FEDERAL ELECTION COMMISSION

RECORD

August 1990 999 E Street NW Washington DC 20463 Volume 16, Number 8

REGULATIONS

REVISED ALLOCATION RULES SENT TO CONGRESS

On June 18, 1990, the Commission sent to Congress revised regulations on the allocation of expenses for activities that jointly benefit federal and nonfederal candidates and elections (11 CFR Parts 102, 104 and 106). The allocation rules will apply to party committees, separate segregated funds and nonconnected committees if the committee:

- o Qualifies as a "political committee," as defined under the Federal Election Campaign Act, and maintains separate federal and nonfederal accounts; or
- o Does not qualify as a "political committee" as defined under the Act but makes disbursements for both federal and nonfederal elections.

New reporting forms, designed to conform with additional disclosure requirements under the revised rules, were sent to Congress on June 22, 1990. The final text of the revised regulations and the explanation and justification were published in the Federal Register on June 26, 1990 (55 Fed. Reg. 26058).

The Commission anticipates that the revised rules and forms will become effective on January 1, 1991, the beginning of a new reporting year. Under 2 U.S.C. §438(d), new rules must remain before Congress for 30 legislative days before being prescribed. (Forms must be before Congress 10 legislative days.) If the current Congress adjourns before the 30 legislative days have elapsed, the Commission will have to resubmit the rules at the beginning of the 102nd Congress in January 1991. This would delay their effective date.

NOTE: A summary of the revised rules will appear in a future Record issue.

NEW DEBT SETTLEMENT RULES SENT TO CONGRESS

On June 22, 1990, the Commission sent to Congress new regulations concerning debts owed by candidates and political committees. The agency prepared the rules to ensure that the creation and settlement of debts do not result in excessive or prohibited contributions to the debtor committees and to promote the timely public disclosure of such transactions. The new rules at 11 CFR Part 116 replace current rules at section 114.10, which is being removed. The Commission also sent to Congress new reporting forms that implement new requirements on the disclosure of debt settlements. The forms were transmitted on June 28, 1990. The final text of the rules and the explanation and justification

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appeared in the Federal Register on June 27, 1990 (55 Fed. Reg. 26378).

Under 2 U.S.C. §438(d), new rules must remain before Congress for 30 legislative days before being prescribed. (Forms must be before Congress 10 legislative days.) If the current Congress adjourns before the 30 legislative days have elapsed, the Commission will have to resubmit the rules at the beginning of the 102nd Congress, which would delay their effective date.

The principal areas in which new Part 116 differs from current rules (at section 114.10) are:

- o Only committees preparing to terminate will be permitted to settle debts; ongoing committees will not be able to do so.
- o Special provisions have been added regarding authorized committees (including committees of publicly funded Presidential candidates) that wish to settle debts, terminate or assign debts to another committee.
- o New provisions address debts owed to unincorporated commercial vendors, committee employees or other individuals who have advanced funds on behalf of a political committee.
- o New provisions provide a detailed explanation of procedures for submitting debt settlement statements and the information that must be included in a statement.
- o New provisions clarify the treatment and reporting of disputed debts.
- o New procedures address situations in which a creditor has gone out of business or a political committee has become essentially defunct.

NOTE: A summary of the revised rules will appear in a future Record issue.

FEC TO INITIATE RULEMAKING PROCEEDING ON FOREIGN NATIONAL ISSUE

On June 28, 1990, the Commission instructed the General Counsel's Office to prepare a draft Notice of Proposed Rulemaking concerning election-related activities of domestic corporations partially or totally owned by foreign national entities, including corporations and individuals. Under the Federal Election Campaign Act and FEC regulations, foreign nationals are prohibited from making contributions or expenditures in connection with federal, state or local elections. 2 U.S.C. §441e; 11 CFR 110.4(a). In advisory opinions, the Commission has permitted domestic subsidiaries owned by foreign nationals to participate in election activity provided that the funds used are not derived from foreign national sources and all election-related decisions are made by U.S. citizens. However, the Commission continues to receive advisory opinion requests that reflect uncertainty about the legal status of foreign-owned domestic subsidiaries. In light of these requests, the Commission voted to initiate a rulemaking proceeding to open a dialogue on this question and solicit public comment. The Commission will be considering, in particular, whether to limit the ability of domestic subsidiaries to participate in U.S. election activity to those that are more than 50 percent American-owned.

Federal Election Commission, 999 E Street, NW, Washington, DC 20463
800/424-9530 202/376-3120 202/376-3136 (TDD)

NEW RULES ON COMPUTER FORMATS FOR PRESIDENTIAL AUDITS SENT TO CONGRESS

On June 22, 1990, the Commission sent to Congress final rules on the production of computerized records maintained by publicly funded Presidential candidates. Current regulations require that if a publicly funded campaign maintains computerized financial records, the campaign must provide the computer tapes to the FEC when the agency conducts the mandatory audit of the committee. During the 1988 election cycle, the Commission expended considerable resources reformatting computer tapes submitted during the audit process. Reformatting the records delayed the completion of certain audits and entailed additional agency expense.

To smooth the process for the 1990 election cycle, the revised rules require that computerized materials be submitted in a format compatible with the FEC's computer processing capability. The rules also list the types of computerized information that an audited committee must produce. Finally, the rules clarify that the committee, not the Commission, must pay for the cost of producing the materials in the required format. Production costs, however, may be treated as exempt compliance costs.

In connection with the rulemaking, the Commission prepared a document that sets forth the technical standards for computerized records submitted to the agency on magnetic tapes or diskettes. This document, "Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding," is available from the FEC's Public Records Office or the Audit Division.

The final rules and the explanation and justification were published in the Federal Register on June 27, 1990 (55 Fed. Reg. 26392). The Commission will announce the effective date of the final rules after they have been before Congress for the required 30 legislative days. 2 U.S.C. §438(d); 26 U.S.C. §§9009(c) and 9039(c). When the Commission revises the rules governing Presidential nominating conventions at 11 CFR Part 9008, it will include parallel provisions requiring the production of computerized magnetic media by publicly funded convention committees.

FEDERAL REGISTER

FEDERAL REGISTER NOTICES

Copies of Federal Register notices are available from the Public Records Office.

1990-5
Filing Dates for the New Jersey Special Elections (55 Fed. Reg. 18388, May 2, 1990)

1990-6
11 CFR Parts 102, 104 and 106: Methods of Allocation Between Federal and Non-Federal Accounts; Payments; Reporting; Transmittal of Final Rule to Congress (55 Fed. Reg. 26058, June 26, 1990)

1990-7
Filing Dates for the Hawaii Congressional Special Elections (55 Fed. Reg. 25880, June 25, 1990)

1990-8
Filing Dates for the Hawaii Special Senate Elections (55 Fed. Reg. 25881, June 25, 1990)

1990-9
11 CFR Parts 106, 9003, 9007, 9033, 9035 and 9038: Presidential Primary and General Election Candidates; Technical Requirements for Computerized Magnetic Media; Transmittal of Final Rule to Congress (55 Fed. Reg. 26392, June 27, 1990)

1990-10
11 CFR Parts 100, 104, 114 and 116: Debts Owed by Candidates and Political Committees; Transmittal of Final Rule to Congress (55 Fed. Reg. 26378, June 27, 1990)

SPECIAL ELECTIONS

HAWAII SPECIAL ELECTIONS

Hawaii will hold special Senate elections and a special Congressional election during September and November 1990.

The special Senate elections, held to fill the seat of the late Spark M. Matsunaga, are scheduled for September 22 (primary) and November 6 (general). Former Representative Daniel K. Akaka was appointed to fill the seat of Senator Matsunaga until a successor is elected in November.

A special Congressional election will be held September 22 to fill the 2nd Congressional District seat formerly held by Mr. Akaka.

Reporting information is given below.

Authorized Committees

Authorized committees of candidates running in the special elections must file reports according to the schedule given in the tables below. All candidates known to be on the ballot are automatically sent FEC reporting forms.

Note that an authorized committee must file notices on contributions of $1,000 or more received after the close of books for a pre-election report but more than 48 hours before the election. The notice must reach the appropriate federal and state filing offices within 48 hours after the committee's receipt of the contribution. For information on the content of the notice, see 11 CFR 104.5(f).

PACs and Party Committees

Quarterly Filers. PACs and party committees that report on a quarterly basis during 1990 may have to file pre- and post-election reports if:

- The committee makes contributions or expenditures in connection with a special election during the coverage dates shown in the tables; and
- The committee has not previously disclosed the special election activity in an earlier report. 11 CFR 104.5(c)(1)(ii) and (h).

Monthly Filers. PACs and party committees that file monthly during 1990 do not have to file pre- and post-election reports for the 2nd District special election in September but are required to file those reports for the November 6 election. In addition, PACs may have to file 24-hour reports on independent expenditures.

PAC Reports on Independent Expenditures. Any PAC (including a monthly filer) that makes independent expenditures in connection with a special election may have to file a 24-hour report. This reporting requirement is triggered when a committee makes independent expenditures aggregating $1,000 or more between 2 and 20 days before an election. The report must be filed with the appropriate federal and state filing offices within 24 hours after the expenditure is made. For more information on this reporting requirement, see 11 CFR 104.4(b) and 104.5(g).

State Filing

In addition to filing with the appropriate federal office--the Clerk of the House, the Secretary of the Senate or the FEC--committees filing Hawaii special election reports must simultaneously file copies of reports with the Hawaii state office: Campaign Spending Commission, P.O. Box 501, Honolulu, Hawaii 96809.

Authorized committees of candidates must file the entire report; other committees must file only the portion of the report that is applicable to the candidate (for example, the Form 3X Summary Page and any schedules that disclose contributions or expenditures on behalf of the candidate). 2 U.S.C. §439(a); 11 CFR 108.3.

Reporting Waivers Apply Only to Certain Special Election Filers

The reporting waivers noted on the accompanying charts apply only to committees filing certain Hawaii special election reports.

HAWAII 2ND CONGRESSIONAL DISTRICT SPECIAL ELECTIONS

I. Committees That Support Candidates in the Special General Election (Sept. 22) and the Regular General Election (Nov. 6)

Report	Period Covered	Reg/Cert[1] Mail Date	Due Date
Pre-special[2]	7/1-9/2	9/7	9/10
Oct. Quarterly	----------	waived[3]	----------
Post-special[4]	9/3-10/17	10/22	10/25
Pre-general	----------	waived[5]	----------
Post-general	10/18-11/26	12/6	12/6

II. Committees That Support Candidates Only in the Special General Election (Sept. 22)

Report	Period Covered	Reg/Cert[1] Mail Date	Due Date
Pre-special[2]	7/1-9/2	9/7	9/10
Oct. Quarterly	----------	waived[3]	----------
Post-special	9/3-10/12	10/22	10/22

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

[2]If the pre-special report is the first report filed by the committee, the report must disclose all activity that occurred before the committee registered and before the individual became a candidate.

[3]The quarterly reporting waiver applies only to committees filing both the pre- and post-special election reports.

[4]The coverage dates of the post-special election report have been extended to cover activity normally disclosed in the pre-general election report, which has been waived.

[5]The pre-general reporting waiver applies only to committees filing the post-special election report.

HAWAII SENATORIAL SPECIAL ELECTION

I. Committees That Support Candidates in the Special Primary (Sept. 22) and the Special General (Nov. 6)

Report	Period Covered	Reg/Cert[1] Mail Date	Due Date
Pre-primary[2]	7/1-9/2	9/7	9/10
Oct. Quarterly	----------	waived[3]	----------
Pre-general	9/3-10/17	10/22	10/25
Post-general	10/18-11/26	12/6	12/6

II. Committees That Support Candidates Only in the Special Primary (Sept. 22)

Report	Period Covered	Reg/Cert[1] Mail Date	Due Date
Pre-primary[2]	7/1-9/2	9/7	9/10
Oct. Quarterly	9/3-9/30	10/15	10/15

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

[2]If the pre-primary report is the first report filed by the committee, the report must disclose all activity that occurred before the committee registered and before the individual became a candidate.

[3]The quarterly reporting waiver applies only to committees filing both the pre-primary and pre-general election reports.

ADVISORY OPINIONS

ADVISORY OPINION REQUESTS

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

AOR 1990-12
Use of poll results purchased by Congressional campaign volunteer. (Date Made Public: June 28, 1990; Length: 4 pages)

AOR 1990-13
Restoration of committee's exemption from disclosure provisions previously granted by court. (Date Made Public: July 6, 1990; Length: 25 pages plus attachments (294 pages) and a correction/supplement (27 pages))

AOR 1990-14
Use of 900-line telephone service for campaign activities. (Date Made Public: July 10, 1990; Length: 43 pages)

AOR 1990-15
Termination of defunct committee with disputed debt. (Date Made Public: July 17, 1990; Length: 20 pages)

ADVISORY OPINION SUMMARIES

AO 1989-32: Foreign National Contribution to State Ballot Measure Committee "Controlled" by Candidate

Californians for Safe Streets (CSS), a committee formed to pass a state ballot measure, may not accept a contribution from a foreign national because CSS activities are viewed as related to the 1990 reelection campaign of Lieutenant Governor Leo McCarthy.

Under the Federal Election Campaign Act and FEC rules, contributions made by foreign nationals in connection with a United States election are prohibited. 2 U.S.C. §441e(a); 11 CFR 110.4(a). The Commission has previously stated that contributions relating exclusively to ballot referendum issues, and not to any election for political office, are not within the Act's purview. See, for example, AO 1980-95. In this case, however, additional factors indicate that CSS activities are election related and therefore subject to the foreign national prohibition.

Mr. McCarthy organized CSS to promote the passage of the Safe Streets Initiative, a ballot measure he helped draft. Under California law, CSS is a "controlled" committee because Mr. McCarthy has significant influence on its actions. California law requires that CSS include the name of the controlling candidate (Mr. McCarthy) on its registration form, in reports filed with the state and in committee mailings of 200 or more pieces.

Although CSS has not expressly advocated his election or solicited support on his behalf, Mr. McCarthy has organized CSS and inextricably linked his name with CSS through CSS communications to the electorate at the same time he is seeking reelection as lieutenant governor. Going beyond the state requirement, CSS has issued press releases quoting Mr. McCarthy and sent out personalized solicitation letters signed by him. Finally, CSS and Mr. McCarthy's campaign committee have coordinated their efforts to such an extent (e.g., overlapping key personnel) that the two appear to be functioning as one committee.

The Commission concluded that, based on these facts, the activities of CSS are related to Mr. McCarthy's campaign. Consequently, CSS may not accept a contribution from a foreign national, even if it were deposited in a separate account that was not used to pay expenses associated with materials that include the candidate's name. (Date issued: July 2, 1990; Length 8 pages)

AO 1990-7: Transfer from Candidate's Former Presidential Exploratory Committee to 1990 House Committee

The Schroeder Fund for the Future, Inc. (the Fund), originally established in 1987 as a testing-the-waters committee for Representative Patricia Schroeder's possible Presidential candidacy, may not make unlimited transfers of funds to Ms. Schroeder's 1990 House campaign committee, based on information provided by the requester concerning the purpose and activities of the Fund and its relationship with Ms. Schroeder's House committee.

As represented in the advisory opinion request, the Fund was formed in 1987 to conduct testing-the-waters activities and was then called "Schroeder 1988?". When Ms. Schroeder announced in September 1987 that she would not be a 1988 Presidential candidate, the Fund changed its name, began to "wind down" its exploratory activities and announced that the Fund would support

Ms. Schroeder's efforts to speak on issues of national interest. A fundraising mailing for the Fund was conducted in February 1989. (Ms. Schroeder was House candidate in 1988 and is a 1990 candidate for the same office.)

Commission regulations at 11 CFR 110.3(c)(4) permit transfers without limit between a candidate's previous and current federal campaign committees (provided that the individual is not a candidate for more than one federal office at the same time). The Fund, however, does not qualify as a previous federal campaign committeee, which is defined as a principal campaign committee or other authorized committee organized to further the candidate's campaign in an election already held. 11 CFR 110.3(c)(4)(i). In this case, the Fund was not an authorized committee in any election. Ms. Schroeder did not become a 1988 Presidential candidate, assuming that amounts received and spent by the Fund qualified for the testing-the-waters exemption under 11 CFR 100.7(b)(1) and 100.8(b)(1). Moreover, she did not authorize the Fund to receive contributions or make expenditures for her 1988 House candidacy. Because the Fund does not meet the definition of a previous federal campaign committee under 11 CFR 110.3(c)(4), the Fund may not rely on that regulation for the purpose of transferring unlimited amounts to the Schroeder for Congress Committee.

Assuming that the Fund and the Schroeder for Congress Committee are not affiliated, as asserted by the requester, any transfers from the Fund to the Schroeder for Congress Committee will be treated as contributions, subject to a $1,000 per election limit. 2 U.S.C. §441a(a)(1)(A); 11 CFR 110.1(b)(1). If the Fund contributes more than $1,000, it will trigger political committee status. 2 U.S.C. §431(4); 11 CFR 100.5(a).

Concerning the limit on the Fund's transfers, the Commission based its conclusion on the requester's assertion that the Fund and the Schroeder for Congress Committee are not affiliated. The Commission's acceptance of this assertion for purposes of the opinion "does not imply [the agency's] agreement with that assertion, nor with [the requester's] related assertions that the Fund is not a 'political committee' and that it has not accepted any 'contribution' or made any 'expenditure.'"

Although one of the indicia of affiliation under FEC rules is whether a committee provides funds in a significant amount to another committee, the Fund's contributions in permissible amounts to the Schroeder for Congress Committee would not, in and of themselves, jeopardize the assumed unaffiliated status of the two organizations, given the substantial cash-on-hand amounts of both the Fund and the Schroeder for Congress Committee. 11 CFR 100.5(g)(4)(ii)(G) and 110.3(a)(3)(ii)(G).

The Commission expressed no opinion on the application of House rules or any tax ramifications, since those issues are not within its purview.

Commissioner Lee Ann Elliott filed a dissenting opinion. (Date issued: June 18, 1990; Length: 9 pages, including the dissent)

AO 1990-8: Establishment of PAC by Corporation Majority-Owned by Foreign Bank

The CIT Group Holdings, Inc. (CIT), a Delaware corporation, may establish and operate a separate segregated fund even though 60 percent of CIT's stock is owned by Dai-Ichi Kangyo Bank Ltd., a Japanese bank, and CIT's 10-member board includes five foreign nationals members.

The Federal Election Campaign Act and Commission regulations prohibit foreign nationals from making contributions (directly or indirectly) or expenditures in connection with any United States election. 2 U.S.C. §441e(a); 11 CFR 110.4(a). CIT, however, because it is organized under state law and has its principal place of business in the United States, is not a foreign national under 2 U.S.C. §441e and 22 U.S.C. §611(b). Therefore, CIT may establish and operate a separate segregated fund (CITPAC) provided that foreign nationals are not solicited for contributions and do not participate directly or indirectly in the decision-making process of CITPAC. 11 CFR 110.4(a)(3). See also AOs 1989-29, 1983-31, 1983-19, 1982-34, 1981-36, 1980-111, 1980-100 and 1978-21. To ensure the exclusion of foreign nationals from participation in PAC activity, foreign national board members must abstain from voting, not just on matters concerning the PAC, but also on the selection of individuals to operate the PAC.

Commissioner Scott E. Thomas plans to file a dissenting opinion. (Date issued: June 18, 1990; Length: 4 pages)

AO 1990-9: Newsletter Published by Candidate as Sole Proprietor

Margaret R. Mueller, a 1990 House candidate, may publish a newsletter as an unincorporated sole proprietor, but funds received and payments made to publish the newsletter will result in contributions and expenditures if the publication contains campaign-related material.

In AO 1990-5, the Commission concluded that publication of a newsletter published by a corporation owned by Ms. Mueller would result in expenditures to influence her election if:

- The newsletter directly or indirectly referred to the candidacy, campaign or qualifications for public office of Ms. Mueller or her opponent;
- The newsletter contained articles or editorials that referred to her views, or those of her her opponent, on public policy issues, or referred to issues raised in the campaign; or
- The distribution of the newsletter were expanded beyond its present audience or in any manner that would indicate its use as a campaign communication.

(See the June 1990 Record for a summary of AO 1990-5.)

Based on these criteria, the May 1990 issue published by Ms. Mueller would be campaign related because it contained an article expressing her views on public issues and two articles on campaign issues. Costs for producing and distributing the entire issue would therefore constitute expenditures.

As the candidate and unincorporated sole proprietor, Ms. Mueller may make unlimited expenditures from personal funds for campaign-related issues of the newsletter. 11 CFR 110.10(a). The expenditures would be in-kind contributions, reportable as both contributions from the candidate and expenditures by the committee. 11 CFR 100.7(a)(1)(iii) and 104.13(a). Other funds received to pay for the expenses of campaign-related issues, including payments for advertising space, would be considered contributions subject to federal limits and prohibitions. (Date issued: June 25, 1990; Length: 4 pages)

AO 1990-11: Publicly Funded Campaign's Donation of Fundraising Items to Staff and Charity

The Friends of Gary Hart--1988, Inc., the publicly funded committee of Presidential primary candidate Gary Hart, may donate unused fundraising items--silver belt buckles--and other excess campaign funds to former campaign personnel and to charitable organizations. Before making the donations, however, the committee must first repay public funds in amounts determined by the Commission and also pay any possible civil penalty assessments.

The silver belt buckles, as campaign assets, may be treated as excess campaign funds, which are defined as amounts received by a candidate which he or she determines are in excess of amounts needed to defray campaign expenses. 11 CFR 113.1(e). The donation of 40 belt buckles and other excess funds to charities would be a permissible use of excess campaign funds because the Federal Election Campaign Act and FEC regulations expressly provide that excess campaign funds may be donated to qualified charitable organizations. 2 U.S.C. §439a; 11 CFR 113.2. The same provisions of the Act and regulations also permit excess campaign funds to be used for any lawful purpose except personal use. The donation of the remaining nine belt buckles to former campaign staff members would not be considered personal use of excess campaign funds and would qualify as a lawful use of such funds.

However, the committee cannot make any donations of excess campaign funds until it has satisfied its public funding repayment obligations and paid possible civil penalties. The excess campaign fund provisions at 2 U.S.C. §439a and 11 CFR 113.2 do not supplant or supersede these requirements under the Title 26 public funding law. AO 1988-5.

Although the Commission has already determined that the committee must repay $35,789 in public funds, the committee may have to repay additional public funds because it failed to include the value of the silver belt buckles in its Statement of Net Outstanding Campaign Obligations (NOCO statement). A NOCO statement lists, among other items, a committee's total assets, including the fair market value of fundraising items, and is used by the Commission in determining a candidate's continued eligibility to receive federal matching funds to retire outstanding campaign obligations. See 11 CFR 9034.5(g)(3). A Hart committee representative informally estimated that the belt buckles were worth between $10,000 and $40,000. Because the 1988 committee has cash and other assets that exceed its unpaid obligations, the inclusion of the buckles' value in the NOCO statement could result in the committee's having to repay additional surplus public funds.

The Commission noted that it has recently approved new debt settlement regulations which, once prescribed, would affect the proposed activities of the Hart committee. Under these new regulations, if the 1988 committee has assets that could be used to defray the debts of Gary Hart's 1984 Presidential committee, the 1984 committee could not settle its debts and the 1988 committee could not terminate. These new rules will become effective when the Commission formally prescribes them. (See the article on the new rules in this issue.)

The Commission also noted that this advisory opinion would not affect remedies available to creditors of the 1984 committee with regard to the assets of the 1988 committee. Debt claims and liabilities are subject to relevant state law, and a committee's responsibility for satisfying those obligations would have to be determined with reference to those laws. See AO 1989-2.

Commissioner Thomas E. Josefiak plans to file a concurring opinion. (Date issued: June 29, 1990; Length: 5 pages)

COURT CASES

GOLAND v. U.S. AND FEC

On May 21, 1990, the U.S. Court of Appeals for the Ninth Circuit affirmed the district court's decision to dismiss the suit and to deny appellant's motion to certify constitutional challenges to the Federal Election Campaign Act. (Civil Action No. 89-55422.) Appellant Michael R. Goland had claimed that the First Amendment guaranteed his right to make unlimited anonymous contributions to candidates.

Background (U.S. v. Goland)

On December 14, 1988, a federal grand jury in Los Angeles indicted Mr. Goland for violations of the Federal Election Campaign Act and criminal statutes stemming from his activities during the 1986 Senatorial election in California. According to the indictments, he advanced $120,000 to a media company to produce advertisements for Ed Vallen, a third-party candidate for the Senate seat. Mr. Goland actually wanted Democratic Senator Alan Cranston to win the election and financed the last-minute Vallen effort in order to divert votes from the Republican candidate, Ed Zschau. Mr. Goland tried to conceal his identity as the donor of the $120,000 contribution by funneling the money through 56 persons, who were later reimbursed by Mr. Goland. The Vallen campaign, uninformed of the true source of the contribution, reported the money as contributions from the 56 individuals.

The federal grand jury indicted Mr. Goland on criminal violations, charging that he had knowingly and willfully caused the treasurer of the Vallen campaign to make false statements to the FEC for the purpose of concealing his $120,000 contribution. 18 U.S.C. §§371 and 1001. Additionally, Mr. Goland was charged with violating the Federal Election Campaign Act (the Act) by exceeding the $1,000 contribution limit and by making a contribution in the name of another. 2 U.S.C. §§441a and 441f.[1]

District Court Decision

On March 13, 1989, after the December 1988 criminal indictment, Mr. Goland filed civil suit in the U.S. District Court for the Central District of California. (Civil Action No. 89-1480.) Pursuant to 2 U.S.C. §437h, he sought immediate certification by the district judge of three constitutional challenges to the Act, as applied. He claimed that the Act's contribution limits and disclosure provisions violated his constitutional rights. He further claimed that the First Amendment proctected his right to make unlimited anonymous contributions to a third-party candidate. Mr. Goland also sought a stay of the pending criminal proceeding. On May 1, 1989, the court dismissed the suit with prejudice, finding that the Supreme Court had already adressed appellant's constitutional ques-

(continued)

[1]The first criminal trial, which concluded on July 10, 1989, resulted in a mistrial because of a hung jury. On September 19, 1989, a federal grand jury returned a superseding indictment charging additional violations of the Act's contribution limits and of criminal statutes. The second trial ended on May 3, 1990. Mr. Goland was convicted on one misdemeanor count of making an excessive contribution. He was acquitted on four other counts of conspiracy and making false statements. The jury deadlocked on one felony count of making false statements. On July 16, 1990, Mr. Goland received a federal prison sentence of 90 days on the one conviction (excessive contribution).

tions in Buckley v. Valeo. Concluding that the constitutional claims were frivolous under Buckley, the court denied plaintiff's motion for certification and stay. Mr. Goland immediately filed an appeal.

Appeals Court Decision

On May 11, 1989, the appeals court denied his motion for a stay of the criminal trial but agreed to review the district court's dismissal of the constitutional questions. In its opinion of May 21, 1990, the court affirmed the district court's judgment, denying appellant's constitutional challenges and dimissing the suit.

Standing to Bring Challenge. The appeals court first considered whether Mr. Goland had standing to bring a constitutional challenge. The court found that "Goland statisfies the traditional standing criteria: he has alleged an actual or threatened injury; that injury was caused by the challenged act; and that injury is apt to be redressed by a favorable decision." The court observed that "[a] successful constitutional challenge to FECA provisions would give at least partial redress to Goland."

Constitutional Challenges. The appeals court ruled that the district court was acting within its discretion by dismissing the suit once it found the constitutional issues were frivolous. A complaint is frivolous when none of the legal points are arguable on their merits. In this case, the issues raised by Mr. Goland had already been resolved by the Supreme Court in Buckley v. Valeo, 424 U.S. 1 (1976).

Appellant argued that Buckley did not resolve the issues he raised. He claimed that the reasoning the Supreme Court applied in upholding the contribution limits--to prevent quid pro quo corruption or the appearance of corruption--did not apply to his claim. There was no opportunity for exacting a quid pro quo deal since he sought to keep his identity secret. Further, because the candidate (Vallen) had no chance of winning the election, he would not be in a position to exchange official favors for money.

The court rejected this argument, pointing out that there is no assurance that a donor's identity will remain secret forever and, even if there were, the Act's disclosure provisions prohibit anonymous contributions exceeding $50. (See 2 U.S.C. §432(c)(2).) Moreover, Buckley upheld the application of contribution limits to minor party candidates as well as to candidates likely to win. Id. at 30-31.

Appellant Goland also argued that the Act's discloure requirements as they relate to anonymous contributions to a third-party candidate were unconstitutional on their face and as applied to him. He based his claim on the historic constitutional protection given to anonymous political speech, citing several Supreme Court cases.

The court found that Mr. Goland could not avail himself of this protection. The Supreme Court in Buckley carefully considered the danger posed by compelled disclosure but held that state interests justified the indirect burden imposed by the Act's disclosure requirements on First Amendment interests. The appeals court concluded: "the [Supreme] Court carved out a narrow exception to the line of cases Goland relies on, and that exception encompasses Goland's activities."

In response to appellant's emphasis on the minor party status of the recipient candidate, the court stated that the Buckley Court provided an exception to the disclosure provisions for those parties that could show a "reasonable probability" that disclosure would subject their contributors to "threats, harassment, or reprisals." Id. at 74. The appeals court noted that appellant Goland "[did] not even attempt to make such a showing." The court also observed that Mr. Goland "was not promoting a reviled cause or candidate."

Finally, Mr. Goland argued that the substantial state interests that the Buckley Court found to justify the disclosure requirements did not apply to anonymous contributions made to a candidate with whom the donor disagrees.

The appeals court found no merit in this argument, observing that one purpose behind the diclosure provisions is "to keep the electorate fully informed of the sources of campaign funding....There is valuable information to be gained by knowing that Vallen took $120,000 from a Cranston supporter." Another purpose behind the Act's disclosure provisions is "to gather the data necessary to detect violations of the contribution limits." The court said that if Goland's position were adopted, one could avoid the contribution limits simply by making an anonymous contribution.

FEC v. CHIPMAN C. BULL FOR CONGRESS

On June 8, 1990, the U.S. District Court for the District of Maine imposed civil penalties on defendants Chipman C. Bull for Congress, the principal campaign committee for Mr. Bull's 1984 House campaign, and Denise M. Deshane, the committee treasurer, for violating several provisions of the Federal Election Campaign Act. (Civil Action No. 88-0037-B.) In earlier rulings of September 13, 1989, and January 9, 1990, the court found that defendants had violated the law by:

- Knowingly accepting $8,937.50 in excessive contributions from three individuals whose contributions took several forms--direct contributions, guarantees of a $10,000 bank loan and interest payments made on the loan (2 U.S.C. §441a(f));
- Failing to disclose the identification of the three guarantors of the bank loan (§434(b)(3)(E)); and
- Failing to meet the filing deadlines for the two reports covering 1985 activity (§434(a)(2)(B)).

In its June 8 order, the court adopted the civil penalties recommended by a United States Magistrate and assessed a penalty of $18,437.50 against the committee and a $500 penalty against the treasurer.

COMMON CAUSE v. FEC (89-5231)

On June 19, 1990, the U.S. Court of Appeals for the District of Columbia Circuit reversed a district court decision by ruling that the FEC did not adequately analyze an affiliation issue in its dismissal of an administrative complaint filed by Common Cause. (Civil Action No. 89-5231.) The court remanded the case to the district court with instructions to return the matter to the FEC for reconsideration consistent with the appeals court ruling.

Background

Common Cause filed an administrative complaint with the FEC alleging that the Republican National Independent Expenditure Committee (RNIEC) and the National Republican Senatorial Committee (NRSC) were affiliated committees and that RNIEC's expenditures on behalf of then-Senator Dan Evans' 1984 reelection campaign were coordinated with NRSC. As a result, Common Cause contended, contributions made by the two committees on behalf of Mr. Evans exceeded the contribution limits of 2 U.S.C. §441a. The Commission found no probable cause to believe that a violation of the Federal Election Campaign Act had occurred.

After the Commission dismissed the administrative complaint, Common Cause filed suit in 1985 with the U.S. District Court for the District of Columbia. (Civil Action No. 85-1130). Common Cause asked the court to find that RNIEC and NRSC were affiliated committees, or that they had coordinated their expenditures on behalf of Senator Evans. (Either finding would have resulted in excessive contributions by NRSC.)

District Court Decision

In its decision of May 30, 1989, the court found that the Commission's dismissal of Common Cause's principal allegations--affiliation and coordination between RNIEC and NRSC--was reasonable. The court did remand one issue from the original complaint--that of affiliation between RNIEC and the Republican National Committee--back to the FEC for further consideration, finding that the Commission had not addressed that allegation in dismissing the administrative complaint.

Appeals Court Decision

In its per curium opinion, the appeals court noted the deference accorded by the courts to FEC decisions. However, in considering the General Counsel's brief recommending the "no probable cause to believe" finding adopted by the Commission, the court found that "the brief lacks any discussion of the affiliation issue that is independent of the analysis of the separate coordination issue."

Common Cause's affiliation claim was based on three facts: (1) Mr. Rodney Smith served as the financial director and treasurer of NRSC until two months before he co-founded and became treasurer of RNIEC; (2) Senator John Heinz continued to be a member of NRSC a short time after he co-founded and joined the advisory panel of RNIEC; and (3) there was a substantial overlap in contributors to the two committees, the result of RNIEC's use of NRSC's mailing list.

Section 441a(a)(5) of the Act defines affiliated committees as those that are "established or financed or maintained or controlled" by the same person or group. Commission regulations then in effect listed several indicia of affiliation at 11 CFR 100.5(g)(2)(ii)(A)-(E). (Current FEC rules provide revised indicia at 11 CFR 100.5(g)(4)(ii)(A)-(J).) The court stated that the General Counsel's brief made no attempt to tie the relevant indicia of affiliation to the facts of the case. As a result, there was no indication that the agency had considered one pertinent indi-

(continued)

cium of affiliation: whether Mr. Smith or Senator Heinz had the ability to influence the decisions of both committees. 11 CFR 100.5(g)(2)(ii)(C) (since revised at 100.5 (g)(4)(ii)(B)).

Another indicium set out in the rules is whether two committees show a similar pattern of contributions. 11 CFR 100.5(g)(2)(ii)(D) (since revised at 100.5 (g)(4)(ii)(J)). The General Counsel's brief did not specifically refer to this indicium. The appeals court found this issue "less troubling" since the brief considered possible affiliation resulting from RNIEC's use of RNSC's contributor list but went on to explain that this implication was rebutted by the committees' dispute over the ownership of the list.

In conclusion the court stated: "Based upon the General Counsel's brief to the Commission, it is impossible to discern whether the FEC applied the applicable statute and regulation to the claim that the NRSC and the RNIEC were affiliated." The court therefore reversed the judgment of the district court on the affiliation issue and remanded the case with instructions for the FEC to reconsider the issue based on the court's decision.

NEW LITIGATION

Democratic Senatorial Campaign Committee v. FEC (90-1504)

The Democratic Senatorial Campaign Committee (DSCC) asks the district court to declare that the Commission acted contrary to law in dismissing certain allegations DSCC had made in an administrative complaint filed with the FEC.

In its administrative complaint, DSCC alleged that $325,000 in media expenditures made by the Auto Dealers and Drivers for Free Trade Political Action Committee (Auto Dealers PAC) in support of 1988 Senate candidate Connie Mack were not independent and thus violated the PAC's $5,000 contribution limit for the candidate under 2 U.S.C. §441a(a)(2). DSCC contended that, because the Auto Dealers PAC and the Mack campaign (Friends of Connie Mack) both used the services of two key campaign consultants, the independence of the PAC's expenditure was compromised, resulting in an excessive contribution by the PAC. DSCC also alleged that the Mack campaign violated 2 U.S.C. §441a(f) by knowingly accepting the contributions. In an allegation unrelated to the Auto Dealers PAC's expenditures, DSCC alleged that the Mack campaign violated §434(a)(6)(A) by failing to file the 48-hour notices required when a campaign receives contributions of $1,000 or more shortly before an election.

The Commission found reason to believe that the Mack campaign had failed to comply with the 48-hour notice requirement and later entered into a conciliation agreement with the campaign with respect to that violation. The Commission could not, however, reach agreement on the alleged violations stemming from the Auto Dealers PAC's media expenditures and accordingly dismissed those allegations.

DSCC requests that the court find that the FEC's dismissal was contrary to law and order the Commission to initiate expedited enforcement proceedings concerning the alleged violations.

U.S. District Court for the District of Columbia, Civil Action No. 90-1504, June 26, 1990.

FIFTEEN-MONTH ACTIVITY OF NATIONAL PARTY COMMITTEES

During the first 15 months of the 1989-90 election cycle, the three national committees of the Republican Party raised almost $113 million, spent almost $100 million and had cash reserves of over $19 million. By contrast, the three Democratic national committees raised and spent just over $24 million, reporting less than $6 million in cash on hand.

Although these figures reveal that the Republican national committees raised and spent more than four times the amount of the Democratic committees, the two parties provided approximately the same amount--$1 million--in direct support of candidates (contributions and coordinated party expenditures). Republicans spent $1,177,219 and the Democrats, $940,103. Most of this activity was in support of candidates running in the ten special elections held thus far during the 1989-90 election cycle.

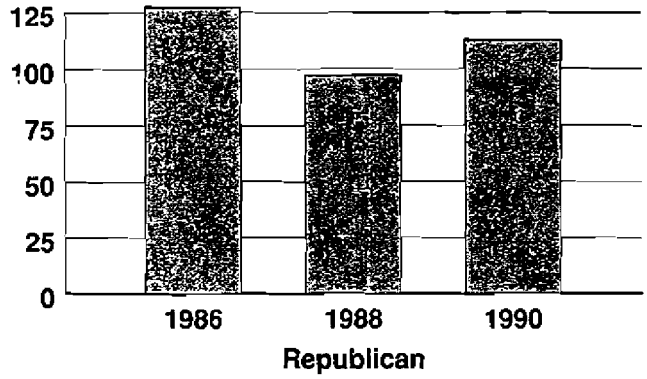
Comparing transfers from the national committees to state and local party committees, the figures show that, during the first 15 months of the current cycle, the Republican committees transferred $1.1 million--more than twice the amount transferred by the Democratic committees.

The accompanying charts are based on a May 25, 1990, press release that provides summary data on the 15-month activity of the national party committees for the 1986, 1988 and 1990 election cycles.

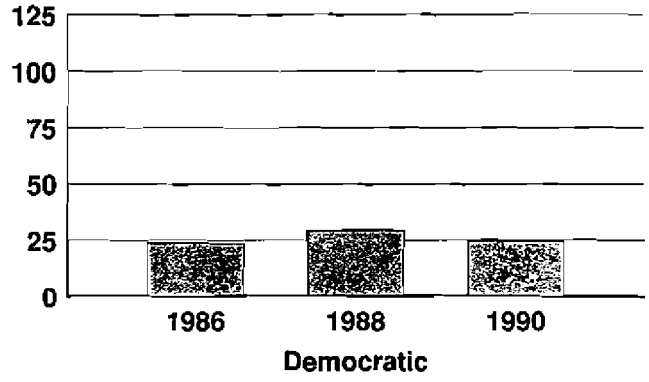
National Party Committee Activity: First 15 Months of Election Cycle [1]

Receipts

Millions of Dollars

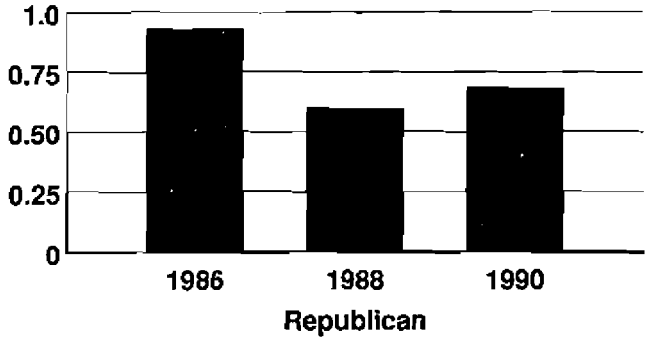


Millions of Dollars

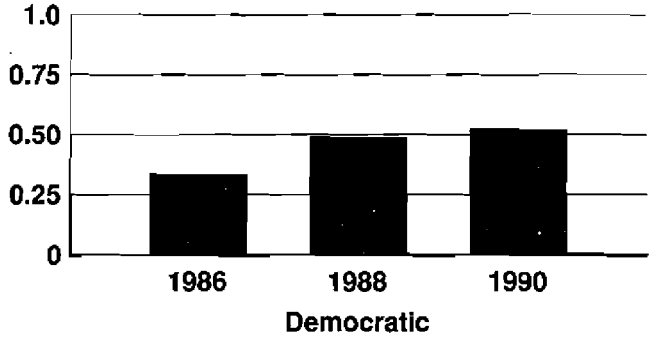


Contributions to Candidates

Millions of Dollars

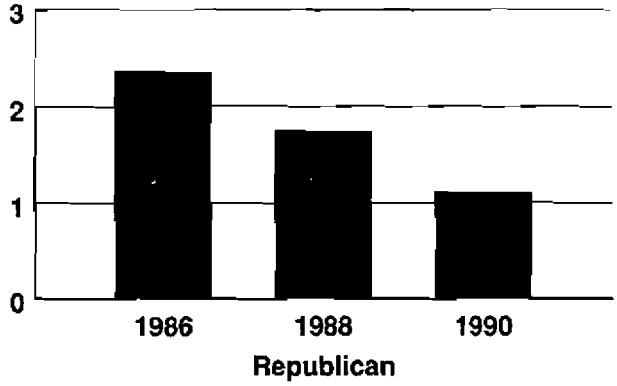


Millions of Dollars

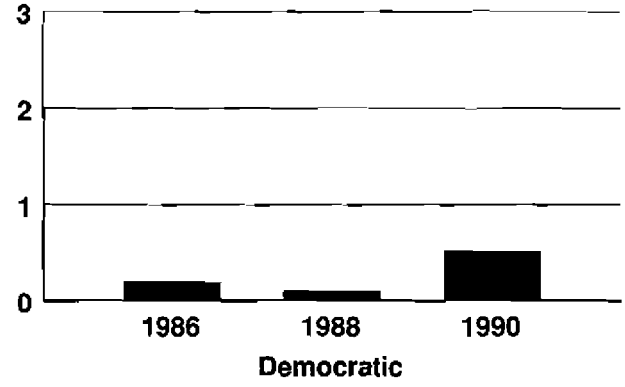


Transfers to State and Local Party Committees [2]

Millions of Dollars



Millions of Dollars



[1] Graphs show the aggregate activity of the three national committees of each major party: the national party committee, the Senatorial campaign committee and the Congressional campaign committee.

[2] Limited to transfers made for federal election activity.

COMPLIANCE

MURS RELEASED TO THE PUBLIC

Listed below are MURs (FEC enforcement cases) recently released for public review. The list is based on the FEC press releases of June 12 and June 25, 1990. Files on closed MURs are available for review in the Public Records Office.

Unless otherwise noted, civil penalties resulted from conciliation agreements reached between the respondents and the Commission.

MUR 2522
Respondents: (a) John Vandenberge for Congress, Stephen P. Poulos, treasurer (MD); (b) Vandenberge Enterprises, Inc. (aka John Vandenberge, D.D.S., P.A.) (MD); (c) Linda Vandenberge (MD)
Complainant: FEC initiated
Subject: Corporate contributions; excessive contributions
Disposition: (a) $1,000 civil penalty; (b) $500 civil penalty; (c) $500 civil penalty

MUR 2655
Respondents: (a) David Edward Landau (PA); (b) Friends of David Landau, Inc., Lawrence M. Goodman, treasurer (PA); (c) Stephanie Klein (PA); (d) Cyrus Landau (PA); (e) Philadelphia National Bank
Complainant: Earl M. Baker, chairman, Republican State Committee of Pennsylvania
Subject: Bank loans; excessive contributions
Disposition: (a), (b) and (d) no probable cause to believe; (c) and (e) no reason to believe

MUR 2733
Respondents: (a) Stenholm for Congress Committee, Charles E. Brownfield, Jr., treasurer (TX); (b) Media Management Consultants, Inc. (TX)
Complainant: FEC initiated
Subject: Corporate loan repayments
Disposition: (a) $1,500 civil penalty; (b) $100 civil penalty

MUR 2834
Respondents: Jim Cummings for Congress Committee, Mike McHugh, treasurer (IN)
Complainant: FEC initiated
Subject: Failure to report on time
Disposition: $250 civil penalty

MUR 2885
Respondents: Jesse Jackson for President '88 Committee, Howard R. Renzi, treasurer (IL)
Complainant: FEC initiated
Subject: Failure to report on time
Disposition: $1,500 civil penalty

MUR 2990
Respondents: Young Executives of America PAC, Lee Riffe, treasurer (CA)
Complainant: FEC initiated
Subject: Impermissible transfer of funds from nonfederal account
Disposition: $1,500 civil penalty

MUR 3003
Respondents: (a) Maria Alonso-Martinez, chairman, Republican Party of Dade County (FL); (b) Al Cardenas (FL); (c) Mary Collins (FL)
Complainant: David W. Southwell, treasurer, Republican Party of Dade County (FL)
Subject: Expenditures made without treasurer's authorization
Disposition: (a)-(c) No reason to believe

MUR 3032
Respondents: Mississippi Democratic Party Political Action Committee, Ed Lee Cole, treasurer
Complainant: FEC initiated
Subject: Excessive and prohibited contributions; inaccurate disclosure
Disposition: $1,800 civil penalty

MUR 3064
Respondents: (a) American Resort & Residential Development Association Political Action Committee, Thomas C. Franks, treasurer (DC); (b) American Resort & Residential Development Association (DC)
Complainant: FEC initiated
Subject: Failure to reimburse administrative expenses on time
Disposition: (a) and (b) Reason to believe but took no further action

INDEX

The first number in each citation refers to the "number" (month) of the 1990 Record issue in which the article appeared; the second number, following the colon, indicates the page number in that issue.

PUBLIC APPEARANCES

September 11	National Association of Legal Secretaries, Washington, D.C. Commissioner Scott E. Thomas
September 12	Texas Medical Political Action Committee, Austin, Texas Craig M. Engle, Executive Assistant to Chairman Elliott

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:

- o Subscription number (located on the upper left hand corner of the mailing label);
- o Name of the subscriber;
- o Old address; and
- o New address.

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

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