

# RECORD

July 1992

999 E Street NW Washington DC 20463

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## REGULATIONS

### NEW ALLOCATION REGULATIONS EFFECTIVE JUNE 18

The revised regulations on the allocation of federal and nonfederal expenses became effective on June 18, 1992, as announced in the Federal Register of that date.<sup>1/</sup>

Two changes to the allocation rules allow state and local party committees to revise their ballot composition ratios and apply the revised ratios retroactively to certain joint federal/nonfederal expenses paid since January 1, 1991, the start of the current allocation cycle. However, the deadline for making retroactive reallocations is July 18, 1992.

Two other changes are not retroactively effective. These changes apply to all committees subject to the allocation rules, including separate segregated funds and nonconnected committees.

The revisions are briefly described below.

#### Changes to Ballot Composition Ratios of State and Local Party Committees

**New Nonfederal Point.** Under the first change, all state and local party committees may include an additional nonfederal point in their ballot composition ratios. 11 CFR 106.5(d)(1)(ii).

**Local Office Point When Local and State Officers Elected in Different Years.** The second change applies only to state and local party committees located in states where state officers are elected in even years while partisan local officers are elected only in odd years. Under the former rules, party committees in this

situation could not include any points for local offices. The new rules, based on Advisory Opinion 1991-25, now authorize committees to include nonfederal point(s) in their ratios if partisan local candidates are expected on the ballot "in any regularly scheduled election during the two-year congressional cycle."

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<sup>1/</sup>The final rules, and their explanation and justification, were published in the March 13, 1992, Federal Register (57 FR 8990). A detailed summary of the revisions appeared in the April 1992 Record.

11 CFR 106.5(d)(1)(ii). (Note that state party committees may add only one nonfederal point for local offices on the ballot, while local party committees may add a maximum of two points.)

**Retroactive Reallocation.** Using a revised ballot composition ratio based on the new rules, state and local party committees have the opportunity to reallocate administrative and generic voter drive costs paid since January 1, 1991. However, committees will have only until July 18 to reallocate these expenses and make corrective transfers from their nonfederal accounts to their federal accounts. See article on page 3 explaining how to calculate and report these adjustments.

#### Changes That Apply to All Committees

As noted above, the following changes to the allocation rules are not retroactively effective:

- o Committees now have a 70-day window (expanded from 40 days) to transfer funds from the nonfederal account to the federal account to pay for the nonfederal share of a joint expense. (The window begins 10 days before the federal account pays the vendor and ends 60 days after the payment.) 11 CFR 106.5(g)(2)(ii)(B) and 106.5(e)(2)(ii)(B).
- o Committees now have a 60-day period following a fundraising program or event to adjust the fundraising ratio and to transfer funds between the federal and nonfederal accounts to reflect the revised allocation. (When reporting these adjustment transfers, committees must enter the date of the event, a new requirement.) 11 CFR 106.5(f) and 106.6(d).

#### FEC ISSUES 1991 ANNUAL REPORT

On June 1, the FEC published its Annual Report for 1991, a review of the agency's activities during that year. The report opens with a discussion of the predicted shortfall of public funds needed for the Presidential elections and the agency's efforts to educate the public on the \$1 tax checkoff, the sole source of Presidential public funding. Legal issues addressed by the Commission in 1991 are also examined, including court rulings on corporate communications and the use of soft money in federal elections. Tables and graphs provide data on the financial activity of political committees as well as the FEC's operation and budget. Finally, the report includes the agency's suggestions for changes in the campaign finance law, which were presented to the President and Congress earlier this year.

To order a free copy of Annual Report 1991, call 800/424-9530 or 202/219-3420.

#### FEDERAL REGISTER NOTICES

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

#### 1992-8

11 CFR Part 200: Administrative Regulations (Petitions for Rulemaking); Notice of Proposed Rulemaking (57 FR 20430, May 13, 1992)

Federal Election Commission, 999 E Street, NW, Washington, DC 20463  
800/424-9530 202/219-3420 202/219-3336 (TDD)

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

Walter J. Stewart, Secretary of the Senate,  
Ex Officio Commissioner  
Donald K. Anderson, Clerk of the House of  
Representatives, Ex Officio Commissioner

## PARTY ACTIVITIES

### RETROACTIVE APPLICATION OF REVISED BALLOT COMPOSITION RATIO

Under the new allocation regulations, state and local party committees may include an extra nonfederal point in their ballot composition ratios, i.e., the ratio used to allocate joint federal and non-federal administrative and generic voter drive expenses. Additionally, certain state and local party committees--those located in states where local officers are elected only in odd years while statewide officers are elected in even years--may further adjust the ratio to include local partisan offices on the ballot. (See article on page 1.)

Committees now have a limited opportunity--until July 18--to apply the adjusted ballot composition ratio retroactively to payments made since January 1, 1991, and to make adjustment transfers from their nonfederal accounts to their federal accounts.

This article explains how to calculate and report retroactive reallocations and transfers. It is based on Advisory Opinions 1991-25 and 1991-15. In the examples used here, a state party committee revises its ratio to include the additional nonfederal point. The same method should be used by those committees located in states which elect local offices in odd years and state officers in even years.<sup>1</sup>

#### 1. Calculate Revised Ratio

First, calculate the revised ratio.

**Example.** The old ratio used by a state party committee for the 1991-92 election cycle was 28 percent federal/72 percent nonfederal (2 federal points and 5 nonfederal points). With the addition of another nonfederal point, the new ratio is 25 percent federal/75 percent nonfederal (2 federal points and 6 nonfederal points).

<sup>1</sup>With respect to these committees, state committees may now add one nonfederal point for local partisan offices on the ballot in odd years, and local committees may add a maximum of two nonfederal points for such offices. See AO 1991-25, summarized in the October 1991 Record, page 9. These non-federal point(s) are in addition to the extra nonfederal point available to all state and local party committees.

#### 2. Determine Total Administrative/Voter Drive Payments to Be Reallocated

Next, determine the total amount paid by the federal and nonfederal accounts for administrative and generic voter drive expenses from January 1, 1991, through the current date. You should rely on committee records, although your committee's previous reports may provide some help.

o **1991 Total.** Determine the total amount of the committee's administrative/voter drive payments for 1991. The Schedule H4 filed with the committee's year-end report for 1991 may be a help. The last "event year-to-date" entry for an administrative/voter drive payment should show the total payments for 1991.

o **1992 Total.** Now determine the total amount of the committee's administrative/voter drive payments from the beginning of 1992 through the current date. The Schedule H4 filed with the committee's last report should show total payments reported thus far in 1992. The committee's records should provide the amount paid for administrative/voter drive expenses from the closing date of the last report through the current date.

o **Add the Totals.** Add the 1991 and 1992 totals to arrive at the total amount of administrative/voter drive payments that may be reallocated under the revised ratio.

**Example.** The state party committee found that its 1991 year-to-date total for administrative/voter drive payments was \$85,000.

The committee's most recent report (the 1992 second quarter report covering through June 30) shows a year-to-date total of \$10,000. Committee records from July 1 through the current date (July 15) indicate that the committee paid another \$5,000 in administrative/voter drive expenses in 1992. The current year-to-date total for 1992 is therefore \$15,000 (\$10,000 plus \$5,000).

Thus, the total amount of administrative/voter drive payments that may be reallocated is \$100,000 (\$85,000 plus \$15,000).

#### 3. Determine Federal and Nonfederal Amounts Under Old Ratio

Apply the old ratio to the total calculated above. This will give you the amount paid by each account.

**Example.** Applying the old ratio (28 percent federal/72 percent nonfederal) to the \$100,000 total, the committee found it spent \$28,000 from its federal account and \$72,000 from its nonfederal account.

(continued)

**4. Determine Federal and Nonfederal Amounts Under Revised Ratio**

Now apply the revised ratio to the same total.

**Example.** Under the committee's new ratio (25 percent federal/75 percent non-federal), the federal share is \$25,000 and the nonfederal, \$75,000.

**5. Calculate Amount of Nonfederal Transfer**

The difference between the old and revised nonfederal portions is the amount that may be transferred from the nonfederal account to the federal account. Note, however, that the transfer must take place by the July 18 deadline.

**Example.** \$75,000 (new ratio) minus \$72,000 (old ratio) equals \$3,000, the amount the committee may transfer by July 18.

**6. Report Adjustments and Transfer**

In the next report due, report the revised ratio (on Schedule H1) and the transfer from the nonfederal account (on Schedule H3). You must also make an adjustment on Schedule H4 to reflect the reallocation of administrative and generic voter drive payments. These steps are illustrated below.

**Schedule H1:** Show the revised ballot composition formula; explain that the revision is based on the new allocation rules.

STATE AND LOCAL PARTY COMMITTEES		REVISED RATIO
BALLOT COMPOSITION		
CHECK ALL OFFICES APPEARING ON THE NEXT GENERAL ELECTION BALLOT:		
		NUMBER OF POINTS
1. PRESIDENT .....	<input checked="" type="checkbox"/> (1 POINT) .....	1
2. U.S. SENATE .....	<input type="checkbox"/> (1 POINT) .....	
3. U.S. CONGRESS .....	<input checked="" type="checkbox"/> (1 POINT) .....	1
4. SUBTOTAL — FEDERAL (ADD 1, 2, AND 3) .....		2
5. GOVERNOR .....	<input checked="" type="checkbox"/> (1 POINT) .....	1
6. OTHER STATEWIDE OFFICE(S) .....	<input checked="" type="checkbox"/> (1 OR 2 POINTS) .....	1
7. STATE SENATE .....	<input checked="" type="checkbox"/> (1 POINT) .....	1
8. STATE REPRESENTATIVE .....	<input checked="" type="checkbox"/> (1 POINT) .....	1
9. LOCAL CANDIDATES .....	<input checked="" type="checkbox"/> (1 OR 2 POINTS) .....	1
10. SUBTOTAL — NON-FEDERAL (ADD 5, 6, 7, 8, AND 9) .....		6
11. TOTAL POINTS (LINE 4 PLUS LINE 10) .....		8
FEDERAL ALLOCATION = LINE 4 DIVIDED BY LINE 11 .....		25 %

+1-----Extra nonfederal point authorized by June 1992 amendment to allocation rules

**Schedule H3:** Report the transfer from the nonfederal account to the federal account; explain that the transfer adjusts for the revised ratio.

NAME OF ACCOUNT		DATE OF RECEIPT		
State Party Committee--Nonfederal		7-16-92		\$ 3,000.00
BREAKDOWN OF TRANSFER RECEIVED				
		ADMIN./VOTER DRIVE AMOUNT	DIRECT FUND-RAISING AMOUNT	EXEMPT ACTIVITY/DIRECT CANDIDATE SUPPORT
i)	Total Administrative/Voter Drive (to adjust for revised ratio)	\$3,000.00		
ii)	Direct Fundraising (List Events-Amount for Each)			
a)				
b)				
c)				
d)				
e)	Total Amount Transferred For Direct Fundraising			
iii)	Exempt Activity/Direct Candidate Support (List Events-Amount For Each)			
a)				
b)				
c)				
d)				
e)	Total Amount Transferred For Exempt Activity/Direct Candidate Support			

**Schedule H4:** To adjust the federal and nonfederal shares of administrative/voter drive payments, enter the following information:

- o In the name and address box, explain that the entry is an adjustment to reflect the revised ratio applied retroactively from January 1, 1991, through the date of the last payment that was reallocated. (In the example, the date was July 15.)
- o In the date box, enter the date of the transfer. Remember, the transfer must be made by the July 18 deadline. (In the example, the transfer was received on July 16.)

- o In the total box, enter zero.
- o In the federal share box, enter the amount of the transfer as a negative number (to reduce the overall federal share of administrative/voter drive payments).
- o In the nonfederal share box, enter the transfer amount as a positive number (to increase the overall nonfederal share of the payments).
- o It is not necessary to fill in the "event year-to-date" total because the adjustment entry, with its zero amount, does not affect the year-to-date total.

A. FULL NAME, MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON-FEDERAL SHARE
Adjustment to reflect revised ratio applied retroactively from 1/1/91--7/15/92		7-16-92 (transfer date)	0	-\$3,000	\$3,000
CATEGORY: <input checked="" type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT EVENT YEAR-TO-DATE:    \$ <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					

## PUBLIC FUNDING

### JUNE MATCHING FUND PAYMENTS

On May 21 and 28, the Commission certified a total of \$5.6 million in matching fund payments to 1992 Presidential candidates. The U.S. Treasury made the payments early in June. As of the June payment, primary candidates had received \$28 million in matching funds, as shown in the table. Candidates have requested almost \$3.4 million for the July payment.

Candidates who withdraw from the race or who fail to receive at least 10 percent of the vote in two consecutive primaries may still receive matching funds to wind down their campaigns and to retire debts incurred before the date on which they became ineligible for matching funds.

### Matching Fund Payments

	June Payment	Cumulative Total
<b>Republicans</b>		
Patrick Buchanan	\$ 263,303	\$ 3,140,803
George Bush	1,329,418	8,114,606
<b>Democrats</b>		
Larry Agran	100,000 <sup>1/</sup>	100,000
Jerry Brown	1,669,742	3,686,787
Bill Clinton	\$1,089,690	5,330,339
Tom Harkin <sup>2/</sup>	42,313	1,852,808
Bob Kerrey <sup>2/</sup>	55,584	1,839,264
Paul Tsongas <sup>2/</sup>	935,972	2,378,918
Douglas Wilder <sup>2/</sup>	0	289,027
<b>New Alliance Party</b>		
Lenora Fulani	134,724	1,309,053
<b>Totals</b>	<b>\$5,620,745</b>	<b>\$28,041,605</b>

<sup>1/</sup>Mr. Agran's payment was certified on May 21. The other payments were certified on May 28.

<sup>2/</sup>These candidates have withdrawn from the Presidential race. Governor Wilder withdrew on January 8, Senator Kerrey on March 6, Senator Harkin on March 9 and former Senator Tsongas on March 19.

### GEPHARDT COMMITTEE: FINAL REPAYMENT AMOUNT

On May 21, the Commission made a final determination that the Gephardt for President Committee, Inc., must repay \$118,944 in primary matching funds to the U.S. Treasury. The repayment represents the pro rata portion<sup>1/</sup> of \$452,544, the amount the Commission determined was paid in excess of the Iowa expenditure limit. The Committee had received \$3.4 million in primary matching funds for the 1988 Presidential campaign.

In the final audit report on the Gephardt Committee, the agency had made an initial determination that the Committee's excess spending totaled \$480,849. The final determination reduced that amount by \$28,305.

The agency decreased the amount of media expenses allocable to the Iowa limit by \$24,490. This reduction was made in consideration of the Committee's written response to audit report findings and the Committee's oral presentation on the findings.<sup>2/</sup> The remaining reductions were based on additional documentation submitted by the Committee.

In a statement of reasons supporting the final repayment determination, the Commission noted that a future addendum to the final audit report may include additional expenses in excess of the Iowa limit, which would increase the repayment amount. Furthermore, the Committee may have received matching funds above the amount needed to retire its debts, in which case it would have to repay the difference.

The final audit report and the statement of reasons are available in the Public Records Office.

<sup>1/</sup>A ratio formula is used to calculate what portion of the excessive expenditures represented the payment of public funds as opposed to private contributions. That amount—the pro rata portion—is subject to repayment.

<sup>2/</sup>The Committee addressed the Commission in a November 6, 1991, open session.

## ADVISORY OPINIONS

### ADVISORY OPINION REQUESTS

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

#### AOR 1992-18

Campaign's use of property jointly owned by candidate and spouse. (Requested by Congressman Richard Ray; Date Made Public: May 21, 1992; Length: 7 pages)

#### AOR 1992-19

Federal campaign's lease of computers purchased with prohibited funds by state campaign. (Requested by the Mike Kreidler for Congress Committee; Date Made Public: June 2, 1992; Length: 6 pages)

#### AOR 1992-20

Checks payable to SSF by corporate members of connected organization used for administration of SSF. (Requested by American Speech-Language-Hearing Association; Date Made Public: June 5, 1992; Length: 2 pages)

#### AOR 1992-21

Donation of campaign funds to National Fund for U.S. Botanical Garden. (Requested by Senator Daniel Patrick Moynihan; Date Made Public: June 5, 1992; Length: 5 pages plus 10-page attachment)

#### AOR 1992-22

For-profit enterprise by individual to sell T-shirts bearing her original candidate slogan. (Requested by Robin Langer; Date Made Public: June 11, 1992; Length: 4 pages)

#### AOR 1992-23

Use of corporate funds to pay for media ads on record of Congressman seeking reelection. (Requested on behalf of National Rifle Association's Political Victory Fund; Date Made Public: June 12, 1992; Length: 11 pages)

### ADVISORY OPINION SUMMARIES

#### AO 1992-12: Candidate's Personal Use and Future Ownership of Campaign Van

During his campaign for re-election, Congressman Larry LaRocco may, on occasion, make personal use of a van leased by the LaRocco for Congress Campaign; as long as he reimburses the committee from his personal funds for use of the van, this arrangement will not result in the candidate's personal use of campaign funds, which is prohibited under 2 U.S.C. §439a. (His committee should report the reimbursements as "other receipts.") AO 1984-59.

For similar reasons, Mr. LaRocco may assume full personal use of the van after the November 1992 election, when he will substitute his name on the bank note in place of the committee's name and begin making payments on the lease from his personal funds. When the three-year lease expires, Mr. LaRocco will own the van. This is a permissible arrangement assuming that the bank is making its usual and normal charge for the leasing transaction and that, when the lease is transferred to his name, Mr. LaRocco will reimburse his committee a portion of any charges paid to secure the lease, such as a security deposit. Moreover, if the lease provides for a discounted purchase price, he may have to pay the committee a portion of the discount.

Any tax laws or House rules that might apply to the proposed activity are outside the Commission's jurisdiction. (Date Issued: May 15, 1992; Length: 3 pages)

#### AO 1992-14: Candidate's Designation of Excess Campaign Funds in Event of His Death

Because the federal campaign finance law does not limit the time when excess campaign funds may be distributed, Congressman Dan Burton may issue instructions on the future use of excess funds in the event of his death.

Mr. Burton's proposal to donate his campaign's excess funds to a nonprofit, tax-exempt charitable foundation is a permissible use of excess campaign funds under 2 U.S.C. §439a. That provision specifically permits excess funds to be donated to a charity described in 26 U.S.C. §170(c). Because excess campaign funds may also be used "for any other lawful purpose," the funds may be donated to the foundation even if it does not qualify as a §170(c) charity. In that case, however,

(continued)

the designation could have adverse federal tax consequences.

The opinion did not address the prohibition on the conversion of excess funds to the candidate's personal use since Mr. Burton stated that his personal estate would not receive any financial benefit from the foundation.

Payments to the foundation would be reportable by the campaign committee as "other disbursements." The Commission did not express an opinion on the application of any tax law or other state or federal law outside the FEC's jurisdiction. (Date Issued: May 15, 1992; Length: 3 pages)

## COURT CASES

### FEC v. WRIGHT

On November 12, 1991, a U.S. district court ordered James C. Wright, Jr., former Speaker of the U.S. House of Representatives, to answer the FEC's questions in connection with an administrative complaint filed against him. The court also ordered Mr. Wright to pay the FEC's court costs. (U.S. District Court for the Northern District of Texas, Fort Worth Division, Civil Action No. 4-91-0542-A.)

The former Speaker appealed the judgment on January 9, 1992. However, he later filed a motion to dismiss the appeal as moot since he and the FEC had reached a settlement with respect to the administrative complaint (MUR 2649). The FEC did not object to the motion, and on May 1, 1992, the U.S. Court of Appeals for the Fifth Circuit dismissed the appeal. (Civil Action No. 92-1033.)

### Background

In July 1988, Citizens for Reagan filed an administrative complaint alleging that Speaker Wright violated 2 U.S.C. §441i. That provision, now repealed, prohibited a federal officeholder from accepting more than a \$2,000 honorarium for a speech, appearance or article. The complaint specifically alleged that Speaker Wright, during 1985 and 1986, accepted excessive honoraria disguised as proceeds from the sale of his book, Reflections of a Public Man. In January 1990, the Commission found reason to believe Mr. Wright had violated §441i and opened an investigation into the matter. When he refused to comply with an FEC order seeking answers to questions about his appearances and the sale of his

book, the agency asked the district court to enforce the order.

### District Court Decision

In its November 12, 1991, judgment,<sup>1</sup> the court concluded that the FEC's order complied with a three-pronged test for validity: the investigation was for a lawful purpose; the information sought was relevant; and the agency's demand was reasonable. The court therefore ordered Mr. Wright to answer the FEC's questions. In reaching its decision, the court considered but rejected Mr. Wright's arguments, which challenged the FEC's authority to investigate his activities.

(Mr. Wright also filed a motion asking the court to dismiss the lawsuit, arguing that, with the repeal of §441i in August 1991, the FEC lost jurisdiction to bring the action. On October 16, 1991, for the reasons discussed below, the court denied Mr. Wright's motion.)

**Speech or Debate Clause.** Former Speaker Wright relied on the speech or debate clause in the Constitution for several of his arguments. The clause states that "for any Speech or Debate in either House, they [Senators or Representatives] shall not be questioned in any other Place." Article I, Section 6.

Mr. Wright contended that the clause nullified the FEC's authority to seek answers to questions on activities that took place when he was a House Member. The court, however, found that the clause did not apply to the FEC's questions, which concerned activities that occurred "outside, and away from, the House" and which were "totally unrelated to anything done in the course of the legislative process...."

Mr. Wright also argued that the FEC violated the clause because, in deciding to pursue an investigation, the agency relied on "speech or debate" material, namely, a report prepared by an outside counsel at the request of the House Committee on Standards of Official Conduct when that body was investigating the sale of the Speaker's book. The court rejected the argument, pointing out that the report lacked any "speech or debate" content but merely contained findings related to the Speaker's financial affairs. Moreover, the court said that the relevant findings in the report (i.e., his alleged circumvention of the honoraria limit) were "independent of anything that occurred in any kind of House proceeding."

<sup>1</sup>Reported at 777 F.Supp. 525.



The former Speaker again invoked the speech or debate clause with respect to his testimony before the House Committee, arguing that the clause immunized him from having to answer the FEC's questions on the same matters. However, because he testified before the Committee "in his capacity as a witness and not in his legislative capacity," the court found no merit to this argument.

Finally, he argued that the constitution's self-discipline clause, when read with the speech or debate clause, effectively allocated to the House the sole authority to enforce violations of the honorarium limit by Members. The self-discipline clause states, in part: "Each House may determine the Rules of its Proceedings [and] punish its Members for disorderly Behavior...." Article I, Section 5. The court rejected this argument for two reasons. First, it "is tantamount to a contention that the relevant provisions of the Act are unconstitutional." Second, it "fails to recognize that the standards of conduct and rules of enforcement found in the Act are, indeed, self-disciplinary rules—the combined votes of the two Houses created the statutory provisions in question."

**Repeal of §441i.** In another line of argument, Mr. Wright claimed that the FEC no longer had authority to investigate or enforce §441i because of recent legislation: The Ethics Reform Act of 1989 (effective January 1, 1991), which prohibited House Members from accepting honoraria and amended §441i to remove House Members from its scope; and the repeal of §441i later that year, on August 14.

The court first noted that the Ethics Reform Act effectively repealed §441i insofar as it applied to House Members. The court went on to point out that, if Congress had intended to eliminate the FEC's authority to enforce §441i violations occurring before the repeal, the legislation would have expressed that intent. "Thus, to this day," the court stated, "§441i is deemed to be in full force and effect as to any conduct of Wright occurring before the date of its repeal."

#### WHITE v. FEC

On April 24, 1992, the U.S. District Court for the Western District of Pennsylvania granted the FEC's motion to dismiss this case based on the report and recommendation of the magistrate judge, which the court adopted as its opinion. (Civil Action No. 91-1201.)

William D. White challenged the constitutionality of 11 CFR 110.11(a), which permits candidates (except those receiving public funding<sup>1/</sup>) to make unlimited contributions of personal funds to their own campaigns. Mr. White claimed that the rule violated the equal protection provision of the Fifth Amendment by conferring a privilege on candidates that is denied to other citizens. He sought an order compelling candidates to pay a penalty in the amount of their excessive contributions. He also sought a preliminary injunction barring candidates from making contributions to their own campaigns in excess of \$1,000. The court denied that motion on August 26, 1991.

In ruling on the issues, the court pointed out that the Supreme Court upheld the challenged provision in Buckley v. Valeo. In that case, the High Court recognized that "the use of personal funds reduces the candidate's dependence on outside contributions and thereby counteracts the coercive pressures and attendant risks of abuse to which the [Federal Election Campaign] Act's contribution limitations are directed." The district court also cited California Medical Association v. FEC, in which the Supreme Court held that the disparities in the Act's contribution provisions do not violate equal protection rights.

Because the Supreme Court has already ruled on the issue raised by Mr. White, the district court found that there was no need to certify his constitutional challenge pursuant to 2 U.S.C. §437h.2/ The court therefore granted the FEC's motion to dismiss based on plaintiff's failure to state a claim for which relief may be granted.

(Litigation continued)

<sup>1</sup>Presidential candidates who receive public funds are subject to a \$50,000 limit on contributions to their own campaigns.

<sup>2</sup>This provision provides for review of constitutional issues: the U.S. district court immediately certifies to the U.S. court of appeals all questions of the constitutionality of the Federal Election Campaign Act.

## NEW LITIGATION

## FEC v. America's PAC

The FEC asks the court to find that America's PAC, registered as a state committee, and its executive director and acting treasurer violated several provisions of the law based on the following claims:

1. Having received an earmarked contribution from Physicians Interindemnity/PAC (PI/PAC, also a state committee), America's PAC altered the notation on the check from "Bill Press for U.S. Senate" to "political contribution" and then deposited it. By failing to forward the earmarked contribution to the Press committee, and by failing to provide the committee and the FEC with required information on the contribution, defendants violated 2 U.S.C. §432(b).

2. The conversion of the \$2,000 contribution from an earmarked contribution to a contribution to America's PAC caused the PAC to become a federal political committee under §431(4)(A), with attendant registration and reporting obligations. Defendants never fulfilled those obligations, in violation of §§433 and 434.

3. Because the PI/PAC contribution contained corporate funds, the conversion of the contribution also caused defendants to violate §441b(a) by knowingly accepting a prohibited contribution.

The FEC asks the court to:

- o Order defendants to refund the \$2,000 contribution to PI/PAC;
- o Order them to file a Statement of Organization and all outstanding reports;
- o Assess a civil penalty against them; and
- o Permanently enjoin them from further similar violations of the Act.

U.S. District Court for the Central District of California, Civil Action No. 92-2747 (JMI); May 6, 1991.

## STATISTICS

### ACTIVITY OF CANDIDATES AND PARTY COMMITTEES THROUGH MARCH 31, 1992

The press office recently released campaign finance statistics on the financial activity of national party committees and 1992 Congressional campaigns. The releases cover activity as of March 31, 1992, which encompasses the first 15 months of the 1992 election cycle. Both press releases may be ordered from the Public Records Office; call 800/424-9530 (ask for Public Records) or 202/219-4140.

### House and Senate Campaigns

The May 10 release on 1992 candidate activity provides the following statistics:

- o A detailed summary of 1992 House and Senate campaigns broken down by political party affiliation and candidate status (incumbent, challenger, open seat);
- o A 15-month comparison of House and Senate activity for the 1992, 1990 and 1988 election cycles;
- o Six-year summaries of current Senate candidates;
- o A financial profile of candidates in each House race; and
- o Rankings of House and Senate candidates in terms of their: overall receipts, contributions from individuals, contributions from PACs, disbursements, cash on hand and debts.

The graphs on page 11 compare 15-month median receipts and cash on hand for House candidates over three election cycles.

### National Party Activity

As shown below, the national Republican Party committees raised and spent more than the Democratic national committees by a wide margin during the first 15 months of the 1992 election cycle. The table is based on the May 17 press release, which provides more detailed data on national party committees.

### 15-MONTH ACTIVITY OF NATIONAL PARTY COMMITTEES, 1/ 1992 ELECTION CYCLE (millions of dollars)

#### Federal Activity

	Receipts	Disbursements	Cash on Hand	Debts
Democratic	\$ 30.0	\$28.6	\$ 3.2	\$1.7
Republican	\$101.5	\$87.8	\$12.6	\$1.5

#### Nonfederal Activity

	Receipts	Disbursements	Cash on Hand
Democratic	\$10.2	\$ 9.3	\$1.6
Republican	\$26.1	\$19.2	\$6.3

<sup>1</sup>Table lists aggregate activity, as of March 31, 1992, of the three national-level committees of each party (the national committee and the House and Senate campaign committees).

**House Campaigns:<sup>1</sup>  
Median Receipts and Cash on Hand  
First 15 Months of Election Cycle<sup>2</sup>**

**Democrats**  
 [White Bar] Receipts  
 [Black Bar] Cash on Hand

**Republicans**  
 [White Bar] Receipts  
 [Black Bar] Cash on Hand

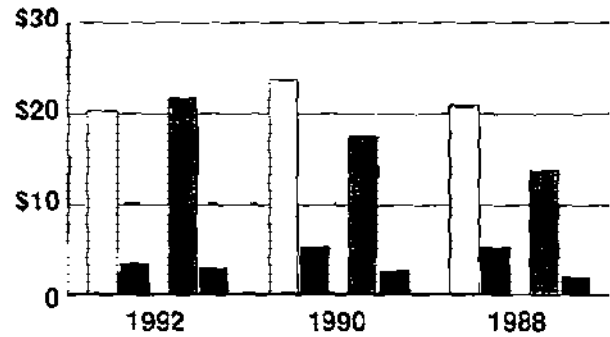
**Chart I  
Incumbents<sup>3</sup>**

Thousands



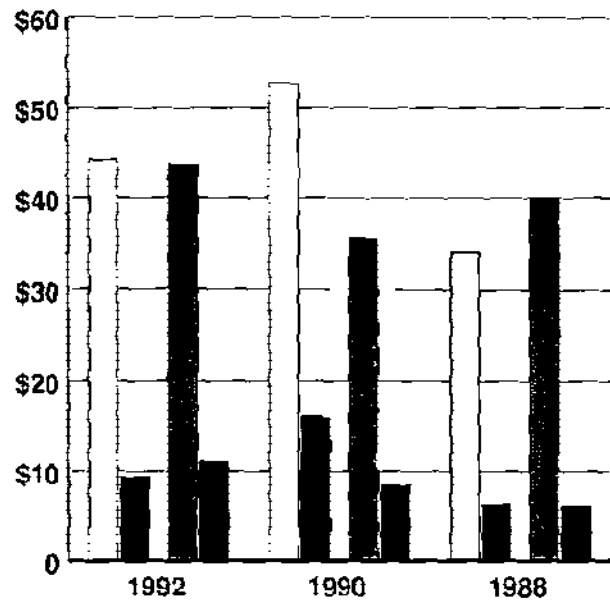
**Chart II  
Challengers<sup>3</sup>**

Thousands



**Chart III  
Open Seat Candidates<sup>3</sup>**

Thousands



<sup>1</sup> These charts reflect the activity of House campaigns that reported raising some money before March 31 of the election year.

<sup>2</sup> An election cycle covers a two-year period: the year before the election year and the election year. These charts show activity as of March 31 of the election year, that is, 15 months into the election cycle.

<sup>3</sup> Note the difference in scales between Chart I and Charts II and III.

**AUDITS****FINAL AUDIT REPORTS RELEASED**

Listed below, in chronological order, are the final audit reports released by the Commission between January and May 1992.

The FEC is required to audit Presidential and convention committees that received public funds. In addition, the Commission may audit any committee whose reports indicate that the committee has not met threshold requirements for substantial compliance with the Federal Election Campaign Act, 2 U.S.C. §438(b).

Copies of audit reports are available for review in the Public Records Office and may be ordered from that office. Call 800/424-9530 (ask for Public Records) or 202/219-4140.

**Riverside County Republican Central Committee**

Date Released: January 2, 1992

Length: 7 pages

**Murray for Congress**

Date Released: January 2, 1992

Length: 2 pages

**Bob Allen for Congress**

Date Released: January 21, 1992

Length: 2 pages

**George Bush for President Committee, Inc.**

Date Released: February 24, 1992

Length: 59 pages

**Cardino '88**

Date Released: March 5, 1992

Length: 10 pages

**Enron Political Action Committee**

Date Released: March 31, 1992

Length: 4 pages

**Americans for Robertson, Inc.**

Date Released: April 15, 1992

Length: 63 pages plus attachments

**Jesse Jackson for President '88 Committee;**

**Jesse Jackson for President '88 Committee—**

**California; New Yorkers for Jesse Jackson**

Date Released: April 22, 1992

Length: 33 pages plus attachments

**COMPLIANCE****FEC PUBLISHES NONFILERS**

The Commission recently cited the committees of the candidates listed below for failing to file reports. The names of authorized committees that fail to file reports are published pursuant to 2 U.S.C. §438(a)(7). Enforcement actions against nonfilers are pursued on a case-by-case basis.

Candidate	Office Sought	Report Not Filed
Taylor	House-AL/07	Pre-Primary
Posner	House-CA/51	Pre-Primary
McCuen	House-AR/04	Pre-Runoff
Orton	House-UT/03	Pre-Convention

**MURS RELEASED TO THE PUBLIC**

Listed below are MURS (FEC enforcement cases) recently released for public review. The list is based on the FEC press release of May 11 and 22 and June 1, 1992. Files on closed MURS are available for review in the Public Records Office.

Unless otherwise noted, civil penalties resulted from conciliation agreements reached between the respondents and the Commission.

**MUR 2768**

**Respondents** (all in ND): (a) North Dakota State Republican Federal Account, Yvonne M. Kroll, treasurer (ND); (b) Strinden for U.S. Senate, Donald Miller, treasurer; (c) Earl S. Strinden

**Complainant:** George Gaukler, Chairman, North Dakota Democratic NPL Party

**Subject:** Excessive coordinated expenditures and contributions

**Disposition:** (a) \$7,500 civil penalty; (b)-(c) No reason to believe

**MUR 2797**

**Respondents** (all in AL): (a) Alabama Education Association; (b) Perkins & Associates, Inc.; (c) Joseph W. Perkins; (d) Harry H. Ferguson, Jr.; (e) Cynthia K. Perkins; (f) Ivy Hunter; (g) Fred Hunter; (h) W. Lee Hudson; (i) Fred DeLoach; (j) Laurie Enslin; (k) Sheri Arnold Brown; (l) Joyce Miller Albright; (m) Grover Gene Hill; (n) Daniel Mark Perkins; (o) Loretta T. Perkins

**Complainant:** Referral by Department of Justice  
**Subject:** Contributions in the names of others; corporate contributions  
**Disposition:** (a) No probable cause to believe; (b) reason to believe but took no further action; (c) \$5,000 civil penalty; (d) \$5,000 civil penalty (e) \$400 civil penalty; (f) \$400 civil penalty; (g) \$400 civil penalty; (h) reason to believe but took no further action; (i) reason to believe but took no further action; (j) \$350 civil penalty; (k) \$300 civil penalty; (l) \$400 civil penalty; (m) no probable cause to believe; (n) reason to believe but took no further action; (o) reason to believe but took no further action

**MUR 3085**

**Respondents:** (a) Democratic Study Group Campaign Fund, William H. Hagan, treasurer (DC); (b) Heublein, Inc. (CT); (c) Transcontinental Pipe Line Corporation (TX); (d) The National Education Association of the United States (DC)  
**Complainant:** FEC initiated  
**Subject:** Corporate and labor contributions; disclaimer  
**Disposition:** (a) \$450 civil penalty; (b) and (c) reason to believe but took no further action; (d) \$1,000 civil penalty

**MUR 3124**

**Respondents:** (a) The Atlanta '88 Committee, Inc., Michael Lomax, treasurer (GA); (b) Production Arts Lighting, Inc. (NY); (c) Pro-Mix, Inc. (NY); (d) Kimball Audio Visual (TX); (e) First National Bank of Atlanta (now known as Wachovia Bank of Georgia, N.A.); (f) Citibank, N.A. (NY)  
**Complainant:** FEC initiated  
**Subject:** Contributions by a national bank; contributions to convention committee from outside metropolitan statistical area  
**Disposition:** (a) Reason to believe but took no further action; (b)-(d) took no action; (e)-(f) reason to believe but took no further action

**MUR 3148**

**Respondents (all in NY):** (a) Throw the Rascals Out, Dennis G. Wedra, treasurer; (b) Committee of 100 Democrats, Dominick A. Fusco, treasurer; (c) Dominick A. Fusco; (d) Stefan Miller  
**Complainant:** Arnold Linhardt, on behalf of Engel for Congress (NY)  
**Subject:** Excessive contributions; failure to disclose contributions; improper authorized committee name; disclaimer  
**Disposition:** (a) \$3,500 civil penalty; (b) \$900 civil penalty; (c) \$250 civil penalty; (d) \$1,300 civil penalty

**MUR 3205**

**Respondents:** Oklahoma Leadership Council, C. Wesley Lane II, treasurer  
**Complainant:** FEC initiated  
**Subject:** Failure to disclose expenses properly; failure to allocate administration expenses  
**Disposition:** (1) \$900 civil penalty (disclosure); (2) no probable cause to believe (allocation)

**MUR 3208**

**Respondents:** Senate Committee for Bo Thomas, Margaret S. Thomas, treasurer (NC)  
**Complainant:** FEC initiated  
**Subject:** Failure to file 48-hour notices  
**Disposition:** \$7,500 civil penalty

**MUR 3211**

**Respondents:** The LaRouche Democratic Campaign (1988 Presidential committee), Edward Spannaus, treasurer (VA)  
**Complainant:** FEC initiated  
**Subject:** Excessive contributions; expenditures in excess of state limits  
**Disposition:** (1) \$1,500 civil penalty (excessive contributions); (2) no probable cause to believe (state limits)

**MUR 3256**

**Respondents:** Alexander Campaign Committee, Julis R. Smith, treasurer (AR)  
**Complainant:** FEC initiated  
**Subject:** Failure to file 48-hour notices  
**Disposition:** \$5,850 civil penalty

**MUR 3321/3142/2857/2832**

**Respondents:** Republican Party of Dade County (FL)  
**Complainant:** FEC initiated  
**Subject:** Failure to file reports on time; failure to amend Statement of Organization on time  
**Disposition:** \$2,000 civil penalty

**MUR 3373**

**Respondents:** United Association Local 725, Pipefitters-Air Conditioning Political Action Committee, Eric S. Johnson, treasurer (FL)  
**Complainant:** FEC initiated  
**Subject:** Failure to file reports on time  
**Disposition:** \$353 civil penalty

**MUR 3425**

**Respondents (all in GA):** (a) Coverdell Senate Committee, Marvin Smith, treasurer; (b) Paul D. Coverdell; (c) Breakfast Club Explorers and treasurer  
**Complainant:** David E. Stahl, Campaign Director, Georgians for Bob Barr - U.S. Senate

(continued)

**Subject:** Failure to register and report  
**Disposition:** (a) Reason to believe but took no further action; (b) no reason to believe; (c) reason to believe but took no further action

**MUR 3490**

**Respondents:** (a) Executive Office of the President, The White House (DC); (b) Citizens for Arlen Specter, Stephen J. Harmelin, treasurer (PA)

**Complainant:** Eric Bradway (PA)

**Subject:** Use of government facilities

**Disposition:** (a)-(b) No reason to believe

**MUR 3500**

**Respondents:** (a) Brown for President, Jodie Evans, treasurer (CA); (b) Garry B. Trudeau; (c) Universal Press Syndicate (MO); (d) Raleigh News & Observer (NC)

**Complainant:** J. Edgar Williams (NC)

**Subject:** Excessive and corporate contributions

**Disposition:** (a)-(d) No reason to believe

**PUBLIC APPEARANCES**

- 7/1 Georgetown University  
Washington, DC  
Michael Dickerson, Public Records  
Dorothy Hutcheon, Information Services
- 7/10 American University  
Washington, DC  
Greg Scott, Information Services  
Michael Dickerson, Public Records
- 7/13 Atlantic and Pacific Exchange  
Washington, DC  
Chairman Joan D. Aikens  
Michael Dickerson, Public Records
- 7/20-24 Conference of Canadian  
Election Officials  
Whitehorse, Yukon  
Chairman Joan Aikens  
John Surina, Staff Director
- 7/21 International Center  
Washington, DC  
Louise Wides, Information Services  
William Kimberling, Clearinghouse on Election Administration  
Michael Dickerson, Public Records
- 7/30 Institute of Alternative  
Journalism  
Seattle, Washington  
Kent Cooper, Public Disclosure

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**JULY 15 QUARTERLY REPORT: WAIVERS**

The second quarter report, due July 15, is waived if the committee is required to file a pre-election report during the period July 5 through July 15. See 11 CFR 104.5(a)(1)(iii)(C) and (c)(1)(i)(C).

The pre-election reports listed below have filing dates that fall within the July 5-15 period. Therefore, committees required to file one of these reports do not have to file the July 15 quarterly report. Committees should be sure, however, to file the pre-election report on time.

- o Georgia Primary: The pre-primary report for the July 21 primary. (Filing date: July 9; registered/certified mailing date: July 6.)
- o Connecticut Conventions: Pre-convention reports for the Democratic and Republican/ conventions held to elect House

and Senate nominees. (These conventions are being held from July 20 through July 25, with the exception noted below. For specific convention dates as well as reporting dates, call the FEC.)

**ALASKA PRIMARY DATE CHANGED**

The date of the Alaska primary has been changed from August 25 to September 8. The pre-election reporting dates that appeared in the January issue have therefore been changed. The revised reporting dates are shown below.

**Alaska Primary, September 8**

Close of Books	Reg./Cert. Mailing Date <sup>1</sup>	Filing Date
August 19	August 24	August 27

<sup>1</sup>Exception: The waiver does not apply to the 4th Congressional District Republican convention on July 11, since the pre-convention report is due on June 29 (registered/certified mailing date is June 26).

<sup>1</sup>Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

FEDERAL ELECTION COMMISSION  
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