Record

July 1997 *Federal Election Commission* *Volume 23, Number 7*

Table of Contents

Reports

July Reporting Reminder

All committees (except monthly filers and Presidential committees) must file their semiannual reports with the Commission by July 31. The report covers financial activity for the period of January 1 (or the day after the closing date of the last report) through June 30.

Presidential committees filing on a quarterly basis must mail their reports to the Commission by July 15. These reports cover financial activity for the period of April 1 through June 30. Monthly filers are reminded that their reports covering activity for the month of June are due on July 20.

Reports sent by registered or certified mail must be postmarked by the filing date; reports sent by other means must be received by the federal and state filing offices on that date.

For more information on 1997 reporting, including dates, see the reporting schedule in the January 1997 Record. To order the 1997 reporting schedule handout, call 800/424-9530 or use the FEC's Faxline by calling 202/501-3413 (request document 586). This information is also available at the FEC's web site: http://www.fec.gov (click "Help for Candidates, Parties and PACs"). ✦

(Reports continued on page 10)

Regulations

FEC Seeks Comments on Petitions to Curtail Soft Money

On June 12, the Commission approved for public comment a Notice of Availability concerning two rulemaking petitions on soft money. The notice responds to requests to the Commission to examine its rules governing soft money in light of the influence it had on political campaigns during the 1996 election cycle.

Soft money generally refers to funds that are prohibited under the Federal Election Campaign Act (the Act) because they come from a prohibited source or exceed the Act's contribution limits.

The first petition, filed on May 20 by five members of the U.S. House of Representatives—Democrats Marty Meehan and James P. Moran and Republicans Marge Roukema, Christopher Shays and Zach Wamp—urges the Commission to modify its rules "to help end or at least significantly lessen the influence of soft money." On June 5, President Bill Clinton also submitted a petition, asking the Commission to ban soft money and to require candidates for federal office and national party committees

(continued on page 9)

Court Cases

FEC v. Christian Coalition

On May 13, the U.S. District Court for the District of Columbia denied the Christian Coalition's motion for partial dismissal of this case.

The decision means that the FEC will be able to seek declaratory and injunctive relief for all of the alleged violations of the Federal Election Campaign Act (the Act), but will not be able to obtain civil penalties for any of the violations that occurred more than five years before the lawsuit was filed.

Background

In July 1996, the Commission filed a lawsuit against the Christian Coalition alleging that the organization, among other things, used its corporate treasury funds to make coordinated expenditures for voter guides, "scorecards," get-out-the-vote drives and other public communications in support of or in opposition to various federal candidates. This suit came after the Democratic Party of Virginia and the Democratic National Committee filed administrative complaints with the FEC in 1992 concerning the Christian Coalition's activities. The complaints were combined and, after a review and investigation of Christian Coalition activities, the Commission found probable cause to believe a violation of the Act had occurred. Attempts at conciliation between the FEC and the Christian Coalition failed, leading to the filing of the suit. (See page 1 of the September 1996 Record.)

Statute of Limitations

The Christian Coalition sought dismissal of those portions of the FEC's suit that concerned prohibited activities that had occurred more than five years before the suit was filed—essentially the activities that related to the 1990 election cycle.

At 28 U.S.C. §2462, the law provides for a five-year statute of limitations for certain law enforcement proceedings. The Christian Coalition argued that that time limit started running at the time that the alleged offenses occurred—not when they were reported to the FEC by the Democratic Party of Virginia. The FEC argued that the time began running when it was notified through the administrative complaint process. Because its investigatory powers and resources are limited, the FEC said that it had no way of knowing about the Christian Coalition's alleged conduct until a complaint was filed with the agency.

The court rejected the FEC's argument, citing the ruling of the U.S. Court of Appeals for the District of Columbia Circuit in *3M v. Browner*.[1] In that case, the appeals court ruled that an agency's failure to detect violations does not negate the inherent difficulties faced by bringing a case to court long after the alleged violation has occurred. The appeals court noted: "nothing in the language of §2462 even arguably makes the running of the limitation period turn on the degree of difficulty an agency experiences in detecting violations."

The court, however, agreed with the FEC that §2462 provides no shield for the Christian Coalition from declaratory or injunctive relief. At 2 U.S.C. §437g(a)(6), the FEC has the authority to seek injunctive relief separate from its authority to seek legal remedies (e.g., civil fines, penalties and forfeitures).

U.S. District Court for the District of Columbia, 96-1781. ✥

[1] 3M Co. v. Browner, *17 F.3d 1453 (D.C. Cir. 1994).*

Minnesota Citizens Concerned for Life v. FEC

On May 7, the U.S. Court of Appeals for the Eighth Circuit affirmed a district court decision that concluded that the Commission's regulations governing qualified nonprofit corporations at 11 CFR 114.10 are unconstitutional on First Amendment grounds.

Background

Minnesota Citizens Concerned for Life (MCCL), a nonprofit corporation concerned with pro-life issues, filed a lawsuit against the FEC soon after the agency promulgated new regulations to conform with the U.S. Supreme Court decision in *FEC v. Massachusetts Citizens for Life, Inc*.[1] In *MCFL*, the high court concluded that 2 U.S.C. §441b—the statute governing contributions and expenditures by corporations—could not constitutionally prohibit certain types of nonprofit corporations from making independent expenditures using their corporate treasuries in connection with federal elections. Subsequently, the Commission promulgated a new regulation that

[1] FEC v. Massachusetts Citizens for Life, Inc., *479 U.S. 238 (1986).*

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

800/424-9530
202/219-3420
202/501-3413 (FEC Faxline)
202/219-3336 (TDD for the hearing impaired)
800/877-8339 (FIRS)

John Warren McGarry, Chairman
Joan D. Aikens, Vice Chairman
Lee Ann Elliott, Commissioner
Danny L. McDonald, Commissioner
Scott E. Thomas, Commissioner

John C. Surina, Staff Director
Lawrence M. Noble, General Counsel

Published by the Information Division
Louise D. Wides, Director
Angela Rucker, Editor

http://www.fec.gov

attempted to codify the MCFL exemption. 11 CFR 114.10. Under that regulation, in order for a nonprofit corporation to be exempt from the prohibitions at §441b, it must have these three features:

- The corporation must have been formed to promote political ideas and does not engage in business activities (11 CFR 114.10(c)(1), (2));
- The corporation has no shareholders or other persons who have a claim on its assets or earnings, or for whom there are disincentives to disassociate themselves from the organization on the basis of its political positions (11 CFR 114.10(c)(3));
- The corporation must not have been established by a business corporation or labor union and must not directly or indirectly accept donations from such entities (11 CFR 114.10(c)(4)(i), (ii)).

MCCL challenged the constitutionality of these regulations because the organization allegedly did not conform to these three features but, nonetheless, considered itself eligible to make independent expenditures from its general treasury funds and planned to do so. Most notably, MCCL engaged in business activities (such as selling advertising space in its newsletter) and accepted corporate contributions.

Prior Court Rulings

In *Day v. Holahan*,[2] a case in which MCCL, the plaintiff here, was a party, the Eighth Circuit discussed which nonprofit associations are qualified under *MCFL* to make independent expenditures. The court there held that Minnesota's attempt to codify an exemption for nonprofit corporations allowing them to make independent expenditures was too restrictive: it "reflected a misreading of *MCFL* and infringed the First Amendment rights of MCCL." The upshot, the court stated, was that MCCL could not be denied exempt status from Minnesota's statutory prohibition of corporate expenditures simply because it engaged in "minor" business activities or accepted contributions from business corporations in amounts that were "not significant."

Bound by the *Day* precedent, in April 1996, the U.S. District Court for the District of Minnesota ruled in favor of MCCL in its suit against the Commission. After first finding that MCCL had standing to challenge the Commission's regulations, the court held that 114.10(c)(2) and (4) were "constitutionally infirm under *Day* because they deny the *MCFL* exemption to a voluntary political association that conducts minor business activities or accepts insignificant corporate donations." Noting that the other parts of the regulation were not severable from these invalid provisions, the court declared all of 11 CFR 114.10 void. (See page 3 of the June 1996 Record.) The Commission had argued not only that MCCL lacked standing but that the *Day* decision was contrary to *MCFL* and other Supreme Court precedents.

Appeals Court Ruling

The appeals court found that, contrary to the FEC's arguments, MCCL had standing to bring this case to court. It also found that MCCL's challenge to the regulations was "ripe" for judicial resolution, and, on the authority of the *Day* decision, the court then affirmed the district court's declaratory judgment voiding the Commission's regulations.

Article III standing requires that a party show actual injury, a casual relationship between that injury and the challenged conduct and the likelihood that a favorable decision by the court will redress the alleged injury.[3] The FEC argued that MCCL lacked standing because voiding the statute would not redress its alleged injury. The FEC maintained that, even without the regulation, MCCL would have to prove that it was entitled to make independent expenditures under *MCFL* and *Day*. The appeals court found that MCCL had either to make significant changes to its operations or risk sanctions for violating FEC regulations and concluded that MCCL did not need to show that a favorable decision would relieve "every" injury. According to the appellate court, the district court redressed an injury for MCCL by declaring that it could continue to make independent expenditures if it met the exemptions defined in *Day*.

While the courts have been wary of pre-enforcement challenges—such as MCCL's challenge to the Commission's regulations before the organization has actually been alleged to have violated them—this stance is not always applicable. The Supreme Court has held that "the Administrative Procedure Act authorizes a pre-enforcement challenge to agency regulations if the issue is 'fit' for prompt judicial decision and if failure to review would cause significant hardship to the parties." In this case, the appeals court said that the legal issue—whether the Eighth Circuit's interpretation of *MCFL* in *Day* invalidates portions of the Commission's regulations—was "fit for prompt determination." Moreover, the court said, court action in this case would also relieve MCCL of a hardship because its representatives would now know that MCCL's methods of operation would be tested under *Day*, rather than under the Commission's regulations.

On the merits, the appellate court agreed with the district court that

(continued)

[2] Day v. Holahan, *34 F.3d 1356 (8th Cir. 1994), cert. denied, 115 S. Ct. 936 (1995).*

[3] Lujan v. Defenders of Wildlife, *504-U.S. 555, 560-61 (1992).*

Court Cases

(continued from page 3)

Day required voiding 11 CFR 114.10 (c)(2) and (c)(4). Only the court of appeals sitting en banc, the court noted, could overturn *Day*'s interpretation of the Supreme Court's *MCFL* decision. Furthermore, because the district court found the remainder of 11 CFR 114.10 not to be severable from the invalid portions—a ruling the Commission had not appealed—11 CFR 114.10 as a whole was properly declared void.

U.S. Court of Appeals for the Eighth Circuit, 96-2612. ✥

FEC v. Legi-Tech

On May 30, the U.S. District Court for the District of Columbia granted the FEC's motion for summary judgment and imposed a $20,000 civil penalty on Legi-Tech, Inc., after the corporation used information obtained from disclosure reports filed with the FEC for commercial purposes in violation of the Federal Election Campaign Act (the Act).

The Act requires political committees to identify each individual whose aggregate contributions exceed $200 in a calendar year by listing their name, mailing address, occupation and employer. 2 U.S.C. §434(b)(3)(A). The FEC must make disclosure reports available for public inspection and copying within 48 hours of receipt. However, "information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes." 2 U.S.C. §438(a)(4).

Legi-Tech, through its Campaign Contribution Tracking System (CCTS), devised a plan to provide paying subscribers with information about political contributors and their contributions. Starting with the 1984 election cycle, CCTS copied contributor information directly from disclosure reports filed with the FEC, entered this information into a computer database, added telephone numbers of contributors and sold the information to its customers. In all, the CCTS received $273,869 from at least 42 customers, including the International Brotherhood of Teamsters, Freedom Policy Foundation, National Association of Independent Schools and International Funding Institute, Inc. In addition, Legi-Tech was aware that some of its customers used the information to solicit contributors.

In 1985, the National Republican Congressional Committee (NRCC) filed an administrative complaint against Legi-Tech, alleging the company was using contributor information for commercial purposes. After an investigation of the complaint, the Commission found probable cause to believe that a violation of the Act had occurred and attempted to enter into a conciliation agreement with Legi-Tech. That effort failed, and the Commission filed suit.

The court dismissed the lawsuit in October 1994, but the U.S. Court of Appeals for the District of Columbia Circuit reversed that decision in February 1996 and remanded this case back to the district court. (For a previous story, see page 9 of the April 1996 Record.)

District Court Ruling

The court rejected Legi-Tech's arguments, which were based, in part, on the corporation's contention that it was an organ of the press and was therefore entitled to use the contributor information in the way that it did. The court agreed with the Commission when it stated that a publisher's use of the names and addresses from disclosure reports filed with the FEC is permissible so long as that use is incidental to the sale of a larger publication. For example, a newspaper article that includes such information as part of the story is permissible. What is not permissible, the FEC contends, is when the use of contributor information is not incidental to the sale of the publication, but, in fact, the primary focus of the publication. AO 1981-38.

Because the Act does not explicitly state whether commercial activity like the CCTS's is protected, the court gave deference to the FEC's construction of §438(a)(4) as well as to its regulations and advisory opinions relevant to this issue. On that basis, the court rejected all of Legi-Tech's challenges.

- It said that the CCTS could not be characterized as a communication similar to a "newspaper, magazine or book," but was more like a listbroker. The former would fall under the FEC's media exemption to §438(a)(4); a listbroker would not.
- It said that the CCTS failed the "principal purpose" test in that its primary purpose was the dissemination of the contributor information for profit. The court said: "Legi-Tech's sale of information through the CCTS posed the precise threat that troubled Congress: while Congress wanted to promote disclosure of campaign contribution information, it also wanted to protect political committees' intellectual property and 'political discourse from the adverse effect that the disclosure requirement of the Act would otherwise have.'"
- The court found Legi-Tech's argument that the CCTS was exempt because Legi-Tech's parent corporation was a diversified media company "unpersuasive" because the CCTS's primary purpose was commercial.

Legi-Tech also argued unsuccessfully that §438(a)(4) violates the First Amendment in that it prevents

"'the dissemination of the truth about political campaigns' and constitutes 'a content based restriction on core political speech.'"

The court, noting that the constitutionality of the statute already had been upheld in *FEC v. International Funding Institute*, restated that the statute "serves important governmental interests by minimizing the adverse effects of the Act's disclosure requirements." In addition, the statute also protects political committees' intellectual property. The commercial use of such information, as the NRCC contended in its original complaint, diminishes the economic value of contributor lists. The court also found that prohibiting commercial use of contributor information would make it more likely that individuals would continue to support financially the current private campaign financing system for U.S. elections. Legi-Tech's other First Amendment arguments also were rejected by the court.

U.S. District Court for the District of Columbia, 91-0213. ✥

Gottlieb v. FEC

On May 8, the U.S. District Court for the District of Columbia granted the FEC's motion to dismiss this case in which Alan Gottlieb and others had asked the court to order the FEC to take action on an administrative complaint that the Commission had voted to dismiss.

The complaint dates back to March 1995 (see page 6 of the December 1995 *Record*). The plaintiffs originally filed the administrative complaint with the Commission alleging that President Clinton's 1992 campaign received more than $3 million in excess of the entitlement allowed it under the Presidential Primary Matching Payment Account Act. 2 U.S.C. §§9034 and 9037. The complaint also alleged that Clinton's primary committee—the Clinton for President Committee—incorrectly treated some contributions as both matchable primary contributions and contributions to the Clinton/Gore '92 General Election Legal and Compliance fund, or GELAC fund.

In August 1995, the Commission dismissed the case—after deadlocking in a 3-3 vote—without finding reason to believe that a violation of the law had occurred. The plaintiffs then filed suit, asking the court to find that the FEC's action was contrary to law and to order the FEC to take action on the complaint.

In its order dismissing this case, the court agreed with the FEC that the plaintiffs did not have standing because they were not harmed by the Commission's decision. The court relied on the recent opinion of the U.S. Court of Appeals for the District of Columbia Circuit in *Common Cause v. FEC* as the basis for its decision. In that ruling, the court held that the plaintiffs lacked constitutional standing to litigate their claims against the Commission because they had not suffered a particular harm. (see page 4 of the May 1997 Record).

On May 14, plaintiffs appealed the decision to the DC Circuit.

U.S. District Court for the District of Columbia, 95-1923. ✥

On Appeal?

FEC v. Williams

The U.S. Court of Appeals for the Ninth Circuit **denied** a petition from the FEC for a rehearing of this case en banc. The FEC had requested such action after the appeals court reversed a decision from the U.S. District Court for the Central District of California to dismiss this case, and ruled in favor of the defendant, Larry Williams. See page 3 of the February 1997 Record.

Akins v. FEC

The U.S. Supreme Court **granted** the FEC's petition for certiorari in this case. The U.S. Court of Appeals for the District of Columbia, sitting en banc, reversed a district court decision and ordered the FEC to review its administrative actions concerning the American Israel Public Affairs Committee and its status as a political committee. See page 1 of the February 1997 Record. ✥

New Litigation

FEC v. California Democratic Party

The FEC asks the court to find that the California Democratic Party (CDP) violated the Federal Election Campaign Act (the Act) and several Commission regulations by using funds from its nonfederal committee account (containing prohibited corporate and union funds) to pay for a voter registration drive instead of allocating the costs of the drive between its federal and nonfederal committee accounts.

Specifically, the CDP made payments from its nonfederal committee account to a group called Taxpayers Against Deception-No on 165 (No on 165) to help it conduct voter registration drives and get-out-the-vote activities associated with defeating Proposition 165 on the California ballot. The Commission asserts that the CDP knew that the registration drive was designed to increase the number of Democratic voters—voters who would support Democratic candidates for state and federal offices. Accordingly, the FEC contends that part of the payments should have come from the CDP's federal committee account to avoid the use of prohibited contributions for federal election purposes.

Background. Proposition 165 was a California ballot initiative designed to reduce the state's spending on welfare and other social programs and was supported by Governor Pete Wilson. No on 165 was a political committee organized to defeat this initiative. Its strategy was

(continued)

Court Cases

(continued from page 5)

to register prospective voters in minority and low-income communities—both groups presumed to be predominantly against Proposition 165 and to vote predominantly Democratic. This strategy involved several organizations, including the CDP, which ultimately spent $719,000 on the registration effort.

Among the examples of the partisan nature of the voter drives:

- Voter drive workers were instructed to assist those who identified themselves as Democrats in completing voter registration cards, but were told to simply hand registration cards to those who identified themselves as Republicans.
- Signs at the voter drives included one with the message: "Stop Pete Wilson—Register Democrat."
- Staff at the CDP received regular updates on the progress of the voter drives, and the CDP's coordinated campaign steering committee also received progress reports. The steering committee included representatives of federal and nonfederal candidates running in California, including Presidential nominee Bill Clinton and Senate nominees Diane Feinstein and Barbara Boxer, who won election to those seats in the 1992 election cycle.

Lack of Allocation. To support the registration drive, the CDP disbursed funds from its nonfederal committee account and did not report any payments from that account to the FEC—violations of 11 CFR 102.5(a)(1)(i), 104.10(b)(4) and 106.5(d).

These regulations call for party committees (and nonconnected committees) to establish a separate federal account for funds that are permissible under the Act and to use only this account for expenditures in connection with federal elections. Likewise, the regulations require a separate nonfederal account for funds from corporations and unions that are not permitted to be used for federal elections. Party committees must allocate expenditures for generic voter drives involving state and federal candidates between the federal and nonfederal accounts or use funds only from the federal account. Finally, party committees must report the allocated disbursements to the FEC.

The CDP also violated 2 U.S.C. §441b(a), which prohibits a political committee from using impermissible contributions in connection with federal elections.

The FEC asks the court to assess civil penalties against the CDP and its treasurer and against the party's federal and nonfederal committees. It also asks the court to order the CDP's federal committee to transfer to the nonfederal committee the amount that should have been allocated for these expenditures. The federal committee must also amend its 1992 October quarterly, Pre-General and Post-General reports.

U.S. District Court for the Eastern District of California, 97-0891, May 9, 1997. ❖

Advisory Opinions

AO 1997-5
Solicitation of Member-Lessee on Chicago Mercantile Exchange

The Chicago Mercantile Exchange (CME) may solicit PAC contributions from noncorporate member-lessees who lease seats from its full members because, based on several court opinions, they qualify as members under the Federal Election Campaign Act (the Act).

The CME is a nonstock and not-for-profit corporation under Illinois law that provides markets for trading futures contracts and options on futures contracts. It is divided into four divisions, each with a limited number of seats. The owner of each seat is considered a member in the CME. Membership status is also given to member-lessees. They have the same rights and obligations as the other members except that they may not vote in CME elections and they may not be elected to the board of directors.

The Act prohibits corporations from making contributions or expenditures in connection with a federal election, but does allow for the establishment of a separate segregated fund (SSF) whose administrators may solicit contributions from a restricted class—executive or administrative personnel, stockholders and the families of those groups. 2 U.S.C. §§441b(a), 441b(b)(2)(C) and 441b(b)(4)(A). An exception at §441b(b)(4)(C) allows an incorporated membership organization or an SSF established by such an organization to solicit contributions from its individual members.

A membership organization, such as the CME, is one that provides for members in its bylaws, expressly solicits members and acknowledges the acceptance of membership. 11 CFR 114.1(e)(1).

The term "member" is not defined in the Act, but is defined in Commission regulations and has also been interpreted in two court cases. In *FEC v. National Right to Work Committee (NRWC),*[1] the U.S. Supreme Court suggested that members of nonstock corporations were to be defined similarly to stockholders of business corporations and members of labor unions. The U.S. Court of Appeals for the District of Columbia Circuit in *Chamber of Commerce v. FEC*[2] interpreted the *NRWC* decision in

[1] FEC v. National Right to Work Committee, *459 U.S. 197, 202 (1982).*

[2] Chamber of Commerce v. FEC, *69 F.3rd 600 (D.C. Cir. 1995); petition for rehearing denied, 76 F.3d 1234 (1996).*

order to consider what might constitute a significant organizational or financial attachment for purposes of membership. It cited two characteristics. The court noted that Chamber members were permitted to serve on policy formulating committees. Additionally, member-physicians of the American Medical Association, another plaintiff, by agreeing to abide by the AMA ethical code, were under the sanctioning authority of the organization. With respect to the acceptable range of financial attachment, the court cited favorably the payment of $1,000 in annual dues and noted that some Chamber members paid annual dues of $100,000 to the organization.

In this AO, the Commission noted that "the rights and duties of member-lessees were similar to those cited with approval by the court in *Chamber*." Specifically, the Commission noted that:

- Member-lessees may serve on policy formulating committees.
- They are subject to sanctions within CME that would affect their professions.
- They assume significant financial obligations associated with CME that are comparable to those mentioned in the *Chamber* case.

Consequently, member-lessees qualify as members for purposes of the Act. Those member-lessees who are individuals may be solicited for contributions to CME's SSF.

This opinion supersedes portions of several previous opinions, as explained below:

- AO 1988-39: This opinion supersedes the Commission's conclusion that member-lessees of CME did not have sufficient organizational and financial attachments to qualify as members and that only one membership in the CME existed with respect to each leased membership.
- AOs 1987-31, 1988-38 and 1994-34: This opinion supersedes the Commission's one-seat, one-membership principle to the extent that the attachments of the member-lessees to the exchanges described in those previous opinions are indistinguishable from the attachments to CME considered in this advisory opinion.

Date Issued: May 16, 1997; Length 6 pages. ✥

Advisory Opinion Requests

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

AOR 1997-6
Reinvestment by political committee of investment income (Kay Bailey Hutchinson for Senate Committee, May 15, 1997; 3 pages)

AOR 1997-7
Status as state committee of political party (The Virginia Reform Party, May 21, 1997, 2 pages plus 32-page attachment)

AOR 1997-8
Use of campaign funds to rent campaign space from candidate (Congressman Lamar Smith, March 13, 1997, 9 pages plus 8-page attachment)

AOR 1997-9
Collection of PAC contributions from individual members of trade exchange through electronic debiting of their trading accounts held with member firms of exchange (Chicago Board of Trade, May 30, 1997, 9 pages plus 25-page attachment) ✥

FEC Conference Schedule

The FEC has set dates for three regional conferences, and tentative dates for four others for 1997-98.

Seattle
Date: September 24-26, 1997
Location: Cavanaugh's Inn
Registration: $175
Hotel rate: $134
Candidates, political parties, corporate and labor organizations

Atlanta
Date: October 15-17, 1997
Location: Sheraton Colony Square
Registration: $180
Hotel rate: $149
Candidates, political parties, corporate and labor organizations

Washington, DC
Date: November 6-7, 1997
Location: Madison Hotel
Registration: $180.50
Hotel rate: $124
Corporate and labor organizations

To register for any of these conferences, call Sylvester Management at 1/800-246-7277 or send an e-mail message to TSYLVESTER@WORLDNET.ATT.NET. Read future issues of the *Record* to get more scheduling information for these conferences slated for late 1997 and 1998:

Washington, DC
December 1997
Trade and membership associations

Washington, DC
February 1998
Candidate committees

Denver
March 1998
Candidates, political parties, corporate and labor organizations

Washington, DC
April 1998
Nonconnected committees

For more information call the FEC's Information Division at 1/800-424-9530 (press 1).

Compliance

MUR 4172
Advances to Clinton Primary Result in Civil Penalties

President Bill Clinton's 1992 primary election political committee, the Clinton for President Committee, agreed to pay a $15,000 civil penalty to the FEC for accepting contributions in violation of limits set out in the Federal Election Campaign Act (the Act). One of those contributions was from the American Federation of Teachers (AFT), which agreed to pay a $2,000 civil penalty to the FEC for violating the Act's ban on union contributions to federal candidates.

The Clinton committee's violations stem from the committee's improper reimbursement of staff members, volunteers, a partnership and the AFT. The Act states that no political committee may knowingly accept a contribution made for the benefit or use of a candidate that violates any imposed limitation on contributions or expenditures. 2 U.S.C. §441a(f).

Under FEC regulations found at 11 CFR 116.5(b), an advance (i.e., an expenditure made on behalf of a political committee by an individual from his or her personal funds) constitutes a contribution unless it is exempt from the definition of contribution found at 11 CFR 100.7(b)(8). The expenditure also does not count as a contribution if it is made for an individual's personal transportation or for the usual and normal subsistence expenses of an individual who is not a campaign volunteer so long as the expenses are incurred while the individual is traveling on behalf of a candidate. In either of these cases, however, the expenditure must be reimbursed by the committee within 60 days if it was paid for by credit card or within 30 days in all other cases.

During the 1992 primary season, the Clinton committee received several advances for which it failed to make reimbursements in a timely manner. In each case, the late reimbursement resulted in excessive contributions. The advances included:

- $14,248 by two staff members for transportation, subsistence and other expenses,
- $50,551 by four volunteers for fundraising and other expenses, and
- $7,403 by a law firm for a luncheon for Mr. Clinton.

The Clinton committee also failed to make a timely reimbursement to the AFT for a newspaper article on which the teacher's union spent $12,125 on Mr. Clinton's behalf. The Clinton committee left the invoice unpaid for 10 months, and, during that time, the AFT made no effort to collect the money owed to it. In accepting the contribution, the Clinton committee violated the Act at 2 U.S.C. 441b, which prohibits contributions from labor organizations in connection with any federal election. The AFT violated 2 U.S.C. 441b(a), which states that it is unlawful for labor organizations to make contributions in connection with any federal election.

This MUR, or Matter Under Review, was initiated as the FEC carried out its normal supervisory duties. After a review of the information, but prior to finding probable cause to believe the committee or the AFT had violated the law, the Commission entered into conciliation agreements with both parties. ◆

MUR 4167
RNC Agrees to $20,000 Civil Penalty

The Republican National Committee agreed to pay a $20,000 civil penalty to the FEC for failing to provide complete contributor information in its reports and failing to demonstrate "best efforts" in obtaining such information, in violation of 2 U.S.C. §434(b)(3)(A).

The Federal Election Campaign Act (the Act) requires that political committees disclose the identification of each person making aggregate contributions in excess of $200 in the calendar year. 2 U.S.C. §434(b)(3)(A). The required information includes the name, mailing address, occupation and employer of the contributor. 2 U.S.C. §431(13). Where a committee can show that it has made "best efforts" to obtain and submit the information, its reports will be considered in compliance with the Act. 2 U.S.C. §432(i).

Prior to March 3, 1994, a committee was considered to have exercised best efforts to obtain contributor information if it had made at least one effort per solicitation. The request for the information had to be in writing or had to be an oral request documented in writing. Additionally, the request had to be clear and tell the contributor that the information was required by law. Since March 3, 1994, following the Commission's adoption of revised regulations, committees demonstrate best efforts by making at least one follow-up, stand-alone request for the missing information within 30 days of receipt of a contribution with incomplete contributor information. This stand-alone request may not include a solicitation for another contribution. 11 CFR 104.7(b). A committee must also report the previously missing information in amendments to its disclosure reports.

Between March 3, 1994, and December 31, 1996, the RNC failed to follow these revised rules. It used additional solicitations, rather than stand-alone, follow-up requests, to obtain the missing contributor information, and it did not file amended reports to disclose previ-

ously missing contributor information.[1] Since January 1, 1997, however, the RNC has been in full compliance with the Commission's best efforts regulations.

This MUR, or Matter Under Review, was initiated as the FEC carried out its normal supervisory duties. The Commission found probable cause to believe that a violation of the Act had occurred and entered into a conciliation agreement with the RNC, which included the civil penalty. ✥

MUR 4208
Staff Advances, Failure to Report Contributions Net Utah Committee $55,000 Civil Penalty

The Friends of Bob Bennett Senatorial Campaign Committee agreed to pay a $55,000 civil penalty to the FEC for accepting excessive contributions (in the form of staff advances and other contributions) and for failing to file the required 48-hour notices on a number of contributions it received during the 1992 campaign.

Senator Robert F. Bennett was a candidate for one of two seats representing Utah in the U.S. Senate during the 1992 election cycle. At that time, one of his committee staff members, Michael Tullis, made advances through his personal credit card to the Committee for his travel and subsistence expenses. He also used his credit card to pay for the travel and subsistence expenses of other campaign workers, and to cover campaign office expenses, media expenses and other miscellaneous items. The charges totaled $22,206.

Under the Federal Election Campaign Act (the Act) no officer or employee of a political committee may knowingly accept a contribution made for the benefit or use of a candidate in violation of the statute's contribution limits. 2 U.S.C. §441a(f). Moreover, commission regulations found at 11 CFR 116.5(b) state that advances are considered contributions unless they are made for an individual's personal transportation expenses and for the usual and normal subsistence of a staff person who is traveling on behalf of the candidate. This exemption applies only if the individual's transportation and subsistence expenses are reimbursed within 60 days if the advance was paid by a credit card or 30 days in other cases. Mr. Tullis's charges constituted an excessive contribution of $22,206, and the Committee violated 2 U.S.C. §441a(f) by accepting such a contribution. The Committee eventually repaid Mr. Tullis in full for his charges.

The FEC also found that the Committee had accepted another $13,450 in excessive contributions during the 1992 election cycle.

Finally, the Committee failed to report 37 contributions within 48 hours of their receipt, as is required by 2 U.S.C. §434(a)(6)(A). The contributions included $600,000 from Mr. Bennett and another $49,001 from individuals—all received in the closing days of the Utah primary and general elections.

This MUR, or Matter Under Review, was initiated after the FEC conducted an audit of the Committee. After reviewing the disclosure reports and other pertinent information, but prior to finding probable cause to believe that the Committee had violated the law, the Commission entered into a conciliation agreement with the Committee. ✥

[1] *In 1994, the respondent, along with other committees, filed suit against the Commission, challenging the Commission's revised "best efforts" regulations. The U.S. Court of Appeals for the District of Columbia Circuit upheld the requirement for a follow-up, stand-alone request to obtain missing contributor information, but vacated the requirement for mandatory language specified for solicitation notices—also contained in the regulation. The U.S. Supreme Court decided not to review this decision.* RNC v. FEC, *76 F.3d 400(D.C. Cir. 1996), cert. denied, 117 S. Ct. 682 (1997).*

Regulations

(continued from page 1)

to raise and spend only federally-permissible funds, or hard dollars.

The Notice of Availability seeks comments on whether the FEC should initiate a rulemaking in response to the petitions. The Commission routinely provides an opportunity for comments on rulemaking petitions before the agency considers the merits of the petition.

Copies of both petitions and the notice are available from the Public Records Office at 800/424-9530 (press 3); through the FEC's Faxline service at 202/501-3414 (request document 230); and at the FEC's web site—http://www.fec.gov. Additionally, the notice is published in the June 18 Federal Register (62 FR 33040).

Public comments on the petitions are due by July 18 and must be submitted in writing to Susan E. Propper, Assistant General Counsel, or Paul Sanford, Staff Attorney, at 999 E St., NW, Washington, DC 20463. Comments may also be e-mailed using this Internet address—softmoney@fec.gov—or faxed to the FEC at 202/219-3923. See the Notice of Availability for more information. ✥

Federal Register

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

Notice 1997-9
Adjustments to Civil Monetary Penalty Amounts: Final Rules; Correction of Effective Date (62 FR 32021, June 12, 1997)

Notice 1997-10
Prohibited and Excessive Contributions; Soft Money; Petition of Rulemaking; Notice of Availability (62 FR 33040, June 18, 1997)

Reports

(continued from page 1)

Electronic Filing Update: July Report Can Be Filed on Disk

For political committees that file directly with the FEC, the Mid-Year Report due July 31 is the first report that can be filed electronically on disk. The Commission encourages committees to file in this way.

In previous editions of the *Record*, articles have described the process of electronic filing and noted that some companies who provide software to committees have modified their programs to allow for disk filing. The FEC encourages filers to try these new electronic filing versions of their software.

There are also a number of committees that have designed their own systems for preparing FEC reports. If you have downloaded the required electronic filing formats from the Commission's Web site (http://www.fec.gov) and modified your process to create the appropriate file, we would like to hear from you during the month of July.

In order to facilitate this first filing, the FEC encourages committees that plan to submit disclosure reports on disk to call the technical staff at the Commission (202/219-3730 or 800/424-9530) before submitting their filings. This will allow the Commission to be sure everything is in place so that the filings can be processed as quickly and efficiently as possible. The FEC may also be able to help with some of the details of preparing the filing and the disk.

Steps in Submitting a Financial Report to the FEC Electronically

There are six basic steps in preparing a report for electronic filing with the FEC:

1. Create the filing using the prescribed FEC electronic filing format (or a commercial software program that has been modified to create the electronic format).
2. Validate the filing on your computer using the validation program (FECHECK) provided by the FEC. (In most cases, a validation program is also included in your modified commercial software product.)
3. Print the file using the FECPRINT program provided. Do not send the printed copy to the FEC. However, it may be useful to review the disclosure report in this way and keep it for your records and for submission to relevant state offices. This step is optional.
4. Prepare a signature page. Sign the Summary Page of the printed version of the filing and either include that one signed page with the disk in the envelope sent to the Commission, or scan that signed page and include a TIFF version of the page on the disk with the filing.
5. Label the disk, listing the committee name and the files included on the disk. If this is your first electronic filing, please also include your fax number and/or e-mail address so that the automated confirmation of receipt and validation can be sent directly to you. First-time electronic filers are encouraged to send a sample filing to the Commission in advance of the actual filing. While not required, this will help ensure that the FEC processes your report immediately when filed. Call the Data Systems Division at 202/219-3730.
6. Send the disk, along with the signed Summary Page, to the Federal Election Commission, 999 E Street NW, Washington, DC 20463.

During July, the FEC will be contacting those filers who have requested sample copies of the software that the agency has been developing. This program will help committees keep their books and prepare their reports for electronic filing. Those who request the pilot software—"beta" testers—will receive copies of the software and will be asked to share their comments and suggestions with the FEC before the agency makes the program available to the public. Release of the first official version of the software is scheduled for September 1997.

Companies that have completed or are in the process of modifying their programs for electronic filing include:

- Aspen Software (Trail Blazer)
- Aristotle Industries (Campaign Manager)
- Capitol Hill Software
- Donnelson and Associates (Micropac)
- Gnossos Software (Keep in Touch: PAC SOLUTION)
- Public Affairs Support Services (PASS). ❖

Index

The first number in each citation refers to the "number" (month) of the 1997 *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

Court Cases

Reports

800 Line

The FEC Now Takes Visa and Mastercard

FEC customers can now pay for FEC materials with Visa or Mastercard. Most FEC materials are available free of charge, but some are sold, including financial statistical reports ($10 each), candidate indexes ($10) and PAC directories ($13.25). The FEC also has a 5¢ per page copying charge for paper documents and a 15¢ per page copying charge for microfilmed documents.

Paying by credit card has its advantages. For instance, since the FEC will not fill an order until payment is received, using a credit card speeds delivery by four to five days.

Visitors to the FEC's Public Records Office are also able to make payments by credit card. Regular visitors, such as researchers and reporters, who in the past have paid for FEC materials out of their own pockets, may now make payments with a company credit card.

The credit card payment system also reduces costs and paperwork associated with check processing, enabling FEC staff to better serve the walk-in visitor.

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

Official Business
Penalty for Private Use, $300

Printed on recycled paper

Bulk Rate Mail
Postage and Fees Paid
Federal Election Commission
Permit Number G-31