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Regulations

MCFL Rules Take Effect

The FEC's new rules on the definitions of "qualified nonprofit corporations" and "express advocacy" became effective on October 5 (60 FR 52069, October 5, 1995).

These rules address issues raised by the Supreme Court's decision in *FEC v. Massachusetts Citizens for Life*. See page 4 of the February 1987 *Record* for a summary of this decision. Under the new rules, nonprofit corporations may make independent expenditures provided they meet certain criteria. One criterion requires that they be organized for the purpose of promoting political ideas and not for the purpose of pursuing business activities. Qualified nonprofits are the only type of corporation that may make independent expenditures.

The regulations also provide greater guidance regarding when communications contain "express advocacy," a key term when determining if a communication is subject to federal disclaimer requirements, prohibitions on corporate expenditures or rules governing independent expenditures.

Refer to page 1 of the August 1995 *Record* for a detailed explanation of these rules. Alternatively, order a free copy of the regulations from the FEC's Information Division: call 800/424-9530. ♦

Public Funding

Cash Flow Problem in Presidential Fund Expected

A cash flow problem in the Presidential Election Campaign Fund will result in partial matching fund payments to Presidential primary election candidates in early 1996.

Although the Fund's overall balance in January 1996 will be at least \$143 million—more than enough to cover first-round payments to candidates—the U.S. Treasury requires that general election grants and inflation adjustment payments for party nominating conventions be set aside before matching payments to primary election candidates are disbursed.

Consequently, only an estimated \$22.5 million will be available for matching fund payments to Presidential primary election candidates on January 1, 1996. This will be insufficient to cover the year's first round of matching fund payments to certified candidates. As of October 1, 1995, the Commission had received submissions from seven certified candidates totaling \$21.4 million. That figure does not include threshold submissions currently under review from President Bill Clinton and Mr. Lyndon LaRouche.

Under present rules, when matching fund certifications exceed

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Special Elections

California, Illinois and Oregon Schedule Special Elections for Late '95, Early '96

The states of California, Illinois and Oregon have scheduled the following special elections:

- For California, general election for all candidates on December 12, 1995, with possible runoff election on February 6, 1996, among highest vote getters should no candidate win a majority (no primary election for this contest); to fill U.S. House seat vacated by Congressman Norman Mineta of the 15th congressional district;
- For Illinois, general election on December 12, 1995, with primary elections for all parties to be held November 28, 1995; to fill U.S. House seat vacated by Congressman Mel Reynolds of the 2nd congressional district; and

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- For Oregon, general election on January 30, 1996, with primary elections for all parties to be held December 5, 1995; to fill U.S. Senate seat vacated by Senator Bob Packwood.

This article explains the reporting requirements for committees involved with these special elections (see the accompanying tables). It also provides information on contribution and coordinated party expenditure limits, and committee transfer issues that arise during a special election.

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

Reporting by Candidate Committees

Individuals who become "candidates" under the Federal Election Campaign Act must file disclosure reports. Candidate status is triggered when campaign activity exceeds \$5,000 in either contributions or expenditures. 2 U.S.C. §431(2). At that point, the candidate and the principal campaign committee become subject to the Act's registration and reporting requirements. See the *Campaign Guide for Congressional Candidates and Committees*.

Normally, candidate committees file semiannually in odd-numbered (nonelection) years. Principal campaign committees of candidates

Reporting Dates for California Special Elections: December 12 General (with Runoff February 6, if Necessary)¹

	Close of Books ²	Reg./Cert. Mailing Date ³	Filing Date
Pre-General	November 22	November 27	November 30
Post-General/Year-End⁴	December 31	January 11	January 11
Pre-Runoff '95⁵	December 31	January 22	January 25
Pre-Runoff '96	January 17	January 22	January 25
Post-Runoff	February 26	March 7	March 7

¹ California does not hold primary elections during special election contests. All candidates for this House seat will compete in the general election on December 12. A candidate must garner a majority of the vote to win the general election. If a single candidate fails to do so, a runoff election among the top vote getters—the top vote getter from each qualified political party and any qualifying independent candidates—will be held on February 6, 1996.

² The close of books is the end of the reporting period. The period begins with the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered and, if applicable, before the individual became a candidate.

³ Reports sent by registered or certified mail are considered to be filed on time if they are postmarked by this date.

⁴ This is a consolidated Post-General and Year-End report.

⁵ Should there be a runoff election, participating candidates must file the Pre-Runoff report as two separate reports—one for 1995 activity and one for 1996 activity. This is because, under the law, a single FEC report may not cover activity spanning more than one calendar year. Candidates filing Pre-Runoff reports need not file a Year-End report since the Pre-Runoff reporting period encompasses the Year-End reporting period.

seeking to win a special election, however, must file the appropriate reports as shown in the accompanying tables.

Pre- and post-election reports. All candidates must file pre-primary reports. Only candidates who win a party nomination or otherwise qualify to run in the general election are required to file pre- and post-general election reports.

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

This requirement applies to all contributions of \$1,000 or more, including: monetary and in-kind

contributions; loans (other than bank loans); guarantees and endorsements of bank loans; and contributions, personal loans and endorsements of bank loans made by the candidate. 2 U.S.C. §431(8)(A); 11 CFR 100.7(a).

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

Reporting by Party Committees and PACs

Semiannual filers. Party committees and PACs filing on a semiannual (rather than monthly) basis are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with any special primary or general election by the close-of-books date shown in the reporting tables. 11 CFR 104.5(c)(1)(ii) and (h).

Monthly filers. PACs filing on a monthly basis are not required to file pre- and post-special election reports

but may have to file 24-hour reports, as explained below. See 2 U.S.C. §434(a)(9); 11 CFR 104.5(h)(2).

Twenty-Four-Hour Reports on Independent Expenditures

All PACs and persons making independent expenditures in connection with a special election may have to file 24-hour reports. This report is required if the committee or person makes independent expenditures aggregating \$1,000 or more between the 20th day and 24 hours before the date of an election.

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

Where to File

Filing with federal authorities. Principal campaign committees file reports and 48-hour notices with the Clerk of the House of Representatives for House elections or the Secretary of the Senate for Senate elections. Noncandidate committees supporting both House and Senate candidates file with the FEC. Noncandidate committees supporting only House candidates file with the Clerk of the House. Those supporting only Senate candidates file with the Secretary of the Senate. 11 CFR 105.1 and 105.4.

Twenty-four-hour reports on independent expenditures are filed with the Clerk of the House for House elections and the Secretary of the Senate for Senate elections. 11 CFR 104.4(c)(3).

Addresses and further filing instructions are provided on the back of Form 3 and Form 3X.

Filing with state authorities. Copies of all reports and notices, including 48-hour notices and 24-hour reports, must simultaneously be filed with appropriate state elections officials. 2 U.S.C. §439(a)(1) and (a)(2)(B); 11 CFR 108.5.

Addresses and telephone numbers can
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Reporting Dates for Illinois Special Elections: November 28 Primary and December 12 General

	Close of Books ¹	Reg./Cert. Mailing Date ²	Filing Date
Pre-Primary	November 8	November 13	November 16
Pre-General	November 22	November 30 ³	November 30
Post-General/Year-End⁴	December 31	January 11	January 11
Year-End⁵	December 31	January 31	January 31

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

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

³ The mailing date is the same as the filing date here because otherwise the mailing date would fall one day before the primary election.

⁴ This line shows the reporting dates for a consolidated Post-General/Year-End report.

⁵ Committees not participating in the general election are not required to file a Post-General Election report, but they must file a regular Year-End report.

Special Elections

(continued from page 3)

be obtained via Flashfax: dial 202/501-3413 and request document 303.

Party committees and PACs need file only that portion of the report applicable to the candidate seeking election in that state (e.g., the Summary Page and the schedule showing the contribution or expenditure). 2 U.S.C. §439(a)(2)(B).

Contribution Limits and Transfers

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

Monies left over from a previous federal campaign. Candidates with leftover monies from a 1994 campaign for federal office may transfer 1994 monies to their 1995 cam-

paigns provided they have fulfilled all 1994 obligations. Such contributions may be transferred without redesignations from contributors. Transferred 1994 contributions do not count against the contributor's limits for the special elections.

Simultaneous campaigns. Candidates simultaneously active in a 1995 special election and a 1996 election for some other federal office must maintain separate campaign committees. 11 CFR 110.3(c)(7). Transfers of funds from one committee to the other may occur only after the candidate has ended one campaign. These transferred contributions count against the contributors' limits for the other campaign and are aggregated with contributions the contributors already made to that campaign. Consequently, monies may not be

transferred if they would cause a contributor to exceed his or her contribution limit to the recipient committee. 11 CFR 110.3(c)(5).

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

Coordinated Party Expenditures

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

For the Illinois House special election and the California House special general election, the coordinated party expenditure limit is \$30,060. A definite coordinated party expenditure limit for the Oregon Senate special election is not yet available because the voting age population (VAP) and the cost of living adjustment (COLA) figures for 1996 are not yet calculated. Party committees, however, should note that, based on 1995 VAP and COLA figures, the limit would be \$138,516 for Oregon; the 1996 adjustments will only increase this limit and the California limit should there be a runoff (the runoff and the general election share one limit). ♦

Reporting Dates for Oregon Special Elections: December 5 Primary and January 30 General

	Close of Books ¹	Reg./Cert. Mailing Date ²	Filing Date
Pre-Primary	November 15	November 18	November 20
Year-End³	December 31	January 31	January 31
Pre-General '95⁴	December 31	January 16	January 18
Pre-General '96	January 10	January 16	January 18
Post-General	February 19	February 29	February 29

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

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

³ Candidates not participating in the January 30, 1996, special general election must file a Year-End report by January 31, 1996.

⁴ Candidates participating in the January 30, 1996, special general election must file two Pre-General reports. This is because, under the law, a single FEC report may not cover activity in more than one calendar year. It should be noted that the Pre-General report for 1995 activity doubles as the 1995 Year-End report.

Public Funding

(continued from page 1)

the amount of money available, each candidate receives a pro-rata share of his or her original certification. For example, if certifications for matching funds in January totaled \$25 million, and only 90 percent of that figure or \$22.5 million were available, each candidate would receive 90 percent of his or her certified amount. The remaining 10 percent for each candidate would be paid in subsequent months as new funds become available.

This shortfall is anticipated because of the Fund's low reserves. The Fund has benefited from only two years of the tax checkoff increase from \$1 to \$3, which took effect in 1994.

The Commission expects the Fund to recover by next spring as a result of tax checkoff deposits made in the early months of 1996. Until then, candidates should be able to secure some form of bridge loans from their banks. The Commission's certification and the expectation that tax checkoffs will replenish the Fund should help in this regard.

Other information on the Fund:

- The Fund's balance is currently \$143.2 million (grants of \$24 million to the two major parties for their nominating conventions have already been disbursed).
- The Fund received \$64.3 million from January 1, 1995, through the end of July 1995. This figure is about \$3 million less than the fund received in 1994 during a comparable period. If deposits into the Fund in the remaining months of 1995 follow past patterns, the Commission expects a balance of \$146.9 million at the end of 1995.
- Assuming general election grants to the two major party nominees total \$123.7 million and the inflation adjustment for the party nominating conventions is about \$700,000, roughly \$22.5 million should be available for primary candidates in January 1996. ♦

Lugar, Specter and Wilson Declared Eligible For Matching Funds

On August 30, the FEC certified 1996 Presidential hopefuls Senator Richard G. Lugar and Governor Pete Wilson¹ as eligible to receive public matching funds. Senator Arlen Specter received certification on August 31. Thus far, seven 1996 Presidential candidates have qualified for public funding. In addition to the three mentioned above, Senator Phil Gramm, Governor Lamar Alexander, Senator Robert Dole and Mr. Patrick Buchanan have all been certified by the FEC. These candidates will receive their first payment from the Presidential Public Funding Program in January 1996.

To establish eligibility for the Presidential public funding program, a candidate must submit documentation showing that he or she has raised in excess of \$5,000 in matchable contributions in each of at least 20 states. Only contributions received from individuals, and only up to \$250 of a contributor's total, are matchable. This threshold submission is reviewed by the FEC's Audit Division. The candidate must also certify that he or she will abide by spending limits, use funds for campaign-related expenses only, agree to an FEC audit and otherwise comply with the election law.

Once Presidential candidates establish eligibility for matching funds, they may submit additional contributions for matching fund consideration on a monthly basis. The federal government will match an eligible campaign's matchable contributions on a dollar-for-dollar basis. ♦

¹ On September 29, 1995, Governor Wilson withdrew from the 1996 Presidential race.

Lenora B. Fulani for President Repayment Adjusted Based on FEC Investigation

On August 3, 1995, as part of an ongoing FEC investigation, the Commission made an initial determination that Dr. Lenora B. Fulani's 1992 principal campaign committee, the Lenora B. Fulani for President committee, repay \$612,557 to the U.S. Treasury.¹ This amount comprises repayments of: \$381,172 for nonqualified campaign expenses disbursed to certain vendors; \$98,096 for nonqualified campaign expenses that reportedly were disbursed to individuals but cannot be traced; and \$133,289 for public funds received in excess of entitlement.

The Allegations

The FEC is investigating the committee based on allegations made by Ms. Kellie Gasink, a former campaign worker.² Ms. Gasink contended that Dr. Fred Newman, Dr. Fulani's campaign manager, used a network of 13 vendors and other entities he controlled to funnel committee funds to himself.

According to Ms. Gasink, these vendors billed expenses to the

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¹ This initial repayment determination is separate and in addition to the initial determination contained in the Final Audit Report; that report set the committee's repayment obligation at \$1,394 (the pro-rata portion of \$3,235 in lost money orders). The committee paid this amount to the U.S. Treasury without dispute. See page 6 of the June 1994 Record for a summary of the Final Audit Report.

² See page 9 of the December 1994 Record (AO 1994-32) and page 8 of the April 1995 Record (AO 1995-1) for summaries of advisory opinions related to Ms. Gasink's allegations. See also page 11 of the August 1994 Record and page 12 of the June 1995 Record for articles on a related law suit (Fulani v. FEC).

Public Funding

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committee that were either inflated or fabricated.³

She also claimed that Dr. Newman embezzled committee funds by reporting that certain individuals received salary payments and reimbursements when actually they did not.

Nonqualified Disbursements to Vendors

The FEC's investigation discovered that a number of individuals involved with the vendors allegedly controlled by Dr. Newman were also involved with the New Alliance Party, which nominated Dr. Fulani for the Presidency in 1992. Additionally, most of these 13 vendors had only two mailing addresses among themselves.

The FEC requested additional documentation from the committee and testimonial evidence from its treasurer and Dr. Newman to rebut the allegations of fraud. Both Dr. Newman and the committee treasurer invoked their Fifth Amendment rights. The committee and vendors did make some of their records available for FEC review, but delayed doing so until after the date the FEC had set as a deadline. Consequently, the FEC did not have a chance to thoroughly review most of these documents before the Commission issued this initial repayment determination. Revela-

tions gleaned from these documents will be addressed before the Commission votes to make a final repayment determination.

Based on the information available at the time, the FEC inferred that Ms. Gasink's allegations with respect to the 13 vendors in question were true. Therefore, the Commission made an initial determination that the committee repay \$381,172, representing public funds used to make the disbursements to the vendors in question.

Nonqualified Disbursements to Individuals

The committee disbursed \$1,429,377 to 769 individuals for the following stated purposes: payroll, salary, clerical services, reimbursements, petition services, organizing services and expenses. Ms. Gasink and two other individuals deny that they received certain payments that the committee reported as disbursements to them.

The committee's treasurer admitted to the FEC that she and her staff sometimes cashed people's pay and reimbursement checks for them. She stated that in such instances she or a member of her staff would write the payee's name on the back of the check and then sign their own name underneath it. They would then cash the check and relay the cash to the payee. The committee treasurer said that she did this for persons who did not have bank accounts and for whom it would be an inconvenience to get to the committee's bank. She also said that these persons preferred to be paid in cash but, because of the FEC's documentation requirements, she felt she had to issue a check in order to create a record of the payment.

The FEC decided that a disbursement made by a check that had a second endorsement by the treasurer or a member of her staff required additional documentation to prove that the money went to the reported payee. The FEC found 567 doubly-

endorsed checks, totaling \$227,691. The committee did not offer further documentation with regard to these disbursements. The Commission determined, therefore, that the committee had to repay \$98,096 to the U.S. Treasury—the pro-rata portion of the \$227,691, representing the public funds used to make the disbursements.

Excess Matching Funds

The committee received public matching funds after August 20, 1992, the candidate's date of ineligibility, because it documented that it was in a deficit position. In light of the findings of this investigation, the FEC reevaluated the committee's entitlement to post-date-of-ineligibility matching funds. Since some of the debts (i.e. those owed to Dr. Newman-controlled vendors) and some of the payments (i.e. the doubly-endorsed checks) are now viewed as nonqualified campaign expenses, the FEC determined that the committee must repay \$133,289 in matching funds received in excess of entitlement. ♦

Compliance

MUR 3972 Wilson Committee Incurs \$90,000 Civil Penalty for Unreported Transactions

The Wilson Committee agreed to pay a \$90,000 civil penalty for failing to report loans and other transactions it had with the candidate. By omitting this activity from its reports, the committee violated various reporting requirements at 2 U.S.C. §434(b).

The committee is Congressman Charles Wilson's (Representative from Texas's second district) principal campaign committee. This matter was referred to the FEC by

³Dr. Newman allegedly controlled these organizations through an umbrella organization called the International Workers Party (IWP). The IWP allegedly founded the New Alliance Party (NAP), the party that nominated Dr. Fulani for the Presidency in 1992. Ms. Gasink claimed that the IWP, which purportedly disbanded in 1979 after the NAP was formed, actually remained intact and went "underground." She alleged that most IWP members own and operate "businesses" in New York City, and that other IWP members are assigned to work at these businesses.

the Justice Department's House Bank Task Force.

During the 1988 and 1990 House campaigns, the committee made four personal loans to the candidate totaling \$26,500.¹ These loans were later repaid by the candidate. The committee, however, failed to report any of these loan disbursements and all but one of the repayment receipts.

On December 27, 1989, the committee advanced \$10,000 to Congressman Wilson to defray the expense of a trip he took to the former U.S.S.R. Congressman Wilson later reimbursed the committee. The committee did not report this advance and only reported one partial reimbursement made by Congressman Wilson.

Similarly, in 1988 and 1989 the committee failed to report three payments totaling \$4,125 for Congressman Wilson's personal hotel and travel expenses, and for noncampaign-related catering costs. Nor did the committee report the subsequent reimbursements it received from the candidate.

In addition to the \$90,000 civil penalty, the committee agreed to amend its reports to disclose the transactions discussed above. ♦

MURs Released to the Public

Listed below are summaries of FEC enforcement cases (Matters Under Review or MURs) recently released for public review. This listing is based on the FEC press releases of September 6 and 21. Files on closed MURs are available for review in the Public Records Office.

MUR 2595/2379

Respondents: (a) Populist Party (DC) and Bob Richards for President Committee, Washington, D.C., Willis Carto, treasurer of both;

(b) Liberty Lobby, Inc. (DC); (c) Cordite Fidelity, Inc. (DC); (d) Willis Carto (DC); (e) Blayne E. Hutzler (DC); (f) Maureen Salaman for Vice President Committee, Willial Campbell Douglass, treasurer (GA); (g) Committee to Defend Liberty Lobby, Inc. (DC); (h) Fred Seipold (AZ); (i) David Sasser (ID); (j) Mary Booker (TX) (deceased); (k) Evelyn Adaska (CA)

Complainant: FEC initiated (Audit)
Subject: Corporate contributions; excessive contributions

Disposition: (a-e) Probable cause to believe, litigation initiated March 1992, Final Consent Order and Judgment issued April 21, 1995: \$20,000 civil penalty (corporate and excessive contributions); (f-g) probable cause to believe, but took no further action (excessive and corporate contributions); (h-i) reason to believe, but took no further action (excessive contributions; corporate contributions); (j-k) reason to believe, but took no further action (excessive contributions)

MUR 3570

Respondents: (a) New York State Democratic Committee, Rosemary Conway, treasurer (NY); (b) Dump D'Amato in '92! Committee, James Luce, treasurer (NY)

Complainant: William D. Powers, Chairman, New York Republican State Committee (NY)

Subject: Failure to report contributions and expenditures; excessive contributions; failure to file disclosure reports; failure to file 24 hour independent expenditure reports; disclaimers

Disposition: (a) Reason to believe, but took no further action (failure to report contributions and expenditures; excessive contributions); (b) reason to believe, but took no further action; (a-b) sent admonishment letters

MUR 3921

Respondents: (a) Ken Bell for Congress Committee, Ken Bell, acting as treasurer (NC); (b) Mark

N. Poovey, treasurer, Ken Bell for Congress Committee (NC)

Complainant: FEC initiated (1990 Audit)

Subject: Failure to amend Statement of Organization; failure to itemize receipts and disbursements; failure to provide contributor information ("best efforts")

Disposition: (a) Probable cause to believe, but took no further action; (b) reason to believe, but took no further action

MUR 3960

Respondents: (a) Whitfield for Congress Committee, E.O. Whitfield, treasurer (KY); (b) E.O. Whitfield (KY); (c) The Honorable Ed Whitfield (KY)

Complainant: Steve Hamrick, Steve Hamrick for Congress (KY)

Subject: Disclaimers

Disposition: (a) \$1,675 civil penalty; (b) reason to believe, but took no further action; (c) no reason to believe

MUR 3972/Pre MUR 283

Respondents: (a) The Wilson Committee (TX); (b) Amy S. Trites, as treasurer and in her individual capacity

Complainant: Referral by U.S. Department of Justice

Subject: Failure to disclose loans to candidate; failure to report disbursements; failure to report an advance to a candidate; failure to report loan repayments, repayment of advance, and refunds; failure to report debts

Disposition: (a) \$90,000 civil penalty; committee to file amended reports; (b) reason to believe, but took no further action

MUR 3979

Respondents: Santorum '94, Judith M. McVerry, treasurer (PA)

Complainant: Rick Bloomingdale, Executive Director, Pennsylvania Democratic State Committee (PA)

Subject: Failure to provide contributor information ("best efforts")

(continued on page 8)

¹ Since January 1993, members of Congress have been prohibited from using campaign funds for any personal purpose.

Compliance

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Disposition: Reason to believe, but took no further action; sent admonishment letter

MUR 4019

Respondents: (all in PA): (a) Tel-Save, Inc., and its president, Daniel Borislow; (b) various individuals; (c) Congressman Jim Greenwood and Greenwood for Congress, Robert O. Baldi, treasurer

Complainant: John P. Murray, Murray for Congress (PA)

Subject: Corporate contributions; contributions in the names of others

Disposition: (a-b) \$30,000 civil penalty; (c) took no action

MUR 4094

Respondents: Ortiz for Congress, Frank A. Tompkins (TX)

Complainant: Erol A. Stone, Stone for Congress (TX)

Subject: Disclaimers

Disposition: Reason to believe, but took no further action; sent admonishment letter

MUR 4112

Respondents: (a) The Honorable James Merrill Jeffords (VT); (b) Jeffords for Vermont, James A. Johnston, treasurer (VT)

Complainant: Democratic Senatorial Campaign Committee, Robert F. Bauer, General Counsel (DC)

Subject: Personal use of campaign funds; failure to itemize disbursements (credit card charges) accurately

Disposition: (a) reason to believe, but took no further action (personal use of campaign funds); (b) reason to believe, but took no further action; sent admonishment letter; committee to amend 1993 Year-End report

MUR 4147

Respondents: (a) The Honorable Karen L. Thurman (FL); (b) Thurman for Congress, Joseph Matus, treasurer (FL); (c) United Parcel Service of America, Inc. (GA)

Complainant: Sumner R. Waite (FL)

Subject: Corporate contributions

Disposition: (a-c) No reason to believe

MUR 4207

Respondents: Sisisky for Congress, Mark B. Sisisky, treasurer (VA)

Complainant: FEC initiated (RAD)

Subject: Failure to file 48-hour report (\$50,000 candidate loan)

Disposition: \$6,500 civil penalty

MUR 4219

Respondents: Dan Frisa for Congress Committee, Patrick H. O'Sullivan, treasurer (NY)

Complainant: FEC initiated (RAD)

Subject: Failure to file disclosure report timely; failure to file 48-hour reports

Disposition: \$10,500 civil penalty

MUR 4221

Respondents: Political Club for Growth, Lisa B. Nelson, treasurer (VA)

Complainant: FEC initiated (RAD)

Subject: Failure to file disclosure reports timely

Disposition: \$3,200 civil penalty ♦

Court Cases

White v. FEC

On September 9, 1995, the U.S. District Court for the District of Columbia dismissed this case. Mr. William D. White brought this suit against the FEC for not taking final action within 120 days in Matters Under Review (MURs)¹ 3706, 3709,

¹ MURs are FEC enforcement cases. The FEC's Office of General Counsel opens MURs based on complaints alleging violations of election law. These complaints may come from the FEC's Audit Division or Reports Analysis Division, or some external source such as the Department of Justice or, as in this case, an interested individual or committee.

3710, 3713, 3714 and 3612, six complaints he filed with the agency between September and November 1992. The Commission dismissed and closed these cases in 1993. Accordingly, the court dismissed Mr. White's suit.

U.S. District Court for the District of Columbia, 93-0771, September 6, 1995. ♦

New Litigation

Buchanan for President v. FEC

Mr. Buchanan and his 1992 Presidential campaign, Buchanan for President, Inc., petition the court to review the Commission's final repayment determination.

Mr. Buchanan accepted public funding¹ for his 1992 campaign for the Republican Presidential nomination. The FEC administers the Presidential Primary Matching Payment Account Act, which requires candidates receiving public funds to abide by overall and state-by-state expenditure limits, and to undergo an FEC audit at campaign's end.

At the conclusion of its audit process, the FEC determined, among other things, that the Buchanan committee had spent \$18,891 in public money for purposes not related to the campaign and that the committee had received \$274,423 in public money in excess of its entitlement. Publicly funded campaigns must return such monies to the U.S. Treasury.

Mr. Buchanan and his committee dispute the FEC's findings and, under 2 U.S.C. §9041, bring their case directly before the U.S. Court

¹ The Buchanan campaign received these monies from the Presidential Election Campaign Fund. This Fund is entirely supported by the designations of taxpayers who direct, through the check-off found on the top half of IRS income tax return forms, that \$3 be deposited in the Fund.

of Appeals for the District of Columbia.

U.S. Court of Appeals for the District of Columbia; 95-1458; September 5, 1995. ♦

Bush-Quayle '92 v. FEC

The Bush-Quayle '92 Primary Committee, the Bush-Quayle '92 General Committee and the Bush-Quayle '92 Compliance Committee all filed separate petitions for review, asking the court to review the Commission's final repayment determination for the primary committee.

The Bush-Quayle '92 Primary Committee accepted public funding¹ for the 1992 Presidential primary elections. The FEC administers the Presidential Primary Matching Payment Account Act, which requires candidates receiving public funds to abide by overall and state-by-state expenditure limits, and to undergo an FEC audit at campaign's end.

At the conclusion of its audit process, the FEC determined, among other things, that the primary committee had spent \$106,929 in public money for purposes not related to the primary election and that the committee had received \$216,853 in public money in excess of its entitlement. Publicly funded campaigns must return such monies to the U.S. Treasury.

The committees dispute the FEC's findings and, under 2 U.S.C. §9041, bring this case directly before the U.S. Court of Appeals for the District of Columbia.

U.S. Court of Appeals for the District of Columbia; 95-1430, 95-1431 and 95-1432; August 22, 1995. ♦

¹ The Bush/Quayle campaign received these monies from the Presidential Election Campaign Fund. This Fund is entirely supported by the designations of taxpayers who direct, through the check-off found on the top half of IRS income tax return forms, that \$3 be deposited in the Fund.

Center for Responsive Politics v. FEC

The Center for Responsive Politics (CRP) asks the court to find that the FEC acted contrary to law in failing to abolish regulations that permit publicly funded Presidential candidates to accept private contributions for their general election legal and compliance (GELAC) funds. The FEC's revised rules governing the public financing of Presidential elections were published in the Federal Register June 16, 1995 (60 FR 31854); these revised rules retain the GELAC fund provisions, which have been in effect since 1980.

The CRP contends that, by allowing candidates to establish GELAC funds, the FEC has created a loophole that enables candidates to circumvent the public financing statutes' limits on expenditures and private contributions.

U.S. Court of Appeals for the District of Columbia, 95-1464, September 7, 1995. ♦

FEC v. Hartnett for U.S. Senate

The FEC asks the court to order Hartnett for U.S. Senate and Mr. Paul Meierer, Jr., its treasurer, to pay:

- An outstanding balance of \$7,937 on a \$9,000 civil penalty agreed upon in a conciliation agreement;
- Accrued interest on this amount, calculated from October 30, 1994, the date the full amount was due; and
- An additional \$5,000 civil penalty, the maximum amount prescribed by 2 U.S.C. §437g(a)(6)(A) for failing to abide by a conciliation agreement.

Hartnett for U.S. Senate was Mr. Thomas Forbes Hartnett's principal campaign committee in 1992. Candidate committees that receive a contribution in excess of \$1,000 between 20 days and 48 hours before an election in which the

candidate is participating must report it within 48 hours of its receipt. 2 U.S.C. §434(a)(6)(A). The committee entered into a conciliation agreement with the FEC on September 30, 1994, to resolve issues related to its failure to abide by this provision. As part of this conciliation agreement, the committee and its treasurer agreed to pay a \$9,000 civil penalty by October 30, 1994. A balance of \$7,937 remained unpaid as of the date of this law suit's filing.

U.S. District Court for the District of Columbia, 1:95CV01829, September 25, 1995. ♦

Advisory Opinions

AO 1995-28 Solicitations by Membership Association

Noncorporate associate business members of the American Health Care Association (AHCA) may be solicited for contributions to AHCA-PAC. Associate business memberships are a type of AHCA membership open to individuals, corporations, partnerships, limited liability companies and other entities. Although corporations are barred from making contributions, their restricted class employees¹ may be solicited by AHCA provided the corporate member grants prior approval. Further, corporate members may donate funds to AHCA-PAC to defray its administrative and solicitation costs.

(continued on page 10)

¹ A corporation's restricted class includes its executive and administrative personnel, its stockholders and the families of both groups.

Advisory Opinions

(continued from page 9)

To qualify under 11 CFR 114.1(e) as a solicitable member of a membership association, a member must:

- Pay regular dues and be entitled to vote for at least one member of the association's "highest governing body" or for those who choose at least one member of that body; or
- Have a significant financial attachment to the association in addition to the payment of dues; or
- Have the right to vote directly for all those on the association's highest governing board; or
- Have an organizational and financial attachment to the association that is significant enough to qualify as a "member," as determined by the Commission on a case-by-case basis.

Associate business members pay regular dues to AHCA and have the right to vote for two delegates to the AHCA's House of Delegates, AHCA's highest governing body. Therefore, associate business members qualify as "members" for PAC solicitation purposes. 11 CFR 114.1(e)(2)(ii).

Corporations are barred from making contributions or expenditures in connection with a federal election. 2 U.S.C. §441b(a). Associate business members that are corporations may not therefore make contributions to AHCA-PAC. Their restricted class employees, however, may be solicited for contributions to AHCA-PAC provided the corporate member gives AHCA-PAC prior approval. 11 CFR 114.8(d).

Costs associated with the establishment of a membership association's PAC, the PAC's administration and the solicitation of contributions to the PAC are not considered contributions or expenditures. A corporation that is an associate business member of AHCA may therefore donate to an administrative fund established to defray these costs.

Date Issued: September 29, 1995;
Length: 8 pages. ♦

AO 1995-29 Disbursement of Funds Donated by Convicted Defrauder to Court- Appointed Receiver

The principal campaign committee of Representative Christopher Cox of California may disburse to a court-appointed receiver funds donated by a contributor believed to have obtained them fraudulently. The Commission ruled that such a disbursement would not be viewed as being for anyone's personal use.

Background

In 1988 and 1990, the Cox committee received contributions from William E. Cooper. He and two other owners of the First Pension Corporation pled guilty in 1994 to defrauding thousands of investors. The First Pension Ad Hoc Investors' Committee, a committee working with the defrauded investors, believes Mr. Cooper's contributions to the Cox committee were made with ill-gotten funds. The Investors' committee has therefore asked the Cox committee to refund the contributions to the receiver appointed by the court.¹

The Commission does not consider such a payment from the Cox committee to the receiver to be a "refund" for the purposes of the Federal Election Campaign Act (the Act). This is because the payee in this case is a court-appointed receiver and not a contributor, and because the payment is not mandated as a refund of excessive or prohibited contributions.

Personal Use Rules

Since such a payment is not a refund under the Act, the Commission examined the proposed payment with respect to the rules on

personal use of committee funds. The Act and Commission regulations provide that the candidate or his campaign committee may use excess campaign funds for any lawful purpose, but may not convert the funds to the personal use of the candidate or any other person. 2 U.S.C. §439a; 11 CFR 113.2(d).

Regulations define "personal use" generally as "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 CFR 113.1(g).

In this case, the request for the payment stems from the fact that Mr. Cooper contributed an equivalent amount to the Cox committee. The request would not have been made had Mr. Cox's campaign not received Mr. Cooper's contribution. Additionally, the payment to the receiver does not constitute a personal use of campaign funds by Mr. Cox, the defrauded investors who will eventually receive the money, or anyone else because the request for payment is being made in concert with an effort by a U.S. District Court to recover the assets lost by the defrauded investors, and is in fulfillment of that purpose.

Reporting the Disbursement

The Cox Committee should report the disbursement to the receiver under the category of "Other Disbursements." 11 CFR 104.3(b)(2)(vi)(A). Since the disbursement will exceed \$200, it should be itemized with a disclosure of the recipient, the date, the amount and the purpose. The committee should state the purpose with a short explanation referring to this advisory opinion. 11 CFR 104.3(b)(4)(vi).

Date issued: September 14, 1995
Length: 6 pages. ♦

¹ The receiver was appointed by the court to oversee companies affiliated with First Pension and to recover assets for the benefit of the defrauded investors.

AO 1995-30 Satellite Broadcast Expenses Not Allocated to Presidential Campaign's State Limits

Senator Arlen Specter's 1996 Presidential campaign committee need not allocate expenses for satellite news conferences to the expenditure limit of any particular state, but the committee must allocate these expenses to its national expenditure limit. The satellite broadcast does not specifically fit the definition of media expenses or overhead expenses, both of which must be allocated to state expenditure limits under 11 CFR 102.6(b)(2)(iii)(D).

The campaign intends to rent satellite broadcast facilities for a designated period of time and pay a fee covering both satellite uplink and studio time.

Senator Specter, located in Washington, D.C., will be linked to television media representatives located in one or several states. The reporters will ask questions, and the senator will answer them just as he would in an ordinary face-to-face press conference. He will have no control over the content of reporters' questions.

The campaign will also send press releases to television news organizations nationwide so that they have the opportunity to monitor the interviews and use the videotape, just as when a press conference occurs in a given state.

Under the Federal Election Campaign Act, a Presidential candidate who becomes eligible for matching payments to finance a campaign for the Presidential nomination of a political party is subject to expenditure limits. 2 U.S.C. §441a(b) and 26 U.S.C. §9035. These limits include a national limit and sublimits for each state based on its voting age population. 2 U.S.C. §441a(b)(1)(A).

Commission regulations state that print and broadcast media advertise-

ments must be allocated to one (or more) state limits. Also included in state limit categories are expenditures for mass mailings and campaign materials directed at a particular state, overhead expenses, expenditures for special telephone programs and certain public opinion poll expenses. 11 CFR 106.2(b)(ii), (iii), (iv), and (v).

The satellite broadcast expenses proposed by Senator Specter's Presidential campaign would not be viewed as advertisement costs. First, the campaign expects the audience to be restricted to media representatives. Additionally, the proposal does not ensure that any news media organizations will take the opportunity to interview the candidate, and it does not allow the campaign to control the use of interview materials. Nor do the expenses fit the definition of state office overhead expenses or any other specific category defined in 11 CFR 102.6(b)(2)(iii)(D). Consequently, Arlen Specter '96 is not required to allocate the satellite broadcast expenses described in his request to the state-by-state expenditure limit. It must, however, count them against the national limit.

Date issued: September 22, 1995;
Length: 4 pages. ♦

AO 1995-31 and AO 1995-32 Permissible Funding Sources for Host Committees

The San Diego Host Committee for the 1996 Republican Presidential nominating convention (AO 1995-31) may accept donations from a bank's holding company and from a wholly-owned bank subsidiary such as a mortgage company.

Similarly, Chicago's Committee for '96, the host committee for the 1996 Democratic Presidential nominating convention (AO 1995-32), may accept donations from a bank's holding company, a wholly-owned bank subsidiary, a company wholly-owned by a bank's holding

company and a credit union.

Donations from these sources are legal as long as: (1) the contributing company is located or has a branch office in the corresponding convention city; and (2) the contributing company can demonstrate that its revenue is sufficient to cover the amount of its donations without relying on monies derived from a bank. The host committees may also accept personal donations from the presidents of these entities so long as these individuals reside in the corresponding convention city.

The host committees may not, however, accept donations from a bank chartered pursuant to state law, even if it is located in a convention city.

The Federal Election Campaign Act (the Act) prohibits banks and corporations from making donations in connection with federal elections. 2 U.S.C. §441b(a).

(continued on page 12)

Federal Register

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

1995-12

Filing Dates for the Illinois Special Elections (60 FR 50623, September 29, 1995)

1995-13

11 CFR 100, 106, 109 and 114: Express Advocacy, Independent Expenditures, Corporate and Labor Organization Expenditures; Final Rule, Announcement of Effective Date (60 FR 52069, October 5, 1995)

1995-14

11 CFR 110: Disclaimers; Final Rule (60 FR 52069, October 5, 1995)

1995-15

Filing Dates for the Oregon Special Elections (60 FR 53374, October 13, 1995) ♦

Advisory Opinions

(continued from page 11)

There are exceptions to this ban, however. Local businesses and organizations, including corporations and labor organizations, may make donations to host committees for certain limited purposes, such as: defraying administrative expenses such as salaries, rent, travel and liability insurance; promoting the suitability of their city as a convention site; welcoming convention attendees; providing the use of an auditorium or convention center; providing transportation and law enforcement; and other similar convention-related facilities and services. 11 CFR 9008.52(c).

The companies and the credit union described by the host committees have branches located in the corresponding convention cities. They qualify, therefore, as local businesses.

Banks are not included in the exception for donations to host committees. 2 U.S.C. §441b(a). The Commission purposely made this distinction to ensure that donations to defray convention expenses are commercially rather than politically motivated. The host committees may not, therefore, accept donations of any kind from any kind of bank, irrespective of whether it is a national, state or local bank.

The Commission notes that the term "bank" as it is used in 11 CFR 9008.52 does not encompass credit unions. The credit union is therefore a permissible source of donations. The other companies are also permissible sources because, even though they are associated with banks, their donations would be funded with monies that are not derived from banks and because their donations would be used to promote their respective convention cities and provide certain services and facilities rather than to influence the outcome of a federal election.

Lastly, host committees may accept donations from local indi-

viduals. 11 CFR 9008.52(c). Since the presidents of the companies and the credit union reside in convention cities, their donations may be accepted by the corresponding host committee.

A host committee that accepts donations must abide by the recordkeeping and reporting requirements of the Act. 2 U.S.C. §437 and 11 CFR 9008.51(b).

Date Issued: September 22, 1995; Length: 3 pages (AO 1995-31) and 5 pages (AO 1995-32). ♦

AO 1995-33 Sending PAC Solicitations Through an Executive's Secretary

The Coastal Employee Action Fund, the separate segregated fund (or PAC) of the Coastal Corporation, may send to secretaries who routinely handle correspondence for their supervisors, who are executives, electronic newsletters containing PAC solicitations. Such transmissions, however, must be accompanied by a clear note to the secretary, informing him or her that the material is intended for the corporate executive.

A corporate PAC may freely solicit only members of its connected corporation's restricted class. This includes the corporation's executive and administrative personnel, its stockholders and the families of these groups. 2 U.S.C. §441b(b)(4)(A)(i).

In the case at hand, the secretary is receiving the solicitation as part of a communication intended for his or her executive supervisor. The secretary is therefore merely an intermediary, functioning in accordance with his or her usual and normal duties. Based on the nature of the function of the secretaries in this case, the PAC may send them the newsletter, complete with solicitations, so long as the secretaries are informed that it is intended

for their executive supervisors. This may be done through a computer cover note.

Date Issued: September 22, 1995; Length: 3 pages. ♦

AO 1995-35 Internet Solicitations by Presidential Committee

Alexander for President, Inc., Governor Lamar Alexander's principal Presidential campaign committee for 1996, may solicit contributions over the Internet as long as certain conditions are met. These solicitations must include the proper disclaimers and requests for contributor information, as required of all written solicitations.

Under the committee's proposal, contributors solicited over the Internet will be instructed to send their checks via the U.S. Postal Service to the committee treasurer at campaign headquarters.

The solicitation will include the disclaimer: "Paid for by Alexander for President, Inc." This disclaimer complies with the requirements at 2 U.S.C. §441d(a)(1) and 11 CFR 110.11(a)(1)(i).

The solicitation will also include a request for contributor information, stating that this information is required of contributors who, in the aggregate, contribute more than \$200 to the committee in a calendar year; this request meets the requirements of 11 CFR 104.7(b)(1). The committee indicates that it will send a follow-up mailing to any contributor whose contribution does not include this information. This fulfills the committee's obligation under the "best efforts" provisions. 11 CFR 104.7(b)(2).

A contribution solicited over the Internet will be considered just like any other contribution for matching fund purposes.

Date Issued: September 22, 1995; Length: 5 pages. ♦

Advisory Opinion Requests

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

AOR 1995-36

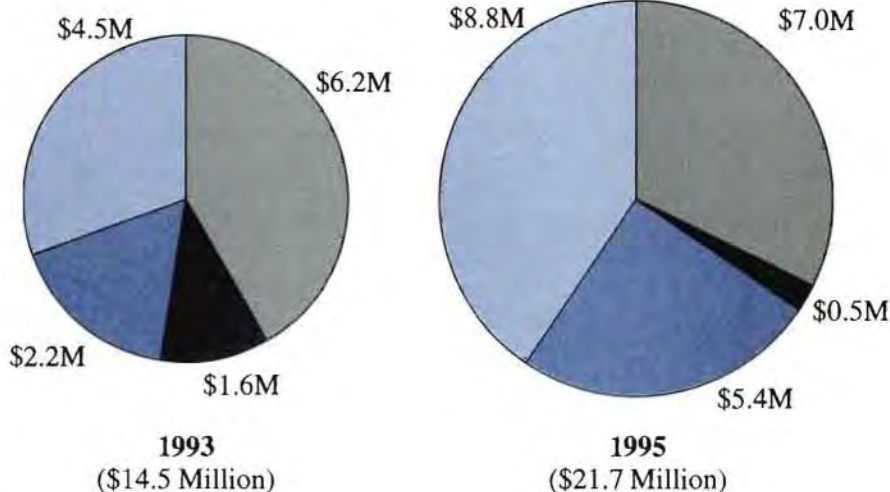
Disaffiliation of PACs connected with joint venture partnership and a new corporation (AK Steel; September 13, 1995; 5 pages plus 1-page attachment) ♦

Contributions Received from Individuals and PACs by Winners of '92 and '94 House Elections: First Six Months of '93 and '95

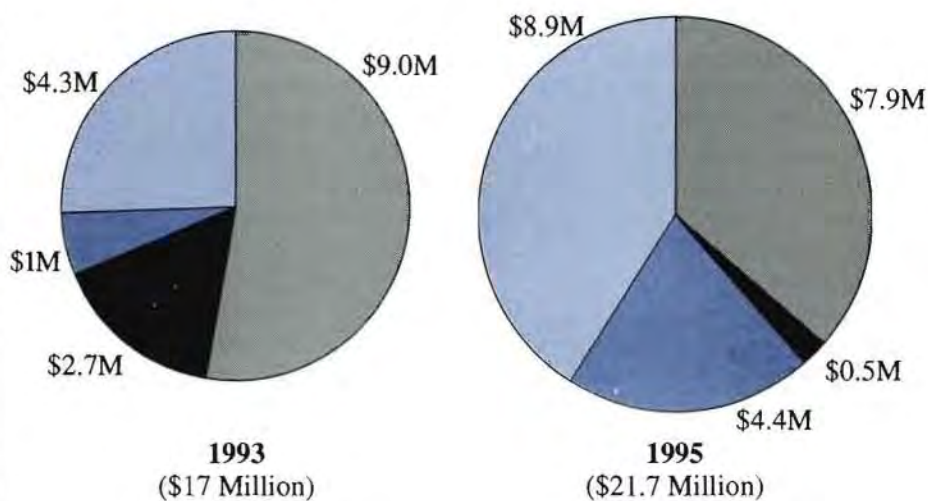
These pie graphs are provided here as a supplement to the press release of September 1. They are based on data contained in the release. Note that in 1993, the House consisted of 195 returning and 63 freshmen Democrats, and 129 returning and 47 freshmen Republicans. Presently, the House is composed of 187 returning and 15 freshmen Democrats, and 159 returning and 73 freshmen Republicans.



Contributions from Individuals



Contributions from PACs



Statistics

House Republicans Report Large Fundraising Gains

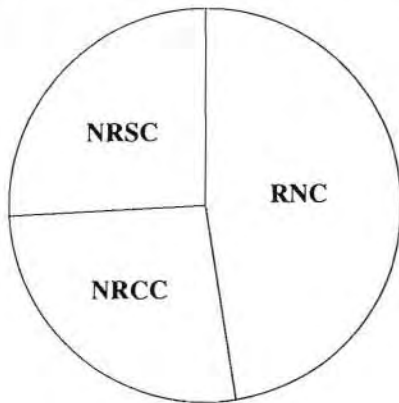
Based on campaign finance reports filed with the FEC, the 232 Republicans in Congress raised \$28.1 million in the first six months of 1995. During the same period of time in the last election cycle (the first six months of 1993), 176 Republican members of Congress raised \$12.9 million. The 1995 increase over 1993 can be attributed to the 73 Republican freshmen, who accounted for \$10.4 million of the \$28.1 million total.

House Democrats, however, had a less successful first six months. Their receipts during that time dropped from \$21.1 million for 258 members of Congress in 1993 to \$17.4 million for 202 members of Congress in 1995.

Meanwhile, 1996 House challengers and open-seat candidates have raised \$3.2 million dollars, divided equally between 24 Democrats and 50 Republicans.

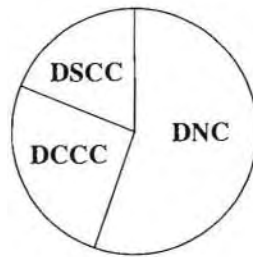
An FEC press release issued on September 1 contains this and other information, including rankings of House members for the following categories: total receipts, contributions received (from individuals and from PACs), disbursements, cash on hand and debts owed. A copy of this *(continued on page 14)*

**Democratic and GOP National Party Federal Account Receipts:
Totals for First Six Months of '95 . . .**



(\$52.0 Million)

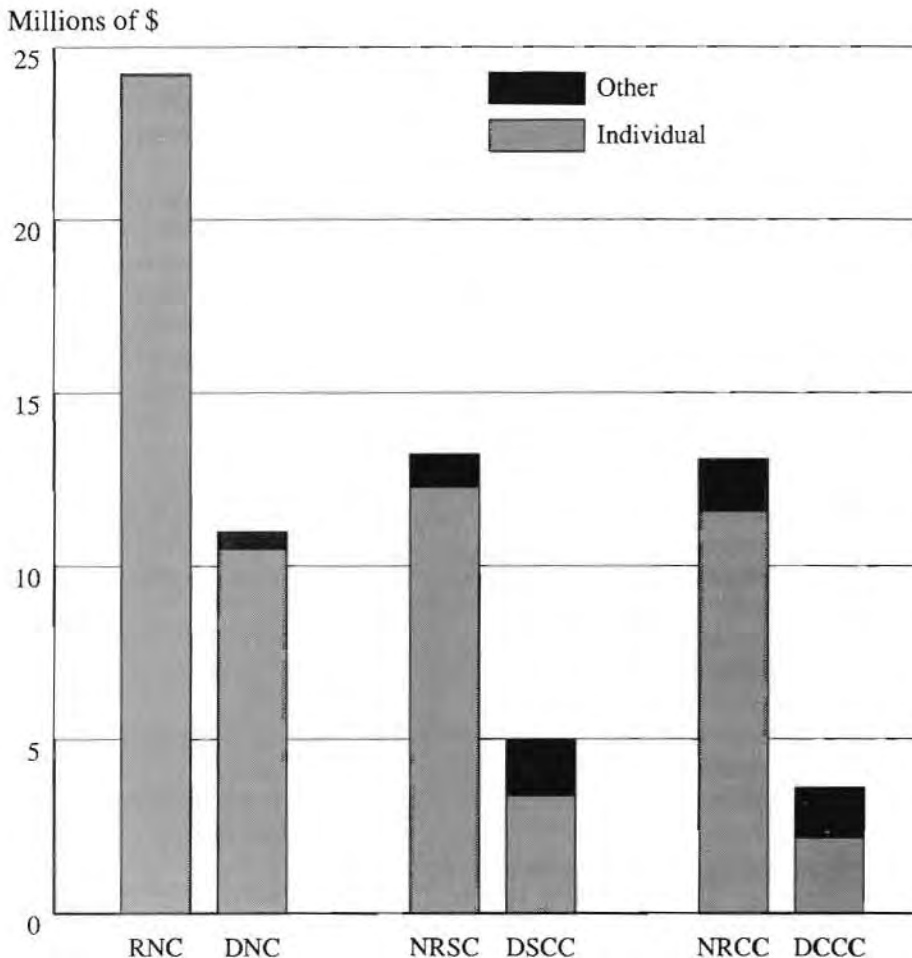
Republican National Cmtee.
National Republican Senatorial Cmtee.
National Republican Congressional Cmtee.



(\$20.4 Million)

Democratic National Cmtee.
Democratic Congressional Campaign Cmtee.
Democratic Senatorial Campaign Cmtee.

. . . and Broken Down by Committee and by Source



Statistics

(continued from page 13)

release may be ordered through the Flashfax system as part of a package on House and Senate fundraising in the first six months of 1995; use a touch tone phone to dial 202/501-3413 and request document 630.

The accompanying pie graphs show the share of individual and PAC contributions received by House incumbents. They are based on figures derived from the data contained in the September 1 press release. ♦

GOP Receipts More Than Double Democratic Party Receipts

In the first six months of this election cycle Republican national party committees reversed a downward trend by significantly outpacing the fundraising efforts of their Democratic counterparts. Receipts for the Republican National Committee, the National Republican Senatorial Committee and the National Republican Congressional Committee totaled \$52 million in the first half of 1995—a 43 percent increase over the first six months of the previous election cycle.

By contrast, the Democratic National Committee, the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee raised a total of \$20.4 million in the first half of 1995, a 10 percent increase over the first six months of the previous election cycle.

Individual contributors accounted for 92.5 percent of the GOP's \$52 million and 78.8 percent of the Democratic party's \$20.4 million in receipts.

With regard to "soft money,"¹ the

¹ "Soft money" refers to funds raised and spent outside the limits and prohibitions of the federal election law. This includes contributions that exceed federal limits and corporate and/or labor organization treasury funds. Such monies may not be used in connection with federal elections, but may be used for other purposes.

Republican national committees raised \$16.8 million while the Democrats raised \$10.8 million during the first six months of 1995. During the same time period in the previous election cycle, the Democrats raised \$8.6 million and the Republicans raised \$6.5 million in soft money.

This information and more is contained in a September 1, 1995, FEC press release. To obtain a copy of this press release, contact the Office of Public Disclosure (800/424-9530) or use the Flashfax service (202/501-3413) and request document 631.

The accompanying graphs are based on data contained in the press release. ♦

In response to the findings, Mr. Little said that as the candidate he was not responsible for maintaining the records and that he did not have the time or the money to obtain the required documentation, or to research or refund excessive or prohibited contributions.

This audit was conducted pursuant to 2 U.S.C. §438(b), which authorizes the Commission to conduct audits of any political committee that files reports that fail to meet the threshold level of compliance set by the Commission. Subsequent to a final audit report, the FEC may choose to pursue unresolved issues in an enforcement matter. ♦

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1995-25: Allocation of costs for ads
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Audits

Friends of Marc Little Audit Report

An FEC audit of Friends of Marc Little, Mr. Marc Little's principal campaign committee during his 1994 bid for the U.S. House seat in Florida's 3rd district, found that the committee:

- Failed to maintain adequate records for its disbursements. The audit found no record other than an entry on a bank statement for \$17,447 in disbursements and found no canceled check, invoice or receipted bill for \$34,898 in disbursements in excess of \$200. Additionally, the committee did not provide documentation for \$12,237 in in-kind contributions.
- Received \$4,803 in prohibited corporate contributions.
- Received \$3,000 in excessive contributions from one contributor. In its FEC reports, the committee wrongfully attributed the excessive amount to three other contributors.

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