THE FEDERAL ELECTION COMMISSION

RECORD

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THE LAW IN THE COURTS

CALIFORNIA MEDICAL ASSOCIATION v. FEC

On June 26, 1981, the Supreme Court handed down a decision in *California Medical Association, et al.* v. *FEC, et al.* (Civil Action No. 79-1952) that affirmed an earlier decision of the U.S. Court of Appeals for the Ninth Circuit. Appellants were the California Medical Association (CMA), an unincorporated association, and CALPAC, a multicandidate committee formed by CMA.

In its opinion, the Court upheld the constitutionality of 2 U.S.C. §44la(a)(1)(C), which limits contributions to a political committee to $5,000 per year, per contributor. The Court concluded that the challenged provision did not violate the First Amendment rights of appellants because it was an appropriate means by which Congress could seek to protect the integrity of the contribution restrictions upheld in *Buckley* v. *Valeo* (424 U.S. 1 (1976)). The Court said, "If First Amendment rights of a contributor are not infringed by limitations on the amount he may contribute to a campaign organization which advocates the views and candidacy of a particular candidate, the rights of a contributor are similarly not impaired by limits on the amount he may give to a multicandidate political committee, such as CALPAC, which advocates the views and candidacies of a number of candidates."

The Supreme Court also upheld the appeals court's ruling that §441a(a)(1)(C) did not violate appellants' equal protection rights under the Fifth Amendment. Appellants had unsuccessfully claimed that the provision allowed corporations and labor organizations to make **unlimited** contributions to their separate segregated funds while limiting to $5,000 a year the contributions an unincorporated association could make to the multicandidate committee it established. The Court held, however, that no equal protection violation existed. The Court stated, "Appellants' contention ignores the fact that the Act as a whole imposes far fewer restrictions on individuals and unincorporated associations than it does on corporations and unions. The differing restrictions placed on individuals and unincorporated associations, on the one hand, and on corporations and unions, on the other, reflect a congressional judgment that these entities have differing structures and purposes and that they therefore may require different forms of regulation in order to protect the integrity of the political process."

The Court found no merit, however, to the FEC's claim that the appellants' direct appeal to the Court (pursuant to Section 437h of the Act)* was inappropriate because an

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* 2 U.S.C. §437h allows for expedited handling of constitutional challenges to the Act and a right of direct appeal to the Supreme Court.

NEW CAMPAIGN GUIDE FOR PARTY COMMITTEES

The Commission recently published a *Campaign Guide for Party Committees* to help state and local party committees comply with the Act and Commission Regulations. The *Party Guide* focuses on provisions of the Act and Regulations specifically governing state and local party committee activities, as well as the standard requirements, such as registration and recordkeeping, reporting and termination procedures. It includes, for example, discussion of special "coordinated" party expenditures on behalf of federal candidates and allocation of operating expenses between federal and nonfederal party accounts.

The *Party Guide* is unique in the *Campaign Guide* series because it includes an appendix on how to fill out forms. Sample forms are completed and cross referenced to explanations in the text.

The *Party Guide*, which is printed as a binder insert, has been sent to all registered party committees. The *Guide* may also be useful to local party organizations which are not currently registered with the Commission but which anticipate supporting federal candidates. Single copies of the *Party Guide* are available free of charge by contacting: Office of Public Communications, Federal Election Commission, 1325 K Street, N. W., Washington, D. C. 20463; or call 202/523-4068 or toll free 800/424-9530.

FEC enforcement proceeding was pending against appellants (pursuant to Section 437g of the Act). The Court found that neither the legislative history nor the statutory language of Sections 437g and 437h indicated that a direct appeal should be limited to situations where no enforcement proceeding was pending. (For a detailed summary of the suit, see the April 1981 *Record.)*

FEC v. DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE

On March 2, 1981, the Supreme Court granted the Commission's petition for a writ of *certiorari* in *FEC* v. *Democratic Senatorial Campaign Committee* (Civil Action No. 80-939). The Court also granted a petition for a writ of *certiorari* filed by the National Republican Senatorial Committee (NRSC) *(National Republican Senatorial Committee* v. *Democratic Senatorial Campaign Committee,* Civil Action No. 80-1129) and consolidated the cases for oral argument. The Commission's petition seeks review of a judgment of the U.S. Court of Appeals for the District of Columbia Circuit, which held that the FEC's dismissal of an administrative complaint filed by the Democratic Senatorial Campaign Committee (DSCC) was contrary to law.

Complaint

In its administrative complaint, filed May 9, 1980, DSCC alleged that NRSC had violated the Act by making special "coordinated" expenditures (2 U.S.C. §441a(d)(3)) as an agent for certain state Republican Party committees. Based on written agreements with the state party committees, the NRSC had made the expenditures to support the general election campaigns of various Senatorial candidates in 1978. NRSC's expenditures were within the limits prescribed by §441a(d)(3) for special party expenditures that a state party committee may make on behalf of its Senate candidate (i.e., $20,000 or 2 cents multiplied by the voting age population of the state). On July 11, 1980, the Commission unanimously determined that there was "no reason to believe" that NRSC had violated the Act. This action was consistent with the Commission's determinations in two prior enforcement actions, Matter Under Review (MUR) 780 and MUR 820.

District Court Ruling

In a petition filed with the U.S. District Court for the District of Columbia on July 30, 1980 *(Democratic Senatorial Campaign Committee* v. *FEC,* Civil Action No. 80-1903), DSCC sought a declaration from the court that the FEC's determination was contrary to law and an order directing the Commission to comply with the declaration within 30 days. On August 28, 1980, the district court affirmed the Commission's determination and interpretation of §441a(d)(3), concluding that the dismissal of DSCC's complaint was not arbitrary, capricious, an abuse of discretion or otherwise contrary to law.

Appeals Court Ruling

DSCC appealed the district court's order on September 3, 1980. On October 9, 1980, in a *per curiam* opinion, the appeals court reversed the district court's judgment and declared the Commission's determination contrary to law. Finding that the Commission had presented no reasoned explanation for its determination on the administrative complaint, the court decided the issue *de novo.* The court determined that neither the language of the statute nor its legislative history could support the Commission's interpretation of §441a(d)(3), i.e., that Congress had not intended to prohibit intraparty agency agreements, such as those used by the Republican Party committees. Accordingly, the appeals court held that, in the absence of an explicit statutory authorization, the agreements between NRSC and the state Republican Party committees violated Section 441a(d)(3). It issued a mandate directing the Commission to conform with its decision.

On October 10, 1980, while the Commission was attempting to comply with the court's decision, intervenor NRSC filed an application to recall the mandate and a petition for an *en banc* rehearing of the case. The appeals court denied both motions on October 11, 1980. Then, in response to a request from NRSC, the Chief Justice of the Supreme Court issued a stay of the appeals court's judgment, pending the Court's decision on NRSC's petition for a writ of *certiorari.*

FEC Files Supreme Court Brief

In a brief filed with the Supreme Court on April 16, 1981, the Commission argued that its decision to dismiss DSCC's administrative complaint was based on a reasonable interpretation of the Act and should be affirmed. The Commission contended that, by substituting its judgment for that of the FEC, the appeals court had interfered with the Commission's exclusive role as the expert body established by Congress to administer, enforce and interpret the Act. Moreover, in reversing the FEC's consistent construction of §441a(d)(3), the appeals court had ignored precedent in the District of Columbia circuit, which gave judicial deference to the Commission's interpretations of the Act. The Commission also asserted that the appeals court's decision required it to develop a new rule of law or statutory interpretation in the context of an enforcement proceeding. This requirement was contrary to the statutory mandate that such rules and interpretations be made through advisory opinions and rulemaking.

Furthermore, the Commission argued that its interpretation of 2 U.S.C. §441a(d)(3) was not contrary to law. Rather, the Commission's interpretation was consistent with statutory language, Commission regulations and advisory opinions and legislative history. A contrary interpretation would conflict with the clear Congressional intent to encourage a close working relationship among the various

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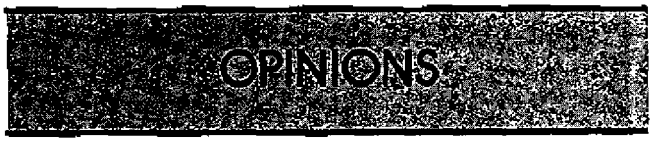
party committees. For example, under the Act, funds may be transferred without limit between political committees of the same party. 2 U.S.C. §441a(a)(4). The Commission asserted that Congress recognized the Act did not prohibit such intraparty arrangements when it rejected an amendment to the Act that would have prohibited NRSC from transferring funds to the state party committees for the purpose of making §441a(d) expenditures. The Commission therefore argued that its interpretation of §441a(d)(3) was entitled to deference by the appeals court.



ADVISORY OPINION REQUESTS

Advisory Opinion Requests (AORs) pose questions on the application of the Act or Commission Regulations to specific factual situations described in the AOR. The following chart lists recent AORs with a brief description of the subject matter, the date the requests were made public and the number of pages of each request. The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject	Date Made Public	No. of Pages
1981-28	State court decision requiring campaign manager's and treasurer's assumption of campaign debts.	7/7/81	22
1981-29	Status of New Mexico pre-primary convention as an election for purposes of the contribution limits.	7/7/81	1
1981-30	Relationship between new political committee (new party) and old political committee (new party) with similar names and common leadership.	7/9/81	2

ALTERNATE DISPOSITION OF ADVISORY OPINION REQUESTS

- **AOR 1981-24** (Act's preemption of city charter's ban on employee contributions) was withdrawn by its requester on June 25, 1981.
- **AOR 1981-28** (see above) was withdrawn by its requester on July 20, 1981.

ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR. Any qualified person who has requested an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

AO 1981-23: Cooperative's Solicitation of Individual Members of Member Associations

Land O'Lakes, an incorporated agricultural cooperative, may not solicit contributions to its separate segregated fund from the individual members (or stockholders) of its member cooperatives.

Land O'Lakes may solicit individuals who are, themselves, direct members of Land O'Lakes as long as they satisfy the requirements for membership in the cooperative. 2 U.S.C. §441b(b)(4)(C) and 11 CFR 114.1(e) and 114.7. It may **not**, however, solicit individuals who are members of cooperatives belonging to Land O'Lakes because these individuals do not meet the membership criteria required for solicitation. (See also AO 1980-48.) The rights and obligations possessed by these individuals vis-à-vis Land O'Lakes are indirect, at best. For example, the member cooperative — not Land O'Lakes — may impose financial obligations on its individual members. Furthermore, individual members of member cooperatives have no direct voting rights in Land O'Lakes affairs, as do the direct individual members and cooperative members of Land O'Lakes.

The Commission noted that, although Commission Regulations permit trade associations to solicit the stockholders and executive and administrative personnel of their corporate members, the regulations give no parallel solicitation rights to incorporated cooperatives — such as Land O'Lakes. Nor do the Regulations extend to membership associations (in general) the exemption that permits national or international labor organizations to solicit the individual members of local unions affiliated with labor organizations. 11 CFR 114.1(e). (Date issued: June 29, 1981; Length: 5 pages)

AO 1981-25: Excess Funds Used to Pay Travel Expenses of Congressman's Wife

Congressman William E. Dannemeyer may use excess campaign funds (not designated for particular campaign purposes) to pay the travel expenses of his wife when she accompanies him to and from his California Congressional District. Mr. Dannemeyer's request does not specifically indicate whether the purpose of these trips is related to his duties as a federal officeholder, his 1982 campaign or his personal use. In this particular case, however, all three

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purposes are permissible under the Act. Although the 1979 Amendments prohibit using excess funds for personal use, the prohibition does not apply to Mr. Dannemeyer because he was a member of Congress on January 8, 1980.

If the travel of Mr. Dannemeyer's wife is intended to influence Mr. Dannemeyer's reelection to Congress, it would constitute a campaign "expenditure." In that case, the costs of the trips would have to be reported by Mr. Dannemeyer's campaign committee as "expenditures."

The Commission expressed no opinion on the application of tax laws or House rules to the trips since these provisions are outside its jurisdiction. Commissioner Frank P. Reiche filed a concurring opinion. (Date issued: July 1, 1981; Length: 5 pages, including concurring opinion)

AO 1981-26: Social Event Held on Behalf of Incumbent Who is Not a Candidate

Costs of a party to be held for Congressman Charles E. Bennett would **not** have to be reported by the host or by Congressman Bennett's 1980 campaign committee.

Although Mr. Bennett's 1980 principal campaign committee has not yet terminated, the costs would not have to be reported because the party would be "purely a social event" and would not be held to influence the results of a federal election. No campaign funds would be raised on Mr. Bennett's behalf; nor would his reelection be advocated. Moreover, Mr. Bennett has not filed a Statement of Candidacy (FEC Form 2) for 1982; nor does his campaign committee's most recent report show that any funds have been raised or spent for a future election campaign. (Under the Act and Commission Regulations, an individual, regardless of whether he or she has publicly announced as a candidate, must register and report with the Commission only when funds received **or** spent to advance his/her candidacy exceed $5,000. 2 U.S.C. §431(2) and 11 CFR 100.3(b).)

The Commission expressed no opinion on the application of House rules to the proposed party, since they are not within its jurisdiction. (Date issued: June 26, 1981; Length: 2 pages)

AO 1981-27: Act's Preemption of Houston Ordinance for Political Advertising

Federal-election-related campaign materials that are placed, posted or erected in Houston, Texas, do not have to include the antilittering warning required by a Houston ordinance because the Act preempts and supersedes the local ordinance.

Among the provisions of the Act and Commission Regulations that "supersede and preempt any provision of state law with respect to election to federal office" are those that govern reporting and disclosure of political contributions and expenditures. 2 U.S.C. §453 and 11 CFR 108.7(b). The Houston ordinance exceeds the Act's disclosure requirements. Therefore, any notice included on political advertising in Houston that advocates the election or defeat of a clearly identified **federal** candidate need only identify the persons who paid for or authorized the communication on behalf of the candidate. 2 U.S.C. §441d and 11 CFR 110.11. (See also Advisory Opinions 1978-24 and 1980-36.)

The Commission noted, however, that the actual placement of any federal-election-related campaign materials in various locations throughout Houston would be subject to other Houston ordinances. Regulating where political ads are located is beyond the purview of the Act. 2 U.S.C. §453. (Date issued: July 2, 1981; Length: 4 pages)

800 LINE

VOLUNTEER ACTIVITY ON BEHALF OF A CANDIDATE'S CAMPAIGN

May an individual volunteer his/her personal services on behalf of a campaign?

Yes. An individual may volunteer any personal service, provided he or she is not compensated for the service by any other committee, individual or organization. 11 CFR 100.7(b)(3).

Do these services count as a contribution to the campaign?

No, although expenses connected with some volunteer activities and services may become contributions, subject to the per election limits, if they exceed certain amounts. (See below.)

May an individual use his/her home for volunteer activity on behalf of a candidate?

Yes. An individual may provide the use of his/her home or the recreation room of his/her residential complex, provided that the room is available without regard to political affiliation. These services (including any nominal fee paid for a recreation room) are **not** considered in-kind contributions to a candidate's campaign. 11 CFR 100.7 (b)(4).

Note: If the volunteer activity is **not** conducted in the individual's home or in a church or community room, donations of food and beverage are considered in-kind contributions subject to the limits. 2 U.S.C. §441a(a).

May an individual also use a church or community room for volunteer activities?

Yes, provided that the room is used regularly by members of the community, without regard to political affiliation, for noncommercial purposes. 11 CFR 100.7(b)(4) and (5).

Would a fee paid by the volunteer for the public rooms count as a contribution to the campaign?

No. Any nominal fee paid by the volunteer for the use of church or community rooms is not considered a contribution. 11 CFR 100.7(b)(4).

May an individual donate food and beverage in connection with campaign volunteer activity?

Yes — but these donations are subject to certain limits. An individual may spend up to $1,000 per candidate, per election, for food, beverage and invitations in connection with campaign-related activity conducted in his/her home or in a church or community room. In addition, the volunteer may spend up to $2,000 per calendar year on behalf of all political committees affiliated with his/her political party. Any donations in excess of these limits, however, are considered in-kind contributions subject to monetary limits. 11 CFR 100.7(b)(6).

May a vendor sell food and beverage to a campaign at cost?

Yes. A vendor,* whether or not incorporated, may sell to a candidate's campaign, at cost, food and beverage to be used in connection with the campaign, as long as the cumulative value of the discounts (i.e., the difference between the cost and the normal commercial rate) does not exceed $1,000 per candidate, per election. 11 CFR 100.7 (b)(7).

May a volunteer pay for the personal transportation costs incurred while campaigning for a candidate?

Yes. A volunteer may spend up to $1,000 per candidate, per election, for his/her own transportation expenses related to the campaign. 11 CFR 100.7(b)(8). Any transportation costs that exceed this amount are considered in-kind contributions subject to the $1,000 per election limit.

May a volunteer pay subsistence costs (i.e., food and lodging expenses) incurred while campaigning for a candidate?

Yes. These costs are not considered contributions. 11 CFR 100.7(b)(8).

AUTHORIZED CANDIDATE COMMITTEES

How does a committee authorized by a candidate (other than the candidate's principal campaign committee) go about registering with the FEC?

Registration of an authorized committee involves three distinct steps:

1. *Action by Candidate.* The candidate designates the authorized committee by filing a written statement with the principal campaign committee. This designation may be made by letter or by filling in the appropriate lines on the Statement of Candidacy (FEC Form 2). 11 CFR 101.1(b).
2. *Action by Authorized Committee.* Within 10 days after being designated, the authorized committee must file a Statement of Organization (FEC Form 1) with the principal campaign committee of the candidate it supports. 11 CFR 102.1(b).
3. *Action by Principal Campaign Committee.* The principal campaign committee, in turn, files both the Statement of Candidacy (FEC Form 2) and the authorized committee's Statement of Organization (FEC Form 1) with the Secretary of the Senate, the Clerk of the House of Representatives or the FEC, as appropriate, and with the appropriate state office. 11 CFR 101.1(b), Part 105 and 108.1.

Once registered, where should an authorized candidate committee (other than the principal campaign committee) file its campaign finance reports?

The authorized committee must file its reports with the candidate's principal campaign committee. The principal campaign committee, in turn, files the reports (together with its own reports) with the appropriate state and federal bodies. In addition, the principal campaign committee files an FEC Form 3Z, consolidating its own receipts and disbursements with those reported by any authorized committee(s). 11 CFR 104.3(f) and 108.1.

Should a candidate's authorized committee(s) report donations it makes to candidates for state or local office?

Yes. Disbursements to state and local candidates must be itemized, as appropriate, on Schedule B, and total donations made to state and local candidates must be included in the figure entered on Line 21 of Form 3.

Note: A political committee must report **all** disbursements it makes, regardless of whether they are intended for federal or nonfederal election activity.

AUDITS RELEASED TO THE PUBLIC

The Federal Election Campaign Act, as amended (the Act) gives the Commission authority to audit campaigns of all Presidential candidates who receive public funds and the campaigns of other political committees. Final audit reports are available to the press through the Press Office and to the general public through the Office of Public Records. The following is a chronological listing of audits released between May 13 and June 18, 1981.

Audit	Date Made Public
1. Civic Host Committee for the 1980 Republican National Convention	5/13/81
2. Realtors Political Action Committee	5/13/81
3. Machinists Non-Partisan Political League	6/2/81
4. UAW-Voluntary Community Action Program (a separate segregated fund of the United Auto Workers)	6/18/81
5. The Committee for Good Government (a separate segregated fund of the United Auto Workers)	6/18/81
6. Citizens Committee for the Democratic National Convention, Inc.	6/18/81

* This exemption applies exclusively to vendors – and not to individuals or other groups.

CLEARINGHOUSE

SUBSCRIPTIONS

- *Election Law Updates* is a quarterly series which summarizes all new state and federal election legislation. $11.00 per year.
- *Election Case Law* is a quarterly series which summarizes recent state and federal litigation relating to election matters. $10.00 per year.

You may order these subscriptions by mail from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Identify report title. Enclose a check or money order for subscription price(s) payable to Superintendent of Documents.

CHANGE OF ADDRESS

Political Committees

Registered political committees are automatically sent the *Record*. Any change of address by a registered committee must, by law, be made in writing as an amendment to FEC Form 1 (Statement of Organization) and filed with the Clerk of the House, the Secretary of the Senate or the FEC, as appropriate.

Other Subscribers

Record subscribers (who are not political committees), when calling or mailing in a change of address, are asked to provide the following information:

1. Name of person to whom the *Record* is sent.
2. Old address.
3. New address.
4. Subscription number. The subscription number is located in the upper left hand corner of the mailing label. It consists of three letters and five numbers. Without this number, there is no guarantee that your subscription can be located on the computer.

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