FEDERAL ELECTION COMMISSION

RECORD

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PARTY ACTIVITIES

ALLOCATING EXPENSES THROUGH BALLOT COMPOSITION

Starting with 1991 activity, registered state and local party committees that conduct federal and nonfederal activity from separate accounts must use the ballot composition method to allocate their administrative and generic voter drive expenses.[1] Even if the party committee plans to report semiannually during 1991 (instead of monthly), the committee needs to calculate the ballot composition ratio now and apply it to current administrative and generic voter drive expenses. This article explains how this is done.

Administrative and Generic Voter Drive Expenses

Registered state and local party committees that maintain separate federal and nonfederal accounts must allocate all of their administrative expenses and generic voter drive costs according to the ballot composition method. 11 CFR 106.5(d).

- **Administrative expenses** include rent, utilities, office supplies and salaries.
- **Generic voter drives costs** include voter identification, voter registration and get-out-the-vote drives that urge the public to support a particular party but do not mention specific candidates. 11 CFR 106.5(a)(2)(i) and (iv).

Ballot Composition Method

Under the ballot composition method, costs are allocated according to the ratio of federal offices to total federal and nonfederal offices expected to be on the ballot in the next general election in the state or geographic area in which the party committee is located. To calculate the ratio, a committee counts the number of categories of offices on the next general election ballot. 11 CFR 106.5(d)(1).

The ballot composition ratio is calculated at the beginning of each two-year federal election cycle. 11 CFR 104.10(b)(1). State and local party committees must therefore calculate the ratio now, based on the 1992 general election ballot. This

(continued)

[1] Note that FEC rules require that other allocation methods be applied to different categories of shared federal and nonfederal expenses (i.e., fundraising, direct candidate support, exempt party activities). Note also that the allocation rules apply to organizations that are not "political committees," as defined under the Federal Election Campaign Act, but that conduct both federal and nonfederal activity. For complete information on allocation, consult the Federal Register reprint of the new allocation rules (55 FR 26058, June 26, 1990) and the Record Supplement on Allocation, published in November 1990. Both documents, as well as the new reporting forms, are available from the Commission. To order, call 800/424-9530 or 202/376-3120.

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ratio will apply to all the committee's administrative and generic voter drive expenses incurred throughout the 1991-92 election cycle. (Committees located in states which hold nonfederal elections in odd-numbered years, however, allocate their generic voter drive costs on a different basis, as explained below.)

FEC Schedule H1 provides a worksheet for state and local party committees to calculate the ballot composition ratio, as shown on page 3.

The committee divides the subtotal of federal points (Line 4) by the total federal and nonfederal points (Line 11) to calculate the ratio percentage. The percentage is then applied to every administrative and generic voter drive expense to determine the federal portion of the expense (i.e., the portion that must be paid from federal-account funds).

Exception: States Holding Nonfederal Elections in Odd Years

State and local party committees located in states that hold federal elections and nonfederal elections (i.e , statewide executive offices) in different years[2] must calculate a separate allocation ratio for generic voter drive costs incurred during the nonfederal election year (i.e., the odd-numbered year). The ballot composition method is still used, but the ratio applied to generic voter drive expenses is based on the nonfederal year's general election ballot. 11 CFR 106.5(d)(2).

For example, to calculate the allocation ratio for expenses incurred in 1991, these committees would use:

- o The 1991 general election ballot to determine the ratio for generic voter drive costs; and
- o Both the 1991 and 1992 general election ballots to determine the ratio for administrative expenses (i.e., both ballots are combined and treated as one ballot for purposes of determining the ratio).

Two separate Schedules H1 would be completed, one for each category of expense.

In 1992, these committees would also use two ratios:

- o The 1992 general election ballot for generic voter drive costs; and
- o Again, a combination of the 1991 and 1992 ballots (as explained above) for administrative expenses.

[2]Five states hold nonfederal elections for statewide executive offices in odd-numbered years: Kentucky, Louisiana, Mississippi, New Jersey and Virginia.

ALLOCATION TRAINING FOR PARTY COMMITTEES

Party committee staff wishing to attend one of the training sessions listed below on the new allocation regulations should call the Information Services Division, 800/424-9530 or 202/376-3120, and ask for the contact person.

Denver, CO, February 7
Dorothy Hutcheon
Des Moines, IA, February 20
Ian Stirton
Washington, DC, To be announced
Bobby Werfel
Austin, TX, March 5
Greg Scott
Columbus, OH, March 19-20
Janet Hess

(NOTE: Separate allocation training sessions for PAC staff will be held later this year in Washington, DC. Check future issues of the Record for details.)

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

SCHEDULE H1 BALLOT COMPOSITION WORKSHEET

STATE AND LOCAL PARTY COMMITTEES

BALLOT COMPOSITION

1/ CHECK ALL OFFICES APPEARING ON THE NEXT GENERAL ELECTION BALLOT:

		NUMBER OF POINTS
	1. PRESIDENT ☐ (1 POINT)	
2/	2. U.S. SENATE ☐ (1 POINT)	
	3. U.S. CONGRESS ☐ (1 POINT)	
	4. SUBTOTAL — FEDERAL (ADD 1, 2, AND 3)	
	5. GOVERNOR ☐ (1 POINT)	
3/	6. OTHER STATEWIDE OFFICE(S) ☐ (1 OR 2 POINTS)	
	7. STATE SENATE ☐ (1 POINT)	
	8. STATE REPRESENTATIVE ☐ (1 POINT)	
4/	9. LOCAL CANDIDATES ☐ (1 OR 2 POINTS)	
	10. SUBTOTAL — NON-FEDERAL (ADD 5,6,7,8, AND 9)	
	11. TOTAL POINTS (LINE 4 PLUS LINE 10)	

FEDERAL ALLOCATION = LINE 4 DIVIDED BY LINE 11 ____ %

[1]Unless otherwise noted, all offices in the same category count as a total of one point. For example, on Line 3, all U.S. House seats on the ballot total one point; each seat is not counted separately.

[2]Each U.S. Senate seat counts as one point.

[3]One point for one office; a maximum of two points for two or more offices. Note that in states where the governor and lieutenant governor run on a single ticket, the entire ticket counts as one point under "Governor" (Line 5). By contrast, in states like California, where the governor and lieutenant governor are elected independently, the office of lieutenant governor may be separately counted as one point under "Other Statewide Office(s)" (Line 6). A maximum of two points may be counted for this category. Note also that statewide partisan judicial offices should not be counted at all.

[4]In the case of state party committees, partisan local offices count as a maximum of one point. Local party committees, however, may count one point for one office or a maximum of two points for two or more offices.

ADVISORY OPINIONS

ADVISORY OPINION REQUESTS

Recent requests for advisory opinions (AORs) are listed below. The full text of each AOR is available for review and comment in the FEC's Public Records Office.

AOR 1990-29
Deposit in separate segregate fund (SSF) of funds originally solicited by SSF, then transferred to state affiliate, then placed in escrow. (Date Made Public: December 26, 1990; Length: 5 pages)

AOR 1990-30
Designation of post-election contributions to retire campaign debts. (Date Made Public: December 28, 1990; Length: 11 pages)

ADVISORY OPINION SUMMARIES

AO 1990-14: AT&T's 900-Line Fundraising Service

As long as AT&T provides its 900-line fundraising service (MultiQuest) at the usual and normal charge, it will not make a prohibited corporate contribution to the political committees who use the service. However, because AT&T remits proceeds from the calls before the charges have actually been paid by the callers, AT&T could be placed in the position of advancing prohibited corporate funds and should therefore take precautions to avoid such an outcome. Finally, the Federal Communications Commission (FCC)--not the FEC--would have to interpret the language in its regulations concerning the extension of credit to candidates.

Background: MultiQuest Service

Using AT&T's MultiQuest 900-line service, a political committee can convey campaign messages, solicit contributions and obtain callers' opinions on issues. AT&T does not expect to contract directly with political committees for the MultiQuest service. Instead, AT&T expects committees to contract with telephone service bureaus, which will then contract with AT&T for the MultiQuest service. (In addition to providing the necessary equipment, telephone service bureaus coordinate 900 services by contracting with telephone companies (like AT&T) for telephone and billing services. They typically record and transcribe caller responses, and may also provide marketing services to prepare the phone message and advertise the number.)

The MultiQuest service provides two basic features: (1) the delivery of telephone calls under tariffs filed with the FCC; and (2) a bill collection service. AT&T does not bill 900-line callers directly but instead contracts with a Local Exchange Carrier (LEC), such as the Chesapeake & Potomac Telephone Company in the Washington, D.C. area. The LEC purchases AT&T's receivables and then collects payments from the callers. Thus, AT&T may obtain payment from the LEC before some callers actually pay the LEC for 900-line calls. Using the payment from the LEC, AT&T deducts the charges for the MultiQuest service and remits the remaining funds to the telephone service bureau. (The service bureau then forwards the funds to the political committee.)

Extension of Credit

Although AT&T expects to contract with telephone service bureaus rather than with political committees, if it does contract directly with a committee, AT&T must require an adequate deposit. This will ensure that, should the program fail, AT&T will not undergo a loss in the form of services provided without payment. 2 U.S.C. §441b(b)(2); 11 CFR 100.7(a)(1)(iii) and 114.1(a)(1). If, however, AT&T contracted with the service bureau, no deposit would be necessary (but see discussion below). The committee would instead pay an adequate deposit to the service bureau. See AO 1990-1.

Usual and Normal Charge

As a general matter, as long as AT&T--or any other company providing services in connection with the MultiQuest service--provides its usual and normal services at its usual and normal charge, it will not make a prohibited corporate contribution. However, because AT&T will remit proceeds for 900-line charges without any guarantee that those charges will actually be paid by the callers, AT&T could be implicated in making an unlawful advance of corporate funds to a committee. For example, a campaign could receive a large volume of calls just before an event that reflected adversely on the campaign, or just before the candidate unexpectedly withdrew. Under such circumstances, a large number of callers might refuse to pay the 900-line charges when they later received their telephone bills. By forwarding funds that would never be paid, AT&T would be in the position of advancing corporate funds.

To avoid this problem, AT&T must monitor political contribution programs more closely than other programs and should not remit funds to the service bureau if it appears that, because of an adverse event, the standard bad debt allowance may be exceeded. In addition, AT&T should take steps to cover such a contingency, such as by increasing its standard charge for the MultiQuest service or by requiring a deposit from the service bureau.

FCC Rules

AT&T asked whether FCC rules at 47 CFR 64.804, which address the extension of credit by common carriers (such as AT&T) to "a candidate or person on behalf of such candidate," should apply to AT&T's extension of credit to a service bureau that has itself contracted with a candidate. However, such a question is beyond the FEC'S jurisdiction; the interpretation of FCC regulations must be made by that agency.

(Date Issued: December 19, 1990; Length: 10 Pages)

AO 1990-25: Parent Corporation's Obligations to Labor Union Under Twice-Yearly Solicitation Provisions

Community Psychiatric Centers (CPC), a parent company, must comply with the twice-yearly solicitation requirements with respect to a labor organization, even though the union represents employees in only one business (Belmont) out of about 40 owned by CPC subsidiaries. CPC must provide the union with: (1) advance notice of CPC's intent to conduct a twice-yearly solicitation; and (2) access to the names and addresses of all CPC employees, including those of CPC subsidiaries and subsidiary-owned businesses. This would be required even if CPC excluded from its own twice-yearly solicitation the employees of Community Psychiatric Centers of California (CPCCal), the subsidiary that owns Belmont.

Twice-Yearly Solicitation Provisions

Under the Federal Election Campaign Act and FEC regulations, a corporation may, twice a year, solicit its employees who are not executive or administrative personnel (i.e., employees outside the restricted class) for contributions to the corporation's separate segregated fund. Similarly, a labor organization with members employed by a corporation may, twice a year, solicit contributions to the union's separate segregated fund from employees of the corporation who are not union members. (Twice-yearly solicitations are subject to special procedures: They must be mailed to the employees' residences, and a custodian must be used to collect contributions in order to insure the anonymity of employees who chose not to contribute or who contribute only small amounts.) 2 U.S.C.§441b(b)(4)(B); 11 CFR 114.6.

Corporation's Obligations to Labor Organization

A corporation that plans to conduct a twice-yearly solicitation has certain obligations with respect to any labor organization representing employees of the corporation or its subsidiaries, branches, divisions or affiliates. 11 CFR 114.6(e)(3). Because a corporation's obligations extend to a labor organization representing any employees within the corporate structure, CPC must allow the union representing 40 Belmont employees to have access to the names and addresses of all 5,800 employees of CPC and its affiliates, even if CPC excludes from its own twice-yearly solicitation all the employees of CPCCal (the subsidiary that owns Belmont). See AO 1977-49. Additionally, CPC must give advance notice of its intent to conduct a twice-yearly solicitation in order to give the labor organization an opportunity to solicit the corporation's nonunion employees using the same method. 11 CFR 114.6(e)(4). The obligation to provide the notice and the employee list to the union resides with CPC, which is the parent corporation.

Limits on Union's Access to Method

FEC rules place several limits on the union's access to a corporation's twice-yearly solicitation method:

- The union may use the corporation's list of employee names and addresses only for the purpose of soliciting contributions to the union's separate segregated fund. 11 CFR 114.6(e)(2).
- The corporation, if it does not wish to disclose the information directly to the labor union, may provide the mailing list to an independent mailing service. 11 CFR 114.6(e)(3)(ii).
- Although the corporation must bear the costs of making the employee list available, the union must pay for the costs of preparing and mailing its solicitation materials. AO 1977-49.
- Finally, the corporation does not have any obligation to the union if it does not conduct a twice-yearly solicitation. 11 CFR 114.6(e)(3)(iii).

(Date Made Public: December 14, 1990; Length: 4 pages)

800 LINE

STAFF ADVANCES AND SALARIES

The Commission recently promulgated new regulations that specifically address when contributions arise in the context of advances to committees by staff and other individuals. The new regulations also discuss the treatment of salary payments owed to committee staff.

This article explains these two provisions, which appear in the new debt settlement rules (11 CFR Part 116).

Advances to Committees: When Contributions Result

General Rule. Section 116.5 clarifies that, when individuals—including candidates--use their personal funds or personal credit cards to obtain goods or services for a political committee, an in-kind contribution to that committee generally results unless the payment is a travel or subsistence expense covered by one of the exceptions explained below under "When Contributions Do Not Result."

For example, an in-kind contribution results if an individual pays for the transportation or subsistence expenses of others or pays for nontravel expenses such as meeting rooms, office supplies or campaign materials. 11 CFR 100.7(a)(1). In these cases, the advance (combined with previous contributions made by the same individual) may not exceed the individual's contribution limit for the committee. (Contributions from the personal funds of a House or Senate candidate to his or her own campaign, however, are not subject to the contribution limits. 11 CFR 110.10(a). Publicly funded Presidential candidates, however, are subject to a $50,000 limit on campaign spending from personal funds. 11 CFR 9003.2(c) and 9035.2)

Treatment as Debt and Contribution. If the committee intends to reimburse the individual (or candidate), the amount must be treated and reported as a debt as well as an in-kind contribution. 11 CFR 116.5(c) and (e). Reimbursements are reported as refunds of contributions and, if the debt had to be itemized on Schedule D,[1] as repayments made on the debt.

Settlement of Debt. In the case of a terminating committee, the individual (or candidate) may agree to settle the debt for less than the amount owed, in which case the committee must include the debt on a debt settlement statement in compliance with 11 CFR 116.7. A debt settlement statement is not required if the individual (or candidate) agrees to forgive the entire amount of the debt. Please note, however, that the individual is under no obligation to settle or forgive the debt. 11 CFR 116.5(d).

Advances to Committee: When Contributions Do Not Result

Note that, in all cases, the exceptions described below do not apply to individuals who are acting as commercial vendors since they are covered by the commercial vendor rules at 11 CFR 116.3 and 116.4. 11 CFR 116.5(a).

Exempt Travel and Subsistence Payments. Under 11 CFR 100.7(b)(8), payments made from an individual's personal funds for his or her transportation expenses incurred while traveling on behalf of a candidate or political party committee are not contributions if they do not exceed $1,000 per candidate, per election, or $2,000 per year for travel on behalf of a party committee. This exemption applies to paid campaign workers and volunteers. Section 100.7(b)(8) also exempts all payments by volunteers for subsistence expenses incidental to volunteer activity.

NEW DEBT SETTLEMENT FORMS

Committees that wish to terminate are reminded that all debt settlement requests must be submitted on new FEC Form 8. This form implements the new debt settlement rules (11 CFR Part 116), which became effective on October 3, 1990. To order copies of Form 8 and the debt settlement rules, call the Commission. (For a summary of the new rules, see the September 1990 Record.)

[1] A debt exceeding $500 must be itemized on a Schedule D accompanying the report covering the period during which the debt was incurred. A debt of $500 or less must be itemized on Schedule D if it has been outstanding 60 days or more as of the date incurred. 11 CFR 104.11(b).

Reimbursed Travel and Subsistence Payments. Under the new rule at 11 CFR 116.5(b), transportation and subsistence expenses that are incurred and paid for by an individual while traveling on behalf of a candidate or party committee and that are not covered under the 100.7(b)(8) exemption are not considered contributions as long as the committee reimburses the individual within certain time periods:[2]

- o In the case of a credit card payment, the committee must reimburse the individual within 60 days after the closing date of the billing statement on which the charges first appear.
- o In all other cases, the committee must reimburse the individual within 30 days after the expenses are incurred.

Salary Payments Owed to Employees

New section 116.6 clarifies that unpaid salaries owed to committee staff are not contributions. Note that this exception does not apply to paid consultants, who are treated as commercial vendors under 11 CFR 116.3 and 116.4.

If a political committee does not pay an employee in accordance with an agreement, the unpaid amount may be treated either as volunteer services, which are exempt from the definition of contribution under 11 CFR 100.7(b)(3), or as a debt. The services may be converted to volunteer activity only if the employee signs a statement agreeing to be considered a volunteer.

If the unpaid amount is treated as a debt, the amount owed must be reported as such. Such debts may be settled for less than the amount owed (in the case of a terminating committee) or entirely forgiven. 11 CFR 116.6(b). If settled for less than the amount owed, the terminating committee must file a debt settlement statement in accordance with 11 CFR 116.8. This is not required if the debt is entirely forgiven.

Please note that employees are under no obligation to convert their services to volunteer activity or to settle or forgive the amount of salary owed. 11 CFR 116.6(b).

[2]This exception applies to the subsistence expenses of paid campaign staff; a volunteer's subsistence expenses are covered under the 100.7(b)(8) exemption.

COURT CASES

FEC v. AUGUSTINE FOR CONGRESS

In September 1988, the U.S. District Court for the Eastern District of Louisiana ordered the Augustine for Congress committee and its treasurer to pay a $20,000 civil penalty for numerous violations of the Federal Election Campaign Act's record-keeping and reporting provisions. (Civil Action No. 87-4544). The court also ordered the committee to file all of its over-due reports within 15 days of the order, which was issued on September 23, 1988. Because the defendants failed to comply with this order, the Commission petitioned the court on April 23, 1990, for an order to show cause why the defendants should not be held in contempt for violating the court order.

In September and November 1990, the committee filed the missing reports and signed an order in which it agreed to pay a total of $9,450 to the Commission on an installment plan (the total representing the $8,000 that remained unpaid on the $20,000 civil penalty, $1,000 in interest and $450 in FEC travel expenses). This agreement became a court order on November 29, 1990. On that date, the court dismissed the Commission's petition for contempt, with prejudice.

STERN v. FEC

On December 11, 1990, The U.S. Court of Appeals for the District of Columbia Circuit affirmed the district court decision granting the Commission's motion for judgment on the pleadings. (Civil Action No. 89-5377.) Philip M. Stern had claimed that the General Electric Company (GE) violated the Federal Election Campaign Act by making unlawful corporate expenditures for the establishment, administrative and solicitation expenses of its separate segregated fund, GE/PAC.

Background: Administrative Complaint and District Court Decision

Although section 441b(a) of the Federal Election Campaign Act prohibits corporations from using their general treasury funds to make contributions or expenditures in connection with a federal election, another provision of the Act specifically excludes from the definitions of contribution and expenditure the use of corporate treasury funds for "the establishment,

(continued)

administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes...." (Emphasis added.) 2 U.S.C. §441b(b)(2)(C). In his complaints filed with the FEC and the courts, Mr. Stern alleged that GE/PAC's contributions were not made for "political purposes" but, rather, were made to advance GE's lobbying interests. As a result, he claimed, GE's funding of the PAC resulted in prohibited corporate expenditures.

When the Commission dismissed his administrative complaint, finding "no reason to believe" that GE had violated the law, Mr. Stern sought judicial review of the agency's decision. The district court ruled that the Commission had not acted contrary to law in dismissing the complaint, holding that GE/PAC's direct contributions to the campaigns of federal candidates were permissible under any construction of "political purposes." The district court found it unnecessary to reach the question of whether lobbying was a permissible activity for a separate segregated fund, although the court characterized the Commission's position—that separate segregated funds could be used "for any lawful purpose"—as a reasonable interpretation of the Act. (Civil Action No. 89-89.)

Appeals Court Decision

In his arguments, Mr. Stern claimed that several types of contributions made by GE/PAC were not made for "political purposes":

- Contributions to unopposed candidates or to those facing weak opposition;
- Contributions made without regard to the candidate's position on business issues;
- Contributions to opposing candidates in the same election;
- Post-election contributions to winners; and
- Contributions to incumbents.

The appeals court examined these claims but found that the GE/PAC's contributions did not violate the Act. Like the district court, the appeals court found no reason to reach the question of how the phrase "political purposes" should be interpreted. "Even under the narrowest possible definition urged by Stern—namely, that segregated funds may be used only 'in connection with an election'—the GE/PAC practices he challenges do not violate the Act."

FEC v. POLITICAL CONTRIBUTIONS DATA, INC.

On December 19, 1990, the U.S. District Court for the Southern District of New York granted the Commission's motion for summary judgment, finding as reasonable the Commission's determination that the sale of contributor information by Political Contributions Data, Inc. (PCD) was prohibited by 2 U.S.C. §438(a)(4), the "sale and use restriction." The court also rejected PCD's Constitutional challenges to that provision and to 11 CFR 104.15(c).

Background

Section 438(a)(4) protects information on individual contributors (including names, addresses, occupations and employers) that is disclosed on reports filed with the FEC. Under section 438(a)(4), information copied from such reports "may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes...." (The names and addresses of political committees, however, may be used for solicitation purposes).

In AO 1986-25, issued to Public Data Access, Inc. (PDA), the Commission determined that PDA's proposed sale of information on individual contributors—information obtained from FEC reports—would be for "commercial purposes" and would therefore violate section 438(a)(4).

After the opinion was issued, PDA established Public Contributions Data, Inc. (PCD), a for-profit corporation, which then sold lists of individual contributor information compiled from FEC reports. On August 2, 1989, the Commission filed suit alleging that PCD had violated section 438(a)(4).

Commercial Purpose Prohibition

Scope. The court rejected PCD's argument that section 438(a)(4) should apply only to commercial list brokers: "There is no cause to limit the FEC to [PCD's] cramped reading of the Act...."

Application to PCD. In AO 1986-25 (requested by PDA), the FEC had determined that the company's status as a for-profit corporation raised the presumption of "commercial purpose." In the present suit, however, PCD argued that it had never actually earned a profit on the sale of contributor reports because it provided them to nonprofit, nonpartisan groups at nominal or reduced prices. The court nevertheless found that the Commission was "entitled to rely on PCD's for-profit status as an indicator of its commercial purpose." The court also noted evidence showing that PCD

had sold reports to about 105 different customers, whereas it gave away reports to only about a dozen journalists and "a few" persons in nonprofit or academic settings.

Applicability of Media Exemption. Commission regulations state that, as an exception to the general "sale and use restriction," the use of information copied from FEC reports is permissible "in newspapers, magazines, books or other similar communications...as long as the principal purpose of such communications is not to communicate any contributor information... for the purpose of soliciting contributions or for other commercial purposes." 11 CFR 104.15(c). In AO 1986-25, the Commission had concluded that PDA's use of contributor information would not fall under this exemption because PDA's lists would have a commercial value to list brokers, among others, and because the FEC information contained in the lists was not incidental to the sale of the communication (as in a newspaper) but was instead the primary focus of the communication.

The court found the Commission's conclusion in AO 1986-25 reasonable. The court also noted the predominance of political entities among PCD's paying customers (about two-thirds were political committees or consultants) and pointed out that 26 PCD customers contacted by the FEC said that they had purchased the reports for solicitation purposes.

Constitutional Challenges

Free Speech. PCD argued that section 438(a)(4)'s ban on the publication of contributor information for commercial purposes was a violation of its free speech rights under the First Amendment. The court said: "The cases on which PCD primarily relies [for its free-speech argument]...stand for the rights of traditional news organizations," which FEC regulations already exempt from section 438(a)(4). See 11 CFR 104.15(c).

The court continued: "The purpose of [section 438(a)(4)]...is to prevent harassment of political contributors as a result of the Act's disclosure provisions." The court explained that contributors might be dissuaded from making contributions if they knew that their names could be commercially marketed. The court concluded: "[T]he 'commercial purposes' provision serves a rational purpose and does not impermissibly infringe on any cognizable free speech rights."

Equal Protection. PCD contended that the news media exemption at 104.15(c) unconstitutionally discriminates against non-media entities in violation of the Equal Protection Clause of the Fourteenth Amendment.

The court first noted that, even if it were to strike down the news media exemption, the ban on the use of reported information for "commercial purposes" would remain intact and would still apply to PCD. The court, however, found the PCD's Equal Protection arguments unavailing, citing Austin v. Michigan Chamber of Commerce,[1] a recent Supreme Court decision. In that case, the Supreme Court concluded that a media exemption under a Michigan State campaign finance law—an exemption that excluded news stories, editorials and commentaries from the definition of campaign "expenditure"—did not violate the Equal Protection Clause. The district court found the High Court's analysis "equally applicable to the case at bar....[T]he press in this case plays a 'unique role' in the context of campaign finance, 'informing and educating the public, offering criticism, and providing a forum for discussion and debate.'" (Citing Austin.) The court said that these press functions "have already been upheld by the Supreme Court as substantial governmental interests."

PCD also challenged the FEC's ability to determine the "principal purpose" behind a communication, citing cases to support the view that the government should not be in the business of examining the content of publications. The court found, however, that the Commission made no substantive examination of the content of PCD's reports but, rather, looked to criteria that were not based on content, i.e., "(1) the corporation's for-profit status; (2) PCD's clientele, both actual and potential; and (3) PCD's willingness to sell reports to anyone who would pay their fees."

Finally, the court rejected PCD's argument that the press should not enjoy greater access to government information than the general public. Citing several Supreme Court cases, including Austin and Buckley v. Valeo,[2] the district court said that "the government may accord the press special privileges over members of the general public."

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[1] __ U.S. __ 110 S.Ct. 1391 (1990).

[2] 424 U.S. 1 (1976).

FEC v. WEBB FOR CONGRESS COMMITTEE

On January 2, 1991, the U.S. District Court for the Eastern District of North Carolina, Raleigh Division, granted the FEC's motion for summary judgment against William Woodward Webb, a 1986 House candidate, his principal campaign committee and the committee treasurer. (Civil Action No. 89-664-CIV-5-BO.) The court found that defendants had violated 2 U.S.C. §441a(f) by knowingly accepting an excessive contribution in the form of a $19,000 loan from the candidate's mother. Defendants argued that the loaned funds were not subject to the contribution limits because they were Mr. Webb's own funds under the definition of a candidate's "personal funds" in FEC rules: "gifts of a personal nature which had been customarily received prior to candidacy." 11 CFR 110.10(b)(2). The court ruled that, while Mrs. Webb's loan to her son "may have been intended to be... similar to those gifts she had given to him prior to his candidacy, this gift was distinct in the fact that it was given to Mr. Webb's election committee and not to Mr. Webb directly....Merely because Mr. Webb had received gifts in the past [from his mother] it does not follow that this particular loan was customary or of a personal nature as required by 11 CFR 110.10(b)(2). This gift was made at the request of Mr. Webb and as a direct result of his candidacy." The court also found that defendants had violated 2 U.S.C. §434(b) by falsely reporting Mr. Webb, rather than his mother, as the source of the $19,000 loan.

The court fined the defendants $5,000 and permanently enjoined them from future violations of the Federal Election Campaign Act.

NEW LITIGATION

FEC v. Mid-America Conservative PAC

The FEC asks the court to declare that the PAC and its treasurer violated the Federal Election Campaign Act by failing to meet the filing deadlines for several reports. The Commission also asks the court to: assess a civil penalty against the defendants; permanently enjoin them from similar future violations of the law; and award the agency court costs.

U.S. District Court for the Northern District of Iowa, Eastern Division, Civil Action No. C90-2093, December 10, 1990.

FEDERAL REGISTER NOTICES

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

1990-19
11 CFR Parts 100, 106, 110, 9001-9007, 9012 and 9031-9039: Public Financing of Presidential Primary and General Election Candidates; Notice of Proposed Rulemaking (56 FR 106, January 2, 1991)

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 December 20 and 21, 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 2804 (case not entirely closed)
Respondents: American Israel Public Affairs Committee (DC) and 31 other respondents
Complainant: Paul Findley; James E. Akins; George Ball; Richard Curtiss; Robert Hanks; Andrew I. Killgore; Orin Parker
Subject: Affiliation; excessive contributions
Disposition: No reason to believe (all respondents)

MUR 2840/PRE-MUR 202
Respondents: (a) California School Employees Association (CA); (b) Wally Blice, Jr. (CA); (c) Jesse Jackson for President '88, Howard R. Renzi, treasurer (IL)
Complainant: Sua sponte
Subject: Prohibited contributions through compensation of union employee engaged in activities on behalf of candidate and through loan of union furniture
Disposition: (a) $2,500 civil penalty; (b) $1,200 civil penalty; (c) reason to believe but took no further action

MURs 2901/2900/2899/2843
Respondents: (a) Policy Innovation Political Action Committee, Susan Armey, treas-

urer (TX); (b) James R. Lightner (TX); (c) Congressman Richard K. Armey (TX); (d) Susan Armey (TX); (e) Dick Armey Campaign, Mike Keeling, treasurer (TX); et al. (f)-(r)
Complainant: John Wayne Caton; also FEC initiated
Subject: Failure to file reports on time; reports signed by unauthorized individual; failure to amend statement of organization on time; excessive contribution; failure to accurately disclose contribution information
Disposition: (a) $3,000 civil penalty; (b) reason to believe but took no further action; (c)-(e) took no action; (f)-(r) no reason to believe

MUR 2925
Respondents: (a) Robert Y. Eckels (TX); (b) Reagan-Bush '84, Scott B. MacKenzie, treasurer (DC); (c) Richard Brown (TX)
Complainant: Douglas Caddy, Chairman, Halt IRS Taxpayer Abuse Now! Political Action Committee (TX)
Subject: Independent expenditures
Disposition: (a) Reason to believe but took no further action; (b) and (c) no reason to believe

MUR 2985
Respondents: (a) David R. Nagle (DC); (b) Nagle Campaign Committee, H. Daniel Holm, Jr., treasurer (IA); (c) H. Daniel Holm, Jr. (IA); (d) Edward J. Gallagher, Jr. (IA)
Complainant: FEC initiated
Subject: Excessive contributions through loan endorsements
Disposition: (a) Reason to believe but took no further action; (b)-(d) $4,000 civil penalty (joint conciliation agreement)

MUR 3000/2879/PRE-MUR 215
Respondents: (a) Congressman Wright Appreciation Committee, Henry Kerry, treasurer (TX); (b) Majority Congress Committee, Robert N. Reeves, treasurer (TX); (c) Kenneth C. Hood (TX); et al. (d)-(h)
Complainant: Peter Flaherty, Chairman, Conservative Campaign Fund, and Kenneth Boehm, treasurer (DC)
Subject: Excessive in-kind contributions; failure to disclose in-kind contributions
Disposition: (a) and (b) $1,500 civil penalty (joint conciliation agreement); (c) reason to believe but took no further action; (d)-(h) no reason to believe

MUR 3021
Respondents: Ed Finkelstein (AZ)
Complainant: Referred by Election Crimes Branch, U.S. Department of Justice (DC)
Subject: Failure to register as candidate; failure to register and disclose activities of a candidate committee
Disposition: No probable cause to believe

MUR 3042
Respondents: (a) Robert J. Gigante (NY); (b) Friends of Bob Gigante, Ralph J. Giorgio, treasurer (NY)
Complainant: Robert Dawson, Political Director, National Republican Congressional Campaign Committee (DC)
Subject: Failure to file last-minute contribution reports on time; failure to provide adequate contributor identification
Disposition: (a) No reason to believe; (b) $2,000 civil penalty

MUR 3070
Respondents: (a) Sang R. Korman (CA); (b) Korman for Congress, Albert T. Nassi, treasurer (CA); (c) Marathon Communications, Inc. (CA); (d) Robert Lavioe (CA)
Complainant: Stephen R. Frank, President, The Eagle Marketing Group (CA)
Subject: Corporate contributions; candidate loans
Disposition: (a)-(d) No reason to believe

MUR 3107
Respondents: (a) Mike Pence (IN); (b) The People for Mike Pence, Michael W. Redford, treasurer (IN); (c) Rick Hawks (IN); (d) Rick Hawks for Congress Committee, Inc., Larry Stoppenhagen, treasurer (IN); (e) Kenneth Bell (NC); (f) Ken Bell for Congress Committee, Mark N. Poovey, treasurer (NC); (g) Ted Blanton (NC); (h) Blanton for Congress, Pete Teague, treasurer (NC)
Complainant: Richard Bates, Democratic Congressional Campaign Committee (DC)
Subject: Personal use of campaign funds
Disposition: (a)-(h) Failed to find reason to believe

MUR 3133
Respondents: Enron Political Action Committee (FKA HNG/Internorth PAC), Robbie Leaver, treasurer (TX)
Complainant: FEC initiated
Subject: Failure to file disclosure report on time
Disposition: $1,100 civil penalty

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