Record

March 1997 *Federal Election Commission* *Volume 23, Number 3*

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Budget

FEC Seeks Supplemental Funds to Investigate Alleged Campaign Finance Abuses

Faced with investigating the "extraordinary problems associated with the 1996 election," the FEC has asked the U.S. Congress and the federal Office of Management and Budget to provide $1.7 million in supplemental funding for this fiscal year and an additional $4.9 million for 1998.

Commission Vice Chairman Joan D. Aikens, who heads the agency's finance committee, told the Senate Committee on Rules and Administration that the additional money is needed to investigate allegations that the Federal Election Campaign Act (the Act) was violated on an unprecedented scale during the 1996 election cycle. Financial activity in the 1996 election cycle surged to more than $2.7 billion, and the Commission received a third more complaints than during the 1994 election cycle.

A laundry list of alleged campaign finance abuses from last year's elections was chronicled almost daily in the nation's newspapers, Ms. Aikens told the panel. And the uproar has not stopped with a new year. "The alleged abuses involve fundraising from nonresi-

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Compliance

MUR 4090 Corporation and Officers Net $91,000 Penalty for Prohibited Contributions

Firearms Training Systems Inc., its former president and its former chief operating officer agreed to pay a total of $91,000 to the FEC after making six contributions with corporate funds during elections in the early 1990s and using a financial scheme of bonus payments to mask reimbursements for two of the contributions.

With respect to each of the six contributions, the Commission found reason to believe that the Georgia-based Firearms Systems and the company's former president, Jody D. Scheckter, knowingly and willfully violated the Federal Election Campaign Act (the Act) by making corporate contributions, making contributions while a government contractor and making contributions in the name of another. 2 U.S.C. §§441b(a), 441c(a)(1) and 441f. The Commission found reason to believe that the violations surrounding the last two of the six contributions were committed knowingly and willfully. Firearms Systems and its former president were assessed a joint civil penalty of $90,000.

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Court Cases

FEC v. DSCC (95-2881)

On January 16, 1997, the U.S. District Court for the Northern District of Georgia ruled that the Democratic Senatorial Campaign Committee (DSCC) violated the Federal Election Campaign Act (the Act) when it contributed $17,500 to a Senatorial candidate's runoff election after having already contributed the same amount during the primary and general elections.

The second contribution violated the Act at §441a(h), which sets a $17,500 limit for national committees—such as the DSCC and the National Republican Senatorial Committee (NRSC)—when giving to a candidate for the U.S. Senate.

Background

The excessive contribution was made during the unusual circumstances surrounding the 1992 Senatorial campaign in Georgia. A state law, which has since been changed, required that the winner of the Senate seat receive a majority of the vote.

Former Senator Wyche Fowler Jr., a Democrat, had a plurality in the general election in 1992, receiving 49 percent of the ballots cast. Republican Senator Paul Coverdell, who challenged Mr. Fowler in the race, came in second with 48 percent of the vote. Because no candidate received a majority of votes, a runoff election was held between the two men. Mr. Coverdell won that race with 51 percent of the vote.

During the primary and general elections, the DSCC contributed $17,500 to Mr. Fowler's campaign, and then contributed another $17,500 to his runoff election.

District Court Finds for FEC

The court ruled in the FEC's favor. The court held that the language and legislative history of the Act, coupled with accepted principles of statutory construction, support the view that §441a(h) precluded the DSCC from making a second contribution of $17,500.

The court pointed out that, unlike individuals and other committees, national committees have a higher contribution limit under §441a(h) and greater discretion in allocating the sum during the length of a campaign. For example, individuals have a $1,000 contribution limit per election (primary, general and runoff), per candidate. Multicandidate PACs have a $5,000 contribution limit per election, per candidate. The court held that national committees, such as the DSCC, may allocate part or all of their $17,500 contribution limit to a Senatorial candidate at any stage of the election campaign.

The DSCC had argued that the FEC had erroneously interpreted the $17,500 limit with respect to post-general election runoffs and that Congress had intended the statute to be part of an effort to expand the role of national committees. However, the court said that the language of §441a(h) was unambiguous and that, even if it were not, the FEC's interpretation of it would be entitled to deference. In AO 1978-25, the court pointed out, the Commission had confirmed that §441a(h) did indeed establish a single contribution limit without regard to whether there were primary, general or runoff elections.

The DSCC had also argued unsuccessfully that the unusual nature of the Georgia majority-winner rule was not taken into account when Congress adopted the statute, and that, had its members known of such a scenario, it would have drafted the law differently. The court said that such speculation would not cause the court to disregard the language of the law.

The court rejected the DSCC's claim that its First and Fifth Amendment rights of freedom of association and equal protection were violated. The DSCC said the law denied them the freedom to associate with Mr. Fowler's campaign because "no committee would ever reserve funds for the uncertain prospect of a runoff." It also pointed out that other types of committees and individuals were able to contribute to Mr. Fowler's runoff election.

The court said that, while a difficult allocation issue confronted the DSCC, the law does not infringe on its right to associate with whomever it wishes. The DSCC lawfully made more than $200,000 in coordinated expenditures under 2 U.S.C. §441a(d)[1] in support of Mr. Fowler's runoff campaign. Further,

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[1] Under 2 U.S.C. §441a(d), the national party is entitled to make limited expenditures for the general election in cooperation with the candidate (in addition to the contributions it is otherwise entitled to make).

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Budget

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dent foreign nationals, the use of soft money possibly spent to circumvent the party spending limits on behalf of publicly funded presidential candidates, coordination in assertedly independent expenditures, and massive, but undisclosed, expenditures on issue advertisements with an electioneering message by labor and business interests," she said.

The 1997 supplemental budget would allow the Commission to hire 7.8 full-time employees—including investigators, attorneys, auditors, systems analysts and clerical support—to investigate the alleged violations of the Act that occurred during the 1996 election cycle. The supplemental also would help cover the administrative costs associated with the investigations.

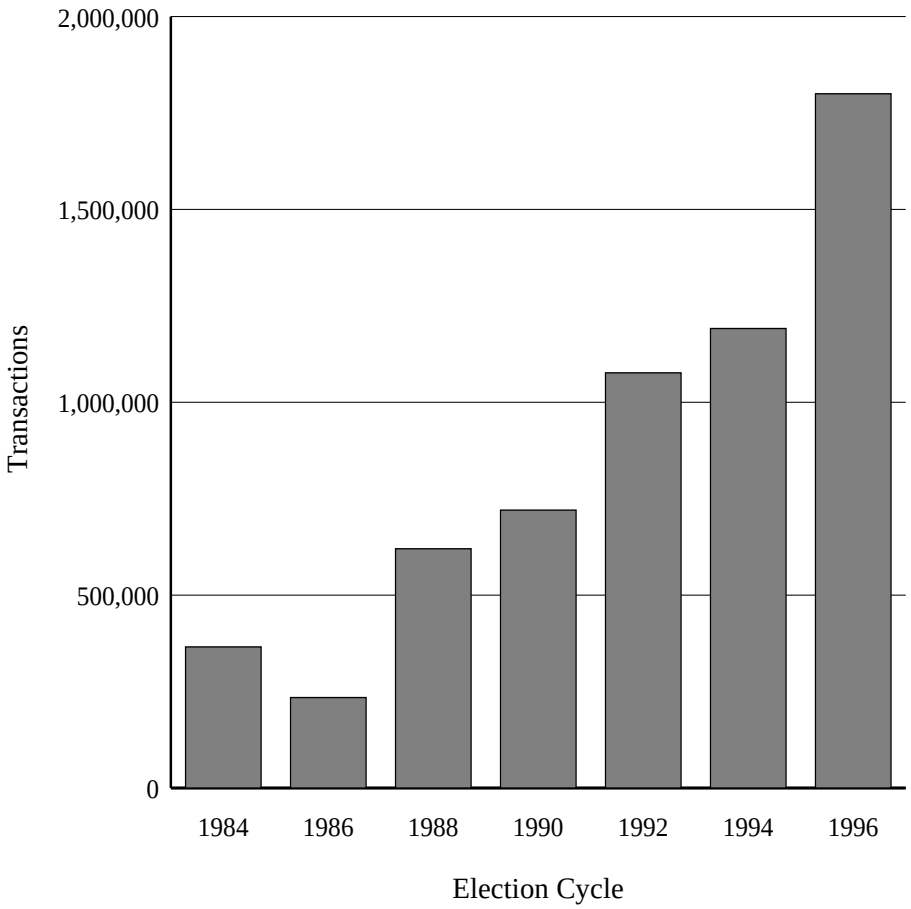
At the same time she requested the 1997 supplemental, Ms. Aikens presented the agency's 1998 budget request: $29.3 million plus a supplemental of $4.9 million to continue the investigations of alleged 1996 election violations.

At the floor funding level request ($29.3 million), several operations would be affected.

- The FEC would have to slow planned enhancements to its PC network and put off expansion of its digital imaging technology for documents other than financial reports filed by political committees.
- In performing desk audits of committees, the Reports Analysis division would face increased strains because of a combination of too few staff and larger financial disclosure reports. (More than 8,000 committees report to the FEC, and large committees—Senate campaigns over $500,000 and other committees with activity over $250,000—represent the bulk of the work.) While higher tolerance thresholds would reduce the workload, they also would result in some glossing over of reports with errors.
- The Commission would not be able to handle as many enforcement cases as it had the previous year. Despite the implementation of a system to prioritize compliance cases, the FEC has more cases than current staff can handle. At the end of December 1996, the FEC had a total caseload of 361 Matters Under Review (MURs) and 86 staff in the Office of General Counsel. Of those cases, just 112 were being actively worked, down from 160 cases in 1995. Increasingly complex investigations and civil actions are too important to dismiss, Ms. Aikens said, and often too complex for just one or two staff attorneys to handle.

Transactions Entered Into FEC Database During Election Cycles

(As of December of Election Year)



The 1998 budget request would allow for the equivalent of 313.5 full-time employees. The supplemental request would allow the FEC to hire another 47 full-time employees.

Ms. Aikens added that changes to the campaign finance laws could affect the FEC's mission. "We know that Congress is going to be deliberating a number of proposals that would significantly amend the law," she said. "Any additional mandate imposed on the agency for rapid implementation will likely require additional funding."

A complete copy of Ms. Aikens's written testimony before the Senate panel is available at the FEC's homepage on the Internet. A news release about the budget request also is available. The address is http://www.fec.gov. Click on "What's New!" to find both documents. ✦

Compliance

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The Commission also concluded that Firearms Systems former chief operating officer, Robert Motter, knowingly and willfully violated the Act by making corporate contributions and contributions in the name of another. He agreed to pay a $1,000 civil penalty.

This MUR was generated by the FEC in the normal course of carrying out its duties.

Between 1991 and 1993, Mr. Scheckter made $7,500 in contributions from his personal checking account to various Democratic and Republican congressional candidates, as well as to the Democratic Congressional Campaign Committee.

In the case of four of the contributions, Mr. Scheckter's secretary submitted a request to Firearms Systems for reimbursements equal to the contributions made. The requests indicated that the reimbursements were for political contributions.

In the case of the other two contributions, Mr. Motter, who took over the position of chief operating officer in November 1992, submitted requests for payroll bonus checks for Mr. Scheckter. Mr. Scheckter received $2,000 in reimbursements in this manner.

Prior to disclosure to the Commission, Mr. Scheckter reimbursed Firearms Systems for the contributions for which he was initially reimbursed. The company also instituted procedures to insure that future political activity would not violate the Act or FEC regulations.

After reviewing the relevant facts, the Commission found reason to believe that violations of the Act had occurred. In an effort to resolve the matter, the Commission did not complete a formal investigation, but entered into conciliation agreements with the parties. ✥

MUR 4121
Lipinski for Congress Fined for Lack of Disclaimer

Congressman William Lipinski's principal campaign committee, Lipinski for Congress, agreed to pay a $6,000 civil penalty to the FEC for failing to include a disclaimer on three pamphlets and fliers that contained express advocacy and were distributed to the general public.

A disclaimer is required on communications that expressly advocate the election or defeat of a clearly identified candidate and are distributed in any newspaper, direct mailing or other form of general public political advertising. 2 U.S.C. §441d(a). The disclaimer must clearly identify the person, committee or other entity who authorized and paid for the communication. 2 U.S.C. §441d(a)(1) and (2).

Express advocacy in communications includes phrases such as "reelect," "vote for," "Smith for Congress," "vote against" or "reject" in advocating the election or defeat of a candidate. When those phrases are not present, a communication still may be considered express advocacy when, taken in context, it can have no other reasonable meaning than to urge the election or defeat of a candidate. 11 CFR 100.22.

The Lipinski committee paid $6,308 for three pamphlets that expressly advocated his election to a seat in the third Congressional district of Illinois. One flier contained the phrase "Bill Lipinski for Congress" and another said "Let's Keep Bill Lipinski working for us. Punch 81." None of the communications, which were distributed to the general public, had disclaimers.

The Commission learned of the communications through a complaint filed with the agency by the Illinois Republican Party during the 1994 Congressional elections. After reviewing the complaint, the Commission found reason to believe that violations of the Federal Election Campaign Act had occurred and eventually entered into a conciliation agreement with Lipinski for Congress. ✥

MUR 3673
DNC, Rainbow Coalition Fined for Corporate Donations

The National Rainbow Coalition and the Democratic National Committee (DNC) each agreed to pay a $5,000 civil penalty to the FEC for violating sections of the Federal Election Campaign Act prohibiting corporate contributions.

The Rainbow Coalition, a nonprofit corporation, and its president, the Rev. Jesse Jackson Sr., made in-kind corporate contributions of more than $22,000 to the DNC to carry out a voter registration drive in violation of 2 U.S.C. §441b(a). The DNC violated the same statute by accepting the contributions.

Between September 11, 1992, and November 3, 1992, the DNC initiated a generic party voter registration drive in conjunction with the Rainbow Coalition. The DNC intended to pay for all costs associated with the drive. However, the Rainbow Coalition paid for the start-up costs for the project in the form of employee compensation for those working on the voter drive. The Rainbow Coalition also advanced certain goods and services for which the DNC made reimbursements of approximately $22,000.

The Commission learned of the transactions through a complaint filed with the agency by Ralph Reed, executive director of the Christian Coalition. The agency conducted a limited investigation and eventually entered into conciliation agreements with the Rainbow Coalition and the DNC. ✥

Court Cases

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the DSCC does not have to be treated the same as other types of committees in respect to contribution limits. "Party committees, individuals, and other organizations and corporations are not similarly situated entities for election regulation purposes," the court said.

Pursuant to a prior agreement of the parties, the court ordered briefing on the appropriate sanctions for DSCC's violation of §441a(h).

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

Bush-Quayle '92 Primary Committee v. FEC

On January 14, 1997, the U.S. Court of Appeals for the District of Columbia Circuit remanded this case to the FEC and asked it to explain why the Commission departed from precedent, or remedy that departure, when it required the Bush-Quayle '92 Primary Committee to repay $323,832 of the federal matching funds it received.

Background

As required by law, the FEC, at the end of the 1992 election cycle, audited former President George Bush's 1992 campaign. The audit included the primary committee, the Bush-Quayle '92 General Committee and the legal and accounting arm of the general election committee, the Bush-Quayle '92 Compliance Committee. The latter two committees are party to this lawsuit.

During the 1992 election, the primary committee received nearly $10.7 million in public funds through the Matching Payment Act. Once Mr. Bush and his running mate, Dan Quayle, had received the Republican nomination for President and Vice President, the general committee received $55.2 million in public funds.

The Law

The Matching Payment Act provides partial public funding—paid for through the $3 check-off on federal tax forms—to Presidential primary candidates who meet certain qualifications. Candidates who receive public funding must agree to limit expenditures to "qualified campaign expenses," i.e., those expenses that are incurred by the candidate in connection with his or her campaign for nomination and that do not violate state or federal law. 26 U.S.C. §9032(9)(A).

The Commission also must conduct an audit of every publicly funded campaign after it ends and require the committee to repay the U.S. Treasury for any nonqualified campaign expenses that were paid for with public funds. The Commission also can require a committee to repay any matching funds that it received in excess of what the law allows. 26 U.S.C. §9038(b)(1).

Final Repayment Determination

The FEC issued a final repayment determination to the primary committee on August 17, 1995, having determined that $409,123 in expenses incurred by the primary committee were not qualified primary campaign expenses because they had, in fact, been made for the benefit of the general election campaign as well.

The expenses in question included disbursements for direct mailings and political advertisements and for equipment and materials sent to the Bush campaign's national headquarters. All these disbursements took place before August 20, 1992—the day Mr. Bush was nominated by his party to run for President. Concluding that expenses benefited both the primary and general campaigns, the Commission determined that half of the expenses should be assigned to the general election committee and the other half to the primary committee.

The FEC calculated the repayments as follows:

- The primary committee would pay its share of the nonqualified campaign expenses—$106,979—plus an additional $216,853 that the FEC determined it had received in excess of the matching fund allowance.
- As a result of reassigning half of the expenses in question to the general committee, the FEC found that the general committee had exceeded its expenditure limit by $182,785. The FEC recommended, but did not order, that the compliance fund reimburse the general committee for this overspending. That would resolve the general committee's excess expenditure problem.

Expenses in Connection With Primary

The Bush-Quayle committees challenged the FEC's final repayment determination in court, saying the Commission should have used a "bright-line" rule and allocated expenses based solely on whether they were incurred before the August 20 Presidential nomination or after the party's Presidential contender had been named.

The Commission had rejected this approach, arguing that whether an expenditure is a primary qualified expenditure depends on both its timing and nature. To qualify, the Commission had explained, the expense must be primarily in connection with the primary. The committees had argued that *any* connection to the primary campaign would qualify an expense fully as a qualified primary campaign expenditure.

Finding that arguments from both the agency and the committees were

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Court Cases

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defensible, the court upheld the FEC's interpretation, based on *Chevron U.S.A. Inc. v. NRDC*[1]. That case requires that, where statutory language is ambiguous, courts must uphold the agency's interpretation so long as it is reasonable. The court added, however, that another committee objection to the Commission's decision merited further consideration.

Arbitrary and Capricious

The committees charged that the FEC had acted "arbitrarily and capriciously" because it had treated expenditures of the Bush-Quayle 1992 campaign differently than similar expenditures of the 1984 Reagan-Bush campaigns.

In the 1984 election, the committees said, the FEC had concluded that certain pre-nomination expenditures by the Reagan-Bush Primary Committee were primary expenses despite the fact that some benefited the general election campaign.

The FEC responded that the two cases were distinguishable from each other and thus were treated differently. It also said that in the Reagan audit, the FEC had not adopted a "bright line" test based on the date of the candidate's nomination.

The court found the FEC's response inadequate. Further, the court said: "An agency interpretation that would otherwise be permissible is, nevertheless, prohibited when the agency has failed to explain its departure from prior precedent."[2]

The court noted further that the FEC's determination was especially problematic given the fact that the agency had adopted new regulations two months before making its repayment determination concerning the Bush-Quayle campaign, but had not applied the approach embodied in those regulations to that determination. The court said that the new rules use a "bright-line" approach to determine whether expenses should be attributed to primary or general elections.

The court remanded the matter to the FEC either to justify its approach or to reconsider the repayment determination.

U.S. Court of Appeals for the District of Columbia Circuit, 95-1430, consolidated with 95-1431 and 95-1432. ✦

[1] Chevron U.S.A. Inc. v. NRDC, *467 U.S. 837, 844 (1984).*

[2] *See* Interstate Quality Servs. Inc. v. RRB, *83 F. 3d 1463, 1465 (D.C. Cir. 1996);* ANR Pipeline Co. v. FERC, *870 F. 2d 717, 723 (D.C. Cir. 1989);* Greater Boston Tel. Corp. v. FCC, *444 F. 2d 841, 852 (D.C. Cir.), cert denied, 403 U.S. 923 (1971).*

Texas Special Election Reporting

Committees* involved in the March 15 Special Election to fill the seat vacated by the late Congressman Frank Tejeda must follow the reporting schedule below. Note that 48-hour notices are required of authorized committees that receive contributions of $1,000 or more between February 24 and March 12. If no candidate receives a majority of the votes during the Special General Election, Texas Gov. George W. Bush will call a Special Runoff Election within five days after the Special General Election votes are certified. If a runoff is required, the Commission will establish additional reporting dates for that election.

	Close of Books	Certified/ Registered Mail Date	Filing Date
Pre-General Report	Feb. 23	Feb. 28	March 3
Post-General Report**	April 4	April 14	April 14
Mid-Year Report***	June 30	July 31	July 31

** These committees include authorized committees of candidates running in the election and other political committees that support these candidates and do not file monthly.*

*** Filed only if there is a majority winner in the Special General Election.*

**** If a Special Runoff Election is required, the Mid-Year report for committees that do not participate should cover financial activity between February 24 and June 30.*

Statistics

Registered PAC Numbers Rise

The number of political action committees registered with the FEC increased by 46 during the second half of last year, bringing the total number of federally registered PACs to 4,079.

The FEC's semiannual survey of registered PACs found that corporate PACs continued to lead among the various categories.

The greatest gains among the PAC categories came in nonconnected PACs with an increase of 45 PACs. Nonconnected PACs are those not connected to or sponsored by a corporation or labor organization and not related to a candidate's campaign or a political party.

While the overall increase in the total number of PACs was nominal between July and December 1996—a 1.14 percent increase—the number of PACs has increased dramatically over the last 20 years. The chart below shows the year-end PAC counts during Presidential election years since 1976. Between 1976 and 1996, PAC numbers increased 256 percent—from a total of 1,146 to 4,079.

More information about PAC statistics from 1974 to today is available in a January 24, 1997, news release. Look for it at the FEC's web site at http://www.fec.gov (click on "News Releases and Media Advisories" at the main menu) or request a copy from the agency's Public Records office by calling 1-800-424-9530 (press 3). The news release also is available on the FEC's Flashfax service at 202-501-3413 (request document 526). ❖

PAC Count During Election Years
(As of December 31)

Date	Committee Type						Total
	Corporate	Labor	Trade/ Membership/ Health	Non-connected	Cooperative	Corporation Without Stock	
1976	433	224	489*				1,146
1980	1,206	297	576	374	42	56	2,551
1984	1,682	394	698	1,053	52	130	4,009
1988	1,816	354	786	1,115	59	138	4,268
1992	1,735	347	770	1,145	56	142	4,195
1996	1,642	332	838	1,103	41	123	4,079

This number represents all other PACs.

Advisory Opinions

AO 1996-49
Affiliation between Joint Venture Partnership PAC and SSF of Owner

PrimeCo, a joint venture partnership, may establish a nonconnected committee that would be affiliated with the separate segregated funds (SSFs) of an affiliated corporation that is one of the owners.

PrimeCo is owned by PCSCO Partnership and PCS Nucleus L.P. (PCSN). Each holds a 50 percent partnership interest in PrimeCo. PCSN is a limited partnership owned 50-50 by two corporations, AirTouch Communications and US West.

PCSCO also is a limited partnership. It is owned 50-50 by Bell Atlantic Corporation and NYNEX Corporation, through wholly-owned subsidiaries of those corporations. Bell Atlantic and NYNEX are expected to merge their corporations this year. The resulting corporation will be known as Bell Atlantic Corporation, and this advisory opinion assumes that the merger is effective.

PCSCO and PCSN do not have political committees, but Bell Atlantic, AirTouch and US West each has at least one SSF. PrimeCo wants to create a nonconnected PAC to advance its political interests, which often differ from those of its owners.

In the partnership agreement establishing PrimeCo, a six-member executive committee is responsible for managing the business affairs of PrimeCo. Three of the members represent Bell Atlantic (and NYNEX) and three represent AirTouch and US West. The entire voting power of each side of the partnership (i.e., the PCSCO side

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Advisory Opinions

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and the PCSN side) is voted as a single unit.

FEC regulations state that committees that are established, financed, maintained or controlled by the same corporation, including any parent, subsidiary, branch or division, are affiliated. Contributions made to or by such committees are considered to have been made by a single committee, and affiliated committees have one contribution limit. 11 CFR 100.5(g)(2).

Corporations may solicit the restricted class—that is, the executive and administrative personnel, stockholders and families of those groups—of its subsidiaries or other affiliates for SSF contributions. 11 CFR 114.3(a)(1) and 114.5(g)(1). This holds true even when affiliates are entities other than corporations, such as partnerships.[1]

When an entity is not an acknowledged subsidiary of another, the Commission weighs several factors to determine whether the sponsoring entities and, hence, their respective SSFs are affiliated. 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J), and 110.3(a)(3)(i) and (ii)(A)-(J).

The Commission applied these factors in this case and concluded that PrimeCo is an affiliate of Bell Atlantic and, thus, any nonconnected political committee PrimeCo creates would be affiliated with the SSFs established by Bell Atlantic and its affiliates. This conclusion was based on a number of factors:

By virtue of its ownership of one of PrimeCo's partners, PCSCO, Bell Atlantic exercises 50 percent control over PrimeCo's executive committee. The agreement of members on the Bell Atlantic side is necessary for PrimeCo to take a significant number of actions. Moreover, PrimeCo's executive committee is composed of the chief operating officer of Bell Atlantic and two other high-ranking officials of Bell Atlantic affiliates. Additionally, Bell Atlantic helped create PrimeCo.

However, PrimeCo would not be affiliated with the SSFs of either AirTouch or US West. Unlike Bell Atlantic, neither corporation by itself can exercise a controlling vote necessary to prevent PrimeCo's executive committee from taking an action. Although either corporation could obstruct a vote by the PCSN side, this would happen only at the secondary voting level, rather than the primary level exercised by the two corporations together. Also, at this secondary level of decision making, the powers that each corporation could exercise are speculative since they have no arrangements for selecting a deciding senior representative to carry out the decision-making in the event that the members from the PCSN side disagree with each other.

Although partnership PACs normally can solicit the general public, PrimeCo's nonconnected PAC may only solicit its restricted class and the restricted class of Bell Atlantic and its subsidiaries. This restriction results from the fact that a PAC of a partnership that is an affiliate of a corporation that has an SSF must follow the rules that apply to SSF solicitations. 11 CFR 114.5(g)(1), AO 1992-17 and 1989-8. PrimeCo may not solicit AirTouch's or US West's restricted class because it is not affiliated with these corporations.

Because PrimeCo and Bell Atlantic are affiliated, Bell Atlantic may pay for the administrative and solicitation costs of PrimeCo's PAC. 2 U.S.C. 441b(b)(2)(C), AO 1996-38 and 1992-17. Alternatively, PrimeCo may pay the administrative and solicitation costs of its own PAC. While normally the Commission does not allow a partnership to act as a connected organization, it treats joint venture partnerships differently as a result of the partnership's ownership by and affiliation with corporations. If a joint venture partnership is owned entirely by corporations and is affiliated with at least one of them, it may perform the functions of a connected organization for its PAC. AO 1994-11, 1994-9 and 1992-17.

If the funding is provided directly by Bell Atlantic, or indirectly by Bell Atlantic by virtue of support from PrimeCo, then PrimeCo should name Bell Atlantic as its connected organization on its statement of organization.

Date Issued: January 17, 1997; Length: 9 pages. ✦

[1] *See AOs 1996-38, 1994-11, 1992-17, 1989-8, 1987-34 and 1983-48.*

FEC Announces Workshop Sites for Candidates and Political Committee Officials

As an attempt to educate committee officials in campaign finance law, specialists from the Commission's Information Division will visit the following six cities this spring and summer:

- Cleveland, OH
- Princeton, NJ
- Des Moines, IA
- Madison, WI
- Phoenix, AZ
- Bismarck, ND

The specialists will meet with candidates for the U.S. House of Representatives and the U.S. Senate, political party committees and PACs. Specific locations and dates have not yet been finalized. To receive additional information, call the Information Division at (800) 424-9530 (press 1) or (202) 219-3420.

Regional conferences will be scheduled later, beginning in the fall of 1997. Watch future editions of the *Record* for additional information.

AO 1996-50
Disaffiliation of Agricultural PACs

The Farm Credit Council (FCC) and the National Council of Farm Cooperatives (Co-ops) and their respective PACs are no longer affiliated with each other because the relationship between the two agricultural groups has changed substantially.

FCC is a not-for-profit membership organization, while Co-ops is a not-for-profit association of cooperative businesses owned and controlled by farmers. Both focus on agricultural issues, and both created political committees that have been affiliated since 1985.

The major purpose of FCC is to promote the common interests of institutions chartered under the Farm Credit Act. FCC's voting membership comprises the National Bank for Cooperatives and six District Farm Credit Councils.

The major purpose of Co-ops is to promote the interests of farm cooperatives, including individual farmer's rights to market their products collectively. Co-ops' membership includes agricultural cooperative associations, state cooperative councils and certain Farm Credit System institutions.

After restructuring in 1990, FCC substantially increased its size and the scope of its activities. At that time, FCC and Co-ops entered into an agreement that guaranteed that their business relationship would continue despite the changes at FCC. That agreement expired on June 30, 1996.

Commission regulations state that political committees established, financed, maintained or controlled by the same corporation, including any parent, subsidiary, branch or division, are affiliated. Contributions made to or by such committees are considered to have been made by a single committee, and affiliated committees have one contribution limit. 11 CFR 100.5(g)(2), 110.3(a)(1) and 110.3(a)(1)(ii).

When an entity is not an acknowledged subsidiary of another, the Commission weighs several factors to determine affiliation status and whether their respective PACs are affiliated. 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J), and 110.3(a)(3)(i) and (ii)(A)-(J).

PAC affiliation between the two agricultural groups had been based on a number of factors: management of FCC and Co-ops was interrelated, executives at Co-ops participated in the selection of FCC's president, the two organizations shared office space, a treasurer and benefits programs, and the PACs of the two groups shared an assistant treasurer.

Since the agreement between FCC and Co-ops lapsed in June 1996, the relationship between the two has changed materially.

Neither FCC or Co-ops has controlling interest in the other entity or participates in the governance or hiring decisions of the other. Both are governed by independent boards with no overlap in their memberships. The two agricultural organizations no longer share a common employee benefits program or treasurer. FCC PAC and Co-ops PAC also no longer have the same assistant treasurer. When all these factors are taken into account, the two organizations and their respective PACs are no longer affiliated.

That decision is not changed by the fact that FCC and Co-ops are housed in the same building and share a receptionist and some administrative expenses, such as copier supplies. Further, the limited degree of overlap between the two—seven Farm Credit Banks are members of both FCC and Co-ops—does not signify affiliation.[1]

Date Issued: January 17, 1997; Length: 6 pages. ❖

[1] *Seven of the 230 entities that are represented by FCC have voting memberships with Co-ops, which has 80 voting members.*

AO 1996-51
Status of State Affiliate as Political Committee

The Reform Party of Arkansas (Reform Party/AR) constitutes a state committee of a political party because it satisfies the definition and requirements set out in the Commission's statutes and advisory opinions.

Arkansas officially recognizes the Reform Party/AR as a state party, and the state party as an affiliate of the National Reform Party.

The Federal Election Campaign 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." 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 1996-43, 1996-27 and 1995-49.

According to Reform Party/AR's bylaws, its purpose is to nominate and endorse candidates for public office and engage in political activities in Arkansas. Among its other responsibilities are to hold state conventions and insure that the Reform Party's Presidential and Vice Presidential candidates are on

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Advisory Opinions

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the state ballot. It has set criteria for party membership and its bylaws establish an executive committee and party officers. Thus, Reform Party/AR satisfies the first requirement of state political committee status as its actions show activity that is commensurate with day-to-day operations.

Reform Party/AR also meets the second requirement of ballot access. In addition to gaining ballot access in the 1996 general election for the Reform Party's Presidential and Vice Presidential contenders, Ross Perot and Pat Choate, Reform Party/AR successfully secured ballot access for Tony J. Huffman, a candidate for the U.S. Congress who qualified as a candidate under 2 U.S.C. §431(2), and who registered and filed campaign finance reports with the Commission. Reform Party/AR also secured ballot access in 1996 for an additional Congressional candidate, two candidates for state office and five candidates vying for local offices.

The fact that the National Reform Party has not received status as either a national party or a national committee has no bearing on the decision about Reform Party/AR's state committee status.[1] AO 1996-43.

In addition to qualifying as a state committee of a political party, Reform Party/AR qualifies as a political party.

Date Issued: January 10, 1997; Length: 4 pages. ✥

[1] *A group claiming to represent the National Reform Party has submitted an advisory opinion request to the FEC concerning its status as a national committee of a political party. See AOR 1996-47 in the December 1996* Record.

AO 1996-52
Use of Excess Campaign Funds for Refund/ Resolicitation Program

Robert E. Andrews for Congress, the principal campaign committee for Robert Andrews's 1996 reelection effort in the First District of New Jersey, may move excess campaign funds from his committee accounts to state and federal accounts being established for future elections without violating the Federal Election Campaign Act (the Act).

Andrews for Congress's excess funds from the 1996 election are divided into two accounts: one contains contributions from individuals and one contains contributions from PACs. The committee wants to identify those contributors who most recently gave to the campaign committee. Once that has been done, the committee wants to:

- Refund contributions of some individuals and then solicit them for contributions for a state committee set up by Mr. Andrews in support of his 1997 candidacy for Governor of New Jersey and
- Transfer excess funds in the PAC account to an account containing PAC contributions that will be part of Andrews for Congress in 1998, Congressman Andrews's principal campaign committee for the next federal election cycle.

The Commission responded to three questions related to this activity.

Do future expenditures from the two accounts come first from the oldest contributions received by Andrews for Congress? Do transfers from the 1996 campaign fund to the state committee come first from the oldest contributions received? No provisions in the Act or agency regulations expressly address the sequence in which funds in a campaign account are depleted when established committees make expenditures and other disbursements.

The Commission's general practice, however, is to treat the funds in a committee's accounts as those most recently received by that committee. The implication then is that the committee makes its disbursements from the oldest contributions, i.e., those that have been in the account the longest.

That practice would also apply to funds transferred to a state political committee.

May the committee select certain contributors to whom it would offer refunds and then solicit them for campaign contributions for a gubernatorial campaign committee? The Act places three general limits on the use of excess campaign funds. 2 U.S.C. §439a. Excess funds may be used to defray ordinary expenses incurred in connection with the duties of a federal officeholder; as a contribution to an IRS-recognized nonprofit organization; or for any other lawful purpose, including transfers to national, state and local political committees, so long as contributions are not converted to personal use.

The proposed refund and resolicitation plan is permissible under the third category—funds used "for any lawful purpose"—because it represents an effort to use excess campaign funds in a future campaign for state office. AOs 1993-10, 1986-5 and 1980-113.

May Andrews for Congress trace the most recent contributors to each of its separate accounts, or must it identify the most recent contributors irrespective of whether their contributions were deposited in the individuals account or the PAC account? The committee may separately trace the most recent contributions from the two accounts. But, in doing so, Andrews for Congress may not alter the number or identity of individual contributors who will be eligible for refunds. Put another way, the pool of contributors eligible to receive refunds must come from those who gave to the

committee last, and their contributions must equal the amount of excess funds in the individuals account. PAC funds that are to be transferred to the PAC account created for the 1998 election cycle may not be included in this individual contributor identification and refund process.

Committees are required to report refunds as offsets to contributions and must itemize refunds of those contributions that were itemized when they were initially received. 2 U.S.C. §434(b), (b)(5). Authorized committees also are required to identify each person who receives a refund. 11 CFR 104.3(b)(4)(v).

Date Issued: January 17, 1997; Length: 5 pages. ✥

Advisory Opinion Requests

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

AOR 1997-1
Use of excess campaign funds to establish charitable foundation (Former Congressman Tom Bevill, January 27, 1997; 2 pages plus 9-page attachment)

AOR 1997-2
Use of campaign funds for congressional retreat fees and travel expenses (The Congressional Institute, The Aspen Institute and Congressmen David Skaggs and Ray LaHood, February 4, 1997; 5 pages plus 4-page attachment) ✥

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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.

New Address for House Resource Center

The Legislative Resource Center, the part of the Office of the Clerk of the House that serves as the disclosure arm of the U.S. House of Representatives, has a new address and telephone number. The Resource Center is now at:

B-106
Canon House Office Building
Washington, DC 20515

The new telephone number is 202-226-5200. The address change went into effect on February 24.

Although all House candidates, their principal campaign committees and committees supporting only House candidates now file disclosure forms directly with the FEC (Public Law 104-79), House members still must file personal financial statements and certain other disclosure information with the Clerk of the House. The Resource Center is electronically linked to the FEC's database of disclosure information.

Change of Address

Political Committees

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

Other Subscribers

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

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

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

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