

# RECORD

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## REGULATIONS

### TRANSFERS FROM NONFEDERAL CAMPAIGNS PROHIBITED AFTER 1992 ELECTIONS

On August 6, 1992, the Commission approved a final rule that prohibits transfers of funds and assets from a candidate's nonfederal campaign to his or her federal campaign. This rule will not become effective, however, until after the 1992 election cycle.

The new regulation at 11 CFR 110.3(d) replaces the current regulation at 11 CFR 110.3(c)(6), which permits nonfederal to federal campaign transfers as long as the transfers do not contain any contributions that are impermissible under the Federal Election Campaign Act (the Act).

The regulation and its Explanation and Justification were published in the Federal Register on August 12 (57 FR 36344). The rule was sent to Congress on August 7. After the rule has been before Congress for 30 legislative days, the Commission will announce the effective date. 2 U.S.C. §438(d).

#### Background

The final rule grants a petition for rulemaking filed by Congressman William Thomas (R/CA), who alleged that the current regulation fails to prevent nonfederal campaigns from using impermissible funds to raise permissible contributions that are then transferred to federal campaigns.

In response, the Commission published a Notice of Proposed Rulemaking seeking comments on draft rules that would have required a nonfederal campaign to exclude a contribution from the amount transferred if it resulted from a fundraising activity financed with impermissible funds. Under the proposed rule, nonfederal campaigns would have had to be able to demonstrate that the funds to be transferred were raised with funds permissible under federal law.

The Commission saw that it would be difficult for nonfederal campaigns to link funds to be transferred with particular fundraising disbursements, given that:

most nonfederal campaigns are subject to less stringent recordkeeping and reporting requirements than those imposed under federal law; their accounts may contain a constantly varying mixture of permissible and impermissible funds; and their fundraising expenses are often paid for with multiple disbursements over the course of several days. Consequently, the draft

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rules would have been difficult for the Commission to monitor and enforce.

In light of these anticipated practical difficulties, the Notice also sought comments on an alternative approach: To ban all transfers from nonfederal campaigns. All of the commenters who supported a rulemaking in this area preferred a total ban, and this is the approach the Commission adopted in its final rule.

Although the revised rule reverses a long-standing policy of permitting non-federal transfers, the total ban will more effectively prevent the indirect use of impermissible funds in federal elections, an area in which the Commission has recently engaged in closer regulation.

#### Final Rule

The final rule, as explained earlier, prohibits transfers of cash and other assets from a candidate's nonfederal campaign committee (or account) to his or her federal campaign committee. The rule does not, however, prohibit the sale of assets by the nonfederal campaign to the federal campaign as long as the assets are sold at fair market value. (Committees may consult 11 CFR 9034.5(c)(1) for guidance in determining fair market value.) A federal campaign may, for example, purchase the nonfederal campaign's mailing list at fair market value.

The final rule also provides that a nonfederal campaign may, if it wishes, make refunds to its donors and make arrangements with the candidate's federal campaign for the solicitation of the same donors by the federal campaign. All solicitation costs, however, must be paid by the federal campaign.

#### PROPOSED RULES ON TRANSFERS BETWEEN FEDERAL CAMPAIGNS

The FEC seeks comments on proposed rules that would amend the current regulations on transfers of funds between a federal candidate's committees authorized for different election years or for different offices (11 CFR 110.3(c)(4) and (c)(5)). The proposed rules would add new requirements to such transfers. First, the transferring committee would have to inform donors of its intent to transfer their contributions. Additionally, the committee would be permitted to transfer only those contributions whose donors provided written authorization for the transfer; other contributions would have to be excluded. The authorizations would operate as redesignations of contributions for another election under 11 CFR 110.1(b)(5)(iii).

Comments are also sought on an alternative to the "affirmative authorization" draft rule. Under the alternative, the committee would still have to notify donors but would be permitted to transfer the contribution of any donor who did not object to the transfer. The Commission asks commenters to consider questions raised by the "no objection" approach: Should the transferring committee be required to give contributors a minimum amount of time to object? If so, how long?

Written comments on the proposed rules are due on September 11, 1992. The Notice of Proposed Rulemaking was published in the Federal Register on August 12, 1992 (57 FR 36023).

Federal Election Commission, 999 E Street, NW, Washington, DC 20463  
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### BAN ON USE OF CANDIDATE NAMES IN SPECIAL PROJECT TITLES

The Commission recently approved a revised regulation that prohibits unauthorized political committees<sup>1/</sup> from using candidate names in the titles of special projects and other communications. Note that this rule will not become effective until after the 1992 election cycle.

The Federal Election Campaign Act and FEC regulations prohibit an unauthorized committee from including the name of a candidate in its own "name." 2 U.S.C. §432(e)(4); 11 CFR 102.14(a). The revised rule at 11 CFR 102.14(a) defines "name" to include "any name under which a committee conducts activities, such as solicitations or other communications, including a special project name or other designation."

The revised regulation and its Explanation and Justification were published in the Federal Register on July 16, 1992 (52 FR 31424). After the rule has been before Congress for 30 legislative days, the Commission will announce the effective date. 2 U.S.C. §438(d). The agency plans to set an effective date of November 4, 1992 (the day after the general election).

#### Background

The Commission had previously interpreted section 432(e)(4) as applying only to a committee's registered name on its Statement of Organization and had thus permitted an unauthorized committee to solicit contributions for itself under a special project name that included the name of a candidate (e.g. "Americans for Doe").

In *Common Cause v. FEC*, 842 F.2d 436 (D.C. Cir. 1988), the court of appeals upheld the Commission's authority to interpret section 432(e)(4) in this fashion, recognizing, however, that a more extensive ban on the use of a candidate's name would also be a reasonable interpretation.

The *Common Cause* decision grew out of the 1980 Presidential election. In recent years, however, unauthorized committees have increasingly adopted the practice of using a candidate's name in the title of a special project. Such projects have the potential for confusing the public and diverting funds away from the named candidates. Candidates have objected to the use of their names in special projects when they shared none of the fundraising proceeds or disagreed with the views expressed in the communication.

#### Notice of Proposed Rulemaking

In response to these concerns, the agency sought comments on proposed regulations that would have: (1) required an unauthorized committee to use a more informative disclaimer for a special fundraising project using a candidate's name in the title; and (2) required that checks given in response to the solicitation be made payable to the unauthorized committee's registered name. (See 57 FR 13056, April 15, 1992.) Neither of these proposals were included in the final rule.

#### Commission Decision

Rather, the final rule bans the use of candidate names in the titles of all communications by unauthorized committees. The agency views this approach as more responsive to the problems at issue and easier to monitor and enforce than the restrictions in the proposed rules.

While comments from unauthorized committees opposed tightening the rules on the use of candidate names, the record supports the Commission's decision. For example, a comment from a Presidential campaign stated that an unauthorized project raised over \$10 million despite the candidate's disavowal of the activities. A recent television documentary (now placed on the rule-making record) reported that a political action committee raised \$9 million in numerous projects whose titles included candidates' names; none of the funds went to the named candidates. Program investigators found that elderly people were particularly vulnerable to being misled into believing they were contributing to the candidates named in the titles.

#### Proposed Revision to Disclaimer Rule Postponed

The Commission decided to reserve action on another change that had been included in this rulemaking. The change would have amended the disclaimer requirement for solicitations by unauthorized committees at 11 CFR 110.11(a)(1)(iv)(A) to conform with 2 U.S.C. §441d(a)(3). The proposed rule would have required an unauthorized committee, when soliciting funds for itself through public advertising, to state in the disclaimer not only who paid for the communication (as required in the current rule) but also whether the communication had been authorized by any candidate. The agency now plans to consider this change in a future rulemaking specifically on disclaimer requirements.

(Regulations continued)

<sup>1/</sup>Unauthorized political committees are committees not authorized by a candidate, such as party committees or PACs.

### FINAL REGULATIONS ON RULEMAKING PETITION PROCEDURES

The Commission recently approved final rules that explain procedures for filing petitions for rulemaking for the agency's consideration. Closely based on the agency's previous procedures, the new regulations provide the public with easy access to the information.

Found in newly created 11 CFR Part 200, the new rules:

- o Describe what information is required in a rulemaking petition;
- o Explain the steps the agency takes in responding to a petition;
- o List the factors the Commission may consider in deciding whether to initiate a rulemaking;
- o Provide for the reconsideration of petitions that are denied; and
- o Define the administrative record (i.e., the documents upon which the agency will base its decision on the petition) for purposes of judicial review.

In a change from the proposed rule, the final rule provides that the Commission will publish a Notice of Disposition in the Federal Register only if it denies a rulemaking petition, since that will be the only opportunity to explain its decision. When the agency decides to initiate a rulemaking, its reasoning will be stated in other rulemaking documents.

The final rules were published in the Federal Register on August 5, 1992 (57 FR 34508). A "Statement of Basis and Purpose" accompanies the rules, as required by the Administrative Procedures Act, which governs these regulations. The new rules became effective on September 4, 1992.

### CLINTON AND BUSH EACH RECEIVE \$55 MILLION IN PUBLIC FUNDS

The FEC recently approved public funding grants for the Democratic and Republican Presidential tickets. On July 17, the agency certified a \$55.24 million payment to the campaign of the Democratic Presidential nominee, Governor Bill Clinton, and his Vice Presidential running mate, Senator Al Gore. The same amount was certified on August 21 to the Republican ticket, President George Bush and Vice President Dan Quayle. The U.S. Treasury paid the funds shortly after the certifications.

To establish their eligibility for the general election grants, the candidates submitted letters of agreements and certifications in which they agreed to comply with the law and submit to certain conditions, including a post-campaign audit.

Under the Presidential Election Campaign Fund Act, the Democratic and Republican nominees are each entitled to a \$20 million public funding grant as increased by the cost-of-living adjustment (COLA). The 1991 COLA was 2.762, thus increasing the base grant to \$55.24 million. Each major party nominee has received general election funds since the first publicly funded Presidential election in 1976.

Major party nominees must agree to limit campaign spending to the amount of the public funding grant, although they may spend up to \$50,000 from their personal funds. These limits are shared by their Vice Presidential running mates.

Although major party nominees may not accept private contributions for their campaigns, contributions may be made to their legal and accounting funds, which are to be used solely to comply with the law. Contributions to these compliance funds are subject to the limits and prohibitions of the Federal Election Campaign Act.

Thus far in the 1992 Presidential season, the Commission has certified almost \$166.7 million in public funds. In addition to the \$55.24 million grants certified to the general election nominees, the agency has certified \$34.1 million in matching funds to 10 primary candidates and \$11.048 million apiece to the Democratic and Republican Parties for their nominating conventions.

**AUGUST MATCHING FUND PAYMENTS**

On July 30, the Commission certified a total of \$2.8 million in matching fund payments to 1992 Presidential primary candidates. The U.S. Treasury made the payments early in August. As of the August payment, primary candidates had received over \$34 million in matching funds, as shown in the table. Candidates have requested \$2.7 million for the September payment.

After a candidate's date of ineligibility, the candidate may still receive matching funds to wind down the primary campaign and to retire debts incurred before that date. Several Democratic candidates became ineligible when they publicly withdrew from the race.<sup>1/</sup> The remaining Democratic candidates (Agran, Brown and Clinton) became ineligible on July 15, when the Democratic Party nominated Governor Clinton. The Republican candidates likewise became ineligible when the Party nominated President Bush on August 19. Lenora Fulani became ineligible on August 20.

Candidate	August Payment	Cumulative Total
<b>Republicans</b>		
Patrick Buchanan	\$ 304,744	\$ 3,612,696
George Bush	546,097	9,502,153
<b>Democrats</b>		
Larry Agran	19,934	269,692
Jerry Brown	171,136	4,239,405
Bill Clinton	1,431,599	7,924,627
Tom Harkin	28,498	1,913,413
Bob Kerrey	41,640	1,927,552
Paul Tsongas	129,748	2,802,341
Douglas Wilder	0	289,027
<b>New Alliance Party</b>		
Lenora Fulani	141,834	1,589,775
<b>Total</b>	<b>\$2,815,229</b>	<b>\$34,070,680</b>

<sup>1</sup>Governor Wilder withdrew on January 8, Senator Kerrey on March 6, Senator Harkin on March 9 and former Senator Tsongas on March 19.

**FINAL REPAYMENTS: 1988 KEMP AND BUSH-QUAYLE CAMPAIGNS**

During June, the Commission issued final repayment determinations with respect to two 1988 Presidential campaigns: the Jack Kemp for President Committee, Inc., and Bush-Quayle '88. Under FEC rules, campaigns have 30 days from their receipt of the final repayment determination to repay the funds to the U.S. Treasury. In accordance with FEC regulations, the Commission, on August 6, 1992, granted the Kemp Committee's request for a 90-day extension of the repayment deadline to give the Committee time to raise the necessary funds.<sup>1/</sup>

**Jack Kemp for President Committee, Inc.**

In its final determination, the Commission ordered the Kemp Committee to repay \$103,555 in public funds. The Committee had received \$5.985 million in matching funds for the 1988 primary election.

The final repayment consisted of:

- o \$54,253.13, the pro rata portion of \$169,805 in expenditures that exceeded the New Hampshire and Iowa spending limits;<sup>2/</sup> and
- o \$49,302 in stale-dated committee checks never cashed by the recipients.

**Bush-Quayle '88**

Under the terms of the final repayment determination, the Bush-Quayle Committee was ordered to repay \$115,142 to the Treasury. The repayment represented \$18,733 spent by the Committee in non-qualified campaign expenses; \$95,909 in excessive travel reimbursements received from media firms; and a \$500 stale-dated committee check. The Committee had received \$46.1 million in public funds for the 1988 general election.

The Committee was also ordered to refund the following amounts paid by media organizations for travel: \$133,819 for payments received in excess of the maximum amount the Committee could charge, and \$61,558 for unused prepayments.

<sup>1</sup>For the same reason, the Commission also granted a 90-day repayment extension to the Gephardt for President Committee, Inc., on August 6.

<sup>2</sup>A ratio formula is used to calculate what portion of the excessive expenditures represented the payment of public funds as opposed to private contributions. That amount--the pro rata portion--is subject to repayment.

## REPORTS

### REPORTS DUE IN COMING MONTHS

To find out what reports your committee must file from October through January, refer to the chart on the opposite page. The reporting dates appear in the tables below. The FEC sends reporting notices and forms to registered committees. (Note, however, that the agency does not send these materials to corporations and labor organizations for partisan communication reports.) For additional forms or information on reporting requirements, call the FEC at 800/424-9530 or 202/376-3120.

#### Candidate Committees: 48-Hour Notices on Last-Minute Contributions

Authorized committees of candidates running in the November 3 general election must file special notices on contributions of \$1,000 or more received between October 15 and October 31. The notice is due within 48 hours of the committee's receipt of such a contribution. See 11 CFR 104.5(f).

This requirement applies to all last-minute contributions of \$1,000 or more:

- o Contributions by check;
- o In-kind contributions;
- o Loans from personal funds;
- o Guarantees and endorsements of bank loans; and
- o Any of the above contributions made by the candidate.

Forty-eight hour notices must be filed with the appropriate federal and state offices. Because 48-hour notices do not have to be signed by the treasurer, they may be sent by mailgram, telegram or fax

machine. The fax numbers for the Clerk of the House and Secretary of the Senate are:  
 o Clerk of the House: 202/225-7781  
 o Secretary of the Senate: 202/224-1851.  
 Other statements and reports may not, however, be faxed due to the original signature requirement.

#### PACs and Individuals: 24-Hour Reports on Last-Minute Independent Expenditures

PACs (including monthly filers) and other persons planning to make independent expenditures in connection with the November 3 general election are reminded of the 24-hour reporting requirement: Any person making independent expenditures aggregating \$1,000 or more in connection with the general election must report the expenditures within 24 hours if they are made between October 15 and November 1. The report must be filed with the appropriate federal and state offices. For further information, see 11 CFR 104.4 (b) and (c), 104.5(g) and 109.2(b).

#### Late Filing

The Federal Election Campaign Act does not permit the Commission to grant extensions of filing deadlines under any circumstances. Failure to file on time could result in enforcement action by the FEC.

#### Where to File Reports

Committees must file original reports with the appropriate federal office and simultaneously file copies of reports with the appropriate state filing offices. 11 CFR Parts 105 and 108. See the instructions to FEC Forms. A list of state filing offices is available from the FEC.

### REPORTING DATES, OCTOBER 1992 - JANUARY 1993

Report <sup>1</sup> /	Close of Books	Reg./Cert. Mail Date <sup>2</sup> /	Filing Date <sup>2</sup> /
October Quarterly	September 30	October 15	October 15
October Monthly	September 30	October 20	October 20
Pre-General	October 14	October 19	October 22
November Monthly	October 31	November 20	November 20
Post-General	November 23	December 3	December 3
December Monthly	November 30	December 20	December 20
Year-End	December 31	January 31, 1993	January 31, 1993

<sup>1</sup> Use the chart, opposite page, to find out which reports your committee must file.

<sup>2</sup> Reports sent by registered or certified mail must be postmarked by the mailing date. Reports sent by other means must be received by the filing date. Note that the registered/certified mail date for the pre-general report is three days before the filing date.

## GUIDE TO REPORTING, OCTOBER 1992 - JANUARY 1993

Type of Filer	Required Reports				
	Quarterly	Monthly	Pre-General	Post-General	Year-End
House and Senate Campaigns of 1992 Candidates	✓		✓ required if candidate runs in election, even if unopposed <sup>1/</sup>	✓	✓
Other House and Senate Campaigns <sup>2/</sup>					✓
1992 Presidential Campaigns With Activity of \$100,000 or Above		✓	✓ filed in lieu of November and December monthly reports if candidate runs in election	✓	✓
1992 Presidential Campaigns With Activity Less Than \$100,000	✓		✓ required only if candidate runs in election	✓	✓
Previous Presidential Campaigns	✓	or <sup>3/</sup>			✓
PACs and Party Committees Filing Monthly		✓	✓ filed in lieu of November and December monthly reports	✓	✓
PACs and Party Committees Filing Quarterly	✓		✓ required only if committee makes contributions or expenditures in connection with election during pre-general reporting period	✓ required regardless of activity	✓
Corporations and Labor Organizations (Reports on Partisan Communications) <sup>4/</sup>	✓		✓		✓

(Reports continued)

<sup>1</sup> Reports and 48-hour notices are required even if the candidate is unopposed or if the general is not held because the candidate received a majority of votes in the previous election.

<sup>2</sup> Campaigns of House and Senate candidates who sought election in a previous year or who are seeking election in a future year file on a semiannual basis in 1992. The next semiannual report is the 1992 year-end report, due January 31, 1993; it will cover activity from July through December 1992.

<sup>3</sup> These campaigns may file on either a monthly or quarterly basis. If they decide to change their filing frequency during 1992, they should notify the Commission in writing.

<sup>4</sup> These reports, filed on FEC Form 7, are required if the organization's aggregate costs exceed \$2,000 for internal communications expressly advocating the election or defeat of a clearly identified candidate. See 11 CFR 104.6 and page 44 of the 1992 Campaign Guide for Corporations and Labor Organizations.

**FLORIDA RUNOFF DATE CHANGED**

The date of the Florida runoff has been changed from September 29 to October 1. The pre-election reporting dates that appeared in the January issue have therefore been changed. The revised dates are shown below.

**Florida Runoff, October 1**

Close of Books	Reg./Cert. Mailing Date <sup>1</sup> /	Filing Date <sup>1</sup> /
Sept. 11	Sept. 16	Sept. 19

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

**STATISTICS**

**MIDYEAR PAC COUNT**

By July 1, 1992, the number of PACs registered with the FEC had grown to 4,125, an increase of 31 PACs since the count was taken six months ago.

Please note, however, that the number of PACs does not necessarily correlate with financial activity. Many PACs have little or no activity. For example, according to their reports, 45 percent of all PACs did not make any contributions to candidates from January 1, 1991, through March 31, 1992.

For statistics on semiannual PAC counts taken since 1975, order the press release of July 23, 1992; call 800/424-9530 (ask for Public Records) or 202/219-4140.

PAC Category	Number of PACs 7/1/92	Gain/Loss Since 12/31/91
Corporate	1,731	-7
Nonconnected	1,091	+8
Trade/Membership/		
Health	759	+17
Labor	344	+6
Corporations		
Without Stock	144	+8
Cooperatives	56	-1
<b>Total</b>	<b>4,125</b>	<b>+31</b>

**ADVISORY OPINIONS**

**ADVISORY OPINION REQUESTS**

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

**AOR 1992-30**

Status of political organization as national party committee. (Requested by Natural Law Party of the United States of America; Date Made Public: August 5, 1992; Length: 7 pages plus attachments)

**AOR 1992-31**

Campaign donation to public housing residents council. (Requested by Michael A. Andrews for Congress Committee; Date Made Public: August 10, 1992; Length: 2 pages)

**AOR 1992-32**

Filing requirements of Vice Presidential candidate on independent ticket. (Requested by LaRouche for President - Independents for Economic Recovery; Date Made Public: August 10, 1992; Length: 3 pages)

**AOR 1992-33**

Treatment of goods and services donated by prohibited sources in connection with shared federal and nonfederal activities. (Requested by the Democratic and Republican National Committees; Date Made Public: August 14, 1992; Length: 3 pages)

**AOR 1992-34**

Use by federal candidate/state governor of state-provided car. (Requested by Castle for Congress Fund; Date Made Public: August 14, 1992; Length: 3 pages)

**ALTERNATE DISPOSITION OF AORs**

**AOR 1992-13: Loans to Law Firm of Attorney Considering Candidacy**

Requested by James M. Blackburn. By letter dated July 1, 1992, this AOR was closed without issuance of an opinion because of incomplete facts.

**AOR 1992-26: Free or Reduced-Rate Campaign Ad Time Offered by Corporate Broadcaster to Candidates**

Requested on behalf of EZ Communications, Inc. On August 13, 1992, the Commission failed to approve an advisory opinion by the required four votes. See Agenda Documents #92-107 and #92-107-A.

## ADVISORY OPINION SUMMARIES

**AO 1992-19: State Campaign's Lease of Computers to Candidate's Federal Campaign**

Mike Kreidler's state campaign committee may lease two computers to his federal campaign committee (Mike Kreidler for Congress Committee) without making a contribution to the federal committee assuming the rental: (1) reflects the usual and normal charge and (2) conforms to standard business practices.

These two factors have been the focus of past advisory opinions on transactions between a state committee and a federal committee. If a state committee provides goods or services at less than the usual charge (i.e., at less than the current market rate), it makes a contribution to the federal committee—a possibly unlawful contribution if state law permits the state committee to accept funds that would be prohibited under federal law. 11 CFR 100.7(a)(1)(iii); AOs 1989-4, 1980-38 and 1978-67.

Mr. Kreidler's state committee account contained primarily prohibited funds when it purchased the computers, since it had already transferred its permissible funds to the federal committee. The state committee now rents the equipment to the federal committee at \$200 a month, although the committee has determined that a fee of \$100 a month is reasonable given the prevailing rates in Olympia, Washington.

Assuming that this rate reflects the usual and normal charge,<sup>1</sup> the rental will not result in a contribution to Mr. Kreidler's federal committee. This conclusion is based on the further assumption that the leasing agreement conforms to standard business practices and includes standard auxiliary charges (e.g., a security deposit, if customary). See AO 1992-12.

The federal committee must itemize its rental payments as operating expenditures. The tax ramifications and the possible application of Washington State law to the described activity are outside the Commission's jurisdiction.

(Date Issued: July 10, 1992; Length: 4 pages)

**AO 1992-25: Utah Convention as Separate Election**

The Owens for Senate Committee, the campaign committee of Congressman Wayne Owens, has a separate contribution limit for the Utah party convention because, under state law, the convention has authority to select the nominee.

Federal campaign law defines "election" to include a general election, a primary election and "a convention or caucus of a political party which has the authority to nominate a candidate." 2 U.S.C. §431(1)(A) and (B); 11 CFR 100.2(b), (c) and (e). Past advisory opinions have looked to state law to determine whether a convention or caucus has authority to nominate. AOs 1986-17, 1984-16 and 1978-30.

Under Utah law, the delegates at the party convention vote for the U.S. Senate nominee. The two highest vote getters then face off in a primary. If, however, a candidate receives 70 percent or more of the convention votes, he or she becomes the party's nominee, and the primary is not held. Therefore, since the convention has the authority to nominate a candidate, it is considered an election, with a separate contribution limit. See AOs 1986-21 and 1978-30, both addressing the Utah 70-percent rule.

Mr. Owens was one of the top two vote getters at the June 13 convention (he received 69.7 percent of the delegates' votes) and will be a candidate in the September 8 primary. His committee therefore has separate contribution limits for the convention and for the primary. Should he win the primary, his committee will also have a separate contribution limit for the general election, thus enabling an individual to make three \$1,000 contributions to the committee. The Commission, however, reminded the committee that it must comply with the rules on the application of the contribution limits, per election, and the designation of contributions. See 11 CFR 110.1 and 110.2.

(Date Issued: July 10, 1992; Length: 2 pages)

<sup>1</sup>The Commission expressed no opinion on the validity of the fair market value determined by the committee.

800 LINE

**ADVANCES BY STAFF: CONTRIBUTION LIMITS AND REPORTING**

Sometimes committee staff, volunteers and candidates use their personal funds or credit cards to pay for committee expenses. These payments are generally considered in-kind contributions, subject to the contribution limits, even when the individual expects to be reimbursed by the committee.<sup>1</sup> Limited exceptions to this rule are explained in this article.

**NOTE:** U.S. House and Senate employees are reminded of 18 U.S.C. §603, which prohibits contributions by a Congressional employee to his or her employing Member.

**General Rule**

The general rule is that an in-kind contribution results when an individual uses his or her personal funds or credit card to pay for goods or services on behalf of a political committee. 11 CFR 116.5(b). (Limited exceptions to this general rule apply only when individuals traveling on behalf of a candidate or political party pay for their own travel and subsistence expenses, as explained in the next section.)

For example, an in-kind contribution results when an individual pays for the transportation or subsistence expenses of others or pays for nontravel expenses such as meeting rooms, office supplies or campaign materials. 11 CFR 100.7(a)(1). In these cases, the in-kind contribution (combined with previous contributions made by the same individual) may not exceed the individual's contribution limit for the committee.<sup>2</sup>

Any reimbursements the committee makes to the individual reduce the amount of the contribution; when fully reimbursed, the individual's advance no longer counts as a contribution.

<sup>1</sup>This article does not apply to payments made by individuals acting as commercial vendors. See 11 CFR 116.3 and 116.4.

<sup>2</sup>Contributions from the personal funds of House and Senate candidates to their own campaigns are not subject to the contribution limits. 11 CFR 110.10(a). Publicly funded Presidential candidates, by contrast, are subject to a \$50,000 limit on campaign spending from personal funds. 11 CFR 9003.2(c) and 9035.2.

**Exception: Unreimbursed Travel and Subsistence**

The exceptions described below apply only to an individual's payments for his or her own travel or subsistence.

**Individual's Travel.** An individual may spend up to \$1,000 per election for his or her own travel on behalf of a candidate and \$2,000 per year for his or her own travel on behalf of a party committee without making a contribution. 11 CFR 100.7(b)(8). Payments that exceed these limits are considered in-kind contributions--unless they are reimbursed by the committee within certain time periods (see below).

This travel exemption applies to paid campaign workers, volunteers and the candidate.

**Volunteer's Subsistence.** A second exception applies only to volunteers. They may spend unlimited amounts for their own meals and lodging when these expenses are incidental to volunteer activity. The payments are not considered contributions. 11 CFR 100.7(b)(8).

**Exception: Reimbursed Travel and Subsistence**

If an individual pays for his or her own transportation and subsistence expenses (using personal funds or a credit card) while traveling on behalf of a candidate or party committee--and the expenses are not covered under the above exceptions--the payments are not considered in-kind contributions if the committee reimburses the individual within certain time periods:

- o In the case of a credit card payment, within 60 days of the closing date on the billing statement where the charges first appear.
- o In all other cases, within 30 days after the expenses are incurred. 11 CFR 116.5(b).

If full reimbursement is not made within these time limits, the unpaid amount becomes an in-kind contribution and may have to be reported as both a contribution and a debt, as explained below.

**Reporting Advances and Reimbursements<sup>3</sup>**

The term "advance" is used in this article to mean an individual's payment for a committee expense when the payment results in an in-kind contribution which the committee intends to reimburse.

<sup>3</sup>The reporting information in this article is based on Advisory Opinion 1992-1.

**Full Reimbursement Made Within Same Reporting Period.** If the committee reimburses an advance, in full, within the same reporting period in which the advance was made, the advance is not reportable. (Nevertheless, the advance—combined with other contributions made by the individual—may not exceed the contribution limits.) The reimbursement of the advance is reportable as an operating expenditure and subject to the itemization rules at 11 CFR 104.3(b)(3)(i) and (4)(i).

**Full Reimbursement Not Made Within Same Reporting Period.** When an advance (combined with other contributions made during the calendar year) exceeds \$200 and remains unreimbursed at the end of the reporting period, the committee must itemize the advance as a memo entry on a Schedule A used for "Contributions from Individuals." (As a memo entry, the amount is not included in the total figure.) The entry should specify the amount as an advance. Unlike other in-kind contributions, advances are not simultaneously itemized as operating expenditures on Schedule B. Once the committee reimburses the individual, however, it must itemize the reimbursement as an operating expenditure on Schedule B. The "purpose of disbursement" box should specify the amount as a reimbursement and should indicate the nature of the advance (e.g., "reimbursement for postage"). Additionally, the entry should be cross referenced to the corresponding memo entry on Schedule A, noting the particular report where the memo entry appeared.

If the individual's unreimbursed advance and other contributions do not exceed \$200, the advance does not have to be itemized and, in fact, is not reportable as a contribution. (The unreimbursed amount, however, may have to be reported as a debt; see below.) The reimbursement, when made, is reportable as an operating expenditure.

**When Advance Becomes a Reportable Debt.** In addition to any reporting that may be required under the above paragraphs, the committee must itemize an advance as a debt on Schedule D if:

- o Full reimbursement was not made within the same reporting period, and 60 days have elapsed since the advance was made; or
- o The advance exceeded \$500 and was not reimbursed within the same reporting period. See 11 CFR 104.11(b).

## COURT CASES

### FEC v. ELDREDGE FOR CONGRESS COMMITTEE

On July 7, 1992, the U.S. District Court for the District of New Hampshire, based on a stipulation submitted by the parties, ruled that the Eldredge for Congress Committee and Faith D. Eldredge, as treasurer, violated the Federal Election Campaign Act by failing to file a timely 1984 quarterly report. As agreed by the parties, the court ordered defendants to pay a \$500 civil penalty and permanently enjoined them from future violations of the reporting laws. (Civil Action No. C85-655-D.)

### FEC v. INTERNATIONAL FUNDING INSTITUTE

On July 10, 1992, the U.S. Court of Appeals for the District of Columbia Circuit, sitting en banc, upheld the constitutionality of 2 U.S.C. §438(a)(4). (Civil Action No. 91-5013.) That provision of the Federal Election Campaign Act (the Act) prohibits anyone from using, for solicitation or commercial purposes, the information on individual contributors listed in political committee reports filed with the FEC.

#### Background

According to the findings of fact in this case, International Funding Institute (IFI), through Robert E. Dolan, its sole stockholder and director, subscribed to an on-line data base service provided by Legi-Tech, Inc. (an amicus curiae in this action). The data base contained information on individual contributors compiled from FEC reports. IFI developed the contributor data into a mailing list, which it marketed through a broker. The broker, in turn, rented the list to about five customers, including American Citizens for Political Action, Inc. (ACPA), a political committee. (Mr. Dolan is also chairman and treasurer of ACPA.) ACPA used the list for several mailings, each soliciting about 5,000 individuals.

In an internal enforcement matter, the FEC found probable cause to believe that IFI, ACPA and Mr. Dolan, as ACPA treasurer, knowingly and willfully violated section 438(a)(4). Unable to reach a conciliation agreement with respondents, the agency filed suit against them in the U.S. District Court for the District of Columbia. (Civil Action No. 90-1623.)

(continued)

Defendants asked the district court to dismiss the case, arguing that §438(a)(4) violated the First Amendment of the Constitution, both on its face and as applied to their conduct. The FEC moved to certify the constitutional question to the court of appeals. The district court granted the FEC's motion.

### Court of Appeals Opinion

**Level of Scrutiny.** The court first examined what level of scrutiny it should apply to determine whether the use restriction of §438(a)(4) was constitutional. Noting some apparent conflicts in levels of scrutiny applied by the Supreme Court in similar cases, the court "assumed"—but did not decide—that §438(a)(4) was subject to intermediate scrutiny.

Quoting Seattle Times Co. v. Rhinehart, 467 U.S. 20, 32 (1984), the court explained the Supreme Court's criteria for intermediate scrutiny: it "require[s] only that the restriction further 'an important or substantial governmental interest unrelated to the suppression of expression' and [that it] be 'no greater than is necessary or essential to the protection of the particular governmental interest involved.'"

**Governmental Interest.** The FEC argued, *inter alia*, that §438(a)(4) was narrowly tailored to further an important governmental interest, that of protecting the value of a political committee's contributor list. The FEC further argued that this protection, in turn, preserves political discourse.

The court agreed: "Without the use restriction of §438(a)(4), innumerable entrepreneurs would, like the defendants here, be able freely to appropriate to themselves part of the value of the contributor lists compiled by reporting political committees. As a result, such committees would have less incentive to compile the lists in the first place. In other words, if the return on their investment in solicitation would be reduced by others using the resulting lists, political committees would not find it worthwhile to solicit as much as they now do; they would raise less money, spend less money, and correspondingly underwrite less political discourse....[T]he use restriction protects political discourse from the adverse effect that the disclosure requirement of the Act would otherwise have."

(The FEC also argued, based on legislative history, that §438(a)(4) furthers the governmental interest in protecting contributors from unwanted solicitations,

but the court did not find it necessary to reach that argument.)

Defendants claimed that a political committee has no property rights in its contributor list because a list of names and addresses is not sufficiently original to warrant copyright protection. The court, however, observed that "Congress may recognize an intellectual property interest, narrower than copyright, that is not subject to the constitutional requirement of originality."

The court rejected defendants' alternative argument that §438(a)(4) is inconsistent with the First Amendment because it creates "a property interest in the political sympathies of another." Instead, the court said, the use provision "narrowly protects the value of the list itself in a particular use; it does not prevent one from soliciting a person who is on a committee's contributor list, so long as one does not obtain that person's name (directly or indirectly) from a list filed with the FEC."

**Conclusion.** The court held that, under an intermediate level of scrutiny, section 438(a)(4) is constitutional as applied to the defendants' conduct because it "advances an important governmental interest" (preserving the value of a political committee's contributor list) and "is no broader than is necessary to that task."

The court rejected defendants' second claim, that §438(a)(4) was unconstitutional on its face. Quoting Members of the City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 798 (1984), the court said that a facial challenge can succeed "only if the statute may 'never be applied in a valid manner' or is 'written so broadly that [it] may inhibit the constitutionally protected speech of third parties.'" The defendants, the court said, failed to make such an argument.

The court remanded the case to the district court for proceedings consistent with its holding but, in response to an unopposed motion by defendants, stayed its mandate through October 9, 1992. Defendants plan to seek the Supreme Court review of the court of appeals decision, and October 8 is the deadline for filing the petition.

**FEDERAL REGISTER NOTICES**

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

**1992-11**

11 CFR Parts 109, 110 and 114: Independent Expenditures, Corporate and Labor Organization Expenditures; Notice of Proposed Rulemaking (57 FR 33548, July 29, 1992)

**1992-12**

11 CFR Part 200: Administrative Regulations (Rulemaking Petitions); Final Rule (57 FR 34508, August 5, 1992)

**1992-13**

11 CFR Part 110: Transfers of Funds from State to Federal Campaigns; Final Rule; Transmittal to Congress (57 FR 36344, August 12, 1992)

**1992-14**

11 CFR Part 110: Transfers of Funds Between Federal Campaign Committees; Notice of Proposed Rulemaking (57 FR 36023, August 12, 1992)

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

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

Candidate	Office Sought	Report Not Filed
Martin	Senate-FL	2nd Quarter
Lally	House-NY/27	2nd Quarter
Albert	House-GA/10	Pre-Runoff
Brown	House-GA/06	Pre-Runoff
Lovett	House-GA/11	Pre-Runoff
Pratt	House-GA/11	Pre-Runoff
Whitaker	House-GA/09	Pre-Runoff

**MURS RELEASED TO THE PUBLIC**

Listed below are MURs (FEC enforcement cases) recently released for public review. The list is based on the FEC press releases of July 15, 23 and 24, 1992. Files on closed MURs are available for review in the Public Records Office.

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

**MUR 2804 1/**

**Respondent:** American Israel Public Affairs Committee (DC)

**Complainants:** Paul Findley, James E. Akins, George Ball, Richard Curtiss, Robert Hanks, Andrew I. Killgore, Orin Parker

**Subject:** (1) Corporate contributions; (2) failure to register and report

**Disposition:** (1) Probable cause to believe but took no further action; (2) no probable cause to believe

**MUR 2934**

**Respondents:** (a) Nevada State Republican Central Committee, Bob Beers, treasurer; (b) Boomtown, Inc., Robert A. Cashell (NV)

**Complainant:** FEC initiated

**Subject:** Excessive contributions and coordinated party expenditures

**Disposition:** (a) and (b) Reason to believe but took no further action

**MUR 3177**

**Respondents:** (a) National Libertarian Committee, William Redpath, treasurer (DC); (b) The Invisible Hand Foundation, successor to LFWS Convention Services Group (WA); et al. (c)-(1)

**Complainant:** Alan Lindsay (TX)

**Subject:** Failure to register and report; corporate contributions

**Disposition:** (a) and (b) Reason to believe but took no further action; (c)-(1) no reason to believe

**MUR 3239**

**Respondents (all in VA):** (a) Smith for Congress, Alson H. Smith, treasurer; (b) Moran for Congress Committee, Suzanne Paciulli Conrad, treasurer; (c) Comfort Inn-North and Jayanti K. Patel, as owner

**Complainant:** John White (VA)

**Subject:** Corporate contributions

**Disposition:** (a)-(c) Took no action

(continued)

<sup>1</sup>A portion of this MUR, involving 31 groups and individuals, was closed and released to the public on December 21, 1990.

**MUR 3242**

**Respondents** (both in NY): (a) Kevin P. Gaughan for Congress Committee, William F. Mathews; (b) Frank J. McGuire  
**Complainant:** Charles Leonard, National Republican Congressional Committee (DC)  
**Subject:** Excessive contribution  
**Disposition:** (a) \$1,800 civil penalty;  
 (b) \$1,800 civil penalty

**MUR 3271**

**Respondents:** McConnell Senate Committee '96, Larry Steinberg, treasurer (KY)  
**Complainant:** FEC initiated  
**Subject:** Excessive contributions  
**Disposition:** Reason to believe but took no further action

**MUR 3312**

**Respondents:** Dan Daly for U.S. Senate, Dorothy Q. Daly, treasurer (MA)  
**Complainant:** Philip S. Pepe, Jr. (NY)  
**Subject:** Failure to disclose disputed debt  
**Disposition:** Probable cause to believe but took no further action

**MUR 3371**

**Respondents** (both in VA): (a) Americans United Committee, Ruth Stormant, treasurer; (b) Thomas DeWeese  
**Complainant:** FEC initiated  
**Subject:** Excessive contribution  
**Disposition:** (a) and (b) Reason to believe but took no further action

**MUR 3384**

**Respondents** (all in CA): (a) Congressman Anthony C. Beilenson; (b) Beilenson Campaign Committee, Julius Glazer, treasurer; (c) Los Angeles Times  
**Complainant:** Paul Morgan Fredrix, Salomon for Congress (CA)  
**Subject:** Mailing to contributors  
**Disposition:** (a)-(c) No reason to believe

**MUR 3421**

**Respondents:** (a) National Republican Senatorial Committee, James L. Hagen, treasurer (DC); (b) U.S. Senator John Seymour Committee, F. Laurence Scott, treasurer (CA)  
**Complainant:** Congressman William E. Dannemeyer (CA)  
**Subject:** Improper coordinated party expenditures  
**Disposition:** (a) and (b) No reason to believe

**MUR 3435/3428**

**Respondents** (all in PA): (a) Richard L. Thornburgh; (b) Thornburgh for Senate Committee, Raymond P. Dimuzio, treasurer; (c) Kirkpatrick & Lockhart  
**Complainant:** Michael Waldman, Public Citizen's Congress Watch (DC); Bob Barnett, Democratic Party of Pennsylvania  
**Subject:** Prohibited contributions  
**Disposition:** (a)-(c) No reason to believe

**MUR 3441**

**Respondents:** New Jersey Democratic State Committee, Raymond J. Lesniak, treasurer  
**Complainant:** FEC initiated  
**Subject:** Reporting errors; impermissible funds  
**Disposition:** Reason to believe but took no further action

**MUR 3447/3229/3180**

**Respondents:** (a) Dan Coats for Indiana, AKA Dan Coats for Senate Committee, Douglas P. Long, treasurer; (b) Dan Coats for Congress Committee, Jeffrey L. Turner, treasurer (IN)  
**Complainant:** Baron Hill (IN); FEC initiated  
**Subject:** Excessive contributions; failure to accurately disclose contributions  
**Disposition:** (a) \$9,000 civil penalty;  
 (b) no reason to believe

**MUR 3532**

**Respondents:** Bush-Quayle '92 Primary Committee, J. Stanley Huckaby, treasurer (DC)  
**Complainant:** Joseph T. West (CA)  
**Subject:** Broadcasting subliminal images  
**Disposition:** No reason to believe

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## INFORMATION

## IRS PHONE NUMBERS CHANGED

The March 1992 article "Compliance with Laws Outside FEC's Jurisdiction" listed telephone numbers for Jack Reilly and Dave Jones of the IRS Exempt Organizations Technical Division. Their telephone numbers recently changed. The new numbers are: Jack Reilly, 202/622-7352; Dave Jones, 202/622-8095.

Mr. Reilly and Mr. Jones provide information on the federal tax obligations of political organizations.

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

Official Business

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

