

Record

June 1993

Federal Election Commission

Volume 19, Number 6

Table of Contents

- Reports**
- 1 Midyear Report
- Legislation**
- 1 "Motor Voter" Law
- 3 "Commission Overwhelmed" Says Vice Chairman in Budget Testimony
- Regulations**
- 3 FEC Survey on "Best Efforts" to Obtain Contributor Information
- 4 Ban on Nonfederal Campaign Transfers Effective July 1
- Special Elections**
- 4 June 5 Texas Runoff: Reporting by PACs and Party Committees
- 5 **Advisory Opinions**
- Public Appearances**
- 6 FEC Staff to Hold Meetings in Hartford, Indianapolis, Helena and Lincoln
- Public Funding**
- 7 1988 Jackson Campaign Ordered to Repay Treasury
- Court Cases**
- 7 Spannaus v. FEC (91-0681)
- 8 LaRouche v. FEC (92-1100)
- 8 FEC v. Miller
- 8 New Litigation
- Compliance**
- 9 MURs Released to the Public
- 9 **Federal Register**
- 10 **Index**
- Publications**
- 11 New Brochure for Local Party Organizations

Reports

Midyear Report Due July 31

Because this is a nonelection year (there are no regularly scheduled federal elections), committees that filed on a quarterly basis in 1992 now file on a semiannual schedule.¹ For most of these committees, the first report covering 1993 activity is the midyear report, due July 31, as explained below.

This article also provides information on optional filing schedules for 1993.

PACs, Party Committees and Congressional Committees: Semiannual Filing

The following committees file on a semiannual basis during 1993:

- Authorized committees of House and Senate candidates, including candidates in 1993 special elections; and
- PACs and party committees except those that have chosen to file monthly (see below). 11 CFR 104.5(a)(2) and (c)(2).

Special Election Reports. Several special elections have been scheduled this year, and committees that make

(continued on page 2)

¹ Except Presidential committees; see page 2.

Legislation

FEC to Assume New Duties Under "Motor Voter" Law

On May 20, President Clinton signed the National Voter Registration Act of 1993 (the "motor voter" law), which assigns new responsibilities to the Commission.

The law will take effect at the start of 1995 (although the effective date will be extended for those states whose constitutions will have to be changed). The law requires states to implement several voter registration procedures: Registration of individuals applying for driver's licenses; registration by mail; and registration at designated government agencies, specifically, public assistance agencies, state-funded agencies serving persons with disabilities, and armed forces recruitment offices. States must also select additional agencies to provide voter registration services.

The FEC is required to inform states about their responsibilities under the law and, in consultation with state officials, to design a national mail-in voter registration form. (A state may design its own form, but the form must satisfy the criteria set forth in the law.) Additionally, every two years, the Commission must report to Congress on the law's effectiveness and recommend legislative changes.

(continued on page 3)

Reports

(continued from page 1)

contributions or expenditures in connection with them may also have to file special election reports. 11 CFR 104.5(h)(1). See the March *Record*, page 1. See also the article on the Texas runoff (this issue, page 4).

Midyear Report. Semiannual filers must file a midyear report no later than Saturday, July 31, 1993. If a filing office is closed that day, the report must be received by Friday, July 30. However, reports sent by registered or certified mail will be considered filed on time if post-marked by July 31. See 11 CFR 104.5(c)(2)(i)(A) and (e).

The midyear report covers activity from January 1 through June 30. However, there are two exceptions to the January 1 opening date:

- If the midyear report is the committee's first report, it must cover all pre-registration activity. The opening date of the report is the date of that first activity. (In the case of a candidate committee, the first report must cover all activity that took place before the individual became a candidate.) Any pre-registration activity that took place in 1992, however, should be disclosed in a separate Form 3 or 3X.
- If the committee filed a previous report or reports disclosing 1993 activity—such as a special election report—coverage for the midyear report begins with the day following the closing day of the last report filed.

Year-End Report. Committees filing on a semiannual basis must file a year-end report covering activity from July 1 through December 31, 1993, and due January 31, 1994. 11 CFR 104.5(c)(2)(i)(B).

PACs and Party Committees: Monthly Filing Option

PACs and party committees have the option of filing on a monthly reporting schedule instead of a semiannual schedule. 11 CFR 104.5(c). (Committees that filed monthly during 1992 continue to file on that basis in 1993 unless they change their schedule to a semiannual one.)

Monthly Schedule. Monthly reports are due on the 20th of each month and cover the previous month's activity. 11 CFR 104.5(c)(3). If sent by registered or certified mail, they must be postmarked by the 20th. 11 CFR 104.5(e). The 1993 monthly reporting dates were published in the January 1993 *Record*.

Special Election Reports. Monthly filers do not have to file pre- and post-special election reports. See 2 U.S.C. §434(a)(9). PACs, however, may have to file 24-hour reports on independent expenditures supporting or opposing special election candidates. 11 CFR 104.4(b) and 104.5(g).

See the March *Record*, page 8, and page 4 of this issue.

Changing the Filing Schedule. Committees wishing to change their filing frequency during 1993 must notify the Commission in advance when filing a required report under the committee's current schedule. A committee may change its filing frequency only once per calendar year. 11 CFR 104.5(c).

Presidential Committees: Monthly or Quarterly Filing

Authorized committees of Presidential candidates may file on either a monthly or a quarterly schedule this year. 11 CFR 104.5(b)(2). Presidential committees wishing to change their filing schedule should notify the Commission in advance.

Quarterly reports cover each three-month quarterly period and are due on the 15th day after the close of the quarter. If sent by registered or certified mail, quarterly reports must be postmarked by the due date. 11 CFR 104.5(e). The next quarterly report due this year is the July 15 quarterly, covering April, May and June activity.

For the monthly reporting dates, see "Monthly Schedule," above.

Further Information

More complete reporting information, including information on where to file reports, appeared in the January 1993 *Record*. If you wish to order a reprint of that article, call the FEC at 800/424-9530 or 202/219-3420. Please feel free to call the FEC with your reporting questions. ♦

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

800/424-9530
202/219-3420
202/219-3336 (TDD)

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

Commissioner
John Warren McGarry,
Commissioner

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

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

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

Published by the Information
Division

Louise D. Wides, Director
Stephanie Fitzgerald, Editor
Blake Lange, Graphics Advisor

Legislation

(continued from page 1)

Finally, the Commission must prescribe regulations necessary to carry out its new responsibilities.

The FEC's National Clearinghouse on Election Administration will be largely responsible for carrying out the FEC's duties. Anticipating the passage of the legislation, the Clearinghouse discussed the "motor voter" bill with the Clearinghouse Advisory Panel and other election officials at a March meeting. The office is currently developing plans to implement the new law.

The Clearinghouse has also published three related reports in its series *Innovations in Election Administration*: "Using NCOA Files for Verifying Voter Registration Lists" (Number 4); "Agency Voter Registration Programs" (Number 5); and "Motor Voter Registration Programs" (Number 6). All are available free of charge.

Call the Clearinghouse to order the publications or to obtain more information on the "motor voter" law: 800/424-9530 (ask for the Clearinghouse) or 202/219-3670. ♦

"Commission Overwhelmed" Says Vice Chairman in Budget Testimony

On April 22, FEC Vice Chairman Trevor Potter testified before the Senate Committee on Rules and Administration, emphasizing the need for a \$2.6 million increase in the FEC's funding for the 1994 fiscal year. "[T]he Commission is currently overwhelmed by a rapidly growing enforcement case load and by the wash of data flowing from the 1992 elections," he stated. "This is despite the fact that a very lean FEC staff has been working furiously throughout the 1992 cycle...."

The \$2.6 million increase would bring the agency's budget to \$23.6 million, with 320 full-time employees.

The Vice Chairman pointed out that campaign finance activity jumped to almost \$2 billion in the 1992 election cycle. This resulted in more—and longer—committee reports than in previous election cycles. Consequently, more staff time has been needed to review the reports and enter data from them. The enforcement workload, too, has demanded more resources due to a case load grown increasingly complex and a threefold growth in the number of respondents over the past four years.

He also said that the passage of the "motor voter" law and new campaign reform legislation would place further strains on the agency. Even without new legislation, the agency anticipates an extremely heavy workload for the 1994 election cycle.

Concluding his testimony, Mr. Potter stressed that "there is no point in keeping campaign finance laws on the books, certainly not in adding to them, if we cannot administer and enforce them in a timely manner. If Congress and the President are serious about wanting us to do the job, then we ask that we be given the tools."

Vice Chairman Potter, who heads the FEC's finance committee, was accompanied by the other two committee members, Chairman Scott E. Thomas and Commissioner Danny L. McDonald. Mr. Potter previously testified on the FEC's need for more funding when he appeared before two House subcommittees in February and March.¹ ♦

Regulations

FEC Survey on "Best Efforts" to Obtain Contributor Information

The Commission invites political committee treasurers to participate—on an anonymous basis—in a survey of methods used to obtain the name, address, occupation and employer of individual contributors (i.e., the information that must be itemized on Schedule A when a contributor gives over \$200 in a calendar year). The agency is sending the questionnaire to randomly selected committees but encourages other committees to take part in the survey. If you would like to participate on behalf of your committee, please call Cynthia Myers at 800/424-9530 or 202/219-3690. You will be sent a questionnaire and a return envelope. Please note that the questionnaire does not ask participants to identify themselves or their committees.

The "best efforts" regulations found at 11 CFR 104.7(b) explain what steps treasurers must take to obtain complete information on contributors. The Commission has already received written comments on proposed changes to the "best efforts" rules and heard the views of political committees and public interest groups at a public hearing.¹ The survey is intended to collect further information that will be helpful to the Commission in drafting workable and realistic rules.

The questionnaire asks what methods the committee currently uses to obtain contributor information and also asks the participant to rate the effectiveness and cost of specific methods, such as follow-up phone calls.

(continued on page 4)

¹ The Notice of Proposed Rulemaking was published in the Federal Register on September 24, 1992 (57 FR 44137), and the hearing was held March 31, 1993. See the May 1993 Record, page 1.

¹ See the April 1993 issue, page 3.

Regulations

(continued from page 3)

The Commission urges committees to participate in the rulemaking process by responding to the survey. ♦

Reminder: Ban on Nonfederal Campaign Transfers Becomes Effective July 1

Candidates and their committees are reminded that, beginning July 1, a candidate's federal campaign committee may no longer receive transfers of funds or assets from the candidate's nonfederal campaign committee. Furthermore, any funds remaining from transfers made before July 1 must be removed from the federal campaign account by July 31. Failure to do so will be a violation of the new rule (11 CFR 110.3(d)).

To identify nonfederal funds, a committee should use the method described in 11 CFR 110.3(c)(5)(ii). Using that method, the committee should review its cash on hand as of July 1, starting from the most recent deposit and working back, until it has identified the sources of funds in its current cash balance. Any funds identified as nonfederal transfers must be removed by July 31.

The revised rule imposing the ban on nonfederal campaign transfers was published in the Federal Register on January 8, 1993 (58 FR 3474). The agency's decision to delay the effective date until July 1 was explained in the March 17 Federal Register (58 FR 14310) and the April *Record*. The effective date was announced on April 7 (58 FR 17967). ♦

Special Elections

June 5 Texas Runoff: Reporting by PACs and Party Committees

The Texas Senate runoff has been scheduled for June 5. This article explains the reporting requirements for party committees and PACs. (The runoff date was announced too late for publication of the reporting dates in the May issue.)

Semiannual Filers

Party committees and PACs filing semiannually (rather than monthly) may have to file pre- or post-runoff reports if they make previously undisclosed contributions or expenditures in connection with the runoff by the close-of-books dates shown in the reporting table. 11 CFR 104.5(h). See also 11 CFR 104.5 (c)(1)(ii).

For example, if the committee's first activity in connection with the runoff is a May 17 contribution to one of the candidates, the committee does not have to file the pre-runoff report since the contribution was made after the closing date for that report (May 16). However, the committee is required to disclose the contribution in the post-runoff report. As another

example, if the committee's only runoff activity is a June 26 contribution to help retire the candidate's debt, the committee does not have to file a runoff report but instead must disclose the contribution in its midyear report.

Monthly Filers

PACs and party committees filing on a monthly basis do not have to file special election reports. See 2 U.S.C. §434(a)(9). PACs, however, may be required to file independent expenditure reports (see below).

24-Hour Reports on Independent Expenditures

PACs (including monthly filers) and other persons making independent expenditures in connection with the Texas runoff may have to file 24-hour reports. These reports are required if independent expenditures aggregating \$1,000 or more are made between May 17 and June 4. Within 24 hours after the expenditure is made, the committee must report all the information required on Schedule E. 11 CFR 104.4(b) and 104.5(g). Note that 24-hour reports must be filed with both the federal and state filing offices (see below).

Where to File Reports

Filing with the Federal Office. PACs and party committees generally file with the FEC (except that those

Texas Runoff Reporting Dates

	Close of Books ¹	Reg./Cert. Mailing Date ²	Filing Date ³
Pre-Runoff	May 16	May 21	May 24
Post-Runoff	June 25	July 6	July 6
Midyear	June 30	July 31	July 31

¹ The close of books is the end of the reporting period. The period begins with the closing date of the last report filed.

² Reports sent by registered or certified mail are considered to be filed on time if they are postmarked by this date.

³ Unless sent by registered or certified mail (see note 2), reports must be received by the federal and state filing offices by this date.

supporting only Senate candidates file with the Secretary of the Senate). 11 CFR 105.2 and 105.4.

Reports on independent expenditures supporting or opposing a candidate in the Texas runoff (24-hour reports) are filed with the Secretary of the Senate. 11 CFR 104.4(c)(2).

Addresses are provided in the Form 3X instructions.

Filing with the Texas Office. Copies of runoff reports and 24-hour reports must be filed with the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, TX 78711-2070.

With respect to pre- and post-runoff reports, party committees and PACs need file only that portion disclosing their runoff activity (i.e., the Summary Page and the schedules showing contributions and expenditures made in connection with the runoff). 11 CFR 108.3.

Contribution Limits

There is a separate contribution limit for the runoff. 11 CFR 110.1(j)(1) and 110.2(i)(1).

Party Expenditure Limits

There is no separate coordinated party expenditure limit for the runoff election. AO 1993-2. The \$716,281 limit applies to both the first election (i.e., the May 1 general election) and the runoff.

The national and state party committees each have a \$716,281 limit and may spend up to that amount on the party's candidate. 11 CFR 110.7(b) and (c). ♦

Advisory Opinions

AO 1992-44 Qualifying as National Party Committee

The National Committee of the U.S. Taxpayers Party (the Committee), formed in September 1992, has not yet conducted sufficient activity at the national level to qualify as a "national committee of a political party" under 2 U.S.C. §431(14). Because it is not a national party committee, it may not make coordinated party expenditures under 2 U.S.C. §441a(d). Moreover, it is not entitled to the higher contribution limits that apply to national party committees. See §441a(a)(1).

The Party, however, does qualify as a "political party" under the law because its 1992 Presidential and Vice Presidential nominees were on the ballot in several states. 2 U.S.C. §431(16). (They had been designated as candidates of several parties apparently identified with the U.S. Taxpayers Party.)

National Party Committee Criteria

The Committee has not met several of the criteria applied in previous advisory opinions to determine whether a committee qualifies as a national party committee. See, for example, AOs 1992-30 and 1988-45. Specifically:

- The Committee has not achieved sufficient ballot access for the Party's non-Presidential candidates. In the 1992 elections, only nine of the Party's House and Senate candidates were on the ballot in three states.
- The Committee has not conducted ongoing party activities such as voter drives; it is still planning such activities.
- The Committee has only recently begun to publicize issues on a nationwide basis; the Party

published a book on its political philosophy and released the first issue of its newsletter in April 1993.

In addition, the Committee has had little financial activity (it raised about \$2,000 but made no expenditures in the 1992 election cycle).

The Committee has met two other criteria—it held a national convention and established a national office. However, considering all the factors together, it has not yet fully engaged in national-level activity to qualify for national committee status. The Committee may attain that status at some future date, but it should request another advisory opinion.

The opinion did not address any public funding issues since they were not raised in the advisory opinion request. Date Issued: April 23, 1993; Length 7 pages. ♦

AO 1993-4 Electronic Payment of Bills Through Computer

The Christopher Cox Congressional Committee may pay its bills electronically as long as it keeps adequate records on all such disbursements.

Using a personal computer, a modem and a software program (Quicken), the Committee plans to transmit instructions to CheckFree Corporation, a payment processing company, to make payments to vendors from the Committee's checking account. While some vendors would receive printed checks issued by CheckFree, other vendors would receive direct electronic payments not documented by any check or other written instrument.

A committee is required to pay its disbursements by check or "similar draft" drawn on an account at the committee's designated campaign depository. 11 CFR 102.10 and 103.3(a). The "similar draft" language was the basis for the Commission's approval of a payment method similar

(continued on page 6)

Advisory Opinions

(continued from page 5)

to the proposed method—a wire transfer of funds from a committee's campaign account to the vendor's account. In AO 1982-25, the Commission said that the wire transfer "would fall under the broad heading of 'similar draft'." So too would the proposed electronic payments made without use of conventional checks. In both cases, the committees would have banking statements and records to document the transactions.

The Cox Committee must retain these records and also keep vendor receipts and invoices. 11 CFR 102.9(b) and 104.14(b). (The Committee's banking records may be preserved on computer disks, tapes or other magnetic media.) In those cases where CheckFree issues checks to vendors, the Committee must retain the cancelled checks. 11 CFR 102.9(b)(2).

The Commission distinguished this opinion from AO 1986-18, involving automatic debits of credit card charges from a Cash Management Account managed by Merrill Lynch. That method of making "checkless" payments was not approved because Merrill Lynch did not qualify as a depository institution under 11 CFR 103.2. By contrast, the proposed "electronic drafts" would be drawn on the Committee's account at a qualified bank.

Date Issued: April 23, 1993;
Length: 4 pages. ♦

AO 1993-5 1992 Contributions Misplaced at Post Office

The Fields for Congress Committee may deposit contributions made during the 1992 campaign but not discovered until January 1993, given that the post office—not committee staff members—was responsible for misplacing the checks.

In January 1993, the Fields Committee learned that postal authorities

had removed from its post office box some mail containing \$5,504 in contribution checks postmarked before the date of the 1992 general election. (The contributions were removed on October 31 or November 1, 1992; the Committee did not receive custody of them until January 4, 1993.) Although contributions must be deposited within 10 days of the treasurer's receipt under 11 CFR 103.3(a), the Committee may deposit the checks because an intervening event—action by the postal authorities—prevented the Committee from obtaining the use of the checks and depositing them within the 10-day period. Moreover, the Committee may treat the checks as contributions made before the 1992 general election¹ rather than as post-election contributions, which may not exceed a campaign's net debts outstanding for an election. See 11 CFR 110.1(b)(3)(iii) and 110.2(b)(3)(iii). (The Fields Committee's reports show no debts for the 1992 general election.)

This conclusion is based on the conclusion reached in AO 1992-42. In that opinion, a campaign committee mailed a bank deposit containing contributions made before the 1992 general election, but the deposit was lost in the mail. The Commission said that the committee could obtain replacement checks in 1993 and treat them as pre-election contributions for the 1992 general because campaign staff were not responsible for the failure to deposit the checks. By comparison, see AO 1992-29 (campaign committee not permitted to deposit contribution checks misplaced by campaign staff) and AO 1989-10 (campaign committee not permitted to accept post-election contributions to restore deposited contributions embezzled by committee treasurer).

The Fields Committee may deposit the checks and, in its next report,

¹ A contribution that is mailed to a committee is considered to be "made" on the date of the postmark. 11 CFR 110.1(b)(6) and 110.2(b)(6).

disclose them as 1992 general election contributions received between October 31 and November 1, 1992. The Committee should include a short memo entry explaining the late deposit and referring to this advisory opinion.

Date Issued: April 15, 1993;
Length: 4 pages. ♦

FEC Staff to Hold Meetings in Hartford, Indianapolis, Lincoln and Helena

During June and July, FEC public affairs specialists will be holding informal meetings in the above cities to offer help in understanding the requirements of the campaign finance law. Candidates, campaign staff, and staff members of party committees and PACs are welcome to schedule meetings, which will be tailored to the particular needs of the participants.

If you would like to schedule a meeting or want more information, call 800/424-9530 or 202/219-3420 and ask for the specialist assigned to your location. The specialists are interested in learning what areas of the law you would like to cover.

- **Hartford, Connecticut**

June 10-11
Ian Stirton

- **Indianapolis, Indiana**

June 24-25
Greg Scott

- **Lincoln, Nebraska**

July 8 and 9
Kathlene Martin

- **Helena, Montana**

July (call for date)
Janet Hess and Kevin Salley

Public Funding

1988 Jackson Campaign Ordered to Repay Treasury

On April 15, 1993, the Commission made a final determination ordering Jesse Jackson's 1988 Presidential campaign to repay \$122,031 in public funds to the U.S. Treasury. (The Jackson for President '88 Committee and two affiliated committees in New York and California had received over \$8 million in primary matching funds.) The campaign made a \$75,000 repayment in January 1993. The \$47,031 balance was due May 27 (after this issue went to print).

In making its final determination, the Commission considered the campaign's responses throughout the audit process, including a presentation by the campaign's counsel at an October 1992 open hearing and additional documentation submitted after the hearing.

The final audit report (containing the initial repayment determination) and the Statement of Reasons supporting the final determination are available for review in the FEC's Public Records Office.

Repayment for Inadequately Documented Disbursements

A large part of the repayment—\$91,192—represented the pro rata¹ portion of \$294,115 in disbursements that were insufficiently documented. In order to become eligible to receive public funds, a campaign must promise to provide records showing that public funds are spent on qualified campaign expenses.

The campaign argued that the Commission should apply a less rigid

interpretation of the documentation rules to the campaign's disbursements because the campaign had been "people-intensive," relying heavily on individual organizers who were less likely to provide the campaign with receipts and other supporting documents than were commercial vendors hired in traditional campaigns.

In its Statement of Reasons, the Commission pointed out that nearly all campaign disbursements to individuals were supported solely by campaign paperwork; there was no documentation from the individual payees on how the money was spent. Furthermore, the Commission noted that the campaign had a difficult time keeping adequate records even for expenditures to large commercial vendors.

The campaign further argued that checks made out to traditional campaign vendors, such as direct mail houses or sign companies, should be considered qualified campaign expenses even without any supporting documents from the payee. The Commission disagreed, stating that "the statute and the Commission's regulations require that all disbursements be documented so that subjective conclusions based on the identity of the payee will not rule. The [Jackson campaign] Committees [were] held to the same standards as the other 1988 presidential committees."

Other Repayments

The Jackson campaign also disputed the repayment of \$10,196, which represented the matching funds it received for excessive contributions, which are not matchable. The campaign argued that the public funds should be seen as matching payments for earlier contributions from the same donors. The Commission pointed out, however, that it can only match specific checks submitted for matching and that the campaign had not submitted the earlier checks.

The Jackson campaign additionally had to pay \$18,953, the pro rata

portion of \$61,127 in income tax penalties, which are not considered qualified campaign expenses. Finally, the campaign had to pay \$1,689, the amount of stale-dated checks never cashed by the payees. ♦

Court Cases

Spannaus v. FEC (91-0681)

On April 20, 1993, the U.S. Court of Appeals for the District of Columbia Circuit ruled on the 60-day deadline for requesting a court review of an FEC decision to dismiss an administrative complaint. No. 92-5191. The court held that the 60-day period begins on the date the FEC dismisses the complaint, based on a mandatory literal reading of the statute. The appellant, Edward W. Spannaus (treasurer of the LaRouche Democratic Campaign), had argued that the period should begin on the date the complainant receives notice of the dismissal. The ruling by the court of appeals affirmed the district court's dismissal of the suit.¹ No. 91-0681.

Under the Federal Election Campaign Act, a petition for judicial review must be filed "within 60 days after the date of the dismissal" of the complaint. 2 U.S.C. §437g(a)(8)(B). The court of appeals said that, in accordance with a Supreme Court decision on filing deadlines,² the statutory language must be read literally. Therefore, based on the "date of dismissal" of the complaint, the

(continued on page 8)

¹ A ratio formula is applied to non-qualified campaign expenses to determine what portion was paid with public funds, as opposed to private contributions, and must therefore be repaid to the U.S. Treasury.

¹ The district court opinion is summarized in the June 1992 Record, page 6.

² The Supreme Court said that "a literal reading of Congress' words is generally the only proper reading of those words." United States v. Locke, 471 U.S. 84, 93 (1985).

Court Cases

(continued from page 7)

court of appeals found that Mr. Spannaus filed his petition for review after the 60-day deadline.³

(The Commission dismissed Mr. Spannaus's complaint on January 9, 1991. The notice of dismissal arrived at his post office box on January 28 and was claimed on February 2. He filed his petition for review with the district court on April 2, 1992.)

Mr. Spannaus said that he had relied on a district court opinion holding that the 60-day review period begins "when the complainant actually receives notice of the dismissal." *Common Cause v. Federal Election Commission*, 630 F. Supp. 508, 512 (D.D.C. 1985). The court of appeals, however, rejected that holding. Commenting on the appellant's reliance on *Common Cause*, the court stated that it "[could not] extend the filing deadline for Spannaus simply because he relied on an unreviewed and, we now hold, incorrect district court decision."

Mr. Spannaus alternatively argued that he should be granted a dispensation from the 60-day time period in light of his late receipt of the FEC's notice of dismissal. The court refused the request, noting that Mr. Spannaus "was less than fully diligent" in filing his review petition. The court pointed out that the FEC's notification letter "conspicuously stated the dismissal date and referred Spannaus to the appropriate review provision." ♦

³ The court contrasted its opinion here with its decision in *LaRouche v. Federal Election Commission*, where the statutory language was not as specific. See next article.

LaRouche v. FEC (92-1100)

On April 20, 1993, the U.S. Court of Appeals for the District of Columbia Circuit denied the FEC's motion to dismiss this case, holding that petitioners had filed their petition for judicial review within the 30-day time limit under the Presidential Primary Matching Payment Account Act.

Under that statute, petitions for review must be filed "within 30 days after the agency action by the Commission for which review is sought."¹ 26 U.S.C. §9041(a).

Petitioners Lyndon H. LaRouche, Jr., and the LaRouche Democratic Campaign '88 sought review of the FEC's final determination that the Campaign repay \$151,260 in federal matching funds to the U.S. Treasury. The FEC made the determination on September 17, 1992, and notified the Campaign in a letter dated September 22. The petitioners filed their petition on October 22, 30 days after the September 22 letter date but 35 days after the September 17 determination.

The FEC argued that the statutory "agency action" language referred to the date the agency made the repayment determination. Because the petition was filed 35 days after that date, the FEC contended, it should be dismissed. The court, however, stated that "[b]oth the [Matching Payment Account] Act and the Commission's regulations lead us to conclude that the 30-day review period...runs from the notice date...." The court noted that, under 26 U.S.C. §9038(b)(1), "a candidate's repayment obligation matures only upon notice from the Commission" and that FEC regulations "repeatedly provide that a limitation period begins after the FEC gives notice of its decision...."

Holding that the 30-day period for filing a review petition began on September 22, the court found that the petition was filed on time and therefore refused to dismiss the case. ♦

¹ Petitions must be filed with the U.S. Court of Appeals for the D.C. Circuit.

FEC v. Miller

On April 23, 1993, the U.S. District Court for the District of Columbia signed a settlement agreed to by both parties. No. 92-2244(SS). In the joint stipulation, Stefan Miller admitted that he had violated the terms of a conciliation agreement he had entered into with the Commission by failing to pay the \$1,300 civil penalty.¹ He further agreed to make monthly installments of \$75 until the full amount is paid. If he fails to make a payment, the FEC may require that the entire amount be paid within 10 days. ♦

New Litigation

White v. FEC (93-771)

William D. White, who filed six complaints with the FEC between September and November 1992, asks the court to declare that the FEC's failure to act on the complaints is contrary to law. He further asks the court to order the agency to take action within 30 days of the declaration. See 2 U.S.C. §437g(a)(8).

U.S. District Court for the District of Columbia, Civil Action No. 93-771, April 4, 1993.

FEC v. National Republican Senatorial Committee (93-0365)

The FEC asks the court to assess a civil penalty against the National Republican Senatorial Committee (NRSC) for making approximately \$183,500 in excessive contributions to Jim Santini, the Republican candidate in the 1986 Nevada Senate race, and for failing to report approximately \$79,300 of those contributions. Specifically, the FEC makes the following allegations:

¹ Mr. Miller later filed a statement in which he maintained that he never agreed to enter into the conciliation agreement, which was signed by his attorney on his behalf. He said, however, that he would honor the terms of the stipulation.

- In two 1985-86 fundraising programs, the NRSC exercised direction or control over earmarked contributions to Jim Santini for Senate (the Santini Committee) when it called individuals who had previously made contributions to the NRSC and asked them to specify that a portion of their NRCS contributions be designated to the Santini Committee. Under 11 CFR 110.6(d), the earmarked contributions counted against the NRSC's contribution limit for the Santini Committee by virtue of the NRSC's exercising direction or control over the contributions. Because the NRSC had exhausted its contribution limit and coordinated party expenditure limit for the Santini Committee, the earmarked contributions exceeded the NRSC's contribution limit by as much as \$104,200.
- The NRSC also exceeded the contribution limits by paying about \$79,300 in solicitation costs that were attributable as in-kind contributions to the Santini Committee.
- The NRSC failed to report the above in-kind contributions.

In addition to the civil penalty, the FEC asks the court: to order the NRSC to disclose the in-kind contributions to the Santini Committee in amended reports; to permanently enjoin the NRSC from further similar violations; and to award the FEC its costs in the action.

U.S. District Court for the District of Nevada, Civil Action No. 93-0365(PMP); April 21, 1993. ♦

Compliance

MURs Released to the Public

Listed below are FEC enforcement cases (Matters Under Review or MURs) recently released for public review. The list is based on the FEC press releases of April 12 and 26 and May 3 and 6, 1993. Files on closed MURs are available for review in the Public Records Office.

MUR 1611

Respondents (all in FL): (a) Allen Z. Wolfson; (b) Cesar Rodriquez; (c) 48 other respondents

Complainant: Referral from Department of Justice

Subject: Excessive contributions; contributions in names of others

Disposition: (a) U.S. District Court summary judgment: \$52,000 civil penalty; (b) U.S. District Court final order and default judgment: \$5,000 civil penalty; (c) for 32 respondents, civil penalties ranging from \$250 to \$3,000; for 6 respondents, reason to believe but took no further action; for 10 respondents, no probable cause to believe

MUR 3093

Respondents (all in MO): (a) John Baine; (b) Maureen Baine; (c) Robert Baine, Jr.; (d) John Baine for Congress Committee, John Baine, Jr., treasurer; (e) Charles F. Vatterott Commercial Properties, Inc.

Complainant: Lili J. Cooper (MO)

Subject: Inaccurate reports; failure to file timely reports with state election office; corporate contribution

Disposition: (a)-(c) No probable cause to believe; (d) \$1,250 civil penalty; (e) \$500 civil penalty

MUR 3223

Respondents: Terry Sanford for U.S. Senate, Alton G. Buck, treasurer (NC)

Complainant: FEC initiated

Subject: Excessive contributions

Disposition: \$5,000 civil penalty

MUR 3368/3119

Respondents (all in NJ): (a) Chandler for Congress Committee, Inc., Raymond Babinski, treasurer; (b) Edmar Corporation; (c) United Jersey Bank/Northwest

Complainant: FEC initiated (3368); Republican State Committee (3119)

Subject: Corporate contributions; failure to file 48-hour notice

Disposition: (a) and (b) \$17,500 civil penalty; (c) no reason to believe

MUR 3431

Respondents: A Lot of Folks for Pat Williams, George Christensen, treasurer (MT)

Complainant: National Republican Congressional Committee, Tom Cole, executive director (DC); referral from U.S. Department of Justice

Subject: Failure to disclose contributions on time

Disposition: \$7,000 civil penalty

MUR 3496

Respondents: Enron Political Action Committee, Rebecca King, treasurer (TX)

Complainant: FEC initiated

(continued on page 10)

Federal Register

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

1993-12

11 CFR Part 201: Ex Parte Communications; Change in Date of Public Hearing (58 FR 14510, March 18, 1993)

1993-13

11 CFR Part 104: Recordkeeping and Reporting Requirements—Best Efforts; Change in Date of Public Hearing (58 FR 14530, March 18, 1993)

1993-14

11 CFR Part 110: Transfers of Funds from State to Federal Campaigns; Final Rule; Announcement of Effective Date (58 FR 17967, April 7, 1993)

Compliance

(continued from page 9)

Subject: Failure to file reports on time

Disposition: \$20,000 civil penalty

MUR 3518/3453

Respondents: National Albanian American PAC, Martin V. DeLisi, treasurer (FL)

Complainant: FEC initiated

Subject: Excessive contributions; failure to file reports on time

Disposition: \$12,500 civil penalty

MUR 3533

Respondents: (a) Dr. Robert Fand (CT); (b) Sally Noonan (SC); (c) United Taxpayers of Danbury PAC, Louise B. Hunt, treasurer (CT)

Complainant: Lynn Taborsak (CT)

Subject: Disclaimer

Disposition: (a) Failed to find reason to believe; (b)-(c) no reason to believe

MUR 3556

Respondents (all in DC): (a) Floyd G. Brown; (b) Presidential Victory Committee (Citizens for Bush); (c) National Security PAC, Elizabeth I. Fediay, treasurer

Complainant: Bobby R. Burchfield, general counsel, Bush/Quayle '92

Subject: Independent expenditures

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

MUR 3590

Respondents: Democratic Party of Virginia, Jay Shropshire, treasurer

Complainant: Republican Party of Virginia, John G. Selph, controller

Subject: Failure to file reports with state election office

Disposition: Reason to believe but took no further action

MUR 3599

Respondents: (a) Jim Moody (WI); (b) Friends of Jim Moody, Robert Friebert, treasurer; et al. (c)-(e)

Complainant: Bill Christofferson, campaign director, Joe Checota for Senate

Subject: In-kind contributions

Disposition: (a)-(e) No reason to believe

MUR 3697

Respondents: The Committee to Elect Don Nelms, Roy J. Shorter, treasurer (AR)

Complainant: FEC initiated

Subject: Failure to file 48-hour notices

Disposition: \$3,000 civil penalty

MUR 3708

Respondents: (a) National Republican Senatorial Committee, Sonya M. Vazquez, treasurer (DC); (b) Coverdell Senate Committee, Marvin Smith, treasurer (GA)

Complainant: Democratic Senatorial Campaign Committee (DC)

Subject: Excessive coordinated party expenditures

Disposition: (a)-(b) Failed by a 3-3 vote to find reason to believe

MUR 3725

Respondents: Democratic Party of Hawaii—Federal Campaign Committee, George M. Waialeale, treasurer

Complainant: FEC initiated

Subject: Failure to file report

Disposition: \$2,500 civil penalty

MUR 3732

Respondents: Service Employees International Union Committee on Political Education, Political Campaign Committee, Richard Cordtz, treasurer (DC)

Complainant: FEC initiated

Subject: Excessive contributions

Disposition: Reason to believe but took no further action ♦

Change of Address

Political Committees

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

Other Subscribers

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

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

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

Index

The first number in each citation refers to the "number" (month) of the 1993 *Record* issue in which the article appeared. The second number, following the colon, indicates the page number in that issue.

Advisory Opinions

- 1992-38: Loan from Presidential campaign's legal and compliance fund to public funding account, 1:6
- 1992-40: Commissions earned by state party committees, 2:5
- 1992-41: Solicitation of members, 3:3
- 1992-42: Bank deposit lost in mail, 3:3
- 1992-43: Preemption of state law's fundraising restrictions, 3:4
- 1992-44: Qualifying as national party committee, 6:5
- 1993-1: Campaign's rental of storage unit from candidate, 4:8
- 1993-2: Application of party spending limits to Texas special runoff, 4:9

- 1993-3: Retroactive reallocation of 1991-92 activity, 5:1
 1993-4: Electronic payment of bills through computer, 6:5
 1993-5: 1992 contributions misplaced at post office, 6:6

Court Cases

- FEC v. _____
 – America's PAC, 4:10
 – International Funding Institute, 1:2; 5:2
 – Miller, 6:8
 – National Republican Senatorial Committee (93-0365), 6:8
 – People & Politics, Inc., 3:3
 _____ v. FEC
 – Common Cause (92-0249 (JHG)), 4:10
 – Common Cause (92-2538), 1:8
 – LaRouche (92-1100), 6:8
 – LaRouche (92-1555), 1:8
 – National Rifle Association (92-5078), 4:10
 – Spannaus (91-0681), 6:7
 – White (93-771), 6:8
 U.S. Senator John Seymour Committee v. Dianne Feinstein, 1:8

Reporting

- Last-minute contributions: 48-hour reporting, 4:7
 Reporting problems, letter to new candidates, 4:8
 Schedule for 1993, 1:3; 6:1
 Special elections in California, Mississippi, Ohio, Texas and Wisconsin, 3:1; 4:7; 6:4

800 Line Articles

- Credit card contributions, 5:5
 Party committee allocation: carrying debts from previous election cycle, 2:7
 \$25,000 annual limit, 4:2

Publications

New Brochure for Local Party Organizations

The FEC recently published a completely revised version of the brochure *Local Party Activity*, which explains the federal rules for "local party organizations"—that is, party committees below the state level that have not registered as federal "political committees."

Written for local party organizations who plan to support federal candidates, the brochure expands and updates the previous version, which has been out of print for some time.

As the brochure explains, only funds subject to federal limits and prohibitions may be used to finance federal election activity. To ensure that this requirement is met, the organization must comply with special accounting and allocation procedures.

The brochure also explains how local party organizations can avoid having to register and file reports under federal law by keeping their federal activities below the dollar thresholds that trigger federal "political committee" status.

Use the form below to order the brochure. ♦



Order Form: Local Party Brochure

Send your order to: Federal Election Commission
 Information Division
 999 E Street, NW
 Washington, DC 20463

Name _____

Organization _____

Address _____

City _____

State _____

Zip Code _____

Number of Copies _____

Phone Number * _____

* If ordering more than 25 copies, please include your phone number.

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

Official Business



Printed on recycled paper

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

