

Record

December 1997

Federal Election Commission

Volume 23, Number 12

Table of Contents

Statistics

- 1 Congressional Financing Heats Up

Regulations

- 1 FEC Seeks Comments on Rulemaking Petition on “Express Advocacy”

- 2 Federal Register Notice

- 3 Conferences

Audits

- 4 Audit Reports Made Public

Reports

- 4 FECFile Order Form

- 5 Advisory Opinions

Publications

- 6 New Brochures on Notices, Partnerships

Court Cases

- 7 Condon v. USA

- 7 Index

Statistics

Congressional Financing Heats Up

House Candidates

During the first six months of 1997 and more than a year before the 1998 general election, House incumbents reported \$52.9 million in receipts, up \$7.4 million from the comparable period for incumbents in 1995. Republicans outpaced their Democratic counterparts in fundraising by nearly \$9 million—\$30.8 million to \$22.1 million. The tallies are based on reports filed by 227 Republican incumbents and 207 Democrats.

The typical¹ Republican incumbent reported receipts of \$105,987, but if that Republican incumbent was a freshman, mid-year receipts increased to \$146,833. The same figure for Democratic incumbents was \$72,726 and, for Democratic freshmen, \$115,228. Thirty-two Republican freshmen and 42 Democratic freshmen were included in these median figures.

Nonincumbents’ fundraising lagged behind incumbents by a substantial margin. Note, however, that most nonincumbent candidates

(continued on page 2)

¹ The typical figure reflects the median of receipts reported by candidates.

Regulations

FEC Seeks Comments on Rulemaking Petition on “Express Advocacy”

On October 31, the Commission approved for public comment a Notice of Availability that addresses the definition of “express advocacy” found in the Commission’s rules at 11 CFR 100.22. The notice responds to a Petition for Rulemaking submitted by attorney James Bopp Jr. on behalf of the James Madison Center for Free Speech.

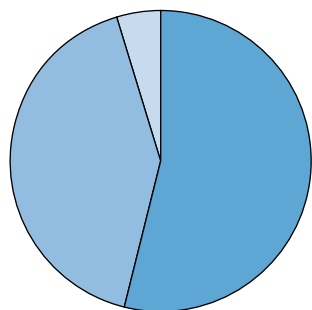
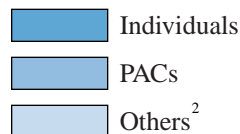
The petitioners urge the Commission to revise this definition to conform with the decision in *Maine Right to Life Committee v. FEC*.¹ In that case, the U.S. District Court for the District of Maine found that paragraph 100.22(b) was invalid because it expanded the definition of the term beyond the Supreme Court’s interpretation of it in *Buckley v. Valeo*. The U.S. Court of Appeals for the First Circuit upheld the lower court ruling and, on October 6, the U.S. Supreme Court declined to hear the case.

The challenged paragraph defines express advocacy as being a com-

(continued on page 3)

¹ *Maine Right to Life Committee v. FEC*, 914 F. Supp. 8 (D.Me. 1996), *aff’d*, 98 F.3d 1 (1st Cir. 1996), *cert. denied* 66 U.S.L.W. 3254 (1997).

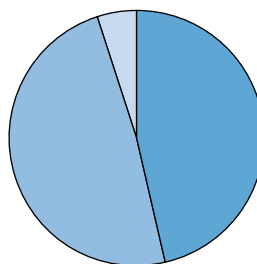
Sources of Receipts of House Candidates During First Quarter of 1998 Election Cycle



Republican Incumbents
\$30.8 million



Republican Nonincumbents
\$1.7 million



Democratic Incumbents
\$22.1 million



Democratic Nonincumbents
\$2.6 million

Statistics

(continued from page 1)

decide to run for the House later in the election cycle, with the result that their financial activities are very

Federal Election Commission
999 E Street, NW
Washington, DC 20463
800/424-9530
202/219-3420
202/501-3413 (FEC Faxline)
202/219-3336 (TDD for the hearing impaired)
800/877-8339 (FIRS)

John Warren McGarry,
Chairman

Joan D. Aikens, Vice Chairman

Lee Ann Elliott, Commissioner

Danny L. McDonald,
Commissioner

Scott E. Thomas, Commissioner

John C. Surina, Staff Director

Lawrence M. Noble, General
Counsel

Published by the Information
Division

Louise D. Wides, Director

Angela Rucker, Editor

<http://www.fec.gov>

limited during this early phase. During the first six months of 1997, nonincumbents—both challengers and candidates vying for open seats—raised \$4.3 million, with Republicans bringing in \$1.7 million and Democrats collecting \$2.6 million. At the time the reports were filed, there were 39 Democrat and 43 Republican nonincumbents. The typical Democratic nonincumbent raised \$28,097 during the first six months of 1997; typical Republican nonincumbents raised \$26,879.

Senate Candidates

Candidates vying for 34 Senate seats in 1998 raised \$42.6 million, according to the mid-year reports. The 58 candidates who filed reports with the Commission showed more fundraising activity than did Senate candidates in past elections. In 1991, with the same 34 contested seats plus two special elections, 55 candidates reported raising \$33.3 million in mid-year reports. In 1993, 50 Senate campaigns reported collecting nearly \$25 million in the same report. And, in 1995, 49 candidates vying for Senate seats

raised \$24 million during the first six months of the year.

For a more detailed analysis of mid-year receipts by congressional candidates, including rankings and lists of individual candidates, read the FEC's October [27](#) and [28](#) press releases. Go to the FEC's web site at <http://www.fec.gov>; request a copy from the Public Records Office at 800/424-9530 (press 3); or retrieve a copy from the Faxline service at 202/501-3413 (request document 610). ♦

² "Others" includes loans and gifts from the candidate, party committee contributions and transfers, and interest.

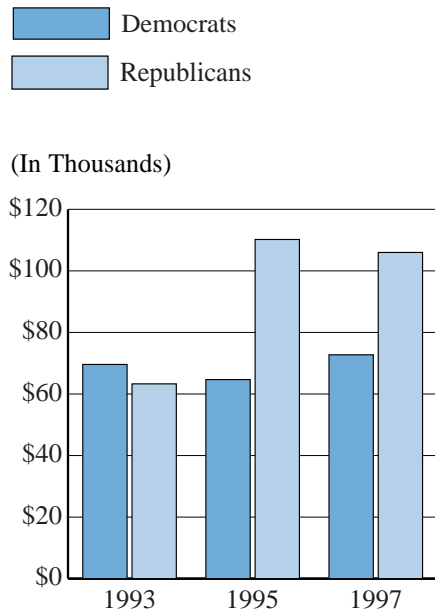
Federal Register

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

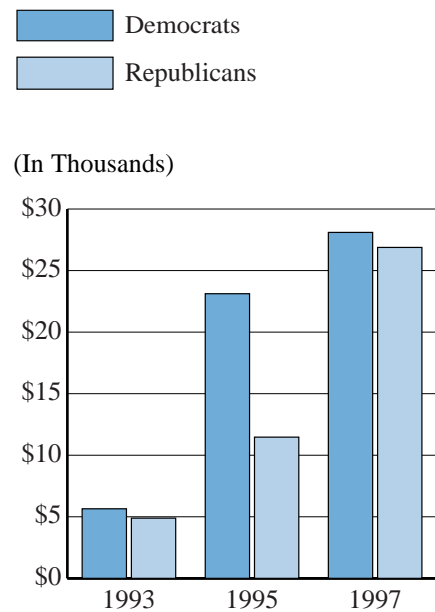
Notice 1997-15

Rulemaking Petition: Definition of "Express Advocacy"; Notice of Availability (62 FR 60047, November 6, 1997)

House Incumbents: Median Receipts of 1st Quarter of Election Cycle



House Nonincumbents³: Median Receipts of 1st Quarter of Election Cycle



³ “Nonincumbents” includes challengers and candidates running in open-seat elections.

Regulations

(continued from page 1)

munication that, when taken as a whole and with limited reference to external events, can only be interpreted by a reasonable person as expressly advocating the election or defeat of a clearly identified candidate or group of candidates. It is based in part on the U.S. Court of Appeals for the Ninth Circuit’s decision in *Furgatch v. FEC*, which articulated this standard.

The petitioners take a different view, arguing that the “express advocacy” standard requires words specifically calling for the election or defeat of a named candidate.

The “express advocacy” standard is important because, among other things, it determines whether certain communications are covered by the Federal Election Campaign Act, and which communications require a disclaimer. The Notice of Availability seeks comments on whether the FEC should initiate a rulemaking in response to the petition. The Commission routinely provides an opportunity for comments on rulemaking petitions before the agency considers the merits of the petition.

The [petition](#) and [notice](#) are available from the Public Records Office at 800/424-9530 (press 3); through the FEC’s Faxline at 202/501-3413 (request document 232); and at the FEC’s web site—<http://www.fec.gov>. The notice is published in the November 6 Federal Register (62 FR 60047).

Public comments must be submitted in either written or electronic form to Susan E. Propper, Assistant General Counsel. Written comments should be mailed to the Federal Election Commission, 999 E St., NW, Washington, DC 20463. Faxed comments should be transmitted at 202/219-3923, with a copy mailed to the preceding address to ensure legibility. Comments also may be sent by e-mail to expressad@fec.gov. Electronic

submissions must include the commenter’s full name, e-mail address and postal mail address. The deadline for comments is December 8. ♦

FEC Conference Schedule

The FEC will hold one more conference this year and three more in 1998. To register for any of the scheduled conferences, call Sylvester Management at 1/800-246-7277 or send an e-mail message to: TSYLVESTER@WORLDNET.ATTNET.

Washington, DC

For trade associations and membership organizations
Date: December 11-12, 1997
Location: Hyatt Regency Capitol Hill
Registration: \$180
Hotel rate: \$145

Washington, DC

For candidate committees
Date: February 23, 1998
Location: Madison Hotel
Registration: \$175
Hotel rate: \$124

Denver

For candidates, political parties and corporate and labor organizations
Date: March 25-27, 1998
Location: Westin Tabor Center
Registration: \$180
Hotel rate: \$136

Read future issues of the *Record* to get scheduling information for the following conference slated for 1998:

Washington, DC

For nonconnected committees
April 1998

Audits

Audit Reports Made Public

Thus far this year, the FEC has issued 10 final audit reports pursuant to 2 U.S.C. §438(b) and 26 U.S.C. §9038(a). The first of these two provisions of the Federal Election Campaign Act authorizes the FEC to audit any political committee that files reports but fails to meet the threshold level of compliance set by the agency. The second provision authorizes the FEC to audit Presidential committees¹ that receive federal funds.

The Commission has the authority to initiate an enforcement matter to pursue issues revealed by an audit. The audited committees are listed below.

Audits for Cause

- Mississippi Democratic Party Political Action Committee (January 24)
- New Hampshire Democratic State Committee (March 27)
- New Jersey Democratic State Committee (July 8)
- Democratic, Republican, Independent Voter Education (DRIVE) (September 25)
- Kevin Quigley for Congress (October 21)

Audits of 1996 Presidential Committees

- [Arlen Specter '96 \(June 30\)](#)
- [Alexander for President, Inc.; Alexander for President Compliance Committee, Inc.; Alexander Audit Fund, Inc. \(July 8\)](#)

¹ Presidential committees include committees of primary election candidates who receive federal matching payments, committees associated with the nominee in the general election who receive federal funds and committees involved in the Democratic and Republican Presidential nominating conventions.

FECFile Order Form

Do you want to file your FEC reports electronically? The FEC will mail you a copy of its new, free electronic filing software—FECFile. Mail or fax this form to the address/number below. Currently, FECFile operates on Windows95 and WindowsNT platforms.

FEC Identification Number _____

Committee Name _____

Electronic Filing Contact Name _____

Address: Street 1 _____

Address: Street 2 _____

City _____

State _____

Zip Code _____

Phone Number _____

Fax Number _____

E-mail Address _____

Federal Election Commission
Data Division—Room 431
999 E Street, NW
Washington, DC 20463
Fax: 202/219-0674

- [Phil Gramm for President, Inc.; Phil Gramm for President Compliance Committee, Inc.; Phil Gramm for President Audit Fund \(July 10\)](#)
- [Committee to Reverse the Accelerating Global Economic and Strategic Crisis: A LaRouche Exploratory Committee \(July 25\)](#)
- [Pete Wilson for President Committee, Inc.; Pete Wilson for President Compliance Committee, Inc.; Pete Wilson for President Audit Fines and Penalties Account, Inc. \(September 5\)](#)

The New Jersey committee audit covers financial activity during the

1992 election cycle; the Mississippi, New Hampshire and DRIVE committees' audits cover financial activities during the 1994 election cycle; and the Quigley committee audit covers financial activity during the 1996 election cycle. Final audit reports, each of which includes an executive summary, are available from the FEC's Public Records Office. Dial 800/424-9530 (press 3) or 202/219-4140. Executive summaries for the five 1996 presidential primary campaign audits also are available at the FEC's web site—<http://www.fec.gov>. ♦

Advisory Opinions

AO 1997-20 Contributions by Nonfederal Committee

Friends of McCarthy, a California nonfederal committee, may use its leftover funds to make contributions to federal candidates so long as those funds are from federally permissible sources and the committee follows one of two options allowed by the Commission.

The Committee qualified as a state committee under California law in 1989, and former Lt. Gov. Leo T. McCarthy used it in 1990 for his reelection campaign. In 1997, the Committee was in the process of terminating, and wanted to use its remaining funds to contribute to federal candidates. Those funds were part of \$6,800 in media refunds the Committee had received between 1995 and 1997 after a number of years of court action. The refunds constituted the Committee's most recent receipts.

In May 1997, the Committee had \$3,500 in cash on hand. A month later, it contributed \$2,000 to Nancy Pelosi for Congress, a federal committee. A short time later, the Committee filed a statement of organization with the FEC, registering as a political committee. It also filed a mid-year report disclosing the contribution to Ms. Pelosi's committee, as well as the most recent media refund and general operating expenses.

By virtue of its \$2,000 contribution to a federal candidate, the Committee qualified as a political committee under the Federal Election Campaign Act (the Act). 2 U.S.C. §431(4). Commission regulations dictate what a political committee must do if it has cash on hand at the time of registration. 11 CFR 104.12. However, the situation the Committee presents is unique:

the Committee had no receipts other than the media refunds during the last three years; those media refunds constituted a return of funds that were originally donated to the nonfederal committee, and the Committee had sought such refunds through legal action begun more than five years ago; the Committee plans to raise no more funds; and the Committee will terminate its activities as soon as it disposes of its cash on hand.

A political committee's cash on hand must be reported on its first report. 2 U.S.C. §434(b); AO 1990-16. To determine the amount of permissible cash on hand at the time the Committee made the contribution to the Pelosi campaign, it may use the traditional method for identifying its cash on hand (Option A) or an alternative method (Option B).

- Option A. Commission regulations state that cash on hand is presumed to comprise those contributions most recently received by a committee. 11 CFR 104.12. In this case, its treasurer must first identify the sources of the \$3,500 in contributions most recently received by the Committee prior to the receipt of the media refunds. Then, it must subtract any funds that would be impermissible under federal law. The remaining amount is the permissible cash on hand in its new status as a federal political committee. The impermissible donations should have been transferred out of the Committee's account within 10 days of the contribution to the Pelosi committee.

Those persons whose contributions constituted the Committee's cash on hand at the time it registered with the FEC should be notified that their contributions are subject to the limitations and prohibitions of the Act. 11 CFR 102.5(a)(2); AO 1990-16. If the notification is not given for such contributions, such funds must be subtracted from the cash on hand total and transferred out of the Committee's federal account.

- Option B. The Committee may use the media refunds in determining whether the \$3,500 cash on hand consisted of federally permissible contributions. Under this option, the cash on hand would be considered as originating from the contributions that were used to make the media disbursements, which were subsequently refunded. The determination of permissible funds within the \$3,500 is based on the ratio of permissible donations to total donations comprising the cash on hand at the time of the relevant media disbursements.

See the advisory opinion for more detailed information about each option. The opinion is available from the Public Records Office (800/424-9530, press 3) and from the FEC's Faxline service (202/501-3413, document 9720).

Amended Reports and Termination

Under both options, if permissible funds total less than the amount contributed to the Pelosi campaign, then the Committee must ask the Pelosi campaign for a refund of the impermissible amount. (The Pelosi campaign must make the refund within 30 days of being informed by the Committee.) The Committee must also cease making further federal contributions. On the other hand, if there are remaining permissible funds, the Committee may contribute them to federal campaigns.

The Committee must also file an amended mid-year report within 30 days of this advisory opinion. If the Committee does not dispose of its remaining permissible funds within 30 days of receiving this advisory opinion, it must, by that date, transfer the impermissible funds in its account to a separate bank account that may not be used for federal elections.

Date Issued: October 22, 1997;
Length: 6 pages. ♦

(Advisory Opinions continued on page 6)

Advisory Opinions

(continued from page 5)

Advisory Opinion Requests

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

AOR 1997-24

Conversion of SSF to nonconnected PAC after dissolution of parent corporation (Corporation for the Advancement of Psychiatry Political Action Committee, October 21, 1997; 2 pages) ♦

Alternative Disposition of Advisory Opinion Request

AOR 1997-23

The requester withdrew this request for an advisory opinion. The request, submitted on October 14, sought the Commission's opinion on the use of a discounted airline ticket by a federal candidate. ♦

Request for Reconsideration of Advisory Opinion

AO 1997-21

The requester has asked the Commission to reconsider this advisory opinion. The opinion, issued on October 2, concluded that the Firebaugh for Congress Committee could use an unexpected vendor refund only to repay a reported loan its candidate had made, but it could not reimburse her for the money she had donated to her campaign. The candidate had provided funds to the committee after the election to retire its unpaid bank loan and other debts. See page 8 of the [November 1997 Record](#). ♦

Publications

New Brochures on Notices, Partnerships

The FEC has just published two new brochures. [Special Notices on Political Ads and Solicitations](#) explains the various types of notices that must appear on political communications. The brochure summarizes the rules for disclaimers, "best efforts" and Internal Revenue Service notices. This brochure clarifies when such notices are required and explains the rules for

the wording and placement of notices on political ads and solicitations.

[Partnerships](#) describes the special rules that apply to partners and partnerships involved in federal election activity. The brochure covers a number of topics, including dual attribution of partnership contributions, prohibited partnership contributions, PACs sponsored by partnerships and partner activity on behalf of federal candidates.

Use the form below to order brochures. The brochures are also available at the FEC's web site—<http://www.fec.gov>. ♦



Brochure Order Form

Special Notices on Political Ads and Solicitations

_____ No. of Copies

Partnerships

_____ No. of Copies

Name _____

Organization _____

Address _____

City _____

State _____

Zip Code _____

Send your order to: Federal Election Commission
Information Division
999 E Street, NW
Washington, DC 20463

Court Cases

Condon v. USA

On March 26, 1996, the parties in this case agreed to a voluntary dismissal by the U.S. Court of Appeals for the Fourth Circuit. The plaintiff in the case, South Carolina Attorney General Charles Condon, had asked the court to declare that the National Voter Registration Act (NVRA) was an unfunded federal mandate that was unconstitutional. The FEC was named in this suit as a one of the defendants.

Mr. Condon had alleged that the NVRA violated the Tenth Amendment, which states that powers not delegated to the federal government and not prohibited to the state by the Constitution are reserved to the states.

U.S. Court of Appeals for the Fourth Circuit, 95-192. ♦

Index

The first number in each citation refers to the “number” (month) of the 1997 *Record* issue in which the article appeared. The second number, following the colon, indicates the page number in that issue. For example, “1:4” means that the article is in the January issue on page 4.

Advisory Opinions

- 1996-35: Status of Green Party as national committee, 1:10
- 1996-42: SSF disaffiliation following corporate spin off, 1:11
- 1996-45: Use of campaign funds, 1:12
- 1996-46: Continuation of exemption from select FECA reporting provisions, 4:7
- 1996-48: Application of “news story” exemption, 2:5

- 1996-49: Affiliation between PAC of joint venture partnership and SSF of corporate partner, 3:7
- 1996-50: Disaffiliation of SSFs, 3:9
- 1996-51: Qualification as state committee of political party, 3: 9
- 1996-52: Resolicitation of excess campaign funds for nonfederal campaign, 3:10
- 1997-1: Use of excess campaign funds to establish foundation, 5:8
- 1997-2: Use of campaign funds for congressional retreat fees, travel, 5:8
- 1997-3: Qualification as state committee of political party, 6:11
- 1997-4: Application of contribution limit to limited liability company, 6:12
- 1997-5: Qualification of lessee of trading “seat” on Exchange as member, 7:6
- 1997-6: Reinvestment by political committee of investment income, 8:8
- 1997-7: Status as state committee of political party, 8:9
- 1997-9: Collection of PAC contributions from individual members through electronic debiting of their trading accounts held with member firms, 9:4
- 1997-10: Transfers between campaign committees of different election cycles, 10:5
- 1997-11: Use of campaign funds, 9:5
- 1997-12: Use of campaign funds, 10:5
- 1997-13: Relationship of limited liability company’s nonconnected PAC to parent corporations’ SSFs, 10:6
- 1997-14: Use of corporate contributions to build party headquarters, 10:8
- 1997-15: Establishment of nonconnected PAC by incorporated membership organization’s CEO, 11:4
- 1997-16: Methods of providing PAC endorsements of federal candidates to restricted class, 11:5
- 1997-17: Contribution limit of limited liability company, 11:6

- 1997-19: Donations by corporation and foundation to potential host committee of presidential convention, 11:7
- 1997-20: Permissibility of contributions by nonfederal campaign committee to federal candidates, 12:5
- 1997-21: Refund to candidate who had made contribution to own campaign, 11:8

Court Cases

- FEC v. _____
- California Democratic Party, 7:5
- Charles Woods for U.S. Senate, 4:6
- Christian Action Network, 1:5; 5:5; 8:4
- Christian Coalition, 7:2
- DSCC (95-2881), 3:2; 8:3
- Fund For a Conservative Majority, 1:5; 11:1
- Kalogianis, 5:3
- Legi-Tech, 7:4
- McCallum, 2:4
- Orton, 6:6
- Parisi, 1:4
- Public Citizen, 4:6
- Williams, 2:3; 7:5; 11:2
- _____ v. FEC
- Akins, 2:1; 7:5
- Bush-Quayle ‘92 Primary Committee, 3:5
- Clark, 5:1
- Clifton, 8:1
- Common Cause (96-5160), 5:4
- Condon, 12:7
- DCCC (96-0764), 1:4
- DNC (96-2506), 1:5; 5:5
- DNC (97-676), 6:7
- DSCC (96-2184), 1:2; 8:3
- Fulani (97-1466), 10:2
- Gottlieb, 7:5
- Hagelin, 6:7
- Hooker, 1:5
- Jones, 6:7
- Maine Right to Life, 11:2
- Minnesota Citizens Concerned for Life, 7:2; 8:4
- NRCC (96-2295), 1:2
- Reilly, 1:4
- Right to Life of Dutchess Co., Inc., 6:8

(continued on back page)

Index

(continued from page 7)

- RNC (94-5248), 2:5
 - RNC (97-1552), 9:1
 - White, 10:2
- Other Court Cases
- DSCC v. NRSC, 10:1

Reports

- Electronic Filing, 2:1; 5:9; 7:10;
10:1; 12:4
- July Reporting Reminder, 7:1
- Schedule for 1997, 1:6
- Special Election, New Mexico, 4:3
- Special Election, New York, 10:12
- Special Election, Texas, 3:6; 4:3

800 Line

- Amended reports, 4:2
- Debt settlement and committee
termination, 1:8

Change of Address

Political Committees

Treasurers of registered political committees automatically receive the Record. A change of address by a political committee (or any change to information disclosed on the Statement of Organization) must, by law, be made in writing on FEC Form 1 or by letter. The treasurer must sign the amendment and file it with the Secretary of the Senate or the FEC (as appropriate) and with the appropriate state office.

Other Subscribers

Record subscribers who are not registered political committees should include the following information when requesting a change of address:

- Subscription number (located on the upper left corner of the mailing label);
- Subscriber's name;
- Old address; and
- New address.

Subscribers (other than political committees) may correct their addresses by phone as well as by mail.

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

Official Business
Penalty for Private Use, \$300



Printed on recycled paper

Bulk Rate Mail
Postage and Fees Paid
Federal Election Commission
Permit Number G-31

