

Record

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Table of Contents

- 1 **Message from the Chairman**
 - Commissioners**
 - 2 1994 Officers Elected
 - Conferences**
 - 2 FEC to Hold Three Conferences
 - Compliance**
 - 3 FEC Prioritizes Enforcement Cases
 - 3 MUR 3309: Dole's 1988 Presidential Campaign Pays \$100,000 Penalty
 - 4 MURs Released to the Public
 - Reports**
 - 4 Reports Due in 1994
 - Court Cases**
 - 12 LaRouche v. FEC
 - 12 FEC v. NRSC
 - 12 New Litigation
 - Regulations**
 - 12 Hearing Scheduled on Personal Use Rules
 - 13 Comments Sought on Use of Candidate's Name
 - 13 **Advisory Opinions**
 - 13 **Federal Register**
 - 800 Line**
 - 14 Registration by Candidates and Their Committees
 - 15 **Index**

FEC Closes 137 Cases Under Enforcement Prioritization System

Story on page 3.

Message from Trevor Potter, Chairman

Nineteen ninety-four will be an unusually important year for the Federal Election Commission.

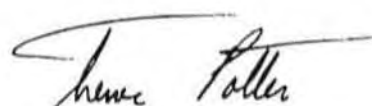
Evidence from recent campaign cycles suggests that the midterm Congressional elections will produce another record year of reportable campaign activity. The personnel and resources of the FEC's information, public records and reports analysis divisions will be stretched to the limit as we attempt to handle a rising workload.

As a result of the recent reorganization of our enforcement caseload, the Commission will deal with allegations of major election law violations on a priority basis. (More about this on page 3.) The Commission anticipates continuing litigation over the effect of *FEC v. NRA Political Victory Fund*, the recent D.C. Circuit decision declaring unconstitutional the presence of the Clerk of the House and the Secretary of the Senate as *ex officio* members of the Commission. This decision called into question enforcement actions taken while representatives of the *ex officio* members were present at the Commission.

The Commission's FY '95 budget request, currently before the President and Congress, asks for funds to provide the Commission with much needed additional staff and with an electronic filing capability. Direct filing would be a significant step toward simplifying the workload of reporting committees and the Commission. It would also speed public disclosure of both contributions and disbursements, which is an important goal of the federal election laws.

Finally, both the House and Senate have approved versions of new campaign finance legislation, which will now go to a conference committee. If legislation were enacted in 1994, it would be the first major change in campaign finance legislation in 15 years. It would also inevitably result in a significant increase in the Commission's workload, whether the effective date were 1994 or 1996.

In the midst of all these challenges, the Federal Election Commission looks forward to working with you. Our staff is committed to assisting you in fulfilling your filing obligations, as well as helping you understand all of the complexities of the federal election laws. We stand ready to provide information about the changing requirements of the law and regulations. Our goal continues to be to accomplish the mission of the Federal Election Commission in a timely and professional manner.



Commissioners

1994 Officers Elected

On December 15, 1993, the Commission unanimously elected Trevor Potter as FEC Chairman and Danny L. McDonald as Vice Chairman. Mr. Potter, who served as 1993 Vice Chairman, succeeds Scott E. Thomas as Chairman.

Mr. Potter was confirmed by the Senate as a Commissioner in November 1991. During his first years in office, he has served as Chairman of the Commission's Finance Committee and Chairman of its Regulations Task Force.

Before his appointment, Mr. Potter specialized in campaign and election law as a partner in a Washington, D.C. law firm. His previous experience in government included 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.

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Commissioner
Scott E. Thomas, Commissioner
John C. Surina, Staff Director
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Published by the Information
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Mr. Potter is a graduate of Harvard College. He earned his J.D. degree at the University of Virginia School of Law, where he served as Editor-in-Chief of the Virginia Journal of International Law. He is currently Chairman of the American Bar Association Committee on Election Law, Administrative Law Section. Mr. Potter is a resident of Fauquier County, Virginia.

Mr. McDonald was first appointed to the Commission in 1981 and was reappointed in 1987.

Before his original appointment, Mr. McDonald managed 10 regulatory divisions as the general administrator of the Oklahoma Corporation Commission. He had previously served as secretary of the Tulsa County Election Board and as chief clerk of the board. He was also a member of the Advisory Panel to the FEC's National Clearinghouse on Election Administration.

A native of Sand Springs, Oklahoma, Mr. McDonald graduated from Oklahoma State University and attended the John F. Kennedy School of Government at Harvard University. He served as FEC Chairman in 1983 and 1989. ♦

Conferences

FEC to Hold Three Conferences in 1994

The FEC will hold three campaign finance conferences this year in Washington, New Orleans and Pittsburgh. These conferences offer basic and advanced workshops on the federal campaign finance law and provide an opportunity to discuss problems and questions with FEC Commissioners and staff.

For more information, or to place your name on the mailing list for registration materials, call the FEC: 800/424-9530 or 202/219-3420.

Please note that placing your name on the mailing list does not mean that you are registered for a conference. Registration materials for conferences must be submitted by the deadlines specified in the registration packets.

Candidate Conference in Washington, D.C.

The Washington conference is designed to help candidates and campaign staff comply with the federal election laws. In addition, representatives from the Internal Revenue Service (IRS), the U.S. Merit System Protection Board and the Congressional ethics committees will brief attendees on the applicable tax laws, the Hatch Act and House and Senate rules, respectively.

The day-long conference will be held February 11, at the Washington Hilton and Towers, 1919 Connecticut Avenue, NW, Washington, DC 20009 (202/797-5820). To receive the group rate of \$125 per night for a single room, notify the hotel that you will be attending the FEC conference.

The \$105 conference registration fee covers materials and two meals (continental breakfast and lunch).

New Orleans and Pittsburgh Regional Conferences

The New Orleans and Pittsburgh conferences will include workshops for candidates, PACs and party committees. Each 1½ day conference will feature FEC Commissioners and staff, and tax experts from the IRS.

The New Orleans conference will be held March 14-15, at the Omni Royal Orleans. The Pittsburgh conference is set for April 28-29, at the Pittsburgh Vista Hotel. (Additional details will appear in future issues of the *Record*.) ♦

Enforcement

FEC Prioritizes Enforcement Cases

Faced with an insurmountable enforcement backlog, the FEC has launched a prioritization system designed to resolve significant cases more quickly.

In the past, the Commission attempted to pursue every enforcement case on its docket. As the number and complexity of cases increased, a backlog developed, jeopardizing the agency's ability to enforce the law effectively. In response, the Commission has developed an enforcement prioritization system.

Under the new system, the Commission ranks enforcement cases, based on specific criteria, to ensure that the agency devotes its limited resources to the more significant cases on the docket. The agency pursues only as many cases as its enforcement staff can actively and efficiently investigate at one time. Using this prioritization system, the Commission anticipates that, depending upon when a complaint is filed, higher-priority cases will be resolved within an election cycle, while cases that do not warrant further consideration will be closed.

The Office of General Counsel (OGC) assists the Commission in carrying out the prioritization process. It evaluates all incoming enforcement cases, according to Commission-approved criteria, and then assigns cases to staff based on their priority. Less significant cases are either held until staff become available or, in some cases, recommended for closure. The OGC delivers periodic status reports to the Commission so that it can monitor the process to ensure that decisions regarding the priority of cases are reasoned, objective and consistent.

As part of the prioritization process, the Commission voted on December 9 to take no further action on 137 enforcement cases and nine enforcement referrals from its Reports Analysis Division. The closed cases fell into two broad categories: those which were relatively insignificant compared with other pending cases and those that were stale, meaning the activity occurred prior to the 1990 election cycle.

In explaining the Commission's action, Chairman Scott E. Thomas said that the agency "cannot, and should not, attempt to fully investigate and resolve each and every one of the hundreds of cases that come before [it]. Law enforcement agencies at every level of government often use their prosecutorial discretion in selecting the cases they can prosecute."

Among the factors the Commission uses to prioritize cases are: the presence of knowing and willful intent; the apparent impact the alleged violation had on the electoral process; the amount of money involved; the age and timing of the violation; and whether a particular legal area needs special attention.

While prioritization will mean that the Commission does not pursue some cases, Chairman Thomas explained that the system "will better enable the FEC to work on a wide range of cases at all times." He cautioned, "No one should assume that any particular type of violation will be overlooked."

In a related move, the Commission announced that it will seek higher civil penalties when serious violations are found. "If paying civil penalties was considered a cost of doing business in the past, that will change," Chairman Thomas said.

To obtain a copy the 50-page press release detailing the Commission's actions, contact the Public Disclosure Division at 202/219-4140 or 800/424-9530. ♦

MUR 3309 Dole's 1988 Presidential Campaign Pays \$100,000 Penalty

In MUR 3309, Senator Robert Dole's 1988 Presidential campaign committee, his leadership PAC and 11 other respondents entered into conciliation agreements with the Federal Election Commission. The respondents agreed to pay civil penalties totaling nearly \$123,000 for violations discovered during the Commission's audit of the campaign. The Dole for President Committee (the campaign committee) and Campaign America (Senator Dole's leadership PAC) agreed to pay civil penalties of \$100,000 and \$12,000, respectively. The campaign committee also agreed to refund more than \$104,000 in excessive and prohibited contributions either to the contributors or to the U.S. Treasury.

Excessive Contributions

During 1986 and 1987, Campaign America spent more than \$47,000 on "testing-the-waters" activities in Iowa and New Hampshire. Under 11 CFR 100.7(b)(1), payments made to "test the waters" for a future candidacy are not considered contributions. Once candidacy is declared, however, the payments become reportable campaign contributions, subject to statutory limits and prohibitions. Since Campaign America could legally contribute only \$5,000 to Senator Dole's Presidential campaign, it exceeded its contribution limit by more than \$42,000, and the campaign knowingly accepted the in-kind contributions. 2 U.S.C. §§441a(a)(2)(A) and 441a(f). The campaign agreed to refund the excessive amount.

The Dole for President Committee also knowingly accepted excessive contributions from individuals, partnerships and political committees totaling more than \$251,000. At

(continued on page 4)

Enforcement

(continued from page 3)

the time the conciliation agreement was signed, July 7, 1993, the committee had refunded all but \$3,000 of this sum, and agreed to refund the rest.

Prohibited Corporate Contributions

The Dole for President Committee knowingly accepted direct and in-kind contributions from several corporations in violation of 2 U.S.C. §441b. Of the \$64,000 total, the campaign committee had refunded \$7,200 at the time of the agreement, and agreed to refund the remaining \$56,800.

The campaign also failed to pay, in advance, for the use of corporate aircraft, in violation of 11 CFR 114.9(e). That regulation requires advance payment for the use of corporate aircraft, at either the first class air fare for travel between cities served by commercial airlines or the charter rate for cities that are not linked by commercial service. As of July 1993, the campaign had reimbursed the corporations involved. One payment, however, was nearly \$2,500 less than the amount owed. The committee agreed to reimburse that corporation.

Excessive Expenditures

The campaign committee exceeded the state spending limits in Iowa and New Hampshire by a total of more than \$588,000. The state expenditure limits, which are based on a state's voting-age population, apply to all Presidential candidates that accept primary matching funds. 2 U.S.C. §441a(b).

Legal and Accounting Compliance Fund

The campaign committee deposited nearly \$119,000 into a legal and accounting compliance fund to be used if the candidate had become the party's nominee in the general election. 11 CFR 9003.3(a). When

the candidate failed to receive the nomination, the committee had sixty days to refund the contributions or to have the contributors redesignate the contributions to another election. 11 CFR 102.9(e). The committee did not complete this process within sixty days, but did make the necessary refunds in January 1991.

Delegate Activity

Finally, the campaign committee failed to disclose the financial activity of eighteen authorized delegate committees. Under 11 CFR 104.3(f), a principal campaign committee must file a special consolidated report disclosing the receipts and disbursements of all committees authorized by the same candidate. ♦

MURs Released to the Public

Listed below is an FEC enforcement case (Matter Under Review or MUR) recently released for public review. The information is based on the FEC press release of December 3, 1993. Files on closed MURs are available for review in the Public Records Office.

MUR 3607

Respondents: (a) Robert W. Kasten, Jr. (WI); (b) Kasten for Senate Committee, Inc., James Behrend, treasurer (WI); (c) Northwest Airlines, Inc. (MN)

Complainant: Paul W. Wallig (DC)
Subject: Corporate in-kind contributions

Disposition: (a)-(c) No reason to believe ♦

Reports

Reports Due in 1994

This article on filing requirements for election year 1994 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 reporting forms, call the FEC: 800/424-9530 or 202/219-3420.

All Committees: Year-End Reports Covering 1993 Activity

All committees must file a 1993 year-end report due January 31, 1994.

Authorized Committees of Candidates

1994 House and Senate Candidates. Authorized committees of 1994 House and Senate candidates file the following reports:

- Quarterly reports;¹
- A pre-primary report;²
- Pre- and post-general election reports (if the candidate participates in the general election); and
- 48-hour notices on contributions of \$1,000 or more received after the 20th day, but more than 48 hours, before the day of each election in which the candidate participates.

¹ Note that an authorized committee of a 1994 candidate must file on a quarterly basis in 1994 even if the candidate withdraws before participating in the primary. However, such a committee would not have to file a pre-primary report (or other election reports) unless the candidate's name remained on the ballot.

² A pre-convention report is required only if the convention has authority to nominate. See 11 CFR 100.2(e).

These notices are due within 48 hours of the committee's receipt of the contribution. 11 CFR 104.5(a)(1) and (f).³

Note: Committees are required to file election reports and 48-hour notices even if the candidate is unopposed in the election. Moreover, these reporting requirements still apply even if a primary or general election is not held because the candidate is unopposed or received a majority of votes in the previous election. However, no report is required for a primary election that is not held because the candidate was nominated by a caucus or convention, for which a pre-election report would have already been filed. See 11 CFR 110.1(j).

Other House and Senate Candidates. Committees authorized by House and Senate candidates who ran or intend to run in a year other than 1994 file on a semiannual basis. 11 CFR 104.5(a)(2).

Presidential Candidates. All committees authorized by Presidential candidates must file on either a monthly or a quarterly schedule. 11 CFR 104.5(b)(2). A Presidential committee wishing to change its filing schedule should notify the Commission in writing.

PACs and Party Committees

PACs (separate segregated funds and nonconnected committees) and party committees that filed on a semiannual basis during 1993 now file on a quarterly basis. Monthly filers continue on the monthly

(continued on page 6)

1993 Year End Report

Note: All committees file this report.

Report	Period Covered	Filing Date ¹
Year-End	Closing date of last report through 12/31/93	January 31, 1994

1993 Monthly Reports

Report	Period Covered	Filing Date ¹
January	January 1-31	February 20
February	February 1-28	March 20
March	March 1-31	April 20
April	April 1-30	May 20
May	May 1-31	June 20
June	June 1-30	July 20
July	July 1-31	August 20
August	August 1-31	September 20
September	September 1-30	October 20
Pre-General ²	Oct. 1-Oct. 19	October 27
Post-General	Oct. 20- Nov. 28	December 8
Year-End	Nov. 29-Dec. 31	January 31, 1995

1994 Quarterly Reports

Report	Close of Books	Filing Date ¹
1st Quarter	March 31	April 15
2nd Quarter	June 30	July 15
3rd Quarter	September 30	October 15
Year-End	December 31	January 31, 1995

Pre- and Post-Election Reports for November 8 General Election

Report	Close of Books	Filing Date ¹
Pre-General ²	October 19	October 27
Post-General	November 28	December 8

¹ Reports sent by registered or certified mail must be postmarked by the filing date (except in the case of the pre-general election report; see footnote 2). Reports sent by other means must be received by the filing date. 11 CFR 104.5(e).

² If sent by registered or certified mail, the pre-general must be postmarked by October 24.

³ Since 48-hour notices do not have to be signed by the treasurer, they may be sent by mailgram, telegram or telefacsimile (fax) machine in order to meet the 48-hour requirement. AO 1988-32. The fax numbers for the Clerk of the House and the Secretary of the Senate are: House—202/225-7781; Senate—202/224-1851. Note: Other reports and statements may not be faxed.

Reports

(continued from page 5)

schedule. PACs and party committees may, however, change their filing schedule, as explained later in this section.

Note that all PACs, whichever schedule they follow, are subject to the 24-hour filing requirement for last-minute independent expenditures (also explained later).

Quarterly Filers. A PAC or party committee that files on a quarterly basis must additionally file a post-general election report. 11 CFR 104.5(c)(1)(i) and (iii).

Quarterly filers may also have to file pre-convention, pre-primary, pre-runoff and pre-general election reports. The requirement to file a pre-election report is triggered if the committee makes a contribution or expenditure in connection with the election during the applicable reporting period. 11 CFR 104.5(c)(1)(ii). A reporting period begins the day after the close of books for the last report filed and continues through the close of books for the pre-election report.

Note that, although the FEC sends committees notices of upcoming reporting deadlines for quarterly reports and general election reports, the agency does not send PACs and party committees pre-election reporting notices for Congressional conventions, primaries or runoffs.

Monthly Filers. Unlike quarterly filers, PACs and party committees filing on a monthly basis do not file pre-election reports for conventions, primaries or runoff elections. They must, however, file pre- and post-general election reports, which are filed in lieu of monthly reports otherwise due in November and December. 11 CFR 104.5(c)(3).

Changing the Filing Schedule. PACs and party committees filing on a quarterly schedule may change to a monthly schedule in order to avoid having to file pre-convention, pre-primary and pre-runoff reports.

The committee must first notify the Commission in writing. The notification should accompany a report filed under the committee's current reporting schedule. A committee may change its filing frequency only once a year. 11 CFR 104.5(c).

24-Hour Reports on Independent Expenditures. Any PAC (including a monthly filer) that makes independent expenditures in connection with any election (convention, primary, runoff, general) may have to file a 24-hour report. This report is required when a committee makes independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours, before the day of the election. The report must be filed within 24 hours after the expenditure is made. For more information on the 24-hour reporting requirement, see 11 CFR 104.4(b) and (c) and 104.5(g). See also "Where to File" (below) for special filing requirements.

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 Detailed 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 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 also file a copy of every report and statement (including 48-hour notices) with the filing office of the state in which the candidate seeks election. 2 U.S.C. §439(a)(2)(B); 11 CFR 108.3.

Presidential Candidate Committees. Principal campaign committees of Presidential candidates file with the FEC. 11 CFR 105.3.

The principal campaign committee must also file a copy of each report and statement with the filing office of each state in which the committee makes expenditures. 2 U.S.C. §439(a)(2)(A); 11 CFR 108.2.

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, exceptions:

- Committees supporting only House candidates file with the Clerk of the House;
- Committees supporting only Senate candidates file with the Secretary of the Senate; and
- PACs file 24-hour notices disclosing independent expenditures on behalf of House and Senate candidates with the Clerk of the House and the Secretary of the Senate, as appropriate. 11 CFR 104.4(c) and 104.5(g).

PACs and party committees must also file a copy of each statement and report with the appropriate state filing office:

- Committees making contributions or expenditures in connection with House and Senate candidates 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 (e.g., the Form 3 Detailed Summary Page and the schedule showing the contribution or expenditure). 2 U.S.C. §439(a)(2)(B); 11 CFR 108.3. ♦

Guide to 1994 Reporting

(All committees must also file a 1993 year-end report, due January 31, 1994)

Required Reports

Type of Filer	Semiannual	Quarterly	Monthly	Pre-Primary ¹	Pre-General	Post-General
House and Senate Campaigns of 1994 Candidates		✓		✓	✓	✓
	required only if candidate runs in election					
Other House and Senate Campaigns	✓					
Presidential Campaigns ²		✓	or ✓			
PACs and Party Committees Filing Monthly			✓		✓	✓
	filed in lieu of November and December monthly reports					
PACs and Party Committees Filing Quarterly ³		✓		✓	✓	✓
	required only if committee makes contributions or expenditures in connection with election during the reporting period ⁴					
	required regardless of activity					

(reporting tables continued on page 8)

¹ Category also includes pre-convention and pre-runoff reports.

² Presidential committees that wish to change their filing frequency during 1994 should notify the Commission in writing.

³ PACs and party committees that filed on a semiannual basis in 1993 file on a quarterly basis in 1994. To avoid the need to file pre-primary and pre-runoff reports, these committees may change to monthly filing if they first notify the Commission in writing. Committees may change filing frequency only once a year. 11 CFR 104.5(c).

⁴ A reporting period begins with the close of books for the last report filed and ends with the closing date for the applicable report.

Pre-Election Reporting Dates: 1994 Primary and Runoff Elections

State or Territory	Election Day	Close of Books ¹	Registered/Certified Mailing Date ²	Filing Date ²
Alabama	June 7 Runoff: June 28	May 18 June 8	May 23 June 13	May 26 June 16
Alaska	August 23	August 3	August 8	August 11
American Samoa ³	November 8 Runoff: November 22	October 19 November 2	October 24 November 10 ⁴	October 27 November 10
* Arizona	September 13	August 24	August 29	September 1
Arkansas	May 24 Runoff: June 14	May 4 May 25	May 9 May 30 ⁵	May 12 June 2
* California	June 7	May 18	May 23	May 26
Colorado	August 9	July 20	July 25	July 28
* Connecticut ⁶	September 13	August 24	August 29	September 1
* Delaware	September 10	August 21	August 26	August 29
District of Columbia	September 13	August 24	August 29	September 1
* Florida	September 6 Runoff: October 4	August 17 September 14	August 22 September 19	August 25 September 22

* States holding 1994 Senate elections.

¹ This date indicates the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered and, if applicable, before the individual became a candidate.

² Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

³ In American Samoa, if a runoff is not held, the November 8 election is considered the general election, and a post-general election report is therefore required. If a runoff is held, the November 22 election is considered the general election, with the post-general reporting dates as follows: close of books, December 12; mailing/filing date, December 22.

⁴ The mailing date is the same as the filing date because the computed mailing date would fall one day before the primary was held.

⁵ Note that the last day for a registered/certified postmark is a federal holiday, when post offices are closed. The report should therefore be postmarked before that date.

⁶ In Connecticut, each party will hold a convention that has the authority to nominate a candidate; pre-convention reporting is therefore required. If a candidate is so nominated at a convention, and the nomination is not challenged, the nominee does not participate in the primary and has no contribution limit or reporting requirements for the primary. 11 CFR 110.1(j)(4); see also AO 1982-49.

With respect to the Senate race, the Democrats will nominate their candidate on July 16; the pre-convention reporting dates are as follows: close of books, June 26; registered/certified mailing date, July 1; filing date, July 4, a federal holiday. (Filing deadlines are not extended when they fall on nonworking days; the report should therefore be received by the appropriate filing offices on July 1 or postmarked by that date, if sent by registered or certified mail.) The pre-convention reporting dates for the selection of the Republican Senatorial nominee on July 23 are: close of books, July 3; registered/certified mailing date, July 8; filing date, July 11. The nomination dates for House candidates are not yet available.

State or Territory	Election Day	Close of Books ¹	Registered/Certified Mailing Date ²	Filing Date ²
Georgia	July 19 Runoff: August 9	June 29 July 20	July 4 ³ July 25	July 7 ⁴ July 28
Guam	September 3	August 14	August 19	August 22
*Hawaii	September 17	August 28	September 2	September 5 ⁵
Idaho	May 24	May 4	May 9	May 12
Illinois	March 15	February 23	February 28	March 3
*Indiana	May 3	April 13	April 18	April 21
Iowa ⁶	June 7	May 18	May 23	May 26
Kansas	August 2	July 13	July 18	July 21
Kentucky	May 24	May 4	May 9	May 12
Louisiana	October 1 General: ⁷ November 8	September 11 October 19	September 16 October 24	September 19 October 27
*Maine	June 14	May 25	May 30 ³	June 2
*Maryland	September 13	August 24	August 29	September 1
*Massachusetts	September 20	August 31	September 5 ³	September 8
*Michigan	August 2	July 13	July 18	July 21
*Minnesota	September 13	August 24	August 29	September 1

* States holding 1994 Senate elections.

(continued on page 10)

¹ This date indicates the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered and, if applicable, before the individual became a candidate.

² Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

³ Note that the last day for a registered/certified postmark is a federal holiday, when post offices are closed. The report should therefore be postmarked before that date.

⁴ The July quarterly report is waived for committees filing the Georgia pre-primary report. See 11 CFR 104.5(a)(1)(iii)(C) and (c)(1)(i)(C).

⁵ Note that the filing date is a federal holiday. Because filing dates are not extended when they fall on nonworking days, the report should be received by the appropriate filing offices by September 2, the Friday before (or sent by registered or certified mail and postmarked by that date).

⁶ In Iowa, a party may, under certain circumstances, have the option of holding a convention to nominate a candidate for the general election. In that case, a pre-convention report would be required instead of a pre-primary report.

⁷ A post-general election report is also required. Note that if a candidate is unopposed in the general election, his or her committee nevertheless has a contribution limit for the general and is required to file pre- and post-general election reports. 11 CFR 110.1(j)(3) and AO 1984-54.

State or Territory	Election Day	Close of Books ¹	Registered/Certified Mailing Date ²	Filing Date ²
*Mississippi	June 7 Runoff: June 28	May 18 June 8	May 23 June 13	May 26 June 16
*Missouri	August 2	July 13	July 18	July 21
*Montana	June 7	May 18	May 23	May 26
*Nebraska	May 10	April 20	April 25	April 28
*Nevada	September 6	August 17	August 22	August 25
New Hampshire	September 13	August 24	August 29	September 1
*New Jersey	June 7	May 18	May 23	May 26
*New Mexico	June 7	May 18	May 23	May 26
*New York	September 13	August 24	August 29	September 1
North Carolina	May 3 Runoff: May 31	April 13 May 11	April 18 May 16	April 21 May 19
*North Dakota	June 14	May 25	May 30 ³	June 2
*Ohio	May 3	April 13	April 18	April 21
Oklahoma	August 23 Runoff: September 20	August 3 August 31	August 8 September 5 ³	August 11 September 8
Oregon	May 17	April 27	May 2	May 5
*Pennsylvania	May 10	April 20	April 25	April 28
Puerto Rico	Resident Commissioner to be elected in 1996.			
*Rhode Island	September 13	August 24	August 29	September 1
South Carolina	June 14 Runoff: June 28	May 25 June 8	May 30 ³ June 16 ⁴	June 2 June 16
South Dakota	June 7 Runoff: June 21	May 18 June 1	May 23 June 9 ⁴	May 26 June 9

*States holding 1994 Senate elections.

¹ This date indicates the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered and, if applicable, before the individual became a candidate.

² Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

³ Note that the last day for a registered/certified postmark is a federal holiday, when post offices are closed. The report should therefore be postmarked before that date.

⁴ The mailing date is the same as the filing date because the computed mailing date would fall one day before the primary was held.

State or Territory	Election Day	Close of Books ¹	Registered/Certified Mailing Date ²	Filing Date ²
*Tennessee	August 4	July 15	July 20	July 23 ³
*Texas	March 8 Runoff: April 12	February 16 March 23	February 21 ⁴ March 28	February 24 March 31
*Utah ⁵	June 28	June 8	June 13	June 16
*Vermont	September 13	August 24	August 29	September 1
*Virginia ⁶	June 14	May 25	May 30 ⁴	June 2
Virgin Islands	September 13	August 24	August 29	September 1
*Washington	September 20	August 31	September 5 ⁴	September 8
*West Virginia	May 10	April 20	April 25	April 28
*Wisconsin	September 13	August 24	August 29	September 1
*Wyoming	August 16	July 27	August 1	August 4

* States holding 1994 Senate elections.

¹ This date indicates the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered and, if applicable, before the individual became a candidate.

² Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

³ Note that the filing date is a Saturday. Because filing dates are not extended when they fall on nonworking days, the report should be received by the appropriate filing offices by July 22, the Friday before.

⁴ Note that the last day for a registered/certified postmark is a federal holiday, when post offices are closed. The report should therefore be postmarked before that date.

⁵ In Utah, pre-convention reporting is required for the Democratic and Republican conventions on May 7. (The pre-convention reporting dates are as follows: close of books, April 17; registered/certified mailing date, April 22; filing date, April 25). A candidate receiving at least 70 percent of the convention vote becomes the party's nominee and does not participate in the primary. In that case, the nominee has no contribution limit or reporting requirements for the primary. 11 CFR 110.1(j)(4); see also AOs 1992-25 and 1978-30.

⁶ In Virginia, each party within a Congressional District decides whether to hold a primary or a convention. If a convention is held, pre-convention reporting is required. Information on convention dates for Congressional races is not yet available. With respect to the Senate races, the Democrats will hold a primary on June 14 (reporting dates shown in table). The Republicans, however, will hold a convention to nominate their candidate on June 4. The pre-convention reporting dates are as follows: close of books, May 15; registered/certified mailing date, May 20; filing date, May 23.

Court Cases

LaRouche v. FEC (92-1100)

The Supreme Court, without comment, refused to review an appeals court decision that directed the FEC to certify matching funds to Lyndon LaRouche, Jr., for his 1992 Presidential primary campaign.

The Commission had denied Mr. LaRouche matching funds based on his past abuses of the public funding law and his conviction for mail fraud, including fraudulent fundraising. In addition, the Commission had cited its obligation to ensure that tax money was not misused.

The Court of Appeals for the District of Columbia Circuit concluded that the Commission did not have statutory authority to deny matching funds to Mr. LaRouche. (992 F.2d 1263 (D.C. Cir. 1993).) (For a summary of that decision, see the September 1993 *Record*.) ♦

FEC v. NRSC (93-1612)

On November 24, 1993, the U.S. District Court for the District of Columbia dismissed a suit the Commission had filed against the National Republican Senatorial Committee (NRSC).

The court cited the recent appeals court decision in *FEC v. NRA Political Victory Fund*, No. 91-5360 (D.C. Cir. Oct. 22, 1993) as the basis for its action. In that case, the appeals court held that the presence of two Congressionally-appointed ex officio members on the Commission violated the Constitution's separation of powers. (For a summary of the appeals court decision, see the December 1993 *Record*.)

The district court did not address the merits of the *NRSC* case, which involved allegedly excessive contributions made by the NRSC to a 1986 Nevada Senate candidate. (For a summary of the case, see the June 1993 *Record*.)

On December 2, 1993, the Commission moved for reconsideration of the district court's order. ♦

New Litigation

FEC v. Larry Williams

The FEC asks the court to assess civil penalties against Larry Williams for making prohibited contributions in the names of others, and for exceeding his individual contribution limit by more than \$26,000.

The case stems from an FEC enforcement matter that was not resolved through the statutorily-prescribed conciliation process. 2 U.S.C. §437g(a)(4)(A).

The Commission found probable cause to believe that Mr. Williams violated 2 U.S.C. §441f by reimbursing 22 individuals for contributions they had made to the 1988 Jack Kemp for President Committee and Victory '88, a joint fundraising committee supporting Mr. Kemp's candidacy. Those reimbursements, combined with Mr. Williams' own contributions to the Kemp campaign (including a \$4,000 purchase of Super Bowl tickets that were offered in exchange for contributions to the campaign), exceeded the \$1,000 statutory limit on individual contributions by more than \$26,000. 2 U.S.C. §441a(a)(1)(A).

Since the Commission found that both violations were knowing and willful, Mr. Williams faces possible civil penalties equal to 200 percent of the amount involved, for each violation. 2 U.S.C. §437g(a)(6)(C).

In addition to requesting the civil penalties, the FEC asks the court to permanently enjoin Mr. Williams from further similar violations and to award the Commission its costs in the action.

U.S. District Court for the Central District of California, Case No. 93-6321, October 18, 1993.

Center for Responsive Politics v. FEC

Pursuant to 2 U.S.C. §437g, the Center for Responsive Politics asks the court to declare that the FEC's failure to act on three complaints it filed is unreasonable and contrary to law. The Center further asks the court to order the agency to respond to the complaints, within 30 days, either by executing conciliation agreements with the respondents or by filing suits against them. The Center also asks the court to award it costs and attorneys' fees.

The three complaints—filed respectively in November 1990, April 1991 and June 1991—allege that respondents violated 2 U.S.C. §441a by making contributions in excess of the statutory limits.

U.S. District Court for the District of Columbia, Civil Action No. 93-2250, October 29, 1993. ♦

Regulations

Hearing Scheduled on Personal Use Rules

The FEC will hold a public hearing January 12, 1994, on its proposed rules governing candidates' personal use of campaign funds. (For a summary of the proposed rules, see the October 1993 *Record*.)

Candidates have long been prohibited from using campaign funds for personal expenses. However, until the beginning of the 103d Congress, many members of Congress were exempted from this ban. Consequently, the Commission was rarely called upon to address the issue of personal use. At the beginning of the 103d Congress, the ban became applicable to all candidates' funds. For this reason, the Commission anticipates that a greater number of questions may arise in this area.

Under the proposed rules, expenses that would exist regardless of the campaign or the candidate's responsibilities as a federal officeholder would be considered personal. The proposed rules offer examples of the types of expenses that would fall into this category. ♦

Comments Sought on Use of Candidate's Name

The Commission invites comments on a proposed change in its regulations that would allow an unauthorized political committee (i.e., a committee not authorized by a specific candidate) to use a candidate's name in the title of any special project or other communication, if the title clearly indicated opposition to the named candidate by using words such as "defeat" or "opposed." Under current rules, any use of a candidate's name in such titles is prohibited.¹

The proposal was published in the Federal Register on December 15, and comments are due by January 31. (58 FR 65559.) ♦

Advisory Opinions

AO 1993-19 Retiring 1984 Presidential Debt

Presidential candidates who accept public funding must agree not to spend more than \$50,000 of their personal funds in connection with the campaign. 26 U.S.C. §9035; 11 CFR 9035.2. As a one-time exception to this rule, the

Commission voted to permit Senator John Glenn to contribute unlimited amounts of his personal funds to retire a debt from his 1984 Presidential campaign.

In waiving the personal funds limit, the Commission noted "the truly singular situation presented" by the Glenn campaign:

- Nearly ten years has passed since the debt was incurred;
- The obligation is large (approximately \$3.25 million); and
- Fundraising efforts to retire the debt have been largely unsuccessful.

In addition to his personal funds, Senator Glenn may also transfer excess funds from his Senatorial campaign committee to retire the Presidential debt. (The Commission sanctioned such transfers in AO 1987-4, and approved similar transfers in its audit repayment decision concerning the Gephardt for President Committee.)¹ Transferred funds, however, must consist of contributions that were raised for the Senate campaign, not to retire the Presidential debt.

Senator Glenn's Presidential committee may not accept contributions from donors who already gave the maximum amount to the 1984 campaign. The Commission has consistently applied the statute's per-election limits to contributions made to retire debts, and found no basis for granting an exception in this case. See 11 CFR 110.1(g) and AOs 1990-17, 1985-2, 1983-39 and 1982-64.

Date Issued: November 15, 1993; Length: 5 pages. Commissioner Joan D. Aikens submitted a concurring opinion (2 pages). ♦

Advisory Opinion Requests

The advisory opinion requests (AORs) listed below are available for review and comment in the FEC's Public Records Office.

AOR 1993-22

Use of excess campaign funds transferred by principal campaign committee to nonconnected committee of former candidate. (Robert A. Roe; November 16, 1993; 2 pages)

AOR 1993-23

Affiliation between SSFs sponsored by a corporation and its "spin-off" subsidiary. (Pacific Telesis Group; November 18, 1993; 9 pages plus attachments) ♦

Federal Register

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

1993-31

11 CFR Part 112: Revision to Advisory Opinion Comment Procedure (58 FR 62259, November 26, 1993)

1993-32

11 CFR Parts 100 and 113: Expenditures; Personal Use of Campaign Funds; Notice of Hearing (58 FR 64190, December 6, 1993)

1993-33

11 CFR Part 102: Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees; Notice of Proposed Rulemaking (58 FR 65559, December 15, 1993)

¹The proposed rules would not affect the ban on the use of a candidate's name in the name of an unauthorized committee.

¹For a summary of the Gephardt decision, see the December 1992 Record.

800 Line

Registration by Candidates and Their Committees

This article explains when candidates and their principal campaign committees (and other authorized committees) are required to register with the FEC. The requirements apply both to new candidates and to candidates who have run in a previous election and are seeking election in 1994 or a future election.

Note: Registration with the FEC does not mean that the individual has qualified for the ballot. Ballot access requirements are governed by state law; for information, consult the state authority (generally, the secretary of state's office).

Candidate Designation of Principal Campaign Committee

Individuals running for federal office must designate a principal campaign committee within 15 days of becoming a "candidate." 11 CFR 101.1(a) and 102.12(a). This requirement applies to candidates who have never run before and to candidates in previous elections who have qualified as candidates for a future election.

Definition of Candidate. An individual becomes a candidate when the individual and persons authorized to conduct campaign activity on his or her behalf receive over \$5,000 in contributions or make over \$5,000 in expenditures. 11 CFR 100.3(a)(1) and (2).

Unauthorized campaign activity on behalf of a candidate may also trigger candidate status unless the individual disavows the activity by writing a letter to the FEC within 30 days after being notified by the agency that unauthorized activity reported to the FEC has exceeded \$5,000. 11 CFR 100.3(a)(3) and 102.13(a)(2).

Testing-the-Waters Activity. Funds raised and spent to "test the waters" for a possible candidacy do not count against the \$5,000 registration threshold until the individual decides to run for office or conducts activities that indicate he or she is actively campaigning rather than testing the waters. 11 CFR 100.7(b)(1) and 101.3. (Examples of permissible testing-the-waters activities, and of those activities that indicate an individual has decided to become a candidate are described at 11 CFR 100.7(b)(ii).)

Designation of Committee. Candidates must designate a principal campaign committee by filing a Statement of Candidacy on FEC Form 2 (or a letter containing the same information). Remember, the form must be filed within 15 days after becoming a "candidate." 11 CFR 101.1(a).

Registration by Principal Campaign Committee

Within 10 days after it has been designated by the candidate, the principal campaign committee or other authorized committee must register by filing a Statement of Organization on FEC Form 1. 11 CFR 102.1(a). Please note that the name of the committee must include the candidate's name. 11 CFR 102.14(a).

Candidates Who Ran in Previous Elections

A candidate who ran in 1992 or another previous election must file a new FEC Form 2 within 15 days after qualifying as a candidate for the 1994 election cycle or another future election. The candidate may either designate a new principal campaign committee or redesignate his or her previous principal campaign committee (if it has not terminated). A newly designated committee will receive a new FEC identification number, while a redesignated committee retains its original number.

If the candidate redesignates an existing committee, the committee need only amend its Statement of Organization within 10 days of the redesignation to reflect any new information (e.g., a change in the committee's name or address). The amendment may be filed either by using FEC Form 1 or by writing a letter noting the changes. 11 CFR 102.2(a)(2). Redesignated committees are reminded that, if outstanding debts remain from a previous election, the committee must continue to report the debts as well as contributions that have been designated by contributors to retire them. 11 CFR 104.11; see also 11 CFR 110.1(b)(3) and (4) and 110.2(b)(3) and (4).

Change of Address

Political Committees

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

Other Subscribers

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

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

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

Where to File Forms 1 and 2

U.S. House candidates and their principal campaign committees file their statements and amendments with the Clerk of the House; U.S. Senate candidates and their principal campaign committees file with the Secretary of the Senate. 11 CFR Part 105.

Copies of statements and amendments must also be filed with state officers. House and Senate campaigns file in the state in which the candidate seeks election. 2 U.S.C. §439(a)(2)(B).

Other Authorized Committees

In addition to a principal campaign committee, other authorized committees may be designated by a candidate to receive contributions and make expenditures on his or her behalf. The following steps must be taken:

- The candidate designates the authorized committee by filing an FEC Form 2 (or letter) with the principal campaign committee. 11 CFR 101.1(b) and 102.13(a)(1).
- Within 10 days of being designated by the candidate, the authorized committee must register by filing an FEC Form 1 with the candidate's principal campaign committee. 11 CFR 102.1(b). (The name of the committee must include the candidate's name. 11 CFR 102.14(a).)
- The principal campaign committee, in turn, files both documents (Forms 1 and 2) with the appropriate federal and state offices, as explained above.

Where to Obtain Forms

FEC Forms 1 and 2 may be obtained by calling the FEC (800/424-9530 or 202/219-3420). Staff are also available to answer questions. ♦

Index

The first number in each citation refers to the "number" (month) of the 1994 *Record* issue in which the article appeared. The second number, following the colon, indicates the page number in that issue. For example, "1:4" means that the article is in the January issue on page 4.

Advisory Opinions

1993-19: Retiring 1984 Presidential debt, 1:13

Court Cases

FEC v. _____
 – National Republican Senatorial Committee (93-1612), 1:12
 – Williams, 1:12
 _____ v. FEC
 – Center for Responsive Politics, 1:12
 – LaRouche (92-1100), 1:12

Reports

Schedule for 1994, 1:4

800 Line Articles

Registration by candidates and their committees, 1:14