Cigar Co., Inc. (GCC), and its president, Austin T. McNamara, paid $80,000 to the FEC for violating sections of the Federal Election Campaign Act (the Act) that prohibit corporate contributions and contributions in the name of another.

Mr. McNamara solicited four employees at GCC for contributions of $1,000 each to Congressman Newt Gingrich's 1994 campaign. He later solicited four employees for contributions of $1,000 each to former Senator Bob Dole's 1996 presidential campaign. GCC then reimbursed the employees and Mr. McNamara, who also contributed $1,000 to each of those campaigns and an additional $1,000 in 1995 to the Committee for Sam Gibbons. The reimbursements, to which Mr. McNamara consented, totaled $11,000.

The Act prohibits corporations from making contributions or expenditures in connection with a federal election. 2 U.S.C. §441b(a). This section of the law also prohibits any corporate officer from consenting to such a contribution or expenditure. Section 441f of the Act makes it unlawful to make a contribution in the name of another. Such a violation may occur if a person gives funds to a straw donor with the mutual understanding that the

[1] Common Cause v. FEC, *489 F. Supp. 738, 744 (D.D.C. 1980).*

[2] *In* Colorado Republican Federal Campaign Committee v. FEC, *the U.S. Supreme Court concluded that political parties are capable of making independent expenditures on behalf of their candidates in congressional races.*

person will pass the funds on to a federal candidate in his or her own name.

Each of the committees involved refunded the contributions to the respective contributors.

In addition to paying the civil penalty, GCC and Mr. McNamara had to provide the FEC with evidence that all of the contributions that were refunded were either disgorged to the U.S. Treasury or reimbursed to GCC.

This MUR, or Matter Under Review, was initiated after the FEC received a complaint from a former GCC employee. After a review of the complaint, but prior to making a finding of probable cause that a violation occurred, the Commission entered into a conciliation agreement with GCC and Mr. McNamara. ❖

MUR 4259
NJ Committees Run Afoul of Allocation, Fundraising Rules

Two New Jersey political committees and Senator Frank Lautenberg's authorized committee have admitted violating the Federal Election Campaign Act (the Act) and Commission regulations dealing with allocation and joint fundraising during the 1994 election cycle. The committees cited were the Mercer County Democratic Committee (MCDC), a local party committee that got involved in 1994's federal elections, the Lautenberg Committee and New Jersey Committee '94, a joint fundraising committee established by the MCDC and the Lautenberg Committee.

Allocation

Commission regulations at 11 CFR 106.5(a)(1) state that party committees that have established federal and nonfederal accounts must allocate certain expenses—including administrative and generic voter drive costs—between those two accounts based on prescribed formulas. The ballot composition method is normally used by state and local party committees in calculating administrative and generic voter drive expenses. The formula is calculated according to the ratio of federal offices to all offices (federal and state) that will appear on the ballot during the next general election. The formula uses a simple point system for each office. The allocation is normally calculated for a two-year election cycle. In five states, however—including New Jersey[1]—the formula is not calculated on a two-year cycle because, in these states, nonfederal elections are not held in the same year that federal elections take place. Instead, nonfederal elections occur in odd-number years.

Consequently, New Jersey (and the four other states) must calculate separate ratios for allocating generic voter drive expenses, one for the year in which federal elections take place and another for the year in which nonfederal elections are held. 11 CFR 106.5(d)(2).

During the 1994 election cycle, the MCDC filed a Schedule H1 with the FEC claiming an allocation ratio of 29 percent for federal expenses and 71 percent for nonfederal expenses with respect to $190,000 in administrative costs and generic voter drive activities. In devising the ratio, the MCDC claimed points for New Jersey state-wide elections that occurred in 1993. While this ratio was correct for calculating administrative costs for the two-year cycle, the costs for voter drives in 1994 could not be calculated with that same allocation formula. Instead, because it conducted state-wide activities on behalf of the New Jersey Democratic State Committee in 1994, the MCDC should have used the state's ballot composition for 1994 alone. Applying the correct formula in this particular case would have resulted in a 50-50 split between federal and nonfederal activities.[2] 11 CFR 106.5(d)(1)(ii) and (d)(2).

Joint Fundraising

Joint fundraising rules at 11 CFR 102.17 require that all participants create or select a political committee to act as the fundraising representative and sign written agreements stating such. Any federal candidate participating in such a joint fundraising endeavor must file a Statement of Organization with the Commission disclosing this relationship. The participants must also agree to an allocation formula for the proceeds, and they must allocate the expenses based on their respective share of the contributions received. The fundraising committee must establish a separate account for joint fundraising receipts and disbursements.

In a series of payments from the NJ Committee, the MCDC received $128,000 and the Lautenberg Committee received $65,160. A portion of these payments included prohibited, nonfederal funds—$7,100 for the MCDC and $20,895 for the Lautenberg Committee.

Further, the NJ Committee failed to include the proper notices to contributors, explaining that they were free to designate their contributions as they wished, notwithstanding the suggested allocation formula included in the fundraising letter. 11 CFR 102.17(c)(2)(i). The NJ Committee also failed to report the amount of contributions it received from prohibited federal sources as memo entries on its disclosure forms to the FEC. 11 CFR 102.17(c)(8)(i)(A).

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[1] The other states that fall under this exception are Kentucky, Louisiana, Mississippi and Virginia.

[2] Under the formula, the committee could take two points for nonfederal activity: one point if any partisan local candidate was expected on the ballot and an extra nonfederal point awarded to all state and local party committees.

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The three committees violated 2 U.S.C. §434(a) by failing to accurately report receipts and disbursements.

The Lautenberg Committee also failed to file an amended statement of organization stating that the NJ Committee was an authorized committee acting as a joint fundraising representative, a violation of 2 U.S.C. §433(c).

Remedies

The MCDC paid a $9,500 civil penalty to the FEC for allocation errors between its federal and nonfederal accounts and for accepting impermissible corporate and labor contributions and excessive contributions in its federal accounts. 11 CFR 106.5(d) and 102.5(a) and 2 U.S.C. §§441a(f) and 441b. The Lautenberg Committee also agreed to pay $20,895 to the FEC to make up for the same amount of nonfederal funds that was transferred to it from the NJ Committee. 2 U.S.C. §§441a(f) and 441b.

In addition to the civil penalty and remedial payment, the committees were required to amend their disclosure reports.

This MUR, or Matter Under Review, was initiated by the FEC after it received a complaint from the chairman of the Mercer County Republican Committee. After a review of the complaint, but prior to finding probable cause to believe that the committees had violated the law, the Commission entered into a conciliation agreement with them. ✥

MUR 3951
Federally Impermissible Loan, Reporting Violations Net Penalty for Harrison

Edward Carl Harrison, a political committee that supported his bid for federal office and the business he owns, E.C. Harrison Properties, Inc., have paid a $20,000 civil penalty to the FEC for violations of the Federal Election Campaign Act (the Act). The prohibited actions included a corporate contribution in the form of a loan and failure to report other loans on time.

During the 1994 congressional election cycle, Mr. Harrison, acting as an officer and director of E.C. Harrison Properties, executed a $50,000 loan to himself. Under the Act, it is impermissible for corporations to make contributions in connection with any federal election. 2 U.S.C. §441b(a). After receiving the loan from his company, Mr. Harrison made two loans of $56,590 and $50,000 to his political committee, the Ed Harrison for Congress Campaign, which changed its name to Friends of Ed Harrison.

E.C. Harrison Properties violated 2 U.S.C. §441b(a) when it made the $50,000 loan to Mr. Harrison at a time when, as a declared and registered candidate for Congress, he was acting as an agent of his campaign. 2 U.S.C. §432(e)(2). Mr. Harrison violated the same statute when, acting in his capacity as officer and director of E.C. Harrison Properties, he approved the loan and when, acting in his capacity as agent of the campaign, he received it. The political committee also violated §441b(a) when its agent, Mr. Harrison, accepted the loan.

Additionally, the political committee used the address and telephone number of E.C. Harrison Properties in its initial political mailings, again violating the Act's broad prohibition against corporate support of federal candidates. Mr. Harrison notified the Commission about this prior to any action by the Commission.

The political committee also failed to report additional loans from Mr. Harrison in a timely fashion on its 1993 Mid-Year and Year-End reports and its 1994 Pre-Primary report, in violation of 2 U.S.C. §434(b). After being notified by the Commission, the committee filed amendments to correct the errors.

This MUR, or Matter Under Review, was initiated after the Commission received a complaint from Kenneth H. Molberg. After a review of the complaint and other pertinent facts, the Commission entered into a conciliation agreement with Mr. Harrison and the other respondents. ✥

Regulations

Public Hearing Produces Range of Comments on Proposed Rules Governing Expenditures by Party Committees

FEC Commissioners, seeking to craft new regulations regarding expenditures by party committees, received suggestions and comments at a recent public hearing that ranged from simply tweaking its existing regulations to making wholesale changes in the way political committees can make expenditures.

Background

Attorneys from national party committees and special interest groups delivered their divergent views during a June 18 public hearing that came about in response to the U.S. Supreme Court's ruling in *Colorado Republican Federal Campaign Committee v. FEC*.[1] In that case, the court concluded that coordinated party expenditure limits at 2 U.S.C. §441a(d) could not be applied to expenditures by a party committee that were made independently of the congressional candi-

[1] Colorado Republican Federal Campaign Committee v. FEC, *116 S.Ct. 2309 (1996).*

date being supported. This ruling opened the door for national party committees to make independent expenditures on behalf of candidates in congressional races. Prior to the ruling, it was presumed that such committees could not make independent expenditures on behalf of their candidates because of the close, on-going contact party committees generally have with candidates.

Subsequently, the Democratic Senatorial Campaign Committee (DSCC) and the Democratic Congressional Campaign Committee (DCCC) requested a rulemaking from the FEC to clarify its regulations in light of the *Colorado* ruling. See page 1 of the June 1997 Record for a discussion of the Notice of Proposed Rulemaking.

Testimony

Democrats. Attorneys for the DSCC and the Democratic National Committee (DNC) advocated disallowing party committees from making virtually any independent expenditures on behalf of their candidates once they have made coordinated expenditures for those same candidates. Coordination, they contended, occurs when there is any understanding or arrangement between the person making the expenditure and the candidate. Coordinated expenditures by one national party committee should also negate any independent expenditures by other national and state committees, the DNC's Joseph E. Sandler said. Party committees inherently coordinate with their candidates, and independent expenditures exist only in the rarest of cases, he said.

Robert F. Bauer, who represented the DSCC and the DCCC, said that if the Commission elects to allow party committees to make unlimited independent expenditures by creating a unit that would ostensibly operate independently of the rest of the party—and the candidates being supported—then it should define exactly how this would work.

The DNC also said that independent expenditures by party committees on behalf of Presidential nominees should be banned, essentially because of the traditionally close contact between the two. The party also told the Commission to leave alone the definition of contribution as it pertains to political committees.

Republicans. Republican committees had a different take on the *Colorado* decision and on how the FEC should craft its revised rules.

Thomas J. Josefiak, an attorney with the Republican National Committee (RNC), said the Supreme Court, in its ruling, found that it was the constitutional right of party committees to make unlimited independent expenditures so long as they were truly independent of candidates. Unlike the Democrats' position, this independence would not hinge on previous coordinated expenditures made by the party on behalf of the candidate.

Bobby R. Burchfield, who represented the National Republican Senatorial Committee, said that viewing any contact between the candidate and party committee as coordination was too broad a definition for coordination and would likely run counter to the First Amendment's guarantees of freedom of speech and association. Rather, Mr. Burchfield suggested, coordination should be viewed as a "meeting of the minds" between a candidate and political committee.

The Republicans also made an appeal to the Commission to make any regulations that it adopts simple to understand and carry out. One example: require that, in order to make independent expenditures, party committees must use the party's speech—not a regurgitated communication from a candidate's committee.

In contrast to the Democrats, the RNC opposed regulations that would automatically ban independent expenditures on behalf of Presidential candidates. Further, they did not have a problem with state committees making independent expenditures while national committees did the same. However, the RNC did tell the Commission not to change the definition of contribution.

Interest Groups. Donald Simon, Executive Vice President and General Counsel for Common Cause, advised the FEC to proceed with caution as it modifies the rules governing party committee expenditures. The revised regulations must balance a party committee's right to make independent expenditures with the fact that party independence rarely occurs, he said. Common Cause suggested that independent expenditures by political parties on behalf of congressional candidates should be subject to a "rebuttable presumption" that the expenditures are coordinated. And, similar to the Democrats' proposals, Common Cause urged that party committees be prohibited from making both coordinated and independent expenditures.

Representing one nonprofit's view of the proposed regulations, James Bopp, Jr., of the National Right to Life Committee, Inc., denounced the entire NPRM and charged the FEC with trying to regulate issue advocacy. He said that the proposals take too broad a view of coordination and fail to provide any clear guidance to nonprofit corporations that plan to make independent expenditures.

Public hearing speakers also commented at length on other aspects of the NPRM, including who constitutes an "agent" and the applicability of express advocacy.

In addition to those who spoke at the public hearing, the FEC received written comments from the Internal Revenue Service, the U.S. Chamber of Commerce and the National

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Republican Congressional Committee (the DCCC's and DSCC's comments were combined).

To review written comments from all who responded, call the FEC's Public Records office at 1/800-424-9530 (press 3) or 202/219-4140. To review the FEC's NPRM, see the May 5 *Federal Register* (62 FR 24367) or request the document from the FEC's Faxline at 202/512-3414 (request document 228). ✥

Comments on Revisions to FEC "Member" Rules Sought

On July 23, the Commission approved for public comment an Advance Notice of Proposed Rulemaking to determine whether revisions are needed to its regulations defining who is a "member" of a membership association. Members can be solicited by an organization's separate segregated fund (SSF) and can also receive partisan communications from the organization. The action is in response to a petition for rulemaking filed by James Bopp, Jr., on behalf of the National Right to Life Committee, Inc.

The Commission is seeking comments in light of the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Chamber of Commerce of the United States v. FEC* (see page 2 of the January 1996 Record). The Commission is not proposing specific amendments to the rules at this time, but is attempting to obtain general guidance on the factors to be considered in determining who is a member of a membership association. After reviewing the comments received in response to the ANPRM, the Commission will decide whether to propose specific language for this purpose.

Copies of the notice are available from the Public Records Office at 800/424-9530 (press 3) and through the FEC's Faxline service at 202/501-3414 (request document 232).

Public comments in response to the notice are due by September 2 and must be submitted in writing to Susan E. Propper, Assistant General Counsel, at 999 E St., NW, Washington, DC 20463. Comments may be faxed to 202/219-3923, with printed copy follow-up. Comments may also be e-mailed using this Internet address—members@fec.gov. Electronic submissions should include the commenter's full name, electronic mail address and postal mail address. See the ANPRM for more information. ✥

Revised Best Efforts Regulations Go Into Effect

Revised "best efforts" rules became effective July 2. The regulations set up procedures to ensure that political committees use their best efforts to obtain and report required contributor information.

The affected regulations are 11 CFR 104.7(b)(1) and (b)(3). See page 6 of the June 1997 Record for a summary of the revised regulations and two examples of acceptable wording that may be included in solicitations. ✥

Advisory Opinions

AO 1997-6 Reinvesting Investment Income

Kay Bailey Hutchinson for Senate may directly reinvest money earned from its investment accounts—money-market funds and U.S. government securities maintained with a securities investment firm. The committee need not physically deposit the investment income into its campaign depository before reinvesting it in the investment accounts.

The Federal Election Campaign Act (the Act) requires that each political committee designate at least one bank as the depository for its campaign funds.[1] All receipts received by the committee must be deposited in checking accounts maintained at the depository. 2 U.S.C. §432(h)(1) and 11 CFR 103.2. With the exception of petty cash, all committee disbursements must be made from those checking accounts. 11 CFR 103.3(a). Commission regulations go on to state that political committees are permitted to transfer campaign funds for investment purposes to other accounts, but such funds must be returned to the campaign depository account before they are used for expenditures.

In AO 1980-39, the Commission concluded that transfers of funds out of a campaign depository for investment purposes are not considered to be expenditures by a political committee. Instead, they are a conversion of one form of cash on hand to another. It follows that reinvesting funds earned from committee investments also would not be considered an expenditure by a political committee. Consequently, the funds would not have to be transferred back to the campaign depository before their reinvestment.

Funds in the committee's investment accounts must, however, be disclosed, and they must be transferred to a campaign depository account before they can be disbursed for operating expenditures or for other noninvestment purposes.

Date Issued: June, 20, 1997; Length: 3 pages. ✥

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[1] *An acceptable depository includes federally chartered institutions or banks where accounts are insured by the FDIC, FSLIC or the National Credit Union Administration.*

AO 1997-7
Status of State Party as State Committee of Political Party

The Virginia Reform Party, also known as The Virginia Independent Party, constitutes a state committee of a political party because it satisfies the definition and requirements set out in the Federal Election Campaign Act (the Act) and in the Commission's regulations and advisory opinions.

The Act defines a state committee as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission." 2 U.S.C. §431(15). The definition of a state committee also requires the existence of a political party. A political party is "an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization." 2 U.S.C. §431(16).

In AO 1992-30, the Commission identified two requirements necessary for state political committee status. The first is that the organization must have a state affiliate agreement that "delineates activities commensurate with the day-to-day operation" of a party at a state level. Second, the state affiliate must gain ballot access for its Presidential and other federal candidates. See also AOs 1997-3, 1996-51, 1996-43, 1996-27 and 1995-49. Additionally, in AOs 1996-51 and 1996-43, the Commission granted state committee status to organizations that were affiliated with national political parties that had not yet achieved national committee status. These state organizations were able to qualify as state committees based on their by-laws, which detailed activities commensurate with the operations of a party on the state level, and the placement of at least one of the party's congressional candidates on the state's ballot. Such candidates, the Commission noted, must qualify as candidates under 2 U.S.C. §431(2).

The Virginia Reform Party meets both requirements for political committee status on the state level. First, the party's by-laws set out a comprehensive organizational structure including a state central committee consisting of party officers and members from each congressional district and state and local conventions to nominate candidates. Such actions are consistent with activities that are commensurate with the day-to-day operations of a political party on the state level. Second, all three of the Virginia party's congressional candidates who appeared on the state's November 1996 ballot filed statements of candidacy with the FEC and had registered principal campaign committees filing disclosure reports. Two of those candidates had sufficient financial activity to qualify as candidates under 2 U.S.C. §431(2), thus meeting the Commission's second requirement of securing ballot access.

Although the Virginia party's three congressional candidates were not listed on state ballots as candidates of any particular party, they still meet the Commission's requirements. The Act's definition of political party refers to the appearance of the candidate's name on the ballot as the candidate of the particular party. In Virginia, congressional candidates and parties are not listed in such pairings on the ballot. Nonetheless, lists of candidates issued by the Virginia State Board of Elections and the FEC during 1996 do indeed denote that the candidates were running as candidates of the party.

Date Issued: June 27, 1997; Length: 4 pages. ✥

Federal Register

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

Notice 1997-11
Recordkeeping and Reporting by Political Committees: Best Efforts; Final Rule and Announcement of Effective Date (62 FR 35670, July 2, 1997)

Advisory Opinion Requests

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

AOR 1997-10
Transfers between campaign committees of different election cycles (Hoke for Congress Committee, June 14, 1997; 3 pages plus 16-page attachment)

AOR 1997-11
Use of campaign funds for Spanish immersion program (Congresswoman Lucille Roybal-Allard, June 19, 1997; 1 page plus 24-page attachment)

AOR 1997-12
Use of campaign funds to pay legal expenses of candidate (Congressman Jerry Costello, June 24, 1997; 6 pages plus 50-page attachment)

AOR 1997-13
Relationship of limited liability company nonconnected PAC to parent corporations' separate segregated funds (United Space Alliance Political Action Committee, July 8, 1997; 5 pages plus 9-page attachment)

AOR 1997-14
Use of corporate contributions for construction costs or purchase of new party headquarters (Mississippi Republican Party, July 9, 1997; 2 pages) ✥

Election Administration

"Motor Voter" Report Sent to President and Congress

On June 30, the FEC transmitted to the President and Congress its second status report on the implementation of the National Voter Registration Act (NVRA), better known as the "Motor Voter" law.

In it, the FEC's Office of Election Administration reported that, while the number of people registering to vote in the nation surged by more than 9 million from 1992 to 1996, the number of people who actually went to the polls last November declined by 5 percent. Just 49 percent of registered voters went to the polls during the last presidential election.

The report covers election data from 44 states and the District of Columbia. Idaho, Minnesota, Wisconsin, North Dakota, New Hampshire and Wyoming are exempt from the provisions of the NVRA, and Vermont has not yet fully implemented the law.

The report found that there were nearly 143 million people registered to vote in the United States in 1996, or 72.8 percent of the voting-age population. The increase in the number of registered voters between 1992 and 1996 was 1.8 percent.

The report also found that the most popular place for people to register to vote in 1995 and 1996 was at their local motor vehicle offices, with 33.1 percent of voter registration applications being filled out in DMV offices. Post card registrations accounted for 29.7 percent of new registrants, and registrars' offices and voter registration drives accounted for 26.1 percent of those registering to vote. Other agencies mandated by the NVRA to provide voter registration services—for example, public assistance agencies, disability service agencies and armed forces recruitment offices—accounted for 11 percent of voter registration applications.

The report, entitled "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1994-1996," contains an analysis of the impact of the NVRA and detailed information provided by states that have implemented the law. It also lists several recommendations to improve how the NVRA is implemented in the states. The full report is available from the FEC's Information Division and the Office of Election Administration by calling 1/800-424-9530. Also look for an executive summary of the report (with supporting data) at the FEC's web site—http://www.fec.gov. ❖

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FEC Sets Conference Schedule

The FEC has set dates for three regional conferences, and tentative dates for four others for 1997 and 1998.To register for any of the three scheduled conferences, call Sylvester Management at 1/800-246-7277 or send an e-mail message to TSYLVESTER@WORLDNET.ATT.NET.

Seattle
Date: September 24-26, 1997
Location: Cavanaugh's Inn
Registration: $175
Hotel rate: $134
Candidates, political parties, corporate and labor organizations

Atlanta
Date: October 15-17, 1997
Location: Sheraton Colony Square
Registration: $180
Hotel rate: $149
Candidates, political parties, corporate and labor organizations

Washington, DC
Date: November 6-7, 1997
Location: Madison Hotel
Registration: $180.50
Hotel rate: $124
Corporate and labor organizations

Read future issues of the *Record* to get more scheduling information for these conferences:

Washington, DC
December 1997
Trade and membership associations

Washington, DC
February 1998
Candidate committees

Denver
March 1998
Candidates, political parties, corporate and labor organizations

Washington, DC
April 1998
Nonconnected committees

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