

Record

March 1996

Federal Election Commission

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Regional Conference in Chicago

April 11-12 at the Drake Hotel, for candidates, party committees, corporations, labor organizations and trade associations; \$150 registration fee (does not include hotel accommodations). Call 800/424-9530 or 202/219-3420 for further information.

Information

The FEC Has a New Address: <http://www.fec.gov>

The FEC now has a "Home Page" and site address on the Internet's World Wide Web, offering the public another FEC access point for information on campaign financing and the election process.

The FEC's Web site address is:

<http://www.fec.gov>

Once at the Home Page, users will find menu options including:

- *Citizens Guide to Contributions and the Law*: This option will offer highlights from various FEC informational brochures and booklets on the Federal Election Campaign Act—valuable tools for students, media, and the general public.
- *Financial Information About Candidates, Parties and PACs*: This option on the menu includes a guide on using the FEC Public Records Office and a description of the FEC's Direct Access Program (DAP). It also contains overviews and summaries of Presidential and Congressional campaigns' financial information for the 1996 election cycle, including charts, graphs and

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Regulations

Public Hearing on Proposed Rules: Candidate Debates Staged by Cable TV Stations

On March 20, 1996, at 10 a.m., the FEC will hold an open hearing to seek public comments on proposed rules regulating the staging of candidate debates by cable television stations. 11 CFR 100.7(b)(2), 100.8(b)(2), 110.13 and 114.4(f). These proposed rules were published in the Federal Register on February 1, 1996 (61 FR 3621).

The proposed rules are part of the rulemaking resulting from the Supreme Court's decision in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986).

The proposed rules would have the following effects:

- Debates sponsored by cable television operators, programmers and producers (stations) would be treated the same as debates sponsored by other broadcast or print media;
- Cable television stations and other news media controlled or owned by a political party, political committee or candidate would continue to be barred from sponsoring candidate debates; and
- Cable television stations would be eligible for the news story expen-

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Information

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tables.¹ Users can access more detailed information on the current election cycle as well as summary information for past cycles at the Commission's File Transfer Protocol (FTP) site.

- *News Releases and Media Advisories*: Statistical releases, policy and procedure news, Sunshine notices of Commission meetings and advisories on a variety of topics can be found here.

Other menu options will be added in upcoming months. ♦

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¹ Only summaries of FEC disclosure reports—not the actual complete reports—are available on the FEC's World Wide Web site.

Federal Election Commission
999 E Street, NW
Washington, DC 20463

800/424-9530
202/219-3420
202/501-3413 (Flashfax Service)
202/219-3336 (TDD)

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Published by the Information
Division

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Dario Bard, Editor

Regulations

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diture exemption under the same terms as other broadcast and print media.

The Commission also seeks comments on whether new rules should make distinctions among cable operators, programmers and producers.

Written comments should be submitted by March 4, 1996, to Susan E. Propper, 999 E Street, NW, Washington, DC 20463. Interested parties are invited to testify at the hearing and should request to do so when they file written comments.

To receive a copy of the Federal Register notice containing the proposed rules, use the FEC's automated Flashfax system; dial 202/501-3413 and request document 233. Alternatively, contact the Public Records Office at 800/424-9530 (option 3 on the main menu) or 202/219-4140. ♦

New Presidential Public Funding Rules Take Effect

The FEC's new rules on the public funding of Presidential campaigns became effective on February 9. See Federal Register Announcement of Effective Date (61 FR 4849, February 9, 1996).

Among the areas affected by these rules are: the audit process for publicly funded Presidential campaigns; General Election Legal and Accounting Compliance Funds; funding general election expenses with primary funds; and travel on government conveyance. See page 3 of the August 1995 *Record* for a more detailed discussion of these changes and a listing of other changes. Alternatively, a free copy of the Federal Register notices on these rules (60 FR 31854, June 16, 1995, and 61 FR 4849, February 9, 1996) may be obtained through Flashfax; call 202/501-3413 and request document 232. ♦

Reports

House Special Elections: Maryland's 7th District and Oregon's 3rd District

Maryland has scheduled a special general election on April 16, and Oregon has scheduled a special primary election on April 2 with a special general election on May 21. These elections are being held to fill the U.S. House seats vacated by Congressmen Kweisi Mfume of Maryland's 7th district and Ron Wyden of Oregon's 3rd district.

The reporting requirements for committees involved with these special elections are outlined in the accompanying tables. Additionally, this article provides information on contribution and coordinated party expenditure limits, and committee transfers.

If you have any questions about special election issues after reading this article, call the FEC at 800/424-9530 or 202/219-3420.

Reporting by Candidate Committees

Candidate committees are required to register and to file financial disclosure reports with the FEC once their campaign activity exceeds \$5,000 in either contributions or expenditures. 2 U.S.C. §431(2). See the *Campaign Guide for Congressional Candidates and Committees*.

Once the \$5,000 threshold is reached, principal campaign committees of candidates seeking to win this special election must file the appropriate reports as shown in the accompanying tables and as discussed below.

Pre- and post-election reports. All participants in Oregon's special primary election must file a pre-primary election report on March 21. Participants in Maryland's March 5 special primary election were advised in the February

Record to file a pre-primary report by February 22.

All participants in the special general elections must file pre- and post-general election reports, per the appropriate table. The April Quarterly report is also required of all active candidate committees, but it is waived for all participants in Maryland's special general election because their pre- and post-general election reports cover the April Quarterly's reporting period.

Forty-eight-hour notices. Principal campaign committees must file 48-hour notices on contributions of \$1,000 or more received between the 20th day and 48 hours before the date of any election in which the candidate participates. The notice must be received by the FEC and the appropriate Maryland and Oregon state election authorities within 48 hours of the campaign's receipt of the contribution.¹ 2 U.S.C. §434(a)(6)(A); 11 CFR 104.5(f).

This requirement applies to all contributions of \$1,000 or more, including: monetary and in-kind contributions; loans (other than bank loans); guarantees and endorsements of bank loans; and contributions, loans and endorsements of bank loans made by the candidate. 2 U.S.C. §431(8)(A); 11 CFR 100.7(a).

For information on the content of the notice, see 11 CFR 104.5(f) and the *Campaign Guide*.

Reporting by Party Committees and PACs

Quarterly filers. Party committees and PACs filing on a quarterly (rather than monthly) basis are required to file pre- and post-special election reports if they make previously undisclosed contributions or expenditures in connection with a

¹ *Forty-eight hour notices are the only FEC reports that may be faxed. Fax numbers: FEC at 202/219-0174; Maryland's Board of Election Laws at 410/974-2019; and Oregon's Secretary of State at 503/373-7414.*

Reporting Dates for Special General Election, Maryland's 7th District, April 16, 1996

	Close of Books *	Reg./Cert. Mailing Date **	Filing Date
Pre-General	March 31	April 5	April 8
Post-General	May 6	May 16	May 16

Reporting Dates for Special Elections, Oregon's 3rd District, Primary on April 2, General on May 21

	Close of Books *	Reg./Cert. Mailing Date **	Filing Date
Pre-Primary	March 13	March 18	March 21
April Quarterly	March 31	April 15	April 15
Pre-General	May 1	May 6	May 9
Post-General	June 10	June 20	June 20

* *The close of books is the end of the reporting period. The period begins with 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.*

** *Reports sent by registered or certified mail are considered to be filed on time if they are postmarked by this date.*

special election by the close-of-books date shown in the reporting tables. 11 CFR 104.5(c)(1)(ii) and (h).

Monthly filers. PACs filing on a monthly basis are not required to file pre- and post-special election reports but may have to file 24-hour reports if they make independent expenditures, as explained below. See 2 U.S.C. §434(a)(9); 11 CFR 104.5(h)(2).

Twenty-Four-Hour Reports on Independent Expenditures

All PACs and persons making independent expenditures may have to file 24-hour reports. This report is required if the committee or person makes independent expenditures aggregating \$1,000 or more between

the 20th day and 24 hours before the date of an election.

The report must be filed within 24 hours after the expenditure is made. For more information, see 11 CFR 104.4(b) and (c) and 104.5(g). See also "Where to File" for special filing requirements.

Where to File

Filing with the FEC. All principal candidate campaign committees, party committees and PACs that participate in these special elections file reports and 48-hour notices with the FEC. Public Law 104-79 and 11 CFR 105.1 and 105.4, and 11 CFR 104.4(c)(3).

Addresses and further filing instructions are provided on the
(continued on page 4)

Reports

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back of Form 3 and Form 3X.

Filing with state authorities.

Copies of all reports and notices filed with the FEC, including 48-hour notices and 24-hour reports, must simultaneously be filed with the appropriate state election authorities: Maryland's Board of Election Laws: P.O. Box 231, Annapolis, 21404-0231, telephone 410/974-3711; and Oregon's Secretary of State, 141 State Capitol, Salem, 97310-0722, telephone 503/986-1518. 2 U.S.C. §439(a)(1) and (a)(2)(B); 11 CFR 108.5.

Party committees and PACs that are active in these special elections must also file copies of their FEC reports with the appropriate state election authorities, but they need only file the portions of their reports applicable to candidates running in the special elections (e.g., the Summary Page and the schedule showing the contribution or expenditure). 2 U.S.C. §439(a)(2)(B).

Contribution Limits and Transfers

Contribution limits. There is a separate contribution limit for each election in which a candidate participates. 11 CFR 110.1(j)(1) and 110.2(i)(1).

Monies left over from a previous federal campaign. Candidates with leftover monies from a previous campaign for federal office may transfer the leftover monies to their special election campaign provided they have fulfilled all of the past campaign's obligations. Such monies may be transferred without redesignations from contributors. Contributions transferred from a past campaign do not count against the contributor's limits for the special election.

Simultaneous campaigns. A candidate simultaneously running

for the same office in one of these special elections and in a regularly scheduled 1996 election may use the same campaign committee for both efforts. Special election contributions do not count against a contributor's limits for the regularly scheduled election. Monies may be transferred from the special election campaign to the other campaign if redesignations from contributors are obtained or if the monies represent leftover funds from the special election campaign.

Candidates simultaneously running in one of these special elections and in a regularly scheduled 1996 election for some other federal office must maintain separate campaign committees. These committees may not transfer contributions from one campaign to the other without first ending one of the campaigns and then obtaining redesignations from the contributors. Redesignated contributions count against the contributor's limit for the election to which they were transferred.

Prohibition on transfers from nonfederal campaigns. Campaigns of candidates participating in special elections should note that transfers from a candidate's nonfederal campaign to his or her federal campaign are prohibited. 11 CFR 110.3(d).

Coordinated Party Expenditure Limits

The national committee of a political party and the party's state committees may make limited coordinated party expenditures in connection with the general election campaign of the party's nominee. 2 U.S.C. §441a(d). The state committee's spending limit is separate from the national committee's limit. 11 CFR 110.7(b)(1).

The coordinated party expenditure limit for 1996 is \$30,910. ♦

Information

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Presidential Candidate Summary Report Available

Persons interested in the financial activity of Presidential primary campaigns may now obtain a two-page report on the receipts and disbursements of campaigns that have reported at least \$100,000 in financial activity. The FEC's Presidential Candidate Summary Report lists total receipts and disbursements by candidate. Each candidate's total receipts and disbursements are also broken down by source and category, respectively. The figures are adjusted to reflect only the actual amounts received and spent. For instance, refunds of contributions are subtracted from the contribution totals, and deposits made by the campaign to secure certain services are subtracted from the spending totals when they are refunded. These adjustments cause the totals on the Presidential Candidate Summary Report to be lower than what the campaigns actually reported on their FEC disclosure forms.

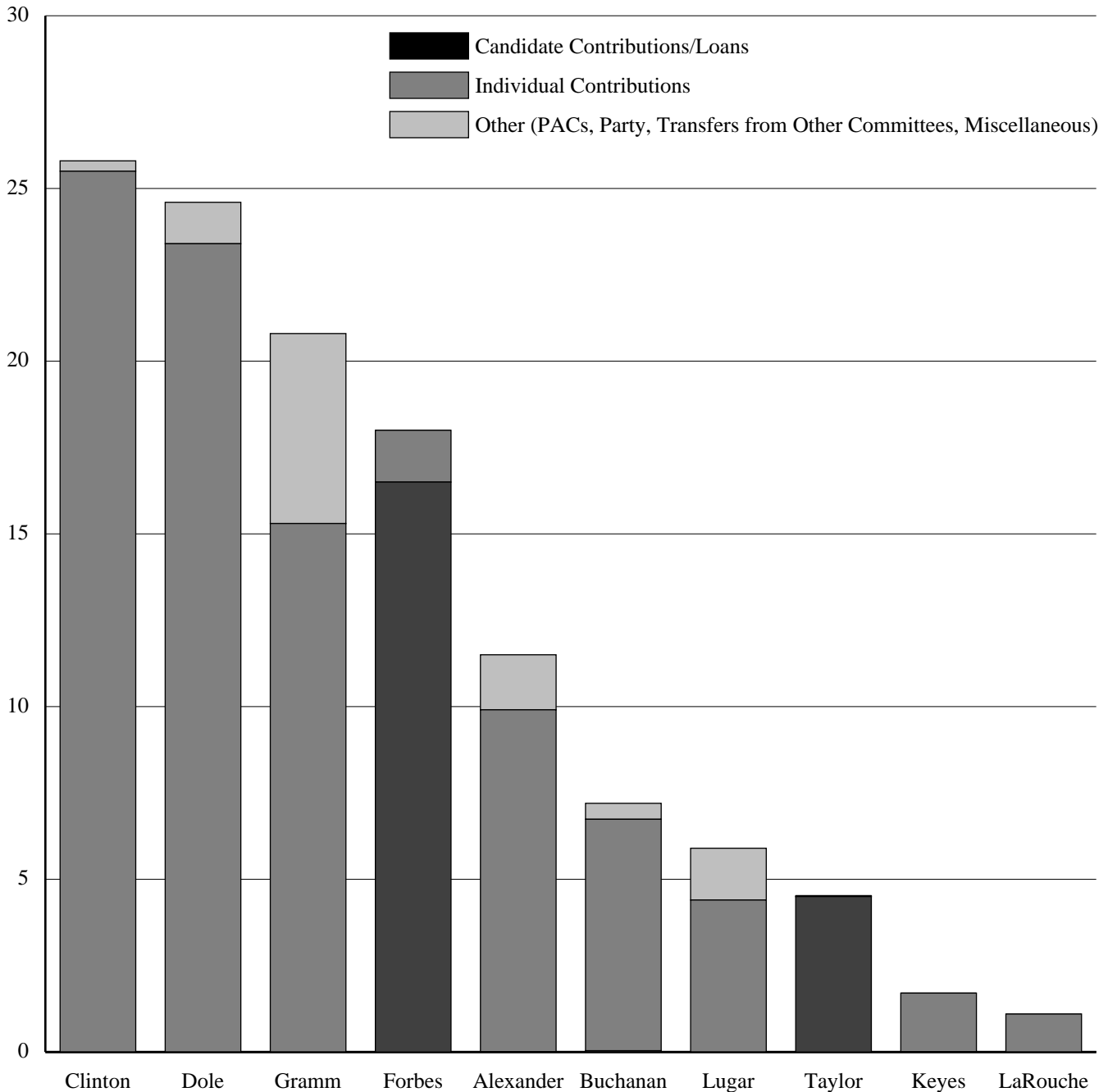
Presidential Candidate Summary Reports may be accessed via the Internet (see page 1 article on the FEC's new World Wide Web site). To have a free copy of the Presidential Candidate Summary Report faxed to you, call the FEC's automated Flashfax system at 202/501-3413 and request document 552. Alternatively, free copies may be ordered from the FEC's Public Records Office: call 800/424-9530 or 202/219-4140.

The FEC will update the Presidential Candidate Summary Report each month based on monthly disclosure reports filed by the campaigns. ♦

Million Dollar Presidential Campaigns

The bar graph below depicts the total receipts, broken down by source, of active Presidential campaigns with at least \$1 million in financial activity. This information is based on the Presidential Candidate Summary Report that includes all activity through December 31, 1995. Therefore, the public matching fund payments received by certified candidates in January 1996 are not reflected in this bar graph. The Presidential campaigns of Republicans Pete Wilson and Arlen Specter are not included because both of these candidates dropped out of the Presidential race in 1995.¹

Millions of \$



¹ Visit the FEC's World Wide Web site (see page 1 article) to access a more detailed version of this bar graph, which includes the Wilson and Specter campaigns as well as other Presidential campaigns with more than \$100,000 in financial activity.

Court Cases

Whitmore v. FEC

On October 26, 1995, the U.S. Court of Appeals for the Ninth Circuit affirmed the district court's dismissal of this case on grounds that plaintiffs lacked standing under Article III of the constitution to file this suit and that, even if they had standing, their claims were frivolous. See page 7 of the February 1995 *Record* for a summary of the district court's decision.

Joni Whitmore of the Green Party was a 1994 U.S. House candidate. She and Alaskan voter James Quinlan brought this suit arguing that the Federal Election Campaign Act violated the constitution because it did not prohibit U.S. House candidates from accepting contributions from sources outside of their congressional districts. See page 9 of the September 1994 *Record* for a summary of this complaint.

U.S. Court of Appeals for the Ninth Circuit (94-36236), D.Ct. No. A94-289 CIV, October 26, 1995. ♦

New Litigation

FEC v. Parisi

The FEC asks the court to impose civil penalties on Angelo Parisi of the greater of \$5,000, or the full amount involved, for each of the following alleged violations:

- Contributions in excess of his \$25,000 annual limit for total contributions: in 1991 (\$33,942 in total contributions), 1992 (\$66,262 in total contributions) and 1993 (\$40,405 in total contributions) (2 U.S.C. §441a(a)(3));
- Contributions in excess of his \$20,000 annual limit for each national party committee: in 1992 (\$27,262 to the National Republican Senatorial Committee and

\$22,750 to the National Republican Congressional Committee) and 1993 (\$24,655 to the National Republican Senatorial Committee) (2 U.S.C. §441a(a)(1)(B)); and

- Contributions in excess of his \$5,000 annual limit for each noncandidate/nonparty political committee: in 1991 (\$6,200 to American Citizens for Political Action)(2 U.S.C. §441a(a)(1)(C)).

These alleged violations stem from an administrative complaint filed with the FEC by the Center for Responsive Politics on January 14, 1994. An FEC investigation into these matters found probable cause to believe that violations had indeed occurred. The FEC then tried to enter into a conciliation agreement with Mr. Parisi to resolve these matters. When an agreement with Mr. Parisi could not be reached, the FEC initiated this law suit as its final recourse in the enforcement of federal election law.

U.S. District Court, Southern District of New York, White Plains Division, 96 CIV 0348, January 16, 1996. ♦

Minnesota Citizens Concerned for Life, et al. v. FEC, et al.

Plaintiffs Minnesota Citizens Concerned for Life (MCCL) and Elizabeth Blosser ask the court to issue declaratory judgments that recently adopted FEC regulations at 11 CFR 114 that govern "qualified nonprofit corporations" exceed the agency's statutory authority and violate MCCL's constitutional rights.¹

¹ *The FEC drafted these regulations to incorporate the Supreme Court's decision in FEC v. Massachusetts Citizens for Life (MCFL) (479 U.S. 238 (1986)) into its regulatory framework. In that decision, the Court exempted MCFL's independent expenditures from the corporate ban. MCFL was a nonprofit membership corporation, tax exempt under 501(c)(4), with the characteristics bulleted in this article.*

Plaintiffs also seek an injunction forbidding the FEC from enforcing these rules against MCCL.

MCCL is a nonprofit membership corporation, tax exempt under 26 U.S.C. §501(c)(4), which asserts that its primary purpose is to educate the public about abortion and related topics. MCCL states that it is independent of any candidate or party, and its profits do not inure to the benefit of any person. MCCL also asserts that it engages in business activities related to its advocacy of issues, such as selling advertising space in its newsletter and renting its membership list. It also accepts corporate contributions, but claims that the amount of such contributions is insignificant when compared with its total receipts.

The Federal Election Campaign Act (the Act) prohibits corporations from making expenditures in connection with federal elections. 2 U.S.C. §441b. The regulations at 11 CFR 114.10, however, create an exception for independent expenditures² made by tax exempt 501(c)(4) corporations that:

- Were formed for the purpose of promoting political ideas;
- Do not engage in business activities;
- Have no shareholders or other persons whose claim on its assets or earnings might create a disincentive for disassociating from the organization; and
- Were not established by a business corporation or labor union and do not accept contributions from such organizations.

MCCL states that it does not satisfy the requirements at 11 CFR 114.10 because it accepts corporate

² *An independent expenditure is an expenditure made without any coordination with a candidate's campaign for a communication which expressly advocates the election or defeat of a clearly identified candidate for federal office.*

contributions, engages in business activities, offers its members affinity credit cards and is involved in charitable causes in addition to its promotion of pro-life stances. Consequently, MCCL claims it can not make independent expenditures without the risk of entering into an enforcement matter with the FEC.

MCCL believes that 11 CFR 114.10 is an unconstitutional infringement on its First Amendment rights. Accordingly, MCCL seeks a declaratory judgment that 11 CFR 114.10 exceeds the statutory authority of the FEC and that it is unconstitutional because its restriction on speech is not narrowly tailored to serve the government's overriding interest—to safeguard against corruption in the electoral process.

MCCL also challenges:

- 114.10(e), which requires non-profit corporations making independent expenditures to submit a letter certifying that they meet the criteria for “qualified nonprofit” status (MCCL argues that this regulation is in excess of the FEC’s statutory authority); and
- 114.10(f), which requires qualified nonprofits to place disclaimers on their solicitations, informing potential donors that their donations may be used for political purposes. MCCL argues that this regulation is in excess of the FEC’s statutory authority and that, along with 114.10(b)(3)(ii), it is unconstitutional because these two regulations allegedly force qualified nonprofits to misrepresent themselves as political committees.

U.S. District Court for the District of Minnesota, 3-95-CV-114, December 13, 1995. ♦

Hooker v. FEC, et al.

John Jay Hooker asks the court to declare it unconstitutional for federal candidates to accept out-of-state contributions to their campaigns.

Mr. Hooker, a potential 1996 candidate for U.S. President, states in his complaint: “I know in my heart that these unconstitutional campaign contributions...deprive the qualified voter of the undivided loyalty of their two United States Senators and of their Congressman...”

U.S. District Court for the Middle District of Tennessee, 95-0654, July 11, 1995. ♦

Advisory Opinions

**AO 1995-40
Disaffiliation of PACs**

The PACs of Continental Airlines and Eastern Airlines are no longer affiliated political committees. Continental Airlines lost ownership of its stock in Eastern Airlines by court order in the course of bankruptcy proceedings.

Continental Airlines first posed the question of the disaffiliation of these two PACs in AO 1990-10. At that time, the court had taken away the management and control of Eastern from Continental and had placed it in the hands of an independent trustee. In AO 1990-10, the Commission nevertheless concluded that the two PACs were still affiliated because Continental still enjoyed sole ownership of Eastern stock.

PACs of affiliated companies are themselves affiliated and as a result share a common contribution limit for contributions received and made. FEC regulations base the affiliation

between two companies (and consequently their PACs) on an evaluation of the following factors:

- The ownership of one company’s controlling interest in voting stock or securities by another;
- The ability of one company to govern another;
- The ability of one company to hire, demote or otherwise control another company’s decision makers;
- The presence of common members, officers and employees who either are members or work for both companies simultaneously or who once were members of or once worked for one company and now are a member of or work for the other; and
- The role of one company in the formation of the other. 11 CFR 110.3(a)(3)(ii)(A) through (F) and (I).

On December 26, 1991, the court overseeing the bankruptcy proceedings issued an Order of Abandonment of Estate Property that stripped Continental of any stock or equity in Eastern and placed ownership of Eastern in the hands of the independent trustee.

Today, Continental does not have an ownership stake in Eastern; the two airlines do not share common directors, officers or administrative personnel; Continental has not infused any cash into Eastern; and Continental has not guaranteed any of Eastern’s pension retirement programs or any other Eastern obligation.

These factors indicate that the ownership relationship between Continental and Eastern has been severed, thus ending the affiliation of their PACs. Continental’s PAC and Eastern’s PAC should submit amended Statements of Organization, deleting mention of each other as an affiliated committee.

Date Issued: January 11, 1996;

Length: 3 pages. ♦

(Advisory Opinions continued on page 8)

Federal Register

Federal Register notices are available from the FEC's Public Records Office.

1996-2

11 CFR 100, 110 and 114: Candidate Debates and News Stories (staged by cable television stations); Notice of Proposed Rulemaking (61 FR 3621, February 1, 1996)

1996-3

11 CFR 100, 104, 105, 109, 110 and 114: Document Filing Point-of-Entry Technical Amendments; Final Rule (61 FR 3549, February 1, 1996)

1996-4

Filing Dates for Maryland Special Elections (61 FR 4666, February 7, 1996)

1996-5

11 CFR 9034 and 9038: Public Financing of Presidential Primary and General Election Campaigns; Final Rule, Correcting Amendments and Announcement of Effective Date (61 FR 4849, February 9, 1996)

1996-6

11 CFR 100 and 108: Point of Entry; Final Rule; Technical Amendments (61 FR 6095, February 16, 1996)

1996-7

Computerized Magnetic Media Requirements for Presidential Committees (61 FR 6245, February 16, 1996)

Corrections on:

Notice 1995-10, 11 CFR 100, 106, 109 and 114: Express Advocacy, Independent Expenditures, Corporate/Labor Expenditures;

Notice 1995-23, 11 CFR 100, 102, 109, 110 and 114: Corporate/Labor Activity, Express Advocacy and Coordination With Candidates (61 FR 4302, February 5, 1996)

Advisory Opinions

(continued from page 7)

AO 1995-43

Refunding Legal Fees to Candidate Committee

The Arnold & Porter law firm may refund \$150,000 in legal fees to the Re-Elect Packwood Committee. This refund represents 75 percent of an adjustment based on the firm's withdrawal of its services. As such, it is not considered a contribution to the committee from the firm but is rather treated as a refund from a vendor.

Arnold & Porter served as Senator Bob Packwood's legal counsel before the Senate Select Committee on Ethics, which made inquiry into certain activities relating to Senator Packwood's service in the Senate. Arnold & Porter received payment for these services from the Re-Elect Packwood Committee and from Senator Packwood's Legal Expense Trust Fund.

At the time when Arnold & Porter withdrew from this case, the inquiry had not been concluded. Senator Packwood was therefore required to secure new counsel. The firm's withdrawal cost Senator Packwood the knowledge and expertise Arnold & Porter had developed with respect to the ethics proceedings. Arnold & Porter recognized this loss and, in accordance with its regular practices, adjusted the cost of its legal services.

Arnold & Porter calculated that it would cost \$200,000 for a new firm to familiarize itself with the case and thus develop a comparable level of knowledge and expertise. Arnold & Porter then sought to refund \$200,000 in legal fees to the Re-Elect Packwood Committee and Senator Packwood's Legal Expense Trust Fund.

The Re-Elect Packwood Committee wishes to receive \$150,000 of the refund, with the remaining

\$50,000 to go to the trust fund. This 75/25 split represents the percentage of legal fees paid respectively by the committee and the trust fund.

Arnold & Porter may refund \$150,000 to the Re-Elect Packwood Committee. This refund does not constitute the making of a contribution by the firm to the committee. Instead, it is considered a refund by a vendor. As such, it is not subject to any contribution limit.

In issuing this opinion, the Commission did not address the issue of Senator Packwood's use of campaign funds to secure legal representation. The statutory and regulatory provisions at 2 U.S.C. §439a and 11 CFR 113 state that campaign funds may not "be converted by any person to any personal use, other than to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office."

Date Issued: January 11, 1996;
Length: 4 pages. ♦

AO 1995-44

Presidential Primary Candidate Excused from Filing 48-Hour Notices

Presidential candidate committees filing FEC reports on a monthly basis are not required to file 48-hour notices during the Presidential primary season. The Forbes for President Committee, the principal campaign committee of Malcolm S. Forbes, Jr., is therefore exempt from the 48-hour notice provisions at 2 U.S.C. §434(a)(6)(A) and 11 CFR 104.5(f).

Under 2 U.S.C. §434(a)(3)(A), Presidential candidate committees that have exceeded \$100,000 in contributions or expenditures must file FEC reports on a monthly basis. The Forbes committee has exceeded this threshold.

The 48-hour notice provisions require candidate committees to

notify the Commission, within 48 hours, of contributions of \$1,000 or more received between the 20th day and 48 hours before any election. Since Presidential candidates are typically active in a number of primary elections, requiring them to abide by these provisions would have the effect of having them file 48-hour notices on an almost continual basis.

The Commission concluded that Presidential candidate committees filing monthly provide sufficient disclosure to exempt them from the 48-hour filing provisions during the Presidential primary season.

The Forbes committee posed further questions with regard to the 48-hour notices, including whether they were required for caucuses. The Commission deemed it unnecessary to address these further questions since this AO exempts the Forbes committee from the 48-hour notice provisions altogether.

Date Issued: January 11, 1996;
Length: 4 pages. ♦

AO 1995-45 Qualified Campaign Expenses for Ballot Access

A publicly funded candidate seeking a minor party's nomination may use campaign funds to pay for his or her ballot access efforts, including petition drives. Such payments are qualified campaign expenses. Further, payments made by the candidate to get his or her party rather than his or her name on the ballot are qualified campaign expenses in instances where doing so is the more cost effective means of securing a place for the candidate as the party's nominee.

Dr. John Hagelin is a candidate for the Natural Law Party's (NLP) 1996 Presidential nomination. On December 22, 1995, the FEC certified Dr. Hagelin as eligible to receive public funding. On January 1, 1996, he was certified to receive

an initial entitlement of \$100,000. As a publicly funded candidate, Dr. Hagelin may use campaign funds for "qualified campaign expenses" only. 26 U.S.C. §§9033, 9038 and 9042, and 11 CFR 9032.9(a)(2).

The Commission has long held that the process by which a non-major party candidate gets on the general election ballot serves a purpose similar to a primary election. Expenses incurred by independent or minor party Presidential candidates to secure ballot access are, therefore, considered qualified campaign expenses. AOs 1984-25 and 1984-11.

Each state has its own ballot access requirements and procedures. In some states, it is simpler and more cost effective to secure a ballot position for a candidate by securing a position for his or her party. Dr. Hagelin proposes to secure ballot access for either himself or for his party, depending on whichever is simpler and more cost effective in any given state.

Although opting to place the party on the ballot instead of Dr. Hagelin will have the residual effect of qualifying NLP Senate and House candidates for the ballot, it is understood that the principal purpose of these efforts is to obtain a ballot position for Dr. Hagelin's candidacy.

Date Issued: January 11, 1996;
Length: 3 pages. ♦

AO 1995-46 Purchase of Candidate's Book by His Campaign

Friends of Alfonse D'Amato, Senator Alfonse D'Amato's principal campaign committee for his 1998 reelection bid, may purchase copies of the Senator's autobiography at a bulk rate discount and then give them away to contributors. This transaction is not an in-kind contribution from the publisher or a personal use of campaign funds.

Senator D'Amato's campaign plans to use campaign funds to purchase several thousand copies of the Senator's autobiography. These books would be purchased at a bulk rate discount. This purchase would be at the standard fair market price for bulk purchases that is normally offered by publishers. The campaign would buy the books on the understanding with the publisher that the candidate would not receive royalties from this purchase, and that the purchased copies would not be resold.

The bulk rate discount would not result in an in-kind contribution to the campaign from the publisher because it is a normal practice of the publishing industry to give discounts to bulk rate buyers with similar conditions attached. AOs 1994-10, 1993-20 and 1989-14. This purchase would be at the usual and normal charge.

The campaign intends to use the copies it purchases solely in connection with the campaign—for instance, as "thank you" gifts to contributors who give a certain amount. The campaign will not buy more books than are needed for campaign-related purposes.

Under 11 CFR 113.1(g), it is illegal to use campaign funds to pay for an expense that would exist irrespective of the candidate's campaign or duties as a federal officeholder. Doing so constitutes a conversion of campaign funds to personal use.

The proposed transaction does not represent a personal use of campaign funds because the books would be used only in connection with campaign activity. Moreover, the fact that Senator D'Amato would not receive proceeds from the proposed transaction indicates that campaign funds would not be converted to his personal use.

Date Issued: February 5, 1996;
Length: 4 pages. ♦

(Advisory Opinions continued on page 10)

Advisory Opinions

(continued from page 9)

AO 1995-48 Preemption of Georgia Law Limiting Receipt of Contributions

Federal campaigns are not required to abide by a Georgia statute that forbids them from accepting contributions during a legislative session.¹ Federal law preempts state law in matters concerning the receipt of contributions.

Day for Senate is the principal campaign committee of Clinton Day, a Georgia State Senator. State Senator Day is seeking the 1996 Republican nomination for U.S. Senator from Georgia. Georgia state law at OCGA §21-5-35(a) states that: "No member of the General Assembly or that member's campaign committee or public officer elected state wide or campaign committee of such public officer shall accept a contribution during a legislative session."

Federal law preempts state law with regard to limitations on contributions and expenditures imposed on federal campaigns. 11 CFR 108.7(b)(3). The areas where federal law does not preempt state law are listed at 11 CFR 108.7(c) and include: the manner of qualifying a candidate or political party for the ballot; the establishment of the date and the place of elections; voter registration; voter fraud and similar offenses; and a candidate's personal financial disclosure.

Since federal law does not prohibit federal campaigns from receiving contributions while a legislative body is in session, the

¹ This conclusion is identical to that reached by the U.S. District Court for the Northern District of Georgia in Teper v. Bowers, No. 1:96-CV-0009-WBH. On January 16, 1996, the court issued a preliminary injunction barring the enforcement of OCGA §21-5-35(a) against federal campaigns.

Day for Senate committee may accept contributions for State Senator Day's federal effort while the Georgia General Assembly is in session.

Date Issued: January 26, 1996;
Length: 3 pages. ♦

Advisory Opinion Requests

Advisory opinion requests are available for review and comment in the Public Records Office.

AOR 1996-1

Permissibility of membership organization's communication encouraging members to give to endorsed candidates (Association of Trial Lawyers of America; January 19, 1996; 5 pages)

AOR 1996-2

Applicability of corporate ban to vendor's providing an online account to federal candidates for free (CompuServe Inc.; January 19, 1996; 4 pages)

AOR 1996-3

Status of foundation as nonconnected political committee (Breedenschmidt Foundation; January 19, 1996; 2 pages) ♦

Compliance

Year-End Nonfiler

The Radanovich for Congress committee was the only candidate committee that failed to file a 1995 Year-End report. This committee is George P. Radanovich's principal campaign committee for the U.S. House seat representing California's 19th district. See the FEC press release of February 16, 1996. The Commission is required by law to publicize the names of nonfiling candidate committees. 2 U.S.C. §438(a)(7). The FEC pursues

enforcement actions against nonfilers on a case-by-case basis. ♦

MURs Released to the Public

Listed below are summaries of FEC enforcement cases (Matters Under Review or MURs) recently released for public review. This listing is based on the FEC press releases of January 22 and 31, and February 6 and 9. Files on closed MURs are available for review in the Public Records Office.

MUR 2291

Respondents: Political Contributions Data, Inc. (NY)

Complainants: National Republican Congressional Committee (DC)

Subject: Sale and/or use of contributor information for a commercial purpose

Disposition: Probable cause to believe, litigation initiated, with final court action taken in March 1994 (see page 4 of the May 1994 Record)

MUR 2667

Respondents: (a) George Bush for President Committee, J. Stanley Huckaby, treasurer (VA); (b) Republican National Committee, William J. McManus, treasurer (DC); (c) Republican state party committees and their treasurers from GA, MI, NJ (federal/nonfederal accounts); (d) Republican state party committees and their treasurers from OH and PA (federal/nonfederal accounts); (e) Republican state party committees and their treasurers from CA, CO, FL, IL, KY, MD, MA, SC, TN, TX, WI, NM and NC (federal/nonfederal accounts)

Complainants: Democratic state party committees from MI, OH, SC and TN

Subject: Exceeding the overall spending limit; excessive contributions; failure to report contributions; corporate and labor union contributions; use of nonfederal funds

Disposition: (a) Probable cause to

believe, but took no further action (exceeding overall spending limit; excessive contributions; failure to report contributions; corporate and labor contributions); (b) probable cause to believe, but took no further action (excessive contributions); no probable cause to believe (corporate and labor union contributions; use of nonfederal funds); (c) probable cause to believe, but took no further action (excessive contributions, corporate and labor union contributions; use of nonfederal funds); (d) probable cause to believe, but took no further action (excessive contributions; use of nonfederal funds [PA only]); no probable cause to believe (use of nonfederal funds [OH only]; corporate and labor union contributions); (e) reason to believe, but took no further action (excessive contributions; use of nonfederal funds; corporate and labor union contributions); (a,b and d) sent admonishment letters

MUR 3764

Respondents: Kasten for Senate Committee, Inc., James R. Behrend, treasurer (WI)
Complainant: FEC initiated (RAD)
Subject: Excessive contributions
Disposition: \$17,000 civil penalty

MUR 4071

Respondents: Rick White for Congress Committee, Dawna K. Munson, treasurer (WA)
Complainants: King County Democrats (WA)
Subject: Disclaimers
Disposition: No reason to believe

MUR 4156

Respondents: Friends of Jim Moody, Robert H. Friebert, treasurer (WI)
Complainant: FEC initiated (RAD)
Subject: Excessive contributions
Disposition: \$40,000 civil penalty

MUR 4161

Respondents: (all in LA):
 (a) Envoy, Inc. PAC, Don Garvey, treasurer; (b) Radiofone, Inc.;
 (c) Garvey Enterprises; (d) Don Garvey; (e) Larry Garvey; (f) Brian Baudot
Complainant: FEC initiated (RAD)
Subject: Corporate contributions, corporate contributions in the names of others
Disposition: (a-f) \$30,000 civil penalty

MUR 4185

Respondents: Bob Krueger Campaign (1993 special runoff election), Nina Guinn, treasurer (TX)
Complainant: FEC initiated (RAD)
Subject: Failure to file 48-hour report (candidate loan of \$100,000)
Disposition: \$10,000 civil penalty

MUR 4210

Respondents: Hoyer for Congress, William I. Garner, Jr., treasurer (MD)
Complainant: FEC initiated (RAD)
Subject: Failure to file 48 hour reports
Disposition: \$15,000 civil penalty

MUR 4225

Respondent: Southeast Texas Roundtable (TX)
Complainant: Stephen M. Clifford (TX)
Subject: Disclaimer, failure to file independent expenditure report
Disposition: Reason to believe, but took no further action

MUR 4248

Respondents: Sheet Metal Workers Local 25 Political Action League, Michael F. Wymbs, Sr., treasurer (NJ)
Complainant: FEC initiated (RAD)
Subject: Failure to file disclosure reports timely
Disposition: \$2,500 civil penalty

MUR 4249

Respondents: (a) Clinton/Gore '96 Primary Committee, Inc., Joan Pollitt, treasurer (DC); (b) KING 5 Television, Tony Twibell, Station Manager (WA)

Complainant: William Lingley (WA)
Subject: Disclaimer
Disposition: (a-b) No reason to believe

MUR 4278

Respondents: Pakistani Physicians Political Action Committee, Dr. Ikram U. Khan, treasurer (NV)
Complainant: FEC initiated (RAD)
Subject: Failure to file reports timely
Disposition: \$2,300 civil penalty

MUR 4285

Respondents: San Bernardino County Republican Central Committee, Nancy McLain, treasurer (CA)
Complainant: FEC initiated (RAD)
Subject: Failure to file reports timely; failure to file a complete report timely
Disposition: \$6,000 civil penalty ♦

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