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Commissioners

Three New Commissioners Join FEC

On July 30, the Senate confirmed the nominations of David M. Mason, Karl J. Sandstrom and Darryl R. Wold to the Commission, and the renomination of Commissioner Scott E. Thomas. Mr. Mason and Mr. Sandstrom began their duties at the Commission in August, and Mr. Wold is expected to take his seat on the Commission this month.

Mr. Mason was a senior fellow at The Heritage Foundation, where he concentrated on research, writings and commentary on Congress and national politics. Before joining the Heritage Foundation, Mr. Mason served as a deputy assistant secretary for the Department of Defense. For nearly a decade, he worked on Capitol Hill in the offices of Senator John Warner, Representative Tom Bliley and former House Republican Whip Trent Lott. Mr. Mason holds an honors degree in political science from Claremont McKenna College. He assumed the seat on the Commission that had been vacant since the 1995 resignation of former Commissioner Trevor Potter.

Mr. Sandstrom was formerly chairman of the Administrative Review Board at the Department of Labor. Before that, he served as

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Commissioner McGarry Retires

On August 11, Commissioner John Warren McGarry retired from the FEC after over 20 years of outstanding public service during the administrations of four Presidents.

Mr. McGarry, a native of Massachusetts, was first appointed to the FEC in 1978, reappointed in 1983 and 1989, and nominated for reappointment in 1997. He last served as FEC Vice Chairman during 1996 and Chairman during 1997.

Mr. McGarry's pivotal contributions to the agency's core mission and programs, from full disclosure to uniform law enforcement, remain a testament to his public service. He safeguarded the delicate balance between fundamental First Amendment rights and compelling governmental interests in ensuring that federal elections remain free from apparent or real corruption.

In an August 6 memorandum to FEC staff, Mr. McGarry said, "This is a time of joy. Joy for the twenty years of work that I love. Joy for having worked with the best people and professionals of any agency in Washington. Joy for the friendships that I hope will last a lifetime." He concluded by noting that, "It's been a wonderful twenty years—some of the best years of my life. I thank you all for being a part of it." ♦

Commissioners

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staff director of the House Subcommittee on Elections and was staff director of the House Task Force on Electoral Reform. Mr. Sandstrom also served as the deputy chief counsel to the House Administration Committee and was an adjunct professor at American University. He received a bachelor's degree from the University of Washington, and holds a law degree from George Washington University and a master's degree in tax law from Georgetown University Law Center. He fills the seat of former Commissioner John Warren McGarry.

Mr. Wold has been an attorney in private practice in California. In his practice, where he has specialized in business, election and political law, Mr. Wold has represented candidates, ballot measure committees, political action committees and others under federal, state and local laws. Mr. Wold, a native of California, graduated with honors from

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202/219-3336 (TDD for the
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Claremont McKenna College and received a law degree from Stanford University. He will assume the Commission seat being vacated by Commissioner Joan D. Aikens.

Mr. Thomas, currently the Commission's vice chairman, was first appointed by President Ronald Reagan in 1986 and was reappointed by President George Bush in 1991. Prior to serving as a commissioner, Mr. Thomas was the executive assistant to former Commissioner Thomas E. Harris. He originally came to the FEC as a legal intern and later became an assistant general counsel for enforcement. A Wyoming native, Mr. Thomas graduated from Stanford University and holds a law degree from Georgetown University Law Center.

Mr. Sandstrom's and Mr. Wold's terms expire in 2001; Mr. Mason's and Mr. Thomas's terms expire in 2003. ♦

Reports

Contributor Search Feature Added to FEC Web Site

Internet users who log on to <http://www.fec.gov> now have immediate access to the name and contribution amount of any individual who has contributed \$200 or more to a federal political committee during the 1997-1998 election cycle. The FEC's new searchable database also allows users to access lists of PACs or party committees that have contributed to specific candidates and view lists of candidates to whom selected PACs and parties have contributed.

The new database search process became accessible on July 21, and is updated daily. Already, Internet users can visit the FEC's web site to view images of original reports dating back to the 1995-1996

election cycle, and examine reports that have been filed electronically. The FEC's web site will soon include reports dating back to the 1993-1994 election cycle.

To start a search, click on "View Contributions and Financial Reports Filed by Presidential and House Campaigns, Parties and PACs" and follow the on-screen instructions. ♦

Use of FEC Web Site, Electronic Filing Up

The FEC's web disclosure system received about 380,000 hits between July 1 and July 27, prime time for viewing political committees' July quarterly and monthly reports. Using the FEC's web site, the public could view images of actual reports recently filed by candidates and political committees.

Other people chose to access these documents by contacting the Commission's Public Records Office. That office recorded nearly 1,100 walk-in customers and almost 1,250 telephone inquiries, July 6-27.

A growing number of reports filed with the Commission were done so electronically. Electronic filing by FEC filers increased to 178 political committees, up from the 101 committees that filed electronically during the first quarter. More than half of the committees that filed electronically did so over the Internet or by dialing up one of the FEC's modems dedicated to receiving reports transmitted to the agency. The majority of those committees used the FEC's software, FECFile, in filing their reports.

New committees now receive a copy of FECFile along with their registration packets. Existing committees can request a copy of FECFile by calling the Electronic Filing Office at 202/694-1293 or 800/424-9530 (press 5 and ask for the Electronic Filing Office). ♦

Court Cases

Judicial Watch, Inc. v. FEC

On July 2, the U.S. District Court for the District of Columbia denied the FEC's motion to dismiss this lawsuit challenging the agency's dismissal of an administrative complaint filed by Judicial Watch, Inc. The court remanded the case to the FEC and ordered it to decide whether to pursue the administrative complaint within 120 days. The FEC has filed notice that it will appeal this decision.

Background

In February, Judicial Watch filed this lawsuit after the Commission voted to take no action on its administrative complaint, which alleged that the White House, Democratic National Committee (DNC), Department of Commerce and Clinton administration had sold seats on foreign trade missions for large campaign contributions to the DNC and the Clinton/Gore 1996 reelection campaign. Judicial Watch contended that the contributions violated 18 U.S.C. §600, a criminal statute which makes it unlawful to promise any special benefit or treatment as a reward for political activities in support of or opposition to a particular candidate, election or political event. See the [April 1998 Record](#), p. 4.

District Court Decision

The FEC moved to dismiss this case for lack of standing. In order to establish standing, a plaintiff such as Judicial Watch must show that it has suffered an injury in fact, that there is a causal connection between the injury and the conduct being complained about and that it is likely that the injury will be redressed by a favorable decision. The FEC claimed that Judicial Watch failed to allege an injury flowing from the Federal Election Campaign Act (the Act).

The court disagreed. It pointed out that, in *FEC v. Akins*, the U.S. Supreme Court concluded that, for purposes of standing, an injury was created when a plaintiff failed to obtain information that had to be publicly disclosed. Thus, affected voters who do not have access to such information have standing to sue. The district court held that, in this case, information that trade mission seats may have been exchanged for contributions to the DNC and Clinton/Gore committee was "important and useful to voters."

The FEC also argued that Judicial Watch did not have standing because its administrative complaint failed to identify violations of the Act over which the Commission had jurisdiction. The complaint only made allegations of bribery, not of reporting violations. The court stated, however, that no plaintiff is required to supply the FEC with a "legal theory" under the Act in order for the agency to pursue an administrative complaint. "At minimum, the FEC, as an agency acting in the public interest, should not interpret complaints narrowly," the court stated.

The court went on to note that the matters outlined in the administrative complaint could raise reporting issues. The court said a contribution in exchange for participation in trade missions could be classified as an offset to a contribution, a refund of a contribution or a disbursement. The DNC and Clinton/Gore committee might have had an obligation to report such transactions.

The court further noted that the FEC failed to notify Judicial Watch that its administrative complaint was technically deficient, as is required by 11 CFR 111.5. The court also stated that, "If ... the allegations were not within its prosecutorial jurisdiction, the FEC should have referred the matter to the Department of Justice or the appropriate agency."

The court also dismissed the FEC's argument that a huge backlog of cases at the agency requires it to dismiss administrative complaints such as the one filed by Judicial Watch without investigating them because of a lack of financial and human resources. The court said the FEC should have raised this issue in the administrative proceedings.

U.S. District Court for the District of Columbia, 98-0386. ♦

DNC v. FEC (97-676)

On July 2, at the request of the FEC, and with the consent of the Democratic National Committee (DNC), the U.S. District Court for the District of Columbia dismissed this case without prejudice and remanded the matter back to the FEC to review the impact of the appellate and U.S. Supreme Court decisions in *Akins v. FEC* on issues presented in this case. See the December 1995, [February 1997](#) and [July 1998 Record](#) issues (all articles are on p. 1).

The suit concerned the Commission's dismissal of the DNC complaint alleging that the Christian Coalition is a political committee. See the [June 1997 Record](#), p. 7.

U.S. District Court for the District of Columbia, 97-676. ♦

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

On July 20, the U.S. District Court for the Southern District of New York granted the FEC's motion to clarify that its June ruling enjoined the FEC only from enforcing 11 CFR 100.22(b) against Right to Life of Dutchess County, Inc.

In June, the court determined that the Commission's regulation at 11 CFR 100.22(b) violated the First Amendment. The part of the regulation in dispute defines express advocacy as a communication that,

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Court Cases

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when taken as a whole and with limited reference 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. In its initial order, the court simply enjoined the FEC from enforcing this regulation. See the [July 1998 Record](#), p. 3.

U.S. District Court for the Southern District of New York, 97-2614. ♦

Hollenbeck v. FEC

On July 27, the U.S. District Court for the District of Columbia granted the FEC's motion to dismiss this case for lack of standing.

Thomas Hollenbeck, a Pennsylvania resident, had filed suit against the FEC after it had dismissed his administrative complaint alleging that a 1994 candidate for federal office had accepted excessive loans. See the [April 1998 Record](#), p. 4.

In order to show standing, a plaintiff must meet the requirements found in Article III of the Constitution—injury in fact, causation and redressability. The court concluded that Mr. Hollenbeck did not meet the requirements for standing because he failed to allege a “concrete and particularized injury” that came about as a result of a violation of the Federal Election Campaign Act. Mr. Hollenbeck, the court said, only vaguely alleged an injury, claiming violations of his First and Fourteenth Amendment rights and the need to protect the public from abuses by federal candidates.

U.S. District Court for the District of Columbia, 98-469. ♦

Advisory Opinions

AO 1998-12 Solicitation of Employee Stockholders

Ashland Inc. Political Action Committee for Employees (the Committee) may solicit, as stockholders, Ashland employees who hold stock in the company, but who are not executive or administrative personnel, so long as the employees can draw at least one share of Ashland stock without incurring a suspension period. Additionally, the Committee's parent company, Ashland, Inc., may use a payroll deduction plan to collect contributions from employees who qualify as Ashland stockholders.

Background

The Ashland Employee Savings Plan is open to employees with one year of service with the company or one of its subsidiaries. Participants choose from several investment alternatives, including mutual funds and Ashland's own common stock fund. Employee contributions are placed either in an after tax account (funds in it are deposited from employee salaries after taxes have been assessed) or a tax-deferred account (funds in it are deposited from employee salaries before taxes are assessed). Ashland matches each participant's contributions to the plan, with a portion of the match automatically invested in the Ashland fund. Ashland also matches any Ashland stock designated by the participant employee for other accounts.

Stockholder Defined

The Federal Election Campaign Act (the Act) allows a corporation or its separate segregated fund (SSF) to solicit contributions any time from its executive and administrative personnel, stockholders and

the families of such individuals. 2 U.S.C. §441b(b)(4)(A)(i). A stockholder is a person who:

- Has a vested beneficial interest in stock,
- Has the power to direct how that stock will be voted (if it is voting stock), and
- Has the right to receive dividends. 11 CFR 114.5(g)(1).

Ashland employees meet the first and second requirements. All participants in the employee savings plan are fully vested regardless of their years of service to the company. Additionally, participants can vote their stock. A participant exercises this power by giving voting instructions to the trustee of the plan, who then votes the participant's shares.

The third requirement, the ability to receive dividends, is somewhat comparable to the right of employees to withdraw funds from their accounts. The test that the Commission has used to measure this is whether “participants are able to withdraw at least one share of stock purchased ... without incurring a suspension period.” Thus, those who have already withdrawn at least one share of Ashland stock, and who continue to hold one share of the company's stock, have withdrawal rights and qualify as stockholders for purposes of the Act. For other employees, withdrawal rights vary with the type of contribution plan account through which the employee has ownership of Ashland stock.

Depending on the technical features of the various accounts, an employee can be eligible to withdraw stock without incurring a suspension, and could hold at least one share of Ashland stock. If that is the case, he or she may be solicited as a stockholder.

Payroll Deduction

In two advisory opinions (AO 1996-10 and AO 1983-17), the

Commission has concluded that the payroll deduction method may be used to collect contributions to a company's SSF from employees who qualify as stockholders, even if they are not executive or administrative personnel. Based on those opinions, Ashland may use payroll deduction to collect contributions for its PAC from employees who qualify as stockholders.

Date Issued: July 16, 1998;
Length: 5 pages. ♦

Advisory Opinion Requests

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

AOR 1998-17

Application of press exemption to free 30 second spot time slots offered by cable broadcasting system to televise candidate campaign advertisements (Daniels Cablevision, Inc., August 3, 1998; 9 pages plus 5-page attachment) ♦

Back Issues of the Record Available on the Internet

This issue of the *Record* and all other issues of the *Record* from 1996, 1997 and 1998 are available through the Internet as PDF files. Visit the FEC's World Wide Web site at <http://www.fec.gov> and click on "What's New" for this issue. Click "Help for Candidates, Parties and PACs" to see back issues. Future *Record* issues will be posted on the web as well. You will need Adobe® Acrobat® Reader software to view the publication. The FEC's web site has a link that will take you to Adobe's web site, where you can download the latest version of the software for free.

Statistics

Congressional Fundraising Continues Climb

U.S. House and Senate candidates disclosed \$484.3 million in receipts for the 1997-1998 election cycle, an 8 percent increase over the same total for the 1995-1996 election cycle. Spending was up by only 3 percent, with candidates reporting a total of \$301.6 million in disbursements. These figures are based on information contained in reports covering activity through June 30.

Contributions received by Senate candidates (\$191.5 million) increased by 13 percent over the previous election cycle, but disbursements (\$117.9 million) increased by a negligible .9 percent. House candidates reported small increases from the last election cycle, with a 5 percent increase in receipts, or \$292.8 million, and a 4 percent increase in disbursements, or \$183.7 million.

The median receipts for House candidates increased over the previous election cycle in all

categories with the exception of Republican incumbents. See the chart below. There also are fewer open seats in this election cycle and fewer nonincumbents who reported receipts of at least \$50,000.

A comprehensive compilation of candidate fundraising during the 1997-1998 election cycle as reported in July quarterly reports is available in an August 14 news release. The release is available:

- At the FEC's web site: <http://www.fec.gov> (click "News Releases and Media Advisories" at the main menu);
- From the Public Records Office and the Press Office (call 800/424-9530); and
- By fax (call FEC Faxline at 202/501-3413 and request document 610).

The chart on this page is based on data taken from this news release. To view digital images of candidate committees' reports submitted to the Commission, visit the FEC's web site and click "[View Financial Reports Filed by Presidential and House Campaigns, Parties and PACs.](#)" ♦

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Median Receipts of House Candidates for 1998 Election Cycle Through June 30*

Type of Candidate	1996 Median Receipts	1998 Median Receipts
Democratic Incumbents	\$296,826	\$348,602
Republican Challengers	\$34,486	\$42,970
Republican Incumbents	\$433,153	\$420,813
Democratic Challengers	\$35,756	\$44,385
Open Seats – Democrats	\$123,602	\$179,183
Open Seats – Republicans	\$80,838	\$115,120

* Median figures include only candidates who reported raising some money before June 30, 1998.

Statistics

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Midyear PAC Count Shows Slight Decrease From 1997

The FEC's semi-annual PAC count reveals that the number of PACs has decreased slightly since the last count was taken in December 1997. The table at right shows the midyear and year-end PAC figures since 1991. To see a complete listing of PAC statistics dating back to 1974, visit the FEC's web site (<http://www.fec.gov>) or request a copy of the agency's July 21 press release (call 800/424-9530 and press 3 for the Public Records Office or press 5 and ask for the Press Office). ♦

	Corporate	Labor	Trade/ Member/ Health	Coop- erative	Corp. w/o Capital Stock	Non- connected ¹	Total
Jul. '91	1,745	339	749	57	137	1,096	4,123
Dec. '91	1,738	338	742	57	136	1,083	4,094
Jul. '92	1,731	344	759	56	144	1,091	4,125
Dec. '92	1,735	347	770	56	142	1,145	4,195
Jul. '93	1,715	338	767	55	139	1,011	4,025
Dec. '93	1,789	337	761	56	146	1,121	4,210
Jul. '94	1,666	336	777	53	138	963	3,933
Dec. '94	1,660	333	792	53	136	980	3,954
Jul. '95	1,670	334	804	43	129	1,002	3,982
Dec. '95	1,674	334	815	44	129	1,020	4,016
Jul. '96	1,645	332	829	43	126	1,058	4,033
Dec. '96	1,642	332	838	41	123	1,103	4,079
Jul. '97 ²	1,602	332	826	41	118	953	3,875
Dec. '97	1,597	332	825	42	117	931	3,844
Jul. '98	1,565	325	820	43	112	897	3,762

¹ Nonconnected PACs must use their own funds to pay fundraising and administrative expenses, while the other categories of PACs have corporate or labor "connected organizations" that are permitted to pay those expenses for their PACs. On the other hand, nonconnected PACs may solicit contributions from the general public, while solicitations by corporate and labor PACs are restricted.

² During the first six months of 1997, 227 PACs were administratively terminated because of inactivity.

Compliance

Nonfilers

The campaign committees of the candidates listed below failed to file required campaign finance disclo-

sure reports. The list is based on recent FEC news releases. The FEC is required by law to publicize the names of nonfiling campaign committees. 2 U.S.C. §438(a)(7). The agency pursues enforcement actions against nonfilers on a case-by-case basis. ♦

Candidate	Office Sought	Report Not Filed
Clark, Barbara Marlene	House NY/06	July Quarterly
Darling, Alberta	Senate WI	July Quarterly
James, Bruce	Senate NV	July Quarterly
Kelly, Sue W.	House NY/19	July Quarterly
Kilpatrick, Carolyn Cheeks	House MI/15	Pre-Primary
Meeks, Gregory W.	House NY/06	July Quarterly
Munsell, Susan Grimes	House MI/08	Pre-Primary
Roberts, Darryl F.	House OK/03	July Quarterly
Schwartz, Kenneth L.	House NY/14	July Quarterly
Starky, Stuart M.	House AZ/03	July Quarterly
Sutherland, Doug	Senate WA	July Quarterly
Wright, Walter W. II	House MO/05	Pre-Primary

MUR 4582 Contributions in the Names of Others

Two Baltimore restaurant owners and a third man have paid a total of \$15,500 in civil penalties as part of three conciliation agreements concerning contributions made in the names of others, violations of 2 U.S.C. §441f.

This section of the Federal Election Campaign Act (the Act) prohibits making a contribution in the name of another, knowingly permitting one's name to be used to make such a contribution and knowingly accepting such a contribution. Commission regulations go on to state that no person may knowingly help or assist any person in making a contribution in the name of another. 11 CFR 110.4(b)(1)(iii).

During the 1993-1994 election cycle, attorney Lalit Gadhia asked his clients Vinay Wahi and Satish Bahl, owners of a Baltimore restaurant, to make contributions to the Indian-American Leadership Investment Fund (IALIF) or to certain candidates. Mr. Gadhia promised them that their contributions would be reimbursed in cash as long as they or someone else could provide him a contribution in the form of a personal check of \$1,000.

Mr. Wahi made five contributions totaling \$4,500. Mr. Bahl contributed \$1,000. Additionally, Mr. Wahi and Mr. Bahl solicited several other individuals—many of whom worked at their restaurant—for \$8,500 in contributions. Another of the Mr. Gadhia's clients, Dr. S.V. Ramamurthy, made \$4,000 in contributions at the attorney's request, and solicited \$3,000 in contributions from several individuals. The contributions went to IALIF and to several candidate committees. Mr. Gadhia subsequently reimbursed the three men for all of their contributions and for the contributions they solicited.¹

The candidate committees that received contributions from the three men included Ben Cardin for Congress, Citizens for Sarbanes, Robb for the Senate, Murtha for Congress and Citizens for Senator Wofford. All of the committees have since disgorged the funds from their accounts, and paid the money to the U.S. Treasury. ♦

¹ Lalit Gadhia was criminally prosecuted, convicted and incarcerated for these actions. Subsequently, the Commission found probable cause to believe that Mr. Gadhia knowingly and willfully made contributions in the names of others and solicited contributions from foreign nationals.

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