

# RECORD

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## AUDITS

### FEC AUDITS PRESIDENTIAL PRIMARY CAMPAIGNS

According to a status report submitted to the Commission on March 16, 1989, the FEC's Audit Division has recently completed interim audit reports on five of the fifteen Presidential primary candidates who received public funds for their 1988 campaigns. A final audit report for one of these committees has also been completed and released to the general public.

The Commission is required by law to audit the campaign finances of all committees receiving public funds to ensure that the money has been used only to cover "qualified campaign expenses," as defined in 26 U.S.C. §9032(9). See 26 U.S.C. §§ 9008(g) and 9038.

According to FEC regulations, Audit staff conduct fieldwork to review the records of each committee's finances. At the conclusion of the on-site review, the Audit Division prepares an interim audit report for Commission approval. Once the interim report is approved, the committee is given the opportunity to respond to the findings in the interim audit. 11 CFR 9038.1. A final audit report is then prepared for release to the general public.

An interim audit report may contain Commission findings and recommendations in any of the following areas:

- o Procedures employed by a committee to comply with the provisions of the election law;
- o Eligibility of the candidate to receive primary matching payments;
- o Accuracy of statements and reports filed with the Commission;
- o Compliance with applicable statutory and regulatory provisions;
- o Preliminary calculations regarding future repayments of public funds to the Treasury. 11 CFR 9038.1(c).

The Commission has approved interim audit reports for the campaigns of Bruce Babbitt, Pete du Pont, Albert Gore, Alexander Haig and Gary Hart, as well as the Republican and Democratic convention committees, which are also recipients of public funds. In addition, the Commission has approved the final audit report for the Pete du Pont campaign; the report is available to the

general public from the FEC's Public Records Office.

Fieldwork has been completed for the campaigns of Robert Dole, Lenora Fulani, Richard Gephardt, Jack Kemp and Lyndon LaRouche. Fieldwork continues for the primary campaigns of George Bush, Michael Dukakis, Jesse Jackson and Paul Simon.

The Commission expects to publicly release final audit reports for most of these committees during 1989.

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**SPECIAL ELECTIONS**

**WYOMING SPECIAL ELECTION**

Wyoming has scheduled a special general election to fill the at-large seat vacated by Representative Dick Cheney, who was recently confirmed by the Senate as Secretary of Defense.

The special election will take place on **April 26, 1989**. The Republican and Democratic nominees were selected by state party committee meetings in March.

Reporting requirements are explained below. For further information on reporting or other requirements of federal election law, call 800/424-9530 or 202/376-3120.

**Nominees' Authorized Committees**

Authorized committees of nominees running in the general election must file pre- and post-general election reports as indicated in the table below. Note that an authorized committee must also file special notices on contributions of \$1,000 or more received during the period April 7 through April 23. The notice must reach the Clerk of the House and the Wyoming Secretary of State (see below) within 48 hours of the committee's receipt of the contribution. 11 CFR 104.5(f). See also AO 1988-32.

**Party Committees and PACs**

Party committees and PACs that make contributions or expenditures in connection with the special election during the coverage dates listed in the table must file the appropriate reports. Committees that file monthly reports during 1989, however, do not file pre- and post-election reports.

Any PAC (including a monthly filer) that makes independent expenditures in connection with the special election may have to file last-minute reports on independent expenditures. Independent expenditures aggregating \$1,000 or more that are made during the period April 7 through April 24 must be reported within 24 hours after the expenditure is made. 11 CFR 104.4(b) and 104.5(g).

**Where to File**

Authorized committees file with the Clerk of the House (see Form 3 for the address). Party committees and PACs file with the appropriate federal office (usually, the FEC; see Form 3X for more details).

All committees must simultaneously file copies of special election reports with the Office of the Secretary of State, 106 State Capitol, Cheyenne, WY 82002-0020.

**FILING DATES FOR APRIL 26 WYOMING SPECIAL ELECTION**

Report	Period Covered	Reg./ Cert. Mailing Date*	Filing Date
Pre-general	** - 4/6	4/11	4/14
Post-general	4/7 - 5/16	5/26	5/26
Mid-year	5/17 - 6/30	7/31	7/31

\*Reports sent by registered or certified mail must be postmarked by the mailing date. Reports that are not sent by registered or certified mail must be received by the filing date.

\*\*The close of books of the last report filed or the date of the committee's first activity, if no previous reports have been filed.

**ADVISORY OPINIONS**

**ADVISORY OPINION REQUESTS**

The following chart lists recent requests for advisory opinions (AORs). The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject
1989-1	Honorarium received by staff member of standing Congressional committee. (Date made public: February 1, 1989; Length, 6 pages)

*continued*

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1989-2 Payment of debt to vendor by unsuccessful candidate committee. (Date made public: February 1, 1989; Length, 12 pages)

1989-3 Contributions to trade association PAC through payroll deduction by employee stockholders. (Date made public: March 10, 1989; Length, 3 pages)

#### RECONSIDERATION OF AO 1987-31

On February 9, 1989, the Commission voted to reconsider Advisory Opinion 1987-31, originally issued January 28, 1988.<sup>1</sup> According to this reconsidered AO, CBOEPAC, the separate segregated fund of the Chicago Board Options Exchange (CBOE), may solicit members designated as "nominees." CBOE is an incorporated membership organization that acts as a securities exchange for the trading of certain standardized option contracts.

In the original AO, the Commission had determined the solicitability of eight classes of members of CBOE. The Commission had concluded that nominees were not solicitable members under FEC regulations because they acted solely as representatives of organizations that were members of CBOE.

Upon review of additional information supplied by CBOE with its request for reconsideration, the Commission determined that nominees do qualify as solicitable members of CBOE because they must meet all requirements for membership in CBOE, in accordance with 11 CFR 114.1(e). Although nominees have membership rights and obligations only as a result of being designated by a member organization, the relevant participatory rights and financial obligations have been shifted to them personally. Nominees are liable for the payment of dues (though their member organization may also be liable). Nominees have the same voting rights as "regular members" under the CBOE constitution. They also enjoy the same privileges and responsibilities stemming from membership status as do individual members. Furthermore, they are individually subject to CBOE's membership rules. Because these factors demonstrate the distinct personal nature of the nominees' participatory and financial attachment to CBOE, CBOEPAC may solicit them for contributions.

Commission determinations regarding the other membership classes were not affected in the reconsideration. Commissioner Lee Ann Elliott issued a concurring opinion. (Date issued: February 13, 1989; Length, including concurrence: 8 pages)

<sup>1</sup>For a summary of the opinion, see the March 1988 Record, p. 5.

## REGULATIONS

### FEC HOLDS PUBLIC HEARING ON PROPOSED DEBT SETTLEMENT REGULATIONS

On February 15 and 16, 1989, the Commission held a public hearing on proposed regulatory changes regarding debt settlement by candidates and political committees. The proposed revisions were outlined in a Notice of Proposed Rulemaking published on December 6, 1988.<sup>1</sup> See 53 Fed. Reg. 49193.

During the hearing, presided over by FEC Chairman Danny Lee McDonald, the Commissioners heard testimony from three witnesses: William R. White, Counsel and Treasurer for the John Glenn Presidential Committee; Robert Bauer, General Counsel for the Democratic Senatorial and Congressional Campaign Committees (DSCC and DCCC, respectively); and Gordon M. Strauss, General Counsel for the Ohio Republican Party, who submitted his comments with John J. Dilenschneider of the Smith and Schnacke law firm.

The full texts of the testimony and comments submitted by the witnesses are available from the FEC's Public Records Office.

#### Issues

The Notice of Proposed Rulemaking requested comments on a proposed new Part 116 of the regulations governing debt settlement. The areas of concern included:

- o Distinctions between ongoing and terminating committees with respect to debt settlement;
- o Comprehensive debt settlement plans filed by terminating committees;
- o Creditors' forgiveness of debts owed by ongoing —though defunct— committees and Commission review;
- o Debts owed by publicly-funded Presidential campaign committees;
- o Extensions of credit and settlement of debts owed to corporate and noncorporate vendors;
- o Advances by committee staff and other individuals;
- o Salary payments owed to committee employees;
- o Disputed debts; and
- o Transfers involving indebted committees.

#### Testimony

William R. White testified and submitted comments related to the debt retirement activities of publicly funded Presidential campaign committees, such as Senator Glenn's 1984 Presidential committee. He proposed that the FEC amend the regulations to permit unlimited contributions to inactive Presidential campaigns under certain circumstances. Mr. White recommended

*continued*

that such a regulatory exemption to the contribution limitations would apply only if:

- o The candidate did not receive his or her party's nomination, did not run for President in the succeeding election, and still had debts remaining after the party convention taking place before the next election (e.g., a 1988 primary candidate would qualify for the exemption if he had debts remaining after the 1992 party convention and if he had not received the 1988 nomination or sought the 1992 nomination);
- o All audits, reviews and compliance matters had been completed and resolved;
- o Any required repayments had been made and any civil penalties had been paid;
- o The contributions were made for the sole purpose of paying outstanding debts; and
- o The debts were not originally incurred with the intent to repay them pursuant to this exemption.

Robert Bauer, submitting comments on behalf of DSCC and DCCC, cautioned the Commission not to exceed its statutory area of competence in its handling of the proposed debt settlement plans. To fully achieve the goals the Commission had outlined in the Notice, such as "fairness to creditors," Mr. Bauer asserted that the FEC would have "to sit as a regulatory referee in bankruptcy." Among his comments on the FEC's proposals, Mr. Bauer:

- o Suggested that the Commission rework the proposed regulations to allow ongoing committees to settle debts for less than the entire amount owed;<sup>2</sup>
- o Suggested that the Commission, when monitoring an extension of credit in the normal course of business, rely on the creditor's judgment about whether an extension was sound and profitable business—presuming the arrangement did not appear to have an election-influencing purpose; and
- o Criticized the FEC's proposed guidelines concerning the submission and review of comprehensive debt settlement plans by terminating committees because the Commission's review of such plans would hinder and delay the payment of debts and because the agency's reviewing standards were not clearly defined.

Gordon M. Strauss and John J. Dilenschneider, commenting on behalf of the Ohio Republican Party, urged the Commission not to promulgate

regulations that would conflict with the federal bankruptcy code, Title 11 of the U.S. Code. They claimed that the proposed Part 116 regulations, concerning the submission of debt settlement plans, would create an unnecessary bureaucratic layer in the settlement process. They suggested, instead, that the Commission discontinue or suspend the rulemaking and appoint a panel of experts in bankruptcy and politics to study the entire matter and recommend rules and legislation to reconcile the competing interests. They further recommended that the Commission consider becoming a "party in interest" in bankruptcy hearings for political committees, similar to the SEC's role in bankruptcy hearings of publicly held corporations. The Commission could thereby avail itself of the extensive investigatory arm of bankruptcy courts.

## STATISTICS

### CONGRESSIONAL SPENDING INCREASED ONLY SLIGHTLY IN 1988

A preliminary FEC report released in February showed that spending for the 1988 Congressional campaigns increased only slightly from the previous election cycle. House spending rose 7.2 percent from the previous election, and Senate spending decreased 5.0 percent. Total spending for the races for both houses reached \$458 million in 1988, compared with just over \$450 million in 1986—an increase of less than 2 percent. By contrast, the 1986 total was 20 percent greater than the total for 1984.

Chart I compares 1988 Congressional incumbents, challengers and open-seat candidates in terms of the money they received, spent and had left over at the end of the election cycle.

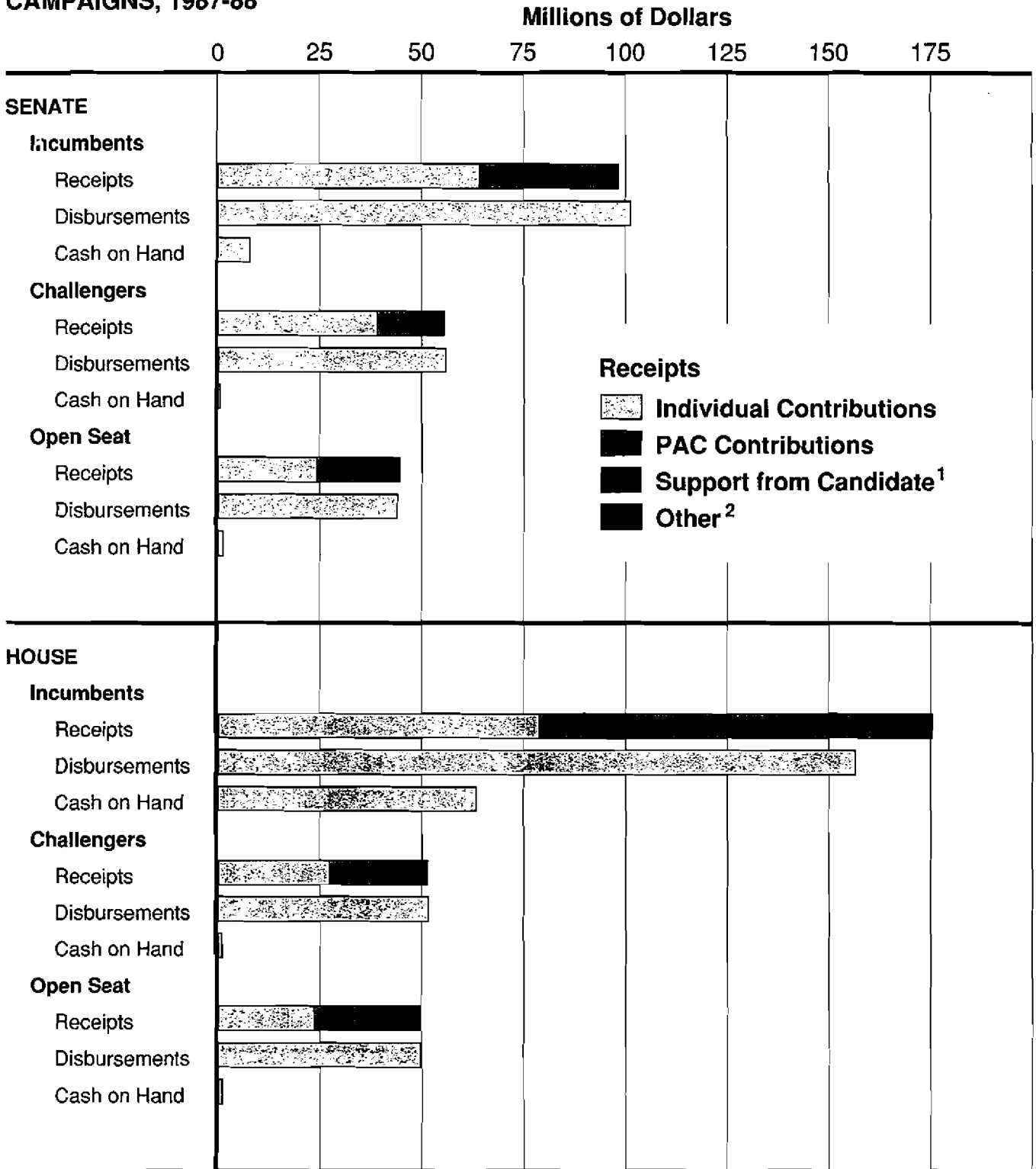
Chart II compares the aggregate receipts and expenditures of winning Senate and House candidates in the past three general elections. Contributions from PACs are also shown in the "receipts" sections.

A copy of the FEC press release covering receipts and expenditures for all 1988 Senate and House candidates may be obtained from the FEC's Public Records Office or by calling 202/376-3140 or 800/424-9530. The Final Report on 1988 Congressional spending is due to be released later this year.

<sup>1</sup>The Notice of Proposed Rulemaking was summarized in the January 1989 Record.

<sup>2</sup>Under current regulations, a corporation may forgive or settle a debt for less than the full amount owed if the settlement is made in a commercially reasonable manner and if the creditor or committee files a debt settlement statement with the FEC prior to the committee's termination. 11 CFR 100.7(a)(4) and 114.10.

**CHART I  
FINANCIAL ACTIVITY OF CONGRESSIONAL  
CAMPAIGNS, 1987-88**

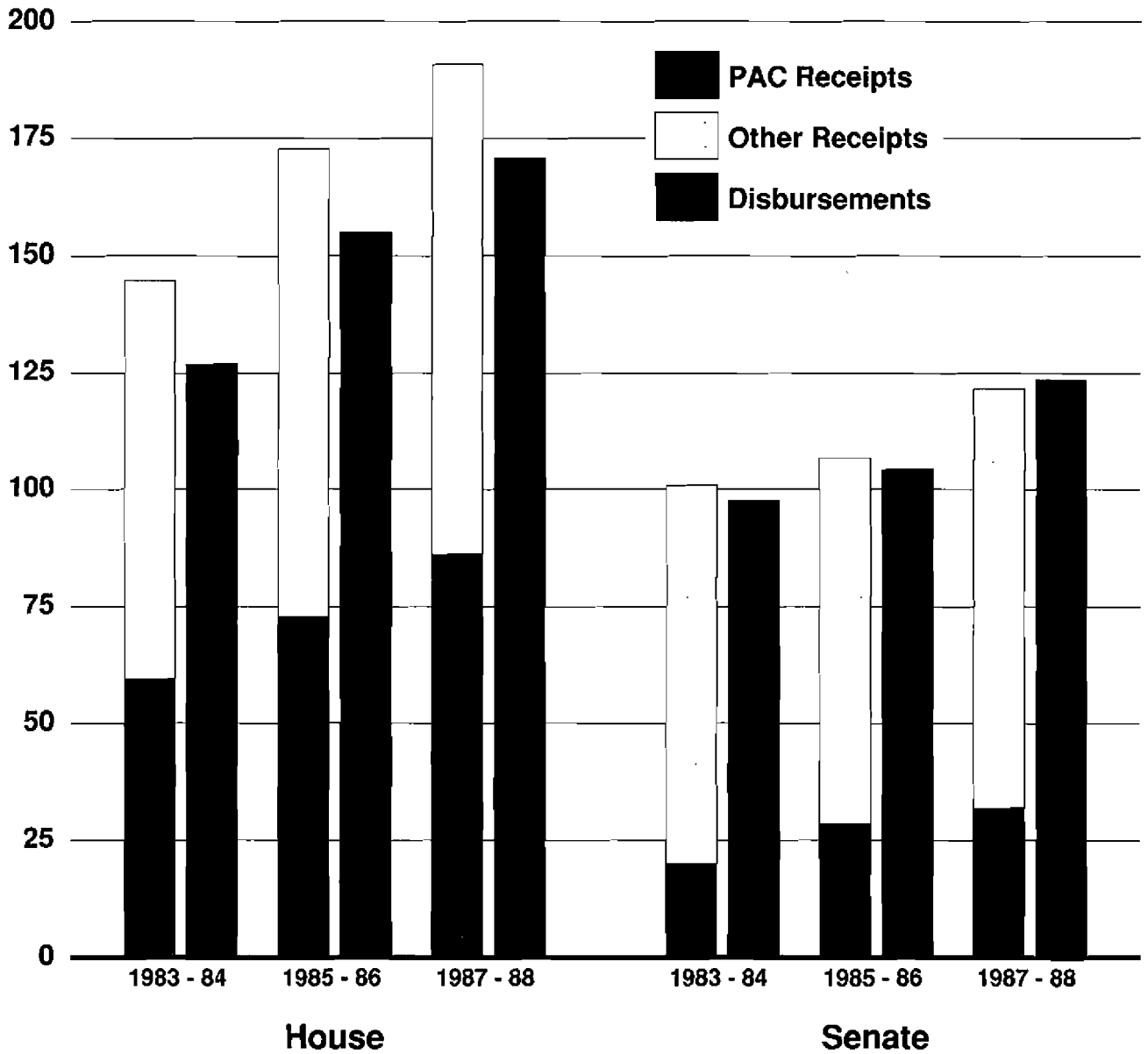


<sup>1</sup>This bar includes candidates' loans and contributions to their respective campaigns. Due to variations in reporting, loans that have been forgiven may be counted as both direct contributions and loans, with the result of increasing the total amount. For an accurate account of candidate support, consult the reports filed by campaigns.

<sup>2</sup>Other includes bank loans, interest, dividends and offsets to expenditures.

**CHART II  
RECEIPTS AND EXPENDITURES OF  
WINNING CANDIDATES**

Millions of Dollars



## COMPLIANCE

### FEC PUBLISHES NONFILERS

In February, the Commission published the names of two Presidential campaigns that failed to file disclosure reports required by the election law. See chart below.

The election law requires the agency to publish the names of nonfiling candidates. Compliance actions against nonfilers are decided on a case-by-case basis. The law gives the Commission broad authority to initiate enforcement actions resulting from infractions of the law, including civil court enforcement and imposition of civil penalties.

#### Nonfilers

Candidate	Office Sought	Report Not Filed
Fernandez, B.	President	Year-End
Jackson, J.	President	Year-End*

\*The candidate's principal campaign committee subsequently filed the report.

### MUR SUMMARIES

#### MUR 2356: PAC's Failure to File Reports On Time

This MUR, resolved through conciliation, concerned the failure of a political action committee (the committee) to file required disclosure reports in a timely manner.

#### Background

The matter originated when the committee failed to file three reports on time during the 1985-1986 election cycle. Consequently, the FEC's Reports Analysis Division (RAD) sent a chronic late-filer notice to the committee, warning it of possible enforcement proceedings should the committee fail to file another report on time. When the committee neglected to file the pre-general report by election day, RAD referred the matter to the General Counsel's Office (OGC) to begin enforcement proceedings.

#### General Counsel's Report

The Commission found reason to believe that the committee and its treasurer had failed to file four reports, in violation of 2 U.S.C. §434(a)(4)(A)(i), (ii) and (iv). An OGC investigation revealed that the committee's 1986 post-general report disclosed a contribution that was made on the last

day of the reporting period for the pre-general report. Yet, the committee had not filed a pre-general election report.<sup>1</sup> In response to the Commission's findings, the committee stated that the contribution was, in fact, made on the first day of the general election report period and that the date listed on the post-general report was a typographical error. The committee subsequently amended its post-general report to correct the mistake. Thus, the General Counsel recommended that the Commission take no further action with regard to the committee's failure to file the pre-general election report.

With regard to the other three reports in question, FEC records showed that the committee filed the 1985 mid-year report 301 days late,<sup>2</sup> the 1985 year-end report 117 days late and the 1986 April quarterly report 70 days late. Thus, the General Counsel recommended that the Commission find probable cause to believe that the committee and its treasurer violated 2 U.S.C. §434(a)(4)(A)(i) and (iv).

#### Commission Determination

While the Commission decided to take no further action against the committee and its treasurer with regard to the pre-general election report, it voted to find probable cause to believe that the committee and its treasurer had failed to file three reports in a timely manner, in violation of 2 U.S.C. §434(a)(4)(A)(i) and (iv). When the respondents failed to settle the matter within the allowable time period, the Commission authorized the General Counsel to institute a civil suit for relief. Subsequently, the committee and its treasurer entered into a conciliation agreement in which they agreed to pay a civil penalty of \$4,000, thereby settling the matter.

#### MURs 1528/1739: Party Activities: Prohibited Funds, Transfers, Allocations and Loans

Two MURs, merged together and resolved through conciliation, involved a federal account (the Federal Committee) of a state party organization (the State Party) and a nonfederal county committee (the County Committee), also part of the State party structure. Violations by the three entities included:

*continued*

<sup>1</sup>An unauthorized committee is required to file a pre-election report if it makes contributions to or expenditures on behalf of a federal candidate and such disbursements have not previously been disclosed. The report must be complete as of the 20th day before the election. 2 U.S.C. section 434(a)(4)(A)(iv); 11 CFR 104.5(c)(1)(ii).

<sup>2</sup>In nonelection years, the mid-year report is due July 31 and the year-end report is due January 31 of the following year. 2 U.S.C. section 434(a)(4)(A)(iv); 11 CFR 104.5(c)(2).

- o The acceptance by the Federal Committee of a contribution containing prohibited funds from the County Committee;
- o Illegal transfers to the Federal Committee from a nonfederal account of the State Party;
- c Failure of the State Party to allocate administrative expenses between its nonfederal account and the Federal Committee;
- o Failure of the Federal Committee to adequately report expenditures made on behalf of candidates;
- o Failure of the Federal Committee to keep complete records;
- o The securance of a bank loan to the Federal Committee with funds in the State Party's nonfederal account; and
- o Failure of the Federal Committee to file required reports.

### Background

MUR 1528 was internally generated by a referral from the FEC's Reports Analysis Division (RAD) after the State Party failed to adequately respond to FEC requests for additional information about transactions between its federal and nonfederal accounts. MUR 1528 was merged with MUR 1739, which had also been internally generated by a referral from RAD. The RAD referrals led to an FEC audit, which uncovered evidence of several violations of the Act and regulations.

### General Counsel's Report

**County Committee.** The Commission found reason to believe that the County Committee had made a \$1,000 contribution to the Federal Committee in 1981 with funds derived from corporate and labor money—a violation of 2 U.S.C. §441b(a).

The Commission focused its investigation on whether the County Committee had enough permissible funds in its account to make a contribution in connection with a federal election. Under 11 CFR 102.5(b), if an unregistered committee wishes to make contributions in connection with federal elections, it must either establish a separate account for funds permissible under the Act or be able to demonstrate through a reasonable accounting method that it had enough permissible funds to make such a contribution. The County Committee's records showed that only one of the committee's four sources of funds constituted a permissible source to use in connection with a federal election. Since the County Committee did not have enough permissible funds in its account to make the contribution, the General Counsel recommended that the Commission find "probable cause to believe" that a violation of 2 U.S.C. §441b(a) had occurred.

**The State Party.** The Commission found "reason to believe" that the State Party violated 2 U.S.C. §441b(a) and 11 CFR 102.5(a)(1)(i) and

106.1(e). Section 441b(a) prohibits the use of corporate and labor money in federal elections, while 11 CFR 102.5(a)(1)(i) states that a political organization with two accounts—for federal and nonfederal election activity—may make expenditures in connection with federal elections only from its federal account. Furthermore, 11 CFR 102.5(a)(1)(i) prohibits any transfer of funds from the organization's nonfederal account to its federal account.

The FEC's investigation revealed that the State Party transferred \$17,900 from its nonfederal account to the Federal Committee during 1981 and 1982, and that the State Party made a prohibited contribution to the Federal Committee in the form of security for a bank loan in 1982. Also, in 1981, the State Party accepted into the Federal Committee's account the \$1,000 contribution from the County Committee. Thus, the General Counsel recommended a finding of "probable cause to believe" that the State Party violated 2 U.S.C. §441b(a) and 11 CFR 102.5(a)(1)(i).

Moreover, 11 CFR 106.1(e) requires political committees with federal and nonfederal accounts to allocate administrative expenses between the two accounts on a reasonable basis. Commission investigation of the State Party's records showed that the State Party failed to allocate administrative expenses between its nonfederal account and the Federal Committee in 1981 and 1982. Thus, the General Counsel recommended that the Commission find "probable cause to believe" that the State Party violated 11 CFR 106.1(e).

**Federal Committee.** The Commission determined that there was "reason to believe" that the Federal Committee and its treasurer violated several provisions of the Act and regulations.

Section 434(b)(6)(B)(iv) of Title 2 requires party committees reporting coordinated expenditures under 2 U.S.C. §441a(d)<sup>1</sup> to disclose, along with other information, the name of a candidate on whose behalf such expenditures were made and the office sought by that candidate. An investigation revealed seven expenditures for which this information was not reported. Thus, the General Counsel recommended finding "probable cause to believe" that the Federal Committee and its treasurer violated the Act.

The Commission's investigation also revealed that the Federal Committee did not keep adequate records, as prescribed by 2 U.S.C. §432(e)(5), for three coordinated expenditures. Based on these findings, the General Counsel recommended that the Commission find "probable cause to believe" that the Federal Committee and its treasurer violated the Act.

<sup>1</sup>Section 441a(d) permits a state party committee to make expenditures on behalf of the party's general election nominees for the House and Senate subject to limitation.



The Commission also found reason to believe that the Federal Committee and its treasurer violated 2 U.S.C. §441b(a) by accepting a loan secured with nonfederal funds. Further investigation supported this allegation, and the General Counsel recommended that the Commission find "probable cause to believe" that the Federal Committee and its treasurer violated the law.

Finally, the Federal Committee filed the 1983 Mid-Year Report 50 days late and failed to file any required reports in 1984. Because of the committee's failure to file these reports on time, the General Counsel recommended that the Commission find "probable cause to believe" that the Federal Committee violated 2 U.S.C. §434(a)(4) (A)(i), (iii) and (iv).

#### Commission Determination

At the time the Commission considered the General Counsel's recommendations, neither the State Party nor the Federal Committee had ever responded to the General Counsel's briefs. Endorsing the General Counsel's recommendations, the Commission instituted a civil suit after the respondents failed to reach a conciliation agreement. Subsequently, the State Party signed a conciliation agreement settling the matter.<sup>2</sup> In that agreement, the State Party agreed to pay a civil penalty of \$7,500 for the violations of both the State Party and its federal account (the Federal Committee). The State Party also agreed to file the unfiled 1984 reports of the Federal Committee.

## COURT CASES

#### MAINE RIGHT TO LIFE COMMITTEE, INC. v. FEC

On February 24, 1989, the U.S. District Court for the District of Maine granted the FEC's motion for dismissal in Maine Right to Life Committee, Inc. v. FEC (Civil Action No. 85-0244-B). The court determined that the case was not ripe, based on the criteria established under Article III of the Constitution.

MRLC and Sandra Faucher, a member of the organization's board of directors, had challenged the constitutionality of the FEC's regulations governing corporate dissemination of voter guides.

<sup>2</sup>At the time of the conciliation agreement, a suit between the FEC and the Federal Committee regarding a different matter was also concluded when the State Party signed a consent order in which it agreed to pay a civil penalty. The order also enjoined the defendant Federal Committee from future violations of the Act. For details on the suit, see page 8 of the October 1984 Record and page 3 of the March 1985 Record.

See 11 CFR 114.4(b)(5). The organization wanted to use funds from its general treasury to publish and distribute a voter guide. Fearing that the expenditure would be prohibited under the FEC's rules, MRLC asked the court to invalidate the regulation governing voter guides and to issue an injunction preventing the FEC from enforcing the regulation.

In dismissing the case, the court concluded that the plaintiffs had not exhausted the administrative remedies available to them to determine the applicability of the regulations and the Act to their particular situation. The plaintiffs, the court observed, had not requested an advisory opinion from the FEC regarding their planned expenditure. Noting that Maine's next federal election was not scheduled until 1990 and that the FEC was required to issue advisory opinions within 60 days, the court said, "The hardship resulting to plaintiff from delay, if any can be found to exist, is far outweighed by the interest in conserving limited judicial resources and, more importantly, by the interest in withholding judgment until FEC policies have crystallized."

#### NEW LITIGATION

#### FEC v. Bob Richards for President (89-0254)

The FEC asks the district court to declare that the Bob Richards for President Committee and Bob Richards, acting as treasurer, violated the terms of a conciliation agreement entered into with the Commission in June 1988. The Waco, Texas, committee was Mr. Richards' principal campaign committee for his 1984 Presidential campaign.

Under the provisions of that agreement, the committee and Mr. Richards were required to:

- o Pay a civil penalty of \$12,000 no later than 30 days after June 28, 1988, when the agreement took effect; and
- o File all required reports and statements with the Commission within the same period of time.

As of the date this suit was filed, the Commission had not received any payments on the civil penalty or any of the required statements and reports from the defendants. The election law permits the Commission to take civil action when any part of a conciliation agreement is violated. 2 U.S.C. §437g(a)(5)(D).

The FEC also asks the court to:

- o Order the defendants to comply fully with the terms of the conciliation agreement;
- o Assess monetary penalties for violation of the agreement;
- o Award the FEC interest on the unpaid civil penalty provided for in the agreement; and
- o Permanently enjoin the defendants from similar future violations of the terms of the agreement.

U.S. District Court for the District of Columbia, Civil Action No. 89-0254, January 31, 1989.

**Common Cause v. FEC (89-0524-GAG)**

Common Cause asks the district court to declare that the FEC acted contrary to law by "partially dismissing" an administrative complaint that Common Cause filed in October 1986.<sup>1</sup>

The administrative complaint alleged that the National Republican Senatorial Committee (NRSC) had violated the election law in its operation and reporting of a solicitation project which benefited twelve 1986 Republican candidates for the U.S. Senate. Common Cause claimed that this operation resulted in excessive contributions to each of the twelve candidates by NRSC either because the contributions were not earmarked or because the NRSC had exercised direction or control over the choice of the recipient candidates. 11 CFR 110.6(d).

Specifically, Common Cause claimed that NRSC had made contributions exceeding the limit of \$17,500 to each of the twelve candidates, in violation of 2 U.S.C. §441a(h). In NRSC's direct mail project, the committee collected checks payable to NRSC with accompanying forms from the donors indicating, by state, which Republican Senate candidates would be supported with their contributions. The Commission's investigation later revealed that some contributions collected were not earmarked for any particular races. NRSC forwarded the earmarked contributions to the appropriate committees and distributed some of the nonearmarked contributions among six of the candidates. NRSC did not report these funds as earmarked contributions from itself, as would have been required if NRSC had exercised direction or control or if the contributions were not earmarked.

Although the FEC pursued other violations by NRSC in connection with its fundraising program,<sup>2</sup> the Commission failed, by a split 3-3 vote, to find probable cause to believe that NRSC had

violated 2 U.S.C. §434(b) by failing to report as its own contributions approximately \$2,718,813 in earmarked contributions it had collected and forwarded to the twelve candidates. (Commissioner Thomas Josefiak issued a statement of reasons for his vote to find no probable cause in this matter, with a joint concurrence from Commissioners Joan D. Aikens and Lee Ann Elliott.) Because the Commission did not find probable cause to believe that NRSC had failed to report the \$2,718,813 as contributions from itself, Common Cause considered its complaint to have been "partially dismissed."

In addition to asking the court to find that the FEC had acted contrary to law in handling the administrative complaint, Common Cause asked the court to:

- o Issue an order directing the FEC to act in accordance with the court's decision within thirty days; and
- o Award costs and attorneys' fees to the plaintiff.

U.S. District Court for the District of Columbia, Civil Action No. 89-0524-GAG, February 27, 1989.



## STAFF

**FEC APPOINTS NEW EEO OFFICER**

In February the Commission appointed Kathlene Carey Beuzard to be the agency's new Equal Employment Opportunity officer. In that capacity, Ms. Beuzard manages the FEC's Equal Employment Opportunity (EEO) program and special emphasis programs, such as the Federal Women's and Hispanic programs.

Ms. Beuzard will divide her time equally between her EEO projects and her regular duties as a public affairs specialist in the FEC's Information Services Division. She replaces Karyl Boozer, who recently resigned from the EEO position.

Ms. Beuzard has been an FEC staff member since 1976 and has served as an EEO counselor since 1985. She holds a B.S. from Delaware State College in Dover.

<sup>1</sup>This compliance matter, MUR 2282, is closed. A summary file is available from the FEC's Public Records Office.

<sup>2</sup>In a previous suit related to Common Cause's complaint, *Common Cause v. FEC (87-2224-GAG)*, the plaintiff alleged that the FEC had unlawfully delayed action on the complaint. In May 1988, the court decided that if the FEC did not resolve the complaint by August 1, 1988, the court would hold a factual hearing concerning the lawfulness of the Commission's delay. On July 28, 1988, the Commission found probable cause to believe that certain violations by NRSC had occurred. The Commission voted to enter into a conciliation agreement with respect to those violations on December 23, 1988. The court subsequently dismissed the prior suit as moot on January 11, 1989.

## PUBLICATIONS

### EXPLANATIONS AND JUSTIFICATIONS FOR FEC REGULATIONS: 1975 - PRESENT

The FEC has just released a compilation of all Explanation and Justifications (E&Js) written since 1975. The E&Js accompany regulations submitted by the FEC to Congress and explain the origin and intent of the proposed regulations.

Designed as a looseleaf binder insert, the compilation contains the following:

- o E&Js for all current regulations, as well as for older regulations that have been revised or deleted;
- o E&Js for rules that were never effective, along with the text of such proposed regulations;
- o A citation index identifying all E&Js applicable to each regulation;
- o A subject index to help locate topics addressed by more than one E&J;
- o A conversion table showing the widespread changes in FEC regulations resulting from the 1979 amendments to the Federal Election Campaign Act; and
- o An appendix that lists previous citations for current regulations.

The E&J compilation provides a useful reference tool for attorneys, accountants and others who regularly work with federal election law. Updates to the compilation will be made available when the FEC promulgates new or revised regulations. To order the volume, which costs \$25.00, and get on the mailing list for future updates, contact the Commission's Public Records Office at 202/376-3140 or 800/424-9530.

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