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Changes to Flashfax

The FEC's Flashfax system has a new name and all new document numbers. See page 13 for information about the new Faxline and how to use it.

Compliance

MUR 3672 Penalties Paid By Corporations, Partnership for Impermissible Contributions

Two U.S. corporations and a limited liability partnership have paid a combined $168,000 in civil penalties to the FEC for improperly collecting contributions from their employees and customers, and then forwarding the funds in the contributors' names to various Republican party operations during the 1992 election cycle.

Cherry Communications, Inc. (CCI), agreed to pay $150,000, Chrysler Corporation agreed to pay $11,000 and Deloitte & Touche agreed to pay $7,000. The violations by the three businesses occurred independently of one another, but all three involved collecting and forwarding contributions.

The Law

In the cases of CCI and Chrysler, the corporations violated the provision in the Federal Election Campaign Act (the Act) that prohibits corporations from making contributions or expenditures in connection with a federal election. 2 U.S.C. §441b(a). Chrysler and Deloitte & Touche also violated the ban at 2

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Regulations

FEC to Hold Public Hearing on Regulations for Expenditures by Party Committees

The FEC will hold a public hearing on proposed rules governing independent expenditures and coordinated party expenditures by party committees on June 18 at 10 a.m. in its hearing room in Washington, DC.

The Commission has proposed rules with several alternative provisions (see 62 FR 24367 in the May 5 *Federal Register*). Many of the changes are in response to the U.S. Supreme Court's ruling in *Colorado Republican Federal Campaign Committee v. FEC.*[1] In this case, the court concluded that political parties are capable of making independent expenditures on behalf of their candidates in congressional races. Prior to this ruling, it was presumed that party committees—which, by their very nature, have close contact with their affiliated candidates—could not make expenditures independently of candidates.

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[1] *Colorado Republican Federal Campaign Committee v. FEC,* 116 S.Ct. 2309 (1996).

Conferences

Conferences Scheduled

The FEC has set dates for three of its conferences scheduled for 1997-1998.

- Seattle Regional Conference
  September 24-26, 1997
  This conference will include workshops for representatives of candidate, party and corporate and labor committees.
- Atlanta Regional Conference
  October 15-17, 1997
  This conference will include workshops for representatives of candidate, party and corporate and labor committees.
- Washington, DC, Regional Conference
  November 6-7, 1997
  This conference will include workshops for representatives of corporations and labor organizations.

Read the *Record* to find out about additional conferences scheduled for late 1997 and 1998. A tentative schedule includes conferences in December 1997 for trade and membership associations (Washington, DC); in February 1998 for candidate committees (Washington, DC); in March for candidate, party and corporate and labor committees (Denver); and in April for nonconnected committees (Washington, DC). ✥

Workshop Canceled

The FEC's workshop scheduled this month in Bismarck, ND, has been canceled. For more information, call the Information Division at 1/800-424-9530 (press 1) or 202/219-3420. ✥

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Publications

FEC Issues 1996 Annual Report

In June, the FEC issued its *Annual Report 1996*, chronicling the agency's activities during that year.

The annual report includes a section that examines some of the most pressing legal issues the Commission confronted in 1996—and continues to face today. Among the topics covered in this chapter are:

- Corporate and labor communications
  - Express advocacy
  - Coordination with candidates
- Independent expenditures by party committees
  - Independent expenditures by qualified nonprofit corporations
- State and national committee status
- "Major purpose" test
- Best efforts
- Personal use of campaign funds
- News story exemption
- Application of contribution limits
- Sale or use ban
- Enforcement process

The annual report also includes an accounting of the Commission's achievements during last year and legislative recommendations submitted to Congress. Charts and statistical tables also tell the story of the FEC's activities during 1996.

Free copies of *Annual Report 1996* are available through the FEC's Information Division. Call 800/424-9530 (press 1) or 202/219-3420. ✥

Resubscribe to the *Record*

Subscribers other than registered political committees must return the renewal notice they received in the mail recently in order to continue receiving the *Record*. If subscribers do not mail in the form, they will be dropped from the mailing list in the next few months. For more information, call the FEC's Information Division at 1/800-424-9530 or 202/219-3420. ✥

Compliance

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U.S.C. §441c on contributions by federal contractors.

The Act defines a contribution to include services or anything of value made to a candidate, campaign committee or political party or organization in connection with a federal election. 2 U.S.C. §441b(b)(2). When a corporation facilitates the collection of contributions to a candidate or political party organization, the corporation has, in fact, provided something of value—that is, the corporation has made a prohibited contribution. Additionally, at §441b(a), the Act prohibits any officer or any director of a corporation from consenting to any contribution or expenditure by the corporation. The Act does, however, provide for certain exemptions from these prohibitions.

For example, a corporation may make partisan communications to its restricted class—stockholders and executive and administrative personnel and their families. 2 U.S.C. §441b(b)(2)(A). A corporation may not, however, step beyond the line of partisan communications and collect contribution checks or facilitate the making of contributions to a political party or organization.

As another example of an exception to the normal ban on corporate contributions and expenditures, corporate employees may make occasional, isolated or incidental use of the facilities of a corporation for individual volunteer activity in connection with a federal election. Those employees must reimburse the corporation for the increased overhead or operating costs. 11 CFR 114.9(a)(1). The exemption for volunteer efforts does not, however, extend to "collective enterprises" where the top executives of a corporation direct their employees to raise funds—using corporate resources, such as lists of vendors and customers—or to solicit a whole class of corporate executives and employees to contribute to a candidate or political committee.

Cherry Communications, Inc.

James R. Elliott, chairman and chief executive officer of CCI, was appointed a co-chairman of an event known as the President's Dinner, a fundraiser to benefit the National Republican Senatorial Committee and the National Republican Congressional Committee. Mr. Elliott set about soliciting his employees to make contributions and attend the dinner, and recruited other CCI officials to help raise money. In addition to soliciting CCI employees, CCI and Mr. Elliott solicited CCI's business clients. As a result of the fundraising effort, CCI collected and forwarded to the President's Dinner $113,125. The cover letters that accompanied the checks were on CCI's corporate letterhead.

The actions carried out by CCI constituted organized fundraising and, therefore, were not exempted from the ban on corporate contributions. In addition to CCI's being penalized for corporate contributions, Mr. Elliott was cited by the FEC for consenting to making corporate contributions, in violation of 2 U.S.C. §441b(a).

Chrysler

During the same election cycle, Chrysler Chairman Lee Iacocca was asked to serve as a co-chair of a Bush-Quayle '92 fundraiser. The request also asked that co-chairs sell a minimum of one table—or raise $10,000—for the event, which was held at the Ritz-Carlton Hotel in Dearborn, MI. Mr. Iacocca forwarded the request to subordinates in the corporation who carried out the fundraising legwork. In all, Chrysler officials collected $11,750 in this effort and forwarded it to Bush-Quayle '92. Additionally, Chrysler sent thank-you notes to its employee contributors on corporate stationery. This organized fundraising activity constituted a corporate contribution and thus Chrysler violated 2 U.S.C. §441b(a). In light of the corporation's status as a federal contractor, Chrysler also violated 2 U.S.C. §441c.

Deloitte & Touche

The prohibited activity at Deloitte & Touche occurred in its Michigan offices where the head of the firm's state office, Daniel Kelly, was also a finance committee member of Michigan Bush-Quayle '92. As a member of the finance committee, Mr. Kelly had committed to raising $10,000 for Bush-Quayle '92. In that effort, Mr. Kelly contacted the Deloitte & Touche partner who regularly conducted the firm's fundraising for state and local political efforts in order to have him help with the fundraising effort. In the end, 35 partners contributed $10,075 for Bush-Quayle '92. The contributions were forwarded to the representatives of the Michigan Bush-Quayle '92 Finance Committee and were labeled as contributions collected at Deloitte & Touche. The final installment of the contributions included a letter from Mr. Kelly on the accounting firm's letterhead. As a federal contractor, Deloitte & Touche's organized fundraising activity constituted a contribution and thus violated 2 U.S.C. §441c. ❖

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Use a touch tone phone to dial **202/501-3413** and follow the instructions. To order a complete menu of Faxline documents, enter document number 411 at the prompt.

Regulations

(continued from page 1)

Consequently, the Democratic Senatorial Campaign Committee and Democratic Congressional Campaign Committee requested a rulemaking in light of the decision in this case.

The Notice of Proposed Rulemaking (NPRM) examines a number of different issues, as discussed below.

Contributions (11 CFR 100.7)

The Commission proposes to add new language to the definition of "contribution," regarding coordinated payments for communications and other things of value. Under two alternative proposals, the definition of contribution would include a payment for a communication or anything of value that is coordinated with a candidate or a political committee. One alternative would specify that the payment for the communication or the thing of value is for the purpose of influencing a federal election.

Coordination (11 CFR 100.23)

The Commission proposes tying its current definition of independent expenditure found at 11 CFR 109.1(a) more clearly to the concept of what negates the independence of expenditures and what constitutes coordination. Revised rules would more fully explain what is meant by coordination, and they would apply to separate segregated funds (SSFs), other political committees and individuals, as well as to party committees. Again, there are several alternatives to this proposal. In each of them, however, the new rule would replace the current language in the regulations indicating when expenditures are "presumed" to be coordinated. Some of the alternatives would also add new language to the definition of coordination based on the decision in *Colorado*.

Currently, the Act defines independent expenditure at 2 U.S.C. 431(17) as "an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate." The new language from the *Colorado* ruling refers to independent expenditures as those "developed…independently and not pursuant to any general or particular understanding with [candidates and their agents]." Comments are being sought on whether the new language should be added to the definition of coordination or whether the high court intended its phrasing to be limited solely to independent expenditures.

Also relevant to the concept of coordination is the definition of agent. The NPRM offers two alternatives. One would identify an agent as a person who holds a significant position with, participates in policy-making decisions of or provides campaign-related services to a candidate's authorized committee. The other alternative expands upon that definition, adding a provision that would require agents to have expressed or implied authority from the principal—the candidate or authorized committee—to act as an agent.

Independent Expenditure Definition (11 CFR 109.1)

The proposed rules would state that party committees may make independent expenditures. There are two alternative wordings for this regulation.

Party Committee Coordinated Expenditures and Independent Expenditures (11 CFR 110.7)

Currently, this section of the regulations implements an exception to the contribution limits found at 2 U.S.C. §441a. Essentially, it allows national, state and local committees to make limited expenditures on behalf of the general election campaigns of federal candidates without counting the expenditures against the committees' contribution limits for those candidates. 2 U.S.C. §441a(d). Such expenditures may be made in consultation with the candidates; hence, they are called coordinated expenditures. The NPRM explains that the Supreme Court's *Colorado* decision did not modify or eliminate the existing statutory limits on coordinated expenditures. The NPRM raises a number of questions about the relationship, if any, between these coordinated expenditures and independent expenditures made by the same party committee.

- *Independent Expenditures for Congressional Candidates*. The proposed rules would subject party committee independent expenditures to the same standards and conditions as independent expenditures made by other entities—including the requirement that they not be coordinated with candidates, reporting requirements, rules on disclaimers and contribution limits and prohibitions. However, the Commission is considering whether, in some respects, these rules should be modified for party committees, given their traditionally close ties to candidates. The NPRM observes that "the Court found it was possible for the Colorado Republican Party to make independent expenditures in the specific circumstances presented in the Colorado case. These circumstances included the fact that the expenditures were made months before the primary election, three individuals were vying for the nomination, and no general election candidate had yet been selected." The Commission is considering what methods party committees could employ to

ensure that their independent expenditures were genuinely independent of an affiliated candidate. For example, the NPRM asks:

Whether it would be feasible for a party committee to create a separate subdivision for the exclusive purpose of making independent expenditures and insulating them from the daily campaign activities of the party?

Whether a party committee's ability to make independent expenditures for a certain candidate would end after it nominates the candidate?

Whether independent expenditures on behalf of a particular candidate would be possible once a party committee had coordinated with the candidate?

Whether, assuming that party committees are affiliated, coordination between the candidate and one party committee would automatically cancel the ability of other affiliated party committees to make independent expenditures for that candidate?

Whether coordination exists between an unopposed primary candidate and the party committee that nominated him or her at a convention so as to preclude subsequent independent expenditures by the party committee for the candidate?

- *Independent Expenditures for Presidential Campaigns.* The proposed rules would continue the current ban on independent expenditures by national party committees on behalf of the general election campaigns of their presidential candidates. This rule recognizes that it may be nearly impossible for a national party committee to be independent of its presidential candidate if the chair of the party has been selected by the presidential candidate, if the national committee serves as the candidate's principal campaign committee or if the staff of the two committees work closely together. The NPRM asks a number of related questions:

Should the ban on independent expenditures on behalf of presidential candidates in general election campaigns be extended to cover presidential primaries as well?

Should other party committees be barred from making independent expenditures on behalf of presidential candidates?

Should the ban only apply to candidates who receive public funding?

- *Other Proposals.* The proposed revised rule would require that when a party committee authorized another party committee to use part or all of its coordinated expenditure limit, the authorization would have to be in writing, specify a dollar amount and be made before the committee actually made the coordinated expenditure. The Commission is seeking comments on whether copies of such authorizations should be attached to a committee's disclosure reports.

The proposed rules would clarify that the Commission's standard for determining whether a party committee communication qualified as a coordinated expenditure would continue to depend on whether it contained an electioneering message and mentioned a clearly identified candidate.

Reporting Independent Expenditures (11 CFR 104.4(a))

The revised rules would add a specific reference to make clear that national, state and subordinate committees of political parties would be subject to the same reporting requirements as other political committees.

Contributions to Committees Making Independent Expenditures (11 CFR 110.1(n) and 110.2(k))

These sections of the regulations would be updated to state that party committees may make independent expenditures. The changes would also make clear that the contribution limits by individuals of 2 U.S.C. §441a would still apply when a party committee used contributions it received to make independent expenditures.

Party Committee Disclaimers (11 CFR 110.11(a))

The regulations at paragraph (a)(2)(i) would be updated to state that the required disclaimer for communications that constituted coordinated expenditures had to indicate who authorized the communication. When parties made independent expenditures, a new paragraph in the regulations would require that a disclaimer state that the party committee paid for the communication, but that it was not authorized by any candidate or authorized committee.

The deadline for submitting comments and requests to testify on this proposed rulemaking was May 30. The location for the public hearing is the Commission's ninth floor meeting room, 999 E Street, N.W.

Copies of the Federal Register notice are available from the FEC Press Office and at the U.S. Government Printing Office web site address, http://www.access.gpo.gov/su_docs/aces/aces140.html. The notice also is available from the FEC's Faxline at 202/512-3414 (document 228). An article discussing the FEC's efforts to conform with the decision in *Colorado* is on page 1 of the September 1996 *Record*.

For more information, call Susan E. Propper, Assistant General Counsel, Rosemary C. Smith, Senior Attorney or Teresa A. Hennessy, Attorney, at 202/219-3690. The toll-free number at the FEC is 800/424-9530. ✥

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Regulations

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Revised Best Efforts Regulations Sent to Congress

On April 25, the Commission submitted to the U.S. Congress revisions to its "best efforts" regulations. These revised rules and an Explanation and Justification were published in the Federal Register on April 30 (62 FR 23335), and an Announcement of Effective Date will be published after the rules have been before Congress for 30 legislative days.

The "best efforts" regulations set up procedures to ensure that political committees meet the statutory requirement to use their best efforts to obtain and report the required contributor information—name, address, occupation and employer—of individuals who contribute $200 or more during a calendar year. The changes came about in response to the court decision in *Republican National Committee v. FEC*,[1] where the U.S. Court of Appeals for the District of Columbia Circuit ruled that the solicitation notice, required by former FEC regulations, was inaccurate and misleading. For a summary of that case, see the April 1996 *Record*, page 10.

There are two significant changes to the rules, found at 11 CFR 104.7(b)(1) and (b)(3).

Solicitations (104.7(b)(1))

All solicitations must include an accurate and clear statement of the law's requirements for the collection and reporting of contributor information. The following examples are acceptable wording that may be included in solicitations, but these are not the only allowable statements:

- "Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 in a calendar year."
- "To comply with Federal law, we must use best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 per calendar year."

This request, or one of similar meaning, must be displayed in a clear and conspicuous manner on any response materials included in a solicitation.

Connected Organization's Information (104.7(b)(3))

Under current regulations, committee treasurers must report all contributor information not provided by the contributor but in the political committee's possession. In this regard, the regulation was modified to clarify that separate segregated funds must report contributor information in the possession of their connected organizations. ✦

[1] *Republican National Committee v. FEC, 76 F.3d 400 (D.C. Cir. 1996), cert. denied, 117 S. Ct. 682 (1997).*

Court Cases

FEC v. Orton

On April 27 and 28, the U.S. District Court for the District of Utah, Central Division, approved the parties' settlement that required Utahns for Ethical Government (UEG) to pay a $9,000 civil penalty to the FEC for violations of the Federal Election Campaign Act (the Act) and to amend their termination report so that all of their expenditures would be reported as in-kind contributions to Orton for Congress. UEG also had to either refund $1,800 in impermissible corporate contributions or remit that same amount to the U.S. Treasury.

The violations resulted from UEG's involvement in the 1990 general election campaign for the 3rd Congressional District seat in Utah. UEG, a single-candidate political committee registered with the FEC, supported William Orton over his opponent, Karl Snow.

The settlement states that UEG accepted corporate contributions and contributions in the name of another, in violation of the Act. 2 U.S.C. §§441b(a) and 441f. The committee reported receipts of in-kind contributions of $1,000 from Sherman Fugal and of $800 from Jayson Fugal. In fact, these contributions were actually from Fugal & Fugal, Inc., a corporation, d/b/a Peggy Fugal Advertising.

The settlement also states that, although UEG included disclaimers on its advertisements that opposed Mr. Orton's opponent, the disclaimers failed to include a statement indicating whether the ads had been authorized by a candidate or candidate committee. Additionally, UEG failed to file a statement of organization with the Commission within 10 days of becoming a political committee, as required by 2 U.S.C. §433(a).

The settlement includes no judicial determination as to whether expenditures of $11,452, made by UEG to pay for ads opposing Mr. Orton's opponent, were in fact excessive contributions to Mr. Orton. The Commission, in its administrative proceedings, had found probable cause that UEG's expenditure had been coordinated with the Orton campaign, based on the fact that a former Orton campaign volunteer had participated in some UEG activities. Under the law, any expenditure made in cooperation with or at the suggestion of a candidate or his campaign is considered a contribution. 2 U.S.C. §441a(a)(7)(B)(i). In prior enforcement matters, the Commission had

interpreted this provision to cover situations where the spender's activity was based on knowledge of official campaign strategy, the source of which was the candidate or the campaign. The defendants disagreed with the finding, arguing that the Commission had no direct evidence of the alleged violation.

The claims against all the defendants, including Mr. Orton and his campaign committee, will be dismissed with prejudice once UEG pays the fine and amends its reports.

U.S. District Court for the District of Utah, Central Division, 95-977W, April 27 and 28, 1997. ✦

Jones v. FEC

On April 30, the U.S. District Court for the Eastern District of Michigan granted the FEC's motion to dismiss this case. The suit, seeking $249 trillion in damages, was filed in February by Alfonzo Jones, a Detroit resident who said, among other things, that the FEC acted contrary to law in not certifying him for public financing for the 1996 presidential campaign.

The court found that Mr. Jones failed to allege any facts in his suit that indicated that the Commission had illegally failed to provide him with public funds.

U.S. District Court for the Eastern District of Michigan, 97-70006-PH, April 30, 1997. ✦

On Appeal?

Hagelin v. FEC and the Commission on Presidential Debates

On May 12, the U.S. Supreme Court **denied** a request from Dr. John Hagelin and the Natural Law Party to hear this case. The U.S. Court of Appeals for the District of Columbia Circuit had upheld a lower court ruling that dismissed this case for lack of jurisdiction. See the November 1996 *Record*, page 1. ✦

New Litigation

DNC v. FEC (97-676)

The Democratic National Committee (DNC) asks the court to find that the FEC's actions on one part of its administrative complaint against Christian Coalition, Inc., are contrary to law. The FEC filed suit against the Christian Coalition for violations alleged in one part of the DNC's complaint, but closed the investigation and did not file suit on the part of the DNC complaint alleging the Christian Coalition's failure to register and file reports as a political committee. However, a subsequent appeals court opinion undercut the stated justification for that decision. The DNC also asks the court to order the FEC to take action on this matter expeditiously.

After complaints against the Christian Coalition by the DNC and others and an FEC investigation, the Commission filed a lawsuit in July 1996 alleging that the Christian Coalition made prohibited corporate contributions—in the form of coordinated expenditures—on behalf of Republican candidates during the 1990, 1992 and 1994 election cycles, in violation of 2 U.S.C. §441b (see the September 1996 *Record*). In its original administrative complaint, the DNC had charged that not only had the Christian Coalition made prohibited corporate contributions, but that it had also made excessive contributions and that it had failed to register and file with the FEC as a political committee. 2 U.S.C. §§441b(a), 441a(a) and (f), 433 and 444.

The September 26, 1995, decision to file a lawsuit alleging only the violation of prohibited contributions came after FEC Commissioners failed to provide the necessary four-vote authorization for the agency to also charge the Christian Coalition with failure to register and file as a political committee. The two commissioners who voted against including the registration and reporting allegation—Commissioners Lee Ann Elliott and Joan D. Aikens—based their decisions on a ruling from the U.S. Court of Appeals for the District of Columbia Circuit in *Akins v. FEC* (Akins I) (see the February 1997 *Record*). That opinion held that an organization does not constitute a political committee under the Act unless, in addition to receiving contributions or making expenditures aggregating in excess of $1,000 on behalf of federal candidates in a calendar year, its major purpose is the election of candidates.

However, in December 1996, an en banc panel of the appeals court issued a new opinion (*Akins* II), reversing its earlier decision. It said that the major purpose test applies only to groups making independent expenditures. An organization that makes contributions or coordinated expenditures (also contributions) need only satisfy the $1,000 threshold to qualify as a political committee under the federal election law.

On February 28, 1997, the FEC notified the DNC that it had closed the investigation of the Christian Coalition in regard to all of the DNC allegations except the prohibited corporate contributions and independent expenditures.

The DNC asks the court to find that, in light of the en banc opinion from the appeals court, the FEC's failure to take any action on the Christian Coalition's failure to register as a political committee was contrary to law. In the alternative, the DNC asks the court to find that, if it is the FEC's position that the agency has not yet dismissed the registration and filing complaint against the Christian Coalition, then the FEC has failed to take action on this particular complaint in a timely manner. The Act allows complainants to file suit against the FEC for dismissing their complaint or for failing to act within 120 days after the complaint is filed. 2 U.S.C.

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Court Cases

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§437g(a)(8)(A). In addition, the DNC asks the court to order the FEC to pay attorney's and other relevant fees associated with this lawsuit.

U.S. District Court for the District of Columbia, 97-676, April 4, 1997. ✥

Right to Life of Dutchess County, Inc. v. FEC

Right to Life of Dutchess County, Inc., (RLDC) asks the court to find that the FEC is acting contrary to law in enforcing the regulation found at 11 CFR 100.22(b), which defines "express advocacy." RLDC cites the October 1996 ruling by the U.S. Court of Appeals for the First Circuit in *Maine Right to Life Committee v. FEC*[1], which struck down that provision on grounds that it was beyond the scope of the FEC's authority.

RLDC is a nonprofit, membership corporation based in New York. Its primary purpose is to provide the general public with information concerning political candidates' stands on pro-life issues. It says it does not intervene in political campaigns on behalf of or in opposition to any candidate for public office; nor does it support or oppose federal candidates.

The group intends to make communications to its members and the general public—using newsletters, voter guides, columns, press conferences, fliers and other methods—about the stances of federal candidates on abortion. RLDC would pay for such communications from its general treasury, and would accept donations offered it—even those from corporations—in order to fund such endeavors. RLDC maintains that these communications are issue advocacy communications and that they do not constitute express advocacy under the *Buckley v. Valeo* opinion. Under the current regulations defining express advocacy, RLDC acknowledges that its communications would be considered express advocacy and, since RLDC is a corporation, that they would be contrary to law.

The regulations defining express advocacy were born out of the U.S. Supreme Court decisions in *Buckley* and *Massachusetts Citizens for Life v. FEC*. The court held in *MCFL* that the Federal Election Campaign Act's (the Act) ban on corporate independent expenditures only applies when the money is used to "expressly advocate" the election or defeat of a clearly identified candidate for federal office. The *Buckley* decision lists examples of phrases that constitute express advocacy: "vote for," "elect," "support," "vote against," "defeat," "reject." These examples are codified in subsection a of 11 CFR 100.22(a). However, in subsection (b), the Commission further defines express advocacy as a communication that, when taken as a whole and with limited references to external events (such as proximity to an election), can only be interpreted by a reasonable person as unambiguously advocating the election or defeat of a clearly identified candidate.

The RLDC contends that the FEC continues to follow this section of its regulations despite the appeals court ruling that struck it down. The group states that enforcement proceedings against it by the FEC would infringe upon its rights under the law and would have a chilling effect upon its future plans for communications. Additionally, the RLDC's funding plans would be contrary to the Act's prohibition on the use of corporate treasury funds in connection with a federal election if its actions were deemed express advocacy and not issue advocacy. 2 U.S.C. §441b.

The RLDC asks the court to find that subsection (b) of the regulation is void and unenforceable and enjoin the FEC from enforcing it. The RLDC states that 11 CFR 100.22(b):

- Is in excess of the statutory authority granted the FEC because it regulates speech, which does not constitute express advocacy;
- Contains vague language—such as "when taken as a whole," "limited reference," "external events" and "proximity"—and provides inadequate notice of what conduct is actually prohibited; and
- Violates the Fifth Amendment's due process clause by vesting the FEC with excessive discretion in enforcing the Act.

U.S. District Court for the Southern District of New York, 97-2614, April 11, 1997. ✥

[1] *Maine Right to Life v. FEC (96-1532).*

Federal Register

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

Notice 1997-6
Electronic Filing of Reports by Political Committees: Final Rules; Announcement of Effective Date (62 FR 22880, April 28, 1997)

Notice 1997-7
Recordkeeping and Reporting by Political Committees; Best Efforts: Final Rule; Transmittal of Regulations to Congress (62 FR 23335, April 30, 1997)

Notice 1997-8
Independent Expenditures and Party Committee Expenditure Limitations: Notice of Proposed Rulemaking (62 FR 24367, May 5, 1997)

Statistics

Congressional, PAC Fundraising and Expenditures Continue Strong Showings in 1996 Election Cycle

Congressional candidates in 1996 raised nearly $800 million and spent almost that much in a two-year fundraising cycle that showed marked increases from the previous presidential election cycle in 1992.

The 2,605 candidates vying for seats in the U.S. House and Senate raised $790.5 million, a 20 percent increase over 1992, and spent $765.3 million, which was a 12 percent increase. The fundraising also was ahead of 1994 election cycle financial activity, with increases of 7 percent in money raised and 5 percent in expenditures.

The jump in fundraising and spending is due to House candidates, who raised $505.4 million of the total and spent $477.8 million. Among these candidates, Republicans outdid their Democratic counterparts with a 32 percent increase in financial activity over the previous election cycle. The Democrats mustered only an 8 percent increase in receipts and a 4 percent increase in expenditures compared with the 1994 election cycle. The large disparity is due, in part, to the large number of Republican incumbents seeking reelection.

PACs continued their prominence in federal elections, posting a 12 percent increase in money raised and an 11 percent increase in expenditures compared with the 1994 election cycle. PACs raised $437.4 million and spent $429.4 million.

Direct contributions to federal candidates totaled $217.8 million, up 15 percent from 1994. While incumbents were able to attract far more PAC money than their chal-

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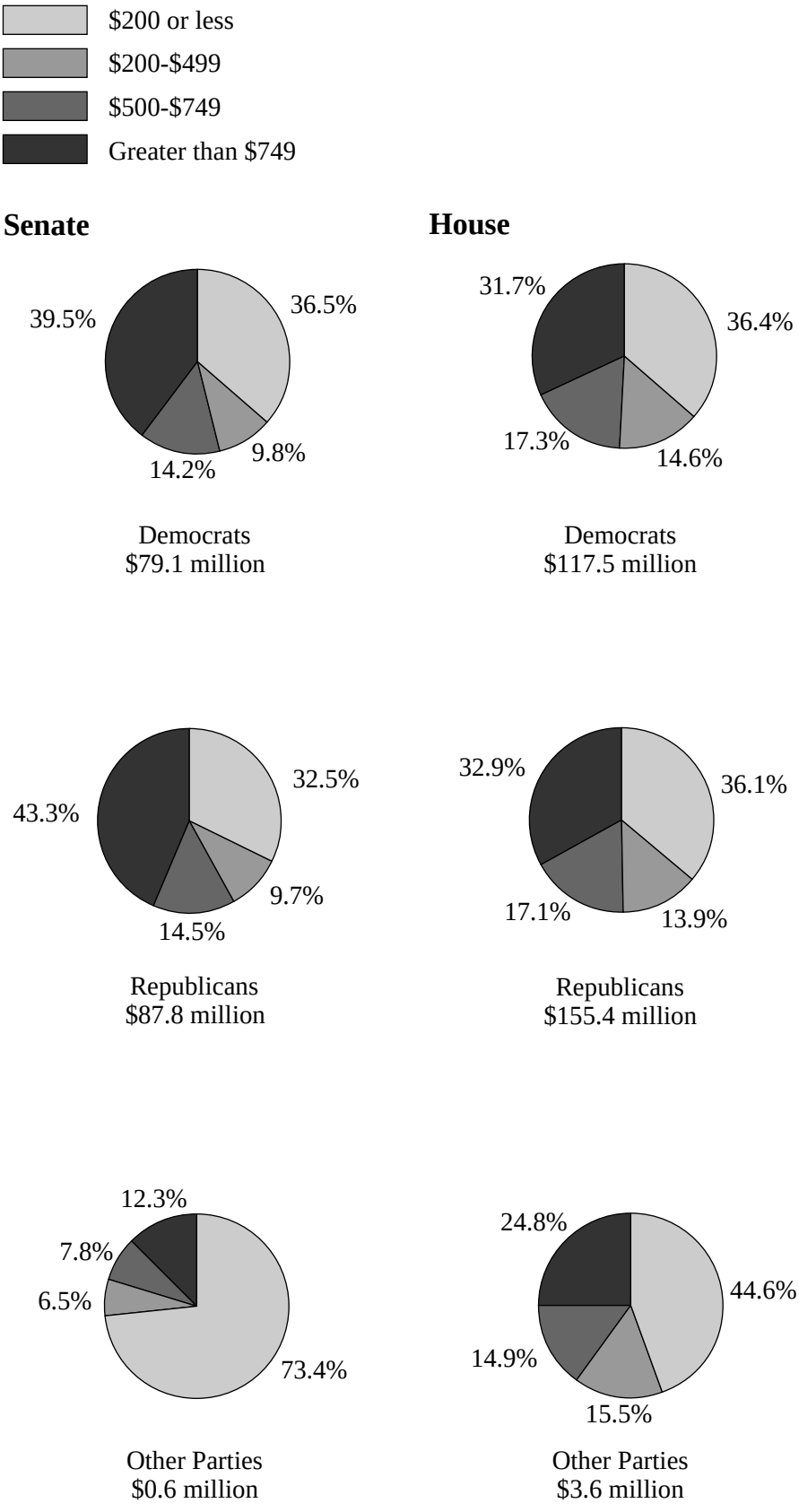
Contributions to 1996 Candidates from Individuals, by Size of Contribution



Statistics

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lengers—$146.4 million to $31.6 million—their take of PAC money represented a lower proportion of contributions to incumbents than in previous years. In federal elections where there was an open seat, PACs contributed $39.8 million to candidates.

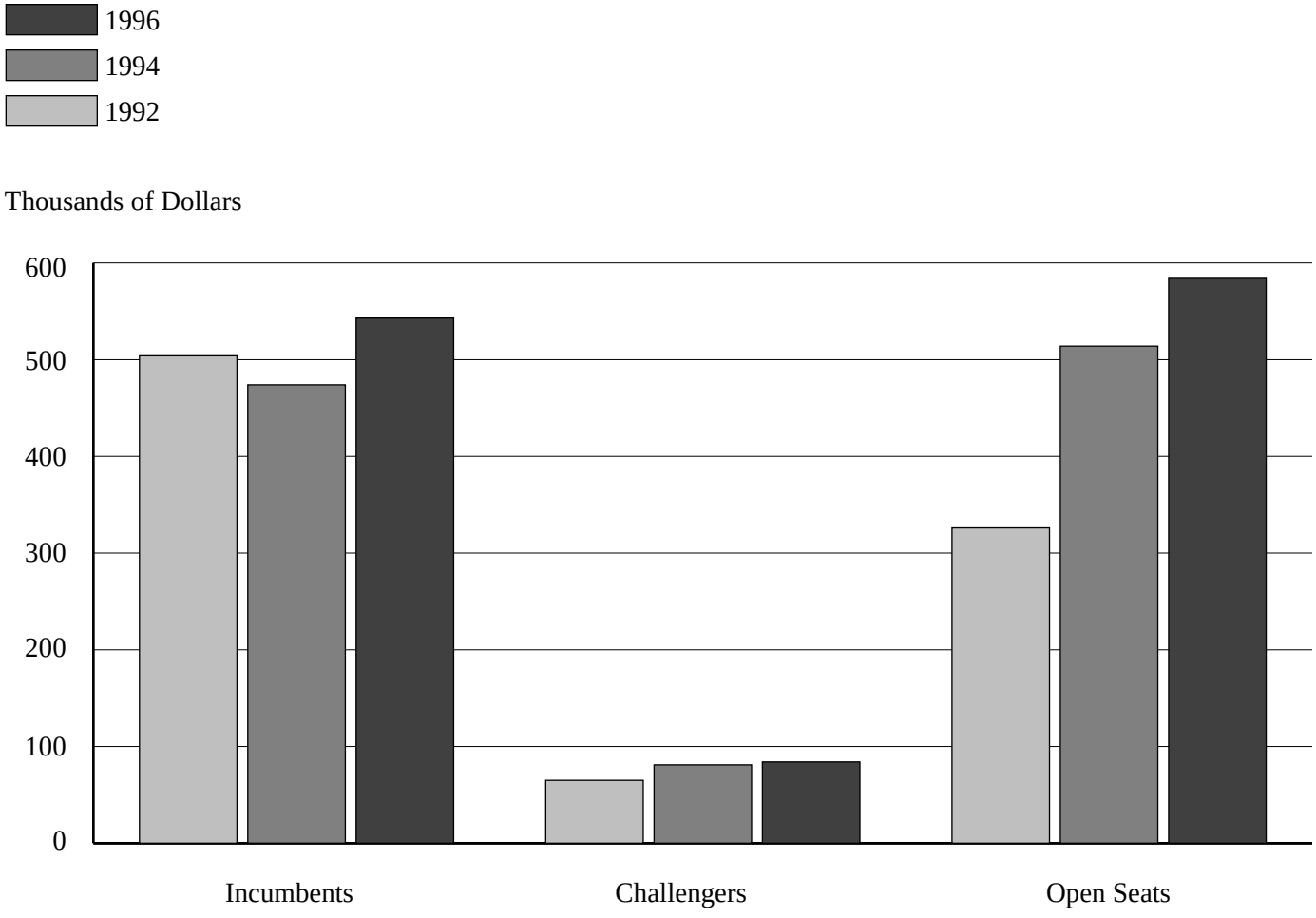
In addition to those contributions, PACs made $10.6 million in independent expenditures, almost double what they spent in the last election cycle. PAC independent spending on behalf of the 1996 presidential campaign dropped from $4 million in 1992 to $1.4 million in 1996. None of these figures, however, includes PAC spending on issue advocacy campaigns. Such spending is not reported to the FEC.

The charts that accompany this article provide additional information about Congressional and PAC fundraising during the 1996 election cycle. More information about financial activities during the most recent campaigns is available in news releases dated April 22, April 14 and March 19. The releases are available:

- At the FEC's web site at http://www.fec.gov (click on "News Releases and Media Advisories" at the main menu); and
- From the Public Records office by calling 1/800-424-9530 (press 3).✥

Median Activity of House General Election Candidates

This chart shows how much it cost the typical candidate to vie for a seat in the U.S. House of Representatives during the 1995-96 election cycle, and compares those numbers with median disbursements of the two previous election cycles.



Independent Expenditures, 1996 Election Cycle

	For	Against	Total
Senate Democrats	$314,689	$5,498,204	$5,812,893
Senate Republicans	$7,697,442	$2,254,670	$9,952,112
House Democrats	$808,327	$181,599	$989,926
House Republicans	$2,540,241	$1,655,766	$2,196,007

Median Disbursements by Candidates for the U.S. House of Representatives in 1996 Election

Type of Candidate	Dollars
Republican Challengers Who Won	1,181,546
Democratic Incumbents Who Lost	708,778
Democratic Challengers Who Won	933,425
Republican Incumbents Who Lost	1,144,540
Republican Open Seat Winners	743,577
Democratic Open Seat Losers	526,735
Democratic Open Seat Winners	791,590
Republican Open Seat Losers	453,510

Advisory Opinions

AO 1997-3
Status of State Affiliate as State Committee of a Political Party

The Constitutional Party of Pennsylvania (CST/PA) satisfies the definition and requirements of a state committee set out in the Federal Election Campaign Act (the Act) and several advisory opinions. This status results, in part, from its affiliation with the U.S. Taxpayers Party (USTP), which is a Commission-recognized national committee of a political party.

The Act defines a state committee as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level." 2 U.S.C. §431(15). The definition of a state committee also requires the existence of a political party. A political party is "an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization." 2 U.S.C. §431(16).

In AO 1992-30, the Commission identified two requirements necessary for state political committee status. The first is that the organization must have a state affiliate agreement that "delineates activities commensurate with the day-to-day operation" of a party at a state level. Second, the state affiliate must gain ballot access for its presidential and other federal candidates. The application of these requirements also can be seen in AOs 1996-51, 1996-43, 1996-27 and 1995-49.

The CST/PA satisfies the first requirement. As in the other advisory opinions, the CST/PA's by-

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Advisory Opinions

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laws delineate activity that is commensurate with the day-to-day functions and operations of a state political party.

However, in one respect, the CST/PA's situation differs from those presented in the advisory opinions. The CST/PA's by-laws do not specify the name of the national party to which the state party is affiliated. The by-laws do, however, state that in the event there is an affiliation with a national party, then the CST/PA would elect national committee members and delegates to a national convention. Additional documents submitted to the FEC by the CST/PA prove that it is indeed an affiliate of the USTP.

Even if a state party is not affiliated with a committee that has achieved national party status, it still may qualify as a state committee of a political party if it also qualifies as a political party. Advisory Opinions 1996-51 and 1996-43. To qualify as a political party, the party organization must obtain ballot access for its federal candidates. The USTP's presidential and vice presidential candidates appeared on the ballot as the candidates of the CST/PA, but the only CST/PA Congressional candidate on the ballot did not qualify as a candidate under the Act. Nevertheless, in view of the fact that the CST/PA was an affiliate of the USTP, a qualified national party committee, and that the USTP's national candidates appeared on the ballot as CST/PA candidates, the CST/PA qualified as a political party. Thus, the CST/PA satisfied both elements necessary for status as a state committee of a political party.

Date Issued: April 18, 1997; Length: 4 pages. ✦

AO 1997-4
Contribution Limits for Limited Liability Company

Eckert Seamans Cherin & Mellott, L.L.C., a Pennsylvania law firm organized as a limited liability company (LLC), may make contributions to federal candidates from its general treasury funds subject to the limits set out in the Federal Election Campaign Act (the Act). The contributions from the firm will not count against its members' individual contribution limits with respect to federal elections.

On January 2, the law firm filed a certificate of organization with the Pennsylvania Department of State as an LLC. The firm formerly was organized as a general partnership.

Under the Act, a person includes "an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons." 2 U.S.C. §431(11). The Act includes a broad prohibition at §441b(a) that prohibits corporations from contributing to federal elections. Contributions by "persons" who are otherwise not precluded from contributing are subject to the limits set out in §441a. Partnerships are permitted to contribute to federal elections, but their contributions, in addition to counting against the partnership's limit, must be attributed proportionately against each contributing partner's limit for that candidate and election. 11 CFR 110.1(e).

In AOs 1996-13 and 1995-11, the Commission determined that LLCs did not fall into the category of either partnership or corporation in the states where they were formed, and thus would be considered "any other organization or group of persons" for purposes of the Act.

The characteristics of LLCs set out in the Pennsylvania statute correspond, for the most part, with the characteristics examined in the previous AOs. Among those characteristics are the state statute's specific recognition of LLCs as a distinct form of business (i.e., distinct from corporations and partnerships), the corporate attribute of limitation of liability for all members and the lack of the general corporate attributes of free transferability of interests and continuity of life. In addition, the firm's operating agreement corresponds to the provisions of the Pennsylvania law.

In reaching the conclusion that the firm may make contributions to federal candidates from its general treasury, the Commission assumes that the firm is not a federal contractor. And, as in the previous advisory opinions, the Commission assumes that none of the members of the firm is a corporation, federal contractor or foreign national, whose contributions would be prohibited under the Act.

Date Issued: April 25; Length: 4 pages. ✦

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FEC Faxline documents may be ordered 24 hours a day, 7 days a week, by calling **202/501-3413** on a touch tone phone. You will be asked for the numbers of the documents you want, your fax number and your telephone number. The documents will be faxed shortly thereafter.

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Political Committees

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

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