

# Record

January 1993

Federal Election Commission

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## Commissioners

### 1993 Chairman and Vice Chairman Elected

On December 15, 1992, the Commission unanimously elected Scott E. Thomas as FEC Chairman and Trevor Potter as Vice Chairman. Mr. Thomas, who was the 1992 Vice Chairman, succeeds Joan D. Aikens as Chairman.

Mr. Thomas has been a Commissioner since 1986 and was the 1987 Chairman. He was reappointed by President Bush and confirmed by the Senate in November 1991 for a second six-year term.

Joining the agency as a legal intern in 1975, Mr. Thomas eventually became an Assistant General Counsel for Enforcement. He also served as Executive Assistant to former Commissioner Thomas E. Harris before succeeding him as Commissioner.

A native of Wyoming, he graduated from Stanford University and holds a J.D. degree from the Georgetown University Law Center. He is a member of the District of Columbia bar.

Mr. Potter was confirmed by the Senate as a Commissioner in November 1991. During his first year in office he served as Vice Chairman of and as Chairman of its Regulations Task Force.

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### Note from the Chairman

This year promises to be challenging and full of activity. There is a good chance of new campaign finance reform legislation, which the FEC would have to implement and administer. In addition, several steps are under way to improve existing FEC operations, including the enforcement process.

We start the year with one improvement in place, the new *Record* design, which I hope readers find readable and attractive. The *Record* staff welcomes readers' comments and suggestions on the design and content of the newsletter.

Scott E. Thomas  
Chairman

## Court Cases

### FEC v. International Funding Institute

On November 30, 1992, the Supreme Court, without comment, refused to review a court of appeals' decision upholding the constitutionality of the "sale or use" restriction, 2 U.S.C. §438(a)(4). That provision prohibits anyone from selling or using, for solicitation or commercial purposes, the information on individual contributors listed in the FEC reports filed by political committees. The Supreme Court's refusal to hear the case left intact the ruling of the Court of Appeals for the District of Columbia Circuit. In July 1992, that court

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## Information

### New Fax Service Offered by Public Records Office

In an effort to provide timely disclosure of campaign finance reports and other FEC materials, the Commission's Public Records Office now offers a faxing service. The charge is \$2 for up to 20 pages, plus the regular charge for reproducing a document. Prepayment is required, so individuals and groups must set up a running account in order to take advantage of this service (see below).

For those interested in the Commission's public meetings, the office will, on a regular basis, fax the agenda of upcoming meetings. (The Commission holds public meetings on Thursdays; the agenda and other meeting documents are made available to the public at 2:00 pm the preceding Tuesday.)

The office will also fax other documents, such as summary pages of campaign reports, up to the 20-page limit.

To set up an account with the office, send a check or money order for at least \$25 made out to the Federal Election Commission. Please include the name, fax number and complete address and phone number of the contact person for the account. Send to the Public Records Office, Federal Election Commission, 999 E Street, NW, Washington, DC 20463. If you have any questions, please call 800/424-9530 (ask for Public Records) or 202/219-4140. ♦

## Commissioners

*(continued from page 1)*

Before his appointment, Mr. Potter was a partner in a Washington, DC, law firm and practiced in the areas of campaign and election law and federal ethics regulations. His previous experience in government includes serving as Assistant General Counsel at the Federal Communications Commission from 1984 to 1985 and as a Department of Justice attorney from 1982 to 1984.

A graduate of Harvard College and the University of Virginia School of Law, Mr. Potter was editor-in-chief of the Virginia Journal of International Law in 1981-1982. He is currently Vice Chairman of the American Bar Association Committee on Election Law, Administrative Law Section. Mr. Potter is a resident of Fauquier County, Virginia. ♦

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**Trevor Potter**, Vice Chairman  
**Joan D. Aikens**, Commissioner  
**Lee Ann Elliott**, Commissioner  
**Danny L. McDonald**,

Commissioner

**John Warren McGarry**,  
Commissioner

**Walter J. Stewart**, Secretary  
of the Senate, Ex Officio  
Commissioner

**Donald K. Anderson**, Clerk  
of the House of Representatives,  
Ex Officio Commissioner

**John C. Surina**, Staff Director  
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## Regulations

### Prohibition on Transfers from Nonfederal Campaigns: New Application of Effective Date

The Commission has resubmitted to Congress the new regulation prohibiting transfers of funds and assets from a candidate's nonfederal campaign to his or her federal campaign. Although the Commission had anticipated that the regulation would be effective at the start of the 1994 election cycle, the resubmission to Congress for a new legislative review period will delay the effective date, probably until sometime in March 1993. However, the Commission plans to apply the prohibition to transfers made before the effective date if they were intended to finance elections held after April 1, 1993. The new rule at 11 CFR 110.3(d) will replace the current regulation, 110.3(c)(6), which permits transfers from nonfederal campaigns as long as they do not contain impermissible contributions.

Before a regulation becomes effective, it must be before Congress for 30 legislative days, 2 U.S.C. §438(d). The new rule was originally transmitted to Congress in August 1992, but Congress adjourned before 30 legislative days had elapsed. The Commission has now resubmitted the rule, in identical form, to the 103rd Congress for a new legislative review period.

Assuming the review period ends sometime in March, the Commission plans to announce that the prohibition applies to all transfers from nonfederal campaigns made in anticipation of federal elections held after April 1, 1993, regardless of when the transfers take place. If made before the effective date of the regulations, such transfers will have to be returned within 30 days after the effective date.

The resubmitted rule was published in the Federal Register in early January along with a revised explana-

tion and justification explaining how the agency intends to apply the rule during the 1994 election cycle. The *Record* will announce the effective date in a future issue. ♦

### Transfers Between Federal Campaigns: Commission Terminates Rulemaking

On December 10, 1992, the Commission decided to take no further action on proposed rules that would have imposed new requirements on transfers between committees authorized by the same federal candidate for different election cycles or federal offices. Under the proposed changes to 11 CFR 110.3(c)(4) and (c)(5), an authorized committee would have been permitted to transfer only those contributions whose donors had provided written authorizations for the transfer; other contributions would have had to be excluded. The authorizations would have operated as redesignations; thus, the transferred funds would have counted against the donors' contribution limits for the recipient committee.

Under the current rules, such transfers are permissible without contributors' authorizations and without the funds counting against the contribution limits of the recipient committee (provided the candidate is not running for more than one federal office at the same time). Recognizing that the proposed rules would significantly change this long-standing policy, the Commission decided to take no further action on the rulemaking. The agency believed that, in this case, any changes to current policy would be more appropriately handled through legislation.

In their comments on the Notice of Proposed Rulemaking (57 FR 36023, August 12, 1992), the national committees of the major political parties opposed the changes, arguing that the Commission lacked authority under the Federal Election Campaign Act (the Act) to impose restrictions not contemplated by Congress. By

contrast, an advocacy organization said that the Commission should prohibit all transfers between federal campaigns authorized for different elections or offices. Disagreeing with these views, the FEC's Office of General Counsel believed that the statute could be read as providing the Commission with the authority to restrict transfers but also believed that a complete ban would contradict the statute.

The agency distinguished this rulemaking from the proposed rules prohibiting transfers from nonfederal campaigns (see above article). That rulemaking pertained to the transfer of contributions raised with "soft money" (funds that are impermissible under the Act). Transfers between federal campaigns, by contrast, do not pose any danger of impermissible funds. Consequently, the Commission saw no immediate need to revise the current regulations. ♦

### Commission Establishes Interim Rules on Ex Parte Communications

On December 9, 1992, the Commission established new interim rules governing ex parte communications made to Commissioners and to individuals working under their personal supervision. (Ex parte communications are written and oral communications from persons outside the Commission.) The regulations also apply to the Special Deputies of the two ex officio Commissioners and to the Deputies' immediate staff.

The interim rules prohibit ex parte communications in connection with ongoing FEC audits and litigation, complementing the ban on ex parte communications concerning enforcement matters, found at 11 CFR 7.15 and 111.22. Additionally, under the new rules, ex parte communications on rulemaking proceedings and advisory opinions are permitted but must be made public.

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## Reports

### Reports Due in 1993

This article on filing requirements for 1993 is supplemented by the reporting tables that follow.

It is the responsibility of the committee treasurer to file required reports on time. To assist treasurers, the Commission sends committees FEC reporting forms and notices of upcoming reporting deadlines.

For further information on reporting or to order extra forms, call the FEC: 800/424-9530 or 202/219-3420.

### Year-End Reports Covering 1992 Activity

All committees must file a 1992 year-end report due January 31, 1993. The coverage and reporting dates are found in Table 1 on page 5.

### Reports Covering 1993 Activity

To find out what reports your committee must file in 1993, check the Guide to Reporting table, below. Then check the accompanying tables on reporting dates, page 5. Please note that if any special elections are held in 1993, committees active in those elections may have to file special election reports, as explained below.

### Committees Active in Special Elections

Committees authorized by candidates running in any 1993 special election must file election reports in addition to regularly scheduled reports. 11 CFR 104.5(h). They are also required to comply with the 48-hour notice requirement for contributions of \$1,000 or more (including loans) received shortly before an election. See 11 CFR 104.5(f).

PACs and party committees supporting candidates running in special elections may also have to file pre- and post-election reports unless they file on a monthly, rather than semiannual, basis. 11 CFR 104.5(c)(3) and 104.5(h). However, all PACs are subject to 24-hour reporting of

independent expenditures made shortly before an election. See 11 CFR 104.4(b) and (c) and 104.5(g).

When timing permits, the *Record* will alert committees to special election reporting dates in 1993.

### Late Filing

The Federal Election Campaign Act does not permit the Commission to grant extensions of filing deadlines under any circumstances. Filing late reports could result in enforcement action by the Commission.

### Where to File

Committee treasurers must file FEC reports with the appropriate federal and state filing offices. Please note that:

- The addresses for the federal offices (FEC, Clerk of the House and Secretary of the Senate) appear in the instructions to the Summary Page of FEC Forms 3 and 3X.

- A list of state filing offices is available from the Commission.

*House and Senate Candidate Committees.* Principal campaign committees of House and Senate candidates file with the Clerk of the House or the Secretary of the Senate, as appropriate. 11 CFR 105.1 and 105.2. The principal campaign committee must simultaneously file a copy of each report and statement with the Secretary of State (or equivalent officer) of the state in which the candidate seeks (or sought) election. 2 U.S.C. §439(a)(2)(B).

*Presidential Committees.* Principal campaign committees of Presidential candidates file with the FEC. 11 CFR 105.3. The principal campaign committee must simultaneously file a copy of each report and statement with the Secretary of State (or equivalent officer) of each state in which the committee makes expenditures. 11 CFR 108.2.

### Guide to 1993 Reporting

(All committees must also file a 1992 year-end report, due January 31, 1993.)

Type of Filer	Reporting Frequency		
	Semi-annual	Quarterly	Monthly
House and Senate Candidate Committees <sup>1</sup>	✓		
Presidential Candidate Committees		✓ or <sup>2</sup>	✓
PACs and Party Committees	✓	or <sup>3</sup>	✓

<sup>1</sup> This category includes committees of candidates retiring debts from a previous election or running for a future election.

<sup>2</sup> Presidential committees may file on either a quarterly or monthly basis. Those wishing to change their filing frequency during 1993 should notify the Commission in writing.

<sup>3</sup> PACs and party committees may file on either a semiannual or monthly basis. Committees wishing to change their filing frequency during 1993 must notify the Commission in writing when filing a report under the committee's current schedule. A committee may change its filing frequency only once per calendar year. 11 CFR 104.5(c).

*Candidate Committees with More Than One Authorized Committee.* If a campaign includes more than one authorized committee, the principal campaign committee files, with its own report, the reports prepared by the other authorized committees as well as a consolidated report (FEC Form 3Z or page 5 of FEC Form 3P, as appropriate). 11 CFR 104.3(f).

*PACs and Party Committees.* Generally, PACs and party committees file with the FEC. There are, however, two exceptions: Committees supporting only House candidates file with the Clerk of the House; those supporting only Senate candidates file with the Secretary of the Senate. 11 CFR 105.1 and 105.2.

PACs and party committees must simultaneously file copies of reports and statements with the Secretary of State (or equivalent officer), as follows:

- Committees making contributions or expenditures in connection with House and Senate campaigns file in the state in which the candidate seeks election. The committee is required to file only that portion of the report applicable to the candidate in that state (e.g., the Summary Page and the schedule showing the contribution or expenditure.). 2 U.S.C. §439(a)(2)(B).
- Committees making contributions or expenditures in connection with Presidential candidates file in the states in which the Presidential committee and the donor committee have their headquarters. 11 CFR 108.4. ♦

### Table 1: 1992 Year-End Report

(Required of all committees.)

Report	Period Covered	Filing Date <sup>1</sup>
Year-End	Closing date of last report through December 31, 1992	January 31, 1993

### Table 2: 1993 Semiannual Reports

Report	Period Covered	Filing Date <sup>1</sup>
Mid-Year	January 1 – June 30	July 31
Year-End	July 1 – December 31	January 31, 1994

### Table 3: 1993 Monthly Reports

Report	Period Covered	Filing Date <sup>1</sup>
February	January 1 – 31	February 20
March	February 1 – 28	March 20
April	March 1 – 31	April 20
May	April 1 – 30	May 20
June	May 1 – 31	June 20
July	June 1 – 30	July 20
August	July 1 – 31	August 20
September	August 1 – 31	September 20
October	September 1 – 30	October 20
November	October 1 – 31	November 20
December	November 1 – 30	December 20
Year-End	December 1 – 31	January 31, 1994

### Table 4: 1993 Quarterly Reports

(Option available to Presidential committees only.)

Report	Period Covered	Filing Date <sup>1</sup>
1st Quarter	January 1 – March 31	April 15
2nd Quarter	April 1 – June 30	July 15
3rd Quarter	July 1 – September 30	October 15
Year-End	October 1 – December 31	January 31, 1994

<sup>1</sup> Reports sent by registered or certified mail must be postmarked by the filing date; reports sent by other means must be received by the federal and state filing offices on that date. 11 CFR 104.5(e).



## Advisory Opinions

### AO 1992-38

#### Loan from Presidential Campaign's Legal and Compliance Fund to Public Funding Account

After the general election, the Clinton/Gore '92 Campaign Committee may accept a temporary \$1 million loan from its general election legal and compliance fund (GELAC fund) provided the campaign committee repays the loan immediately upon the receipt of reimbursement payments from the U.S. Secret Service.

The campaign was experiencing a cash flow problem after the general election and was waiting to receive about \$1.2 million in anticipated reimbursements from the Secret Service for transportation and related services provided to Secret Service staff. The temporary loan would permit the campaign to pay urgent expenses before it received the Secret Service reimbursements.

Under the public funding laws, a campaign that receives full public funding for the general election—as the Clinton/Gore campaign did—must limit campaign spending to the amount of the grant and may not accept any contributions to pay for qualified campaign expenses. 2 U.S.C. §441a(b)(1) and 26 U.S.C. §9003(b)(1) and (2). However, the campaign's GELAC fund may accept private contributions to pay for costs associated with complying with the law. 11 CFR 9003.3(a). These compliance-related payments are not subject to the spending limit. 11 CFR 9002.11(b)(5).

Other regulations also provide exceptions from the spending ceiling and allow certain expenses to be paid from the GELAC fund.

First, somewhat analogous to a loan based on future Secret Service payments, a GELAC fund may make loans to the campaign account before

the campaign receives its public funding payment, although the loan must be repaid shortly after the payment is made. 11 CFR 9003.3(a)(2)(i)(G) and 9003.4(b)(2).

Second, either the campaign account or the GELAC fund may pay for unreimbursed Secret Service costs, and such payments do not count against the spending limit. 11 CFR 9003.3(a)(2)(i)(H) and 9004.6(a). See also the Explanation and Justification for 11 CFR 9004.6 at 56 FR 35903 (July 29, 1991).

The proposed loan comports with the underlying principles of these regulations. However, the loan may be used only to defray qualified campaign expenses, and it must be repaid immediately upon the campaign's receipt of the Secret Service reimbursements. Any shortfall that occurs because the Secret Service, for valid reasons, fails to make full repayment to the Clinton/Gore Campaign will result in an improper use of GELAC fund contributions and have legal consequences.

Date Issued: November 17, 1992; Length: 4 pages. Chairman Joan D. Aikens wrote a dissenting opinion (4 pages); Commissioner Trevor Potter wrote a concurring opinion (1 page). ♦

## 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 1992-42

Application of election limits to contributor checks written after the 1992 general election to replace pre-general checks that were lost in the mail. (Lewis for Congress Committee, December 10, 1992, 4 pages plus attachments)

### AOR 1992-43

Compliance by federal candidate, also a state officeholder, with state law's restrictions on political fundraising by state officials. (Senator Tim Erwin, Washington State, December 21, 1992; 2 pages)

### AOR 1992-44

Status of political organization as national party committee. (National Committee of the U.S. Taxpayers Party, December 22, 1992, 3 pages plus attachments) ♦

## Public Appearances

- |      |   |
|------|---|
| 1/19 | American University<br>Washington, DC<br>Scott Thomas<br>Chairman<br>Michael Dickerson<br>Public Records              |
| 1/25 | Public Affairs Council<br>Washington, DC<br>Lee Ann Elliott<br>Commissioner<br>Dorothy Yeager<br>Information Services |

## Computer Resources

### Computer Access to Advisory Opinions

The Commission offers on-line computer access to the full text of advisory opinions (AOs) issued since 1975 as well as a computer search system to identify opinions by subject. In addition, a text search allows the user to locate a text string in a particular opinion, such as a person's name or a key word or phrase.

Researchers can access on-line AOs using the computer terminals in the FEC's Public Records Office or in the 24 state election offices that have terminals with access to FEC information.<sup>1</sup> The AOs are also available through the FEC's Direct Access Program (DAP). DAP subscribers access the information through personal computers and modems.

DAP subscribers and terminal users also have on-line access to FEC campaign finance data in numerous formats and to the summaries of court cases that appear in the FEC publication *Selected Court Case Abstracts*. The case summaries can be researched using a search program similar to the AO program.

The cost of the Data Access Program is \$25 per hour, with no additional sign-up fees. (However, to use the AO and court case search programs, subscribers must be able to set modem software to some form of VT emulation, e.g., VT100 or VT102.) For more information on DAP, call Phyllis Stewart-Thompson, Data Systems Development Division, 800/424-9530 or 202/219-3730. ♦

<sup>1</sup>The states are: AK, AZ, CA, CO, CT, GA, HI, IL, IA, LA, MD, MA, MI, NE, NV, NJ, NM, OH, TN, TX, UT, VT, WA and WI. For the names and addresses of the state offices, call the Public Records Office: 800/424-9530 (ask for Public Records) or 202/219-4140

## Public Funding

### Robertson Campaign Disputes Repayment Amount

At a December 2, 1992, hearing, Pat Robertson's 1988 Presidential campaign argued that the FEC should reduce the amount of public funds the campaign had to repay to the U.S. Treasury. In the final audit report, approved in March 1992, the Commission made an initial determination that the campaign repay \$388,544. The campaign committee, Americans for Robertson, Inc., had received \$10.4 million in matching funds.

Counsel for the campaign, Gordon Robertson and Carol Laham, contested several repayment issues on

legal grounds, questioning the Commission's interpretation of the law. They also said that, within five days, they would produce documents supporting a substantial reduction in the repayment. For example, the final audit report found that, based on available records, the campaign had exceeded the Iowa and New Hampshire expenditure limits by \$1.1 million. According to campaign counsel, however, the new records would show that the excessive spending was less than half that amount, thus reducing the repayment by about \$200,000. (The campaign submitted the additional records on December 9, 1992.)

The Commission will review the new records and remarks made at the hearing when making its final repayment determination. ♦

### December Matching Fund Payments<sup>1</sup>

Candidate	December Payment	Cumulative Total
<b>Republicans</b>		
Patrick Buchanan	\$412,917	\$ 5,048,204
George Bush	0	10,118,252
<b>Democrats</b>		
Larry Agran	0	269,692
Jerry Brown	0	4,239,405
Bill Clinton	0	12,536,135
Tom Harkin	11,990	2,008,713
Bob Kerrey	44,128	2,115,991
Paul Tsongas	13,609	2,922,814
Douglas Wilder	0	289,027
<b>New Alliance Party</b>		
Lenora Fulani	53,494	1,989,966
<b>Natural Law Party</b>		
John Hagelin	176,954	276,954
<b>Total</b>	<b>\$713,093</b>	<b>\$41,815,153</b>

<sup>1</sup>Candidates have requested \$410,769 for the January 1993 payment



## Court Cases

(continued from page 2)

concluded that section 438(a)(4) is constitutional on its face and as applied to the defendants' conduct because it "advances an important governmental interest"—protecting the value of a political committee's contributor list—and "is no broader than necessary to that task." (The decision was summarized in the September 1992 *Record*.)

The FEC had filed suit against the International Funding Institute (IFI), American Citizens for Political Action, Inc. (ACPA), a political committee, and Robert E. Dolan, as treasurer of ACPA. According to the findings of fact, IFI, a consulting firm headed by Mr. Dolan, knowingly used reported contributor names and addresses in developing a mailing list that was rented to about five customers, one of whom was ACPA. ACPA used the list for several mailings.

Defendants argued for dismissal, claiming that section 438(a)(4) violated the First Amendment; the FEC then moved to certify the constitutional question to the court of appeals. When that court upheld the constitutionality of the sale or use restriction, defendants sought Supreme Court review.

Under a previously issued order that was stayed during the Supreme Court petition review, the case was remanded to the U.S. District Court for the District of Columbia for proceedings consistent with the court of appeals' holdings. ♦

### U.S. Senator John Seymour Committee v. Dianne Feinstein, et al.

On November 3, 1992, the U.S. District Court for the Central District of California dismissed this suit, ruling that the FEC has exclusive jurisdiction over the allegations raised in the complaint, as the FEC, an intervenor, had argued in its motion to

dismiss. (Civil Action No. CV 92-6143-RMT(Ex).)

Plaintiffs contended that solicitation letters mailed by the Feinstein for Senate Committee constituted mail fraud under the Racketeering Influenced and Corrupt Organization (RICO) Act. The letters in question allegedly solicited earmarked contributions in excess of the Federal Election Campaign Act (FECA) limits by asking that contributions of over \$1,000 be made payable to the Democratic Senatorial Campaign Committee, "Feinstein Tally." Plaintiffs argued that these solicitations should be considered RICO violations because they falsely represented that such contributions were lawful and could be used for the exclusive benefit of the candidate.

The court, however, found that the FEC has exclusive jurisdiction over the merits of FECA claims. ♦

## New Litigation

### Lyndon H. LaRouche, Jr. v. FEC (92-1555)

Lyndon LaRouche and the LaRouche Democratic Campaign '88 petition the court to review the FEC's final repayment determination. (On September 17, 1992, the FEC required the Campaign to repay \$151,260 in matching funds to the U.S. Treasury.)

## Federal Register

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

### 1992-22

11 CFR Parts 100 and 114: Definition of "Member" of Membership Association; Change of Public Hearing Time (57 FR 56867, December 1, 1992)

### 1992-23

11 CFR Part 201: Ex Parte Communications; Interim Rules with Request for Comments (57 FR 58133, December 9, 1992)

Petitioners specifically ask the court to rule on whether the FEC's repayment determination and the methods it used to determine the repayment amount were arbitrary, capricious and not in accordance with the law. They also ask the court to consider whether the FEC waived its rights to require repayment of matching funds the Campaign received after the candidate's date of ineligibility because the FEC had certified the funds based on debt statements submitted in good faith by the Campaign.

U.S. Court of Appeals for the District of Columbia Circuit,<sup>1</sup> App. No. 92-1555, October 22, 1992.

### Common Cause v. FEC (92-2538)

Pursuant to 2 U.S.C. §437g, Common Cause asks the court to declare that the FEC's failure to act on an administrative complaint is contrary to law. Common Cause further asks the court to order the agency to conform with §437g within 30 days and to award costs and attorneys' fees to Common Cause.

Common Cause claims that the FEC failed to take required action on an administrative complaint Common Cause filed in December 1990. In the administrative complaint, Common Cause alleged that the National Republican Senatorial Committee (NRSC) had made excessive contributions and expenditures in connection with the 1988 Montana Senate election and failed to report them accurately. Common Cause also claimed that the Montana Republican Party had violated the law by participating in the NRSC's alleged violations.

U.S. District Court for the District of Columbia, Civil Action No. 92-2538, November 10, 1992. ♦

<sup>1</sup> Commission repayment determinations are directly reviewable by this court. 26 U.S.C. §9041(a).



## Regulations

(continued from page 3)

The Commission seeks comments on the interim rules (11 CFR Part 201), which were published in the Federal Register on December 9, 1992 (57 FR 58133) and became effective on that date. The Commission may reevaluate the rules in light of comments received. Comments are due by January 8 and should be submitted in writing to Susan E. Propper, Assistant General Counsel, 999 E Street, NW, Washington, DC 20463.

The interim rules are briefly summarized below.

### Audits and Litigation

The ban on ex parte communications in connection with FEC audits applies both to audits of Presidential public funding recipients and to audits of committees whose reports do not meet threshold requirements for substantial compliance with the law (§438(b) audits).

In the case of the Presidential audits, the ban on ex parte communications begins when the Commission sends a letter asking the committee to make preparations for audit fieldwork. The ban ends when the Commission issues the final audit report or, if repayment of public funds is required, when the committee makes the repayment to the U.S. Treasury or the Commission authorizes suit to pursue repayment.

The Commission specifically asks for comments on whether restrictions on ex parte communications—a complete ban or, alternatively, a requirement that such communications be made public—should apply earlier in the public funding process, for example, from the time the Presidential candidate seeks eligibility to receive public funds.

The prohibition on ex parte communications in connection with §438(b) audits begins when a proposed audit referral is circulated and ends when the Commission issues the final audit report.

The prohibition involving litigation takes effect when the Commission authorizes a suit or, in the case of defensive litigation, when suit is filed against the Commission. It extends through the conclusion of the litigation.

If a Commissioner or staff member is unable to prevent a prohibited ex parte communication, he or she must deliver a statement on the substance and circumstances to the FEC's Ethics Official (the General Counsel); the statement will become part of the file.

### Rulemaking Proceedings and Advisory Opinions

The Commission encourages the public to submit formal, written comments on rulemakings and advisory opinion requests during the public comment period. Ex parte communications made during the rulemaking or advisory opinion process are permitted, but, under the new rules, public disclosure is required so that all persons will have equal notice of the information before the Commission. A written communication or a written summary of an oral conversation must be transmitted to the Commission Secretary's Office within 48 hours or before the next Commission discussion of the matter, whichever is earlier. The communication will then be placed on the public record.

This restriction takes effect when an advisory opinion request or proposed rulemaking is circulated to the Commissioners and ends when the advisory opinion is issued or the Commission takes final action on the rulemaking.

### Exceptions

The prohibitions and restrictions do not apply to ex parte communications on the status of pending matters; nor do they apply to the views expressed by Commissioners and staff during public appearances. ♦

## Publications

### Updated MUR Index Available

The Commission recently updated the *FEC MUR Index*, a useful document for those researching closed compliance cases, called Matters Under Review or MURs. The MUR Index lists cases that have been released to the public from 1975 through October 1992.<sup>1</sup>

The Index may be purchased from the Public Records Office at a cost of \$110. Checks made out to the Federal Election Commission should be sent to Public Records, 999 E Street NW, Washington, DC, 20463. A copy of the Index is available for use in the Public Records Office, located on the first floor of the FEC. Researchers can also use an on-line MUR Index at computer terminals in the office.

The Index is made up of several sections. The Summary Reports (Volumes I, II and III), organized by MUR number, list the open and closed dates for each MUR; the complainant and respondents; the U.S. Code and FEC regulations cited in the MUR file; and subject terms from a thesaurus.

Volume IV contains a number of research aids, such as a complainant/respondent index, a citation index and a subject index. Additional indexes listing subject numbers and microfilm locations are useful for those researching MURs in the Public Records Office, with access to the on-line Index and microfilm reels.

For more information, call 800/424-9530 (ask for Public Records) or 202/219-4140. ♦

<sup>1</sup>The Commission must, by law, keep all information on a MUR confidential until the agency reaches a final determination and closes the file. At that point, the file is put on the public record. See 2 U.S.C. §437g(a)(12) and 11 CFR 111.21; see also 11 CFR 4.4(a)(3).



## Compliance

### MURs Released to the Public

Listed below are FEC enforcement cases (Matters Under Review or MURs) recently released for public review. The list is based on the FEC press releases of December 8 and 18, 1992. 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.

#### Pre-MUR 251

**Respondent:** John Price (UT)  
**Complainant:** FEC initiated  
**Subject:** Annual contribution limit for individuals  
**Disposition:** Declined to open a MUR

#### MUR 3313

**Respondents:** (a) David Thibodeaux for Congress—1990, Eugene N. Daniell III, treasurer (LA); (b) American Coalition for Legislative Reform, Charles R. Phillips, treasurer (TX); (c) Mr. John Chance (LA); (d) Mrs. John Chance (LA); (e) Jack Lawton, Jr. (LA); (f) Mr. Jack Lawton, Sr. (LA); et al. (g)-(l)  
**Complainant:** Democratic State Central Committee of Louisiana, James J. Brady, chairman  
**Subject:** Affiliation; improper disclosure; excessive contributions  
**Disposition:** (a)-(f) Reason to believe but took no further action (some sent admonishment letters); (g)-(l) no reason to believe

#### MUR 3347

**Respondents:** (a) Democrats for Economic Recovery—LaRouche in '92, Kathy A. Magraw, treasurer (VA); (b) Schiller Institute, Inc. (DC); (c) Hamilton System Distributors, Inc., Charles E. Hughes, president (NJ); (d) Committee to Save the Children in Iraq (DC); (e) Richard A. Black (MA); (f) Marian Black (MA)

**Complainant:** Mark A. Stemmiski (MA)  
**Subject:** Disclaimer  
**Disposition:** (a)-(d) No reason to believe; (e)-(f) reason to believe but took no further action (sent admonishment letter)

#### MUR 3440

**Respondent:** Joseph A. Cannon (UT)  
**Complainant:** FEC initiated  
**Subject:** Annual contribution limit for individuals  
**Disposition:** \$600 civil penalty

#### MUR 3486

**Respondents:** (a) General Electric Company (CT); (b) Kidder, Peabody Group Inc. (NY)  
**Complainant:** The International Association of Machinists and Aerospace Workers, AFL-CIO (DC)  
**Subject:** Solicitation of voluntary contributions  
**Disposition:** (a)-(b) Insufficient votes to find no reason to believe

#### MUR 3550

**Respondents:** (a) Andy Schlafly for Congress, Andy Schlafly, treasurer (VA); (b) Timothy L. Brown (VA); (c) John S. Walker (VA)  
**Complainant:** Michael Herrich (VA)  
**Subject:** Disclaimers  
**Disposition:** (a) No reason to believe; (b)-(c) reason to believe but took no further action (sent admonishment letters)

#### MUR 3564

**Respondents:** Erwin for Congress '92 Committee, Norma J. Hickok, treasurer (WA)  
**Complainant:** Jim Cozad (WA)  
**Subject:** Failure to file report on time  
**Disposition:** Reason to believe but took no further action (sent admonishment letter)

#### MUR 3577

**Respondents:** Fred Phelps, Sr.  
**Complainant:** Gloria O'Dell  
**Subject:** Failure to file report  
**Disposition:** No reason to believe

#### MUR 3579

**Respondents:** Concerned Voters, Inc., Wilson C. Lucom, treasurer, chairman (MD)  
**Complainant:** FEC initiated  
**Subject:** Disclaimer  
**Disposition:** Reason to believe but took no further action

#### MUR 3628/3602

**Respondents:** (a) Bush-Quayle '92 Primary Committee, Inc., J. Stanley Huckaby, treasurer (DC); (b) James A. Baker, III (DC)  
**Complainants:** Fred MacDonald (CA) (3628); Clark R. Kerr (AZ) (3602)  
**Subject:** In-kind contributions  
**Disposition:** (a)-(b) No reason to believe

#### MUR 3694

**Respondents:** Hoosiers for Hogsett Committee, John W. Boyd, treasurer (IN)  
**Complainant:** FEC initiated  
**Subject:** Excessive contributions  
**Disposition:** Reason to believe but took no further action

#### MUR 3717

**Respondents:** (a) Integra Political Action Committee (formerly, Pennbancorp PAC), Donald E. Warner, treasurer (PA); (b) Pennsylvania Bankers Public Affairs Committee (Federal), Joseph N. Tosh, treasurer (PA)  
**Complainant:** FEC initiated  
**Subject:** Excessive contributions  
**Disposition:** (a)-(b) Reason to believe but took no further action (sent admonishment letters) ♦



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