



# THE FEDERAL ELECTION COMMISSION

# RECORD

1325 K Street N.W., Washington, D.C. 20463

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July 1981

## REPORTS

### REPORTS DUE IN JULY

During July, all registered political committees are required to file semiannual, quarterly or monthly reports, depending on the type of committee they are. The following paragraphs explain the reporting schedule for the various categories of filers.

#### Presidential Committees With Activity Exceeding \$100,000

Authorized Presidential committees that received or spent in excess of \$100,000 during the 1980 election year and which, therefore, reported on a monthly basis during the election year may choose one of two options:

- They may continue filing monthly reports during 1981. The monthly report, due by July 20, must cover all activity of the preceding month (June 1-30).
- Alternatively, they may report quarterly. (If they wish to change from a monthly to a quarterly reporting schedule, the FEC's Reports Analysis Division requests that they notify the Commission of their intention in writing.) The quarterly report is due by July 15 and must cover all activity from the closing date of the last report through June 30.

#### Presidential Committees With Activity Less Than \$100,000

Presidential committees whose activity did not exceed \$100,000 during 1980 report on a quarterly basis.\* In addition, Presidential committees active in the 1972 and 1976 elections file quarterly. The second quarterly report, due July 15, should cover all activity between April 1 and June 30. 11 CFR 104.5(b)(2).

**Note:** Authorized Presidential committees may **not** report on a semiannual basis. 11 CFR 104.5(b)(2).

#### Noncandidate Committees That Filed Monthly in 1980

Political committees that are not authorized by candi-

dates and that filed on a monthly basis during 1980 may choose one of two options:

- They may continue filing monthly reports during 1981. The monthly report, due by July 20, must cover all activity of the preceding month (June 1-30).
- Alternatively, they may file on a semiannual schedule, but only if they notified the Commission of this change at the time they filed their last monthly report. The July semiannual report, due July 31, must cover all activity from the closing date of the last monthly report through June 30. 11 CFR 104.5(c).

#### Special Election Filers

The semiannual report may be waived for political committees (both candidate and noncandidate) active in certain special elections held during June and July, **provided they filed the appropriate special election reports on time.** For more information on reports required for committees active in the special elections, consult the special notices prepared by the Commission or contact the Commission at 202/523-4068 or toll-free 800/424-9530.

#### All Other Committees

All other political committees must file a semiannual report in July covering all activity from the closing date of the last report through June 30.

**Note:** If a committee filed a quarterly report in April, the July semiannual report should only cover activity between April 1 and June 30.

### SPECIAL ELECTION IN PENNSYLVANIA

Pennsylvania will hold a special election in its Third Congressional District to fill the seat formerly held by Congressman Raymond F. Lederer. The special election is scheduled for July 21, 1981. The principal campaign committees of candidates running in the election must file the appropriate pre- and post-election reports. All other political committees which support candidates in the election (and which do not report on a monthly basis) must also follow this reporting schedule.

**Note:** The semiannual report (due July 31) will be waived for those committees which are active in the special election, but which file the pre-election report on time.

\* These committees also have the option of reporting on a monthly basis. 11 CFR 104.5(b)(2).

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National and state party committees may each make coordinated expenditures of up to \$16,710 on behalf of candidates in the special election. 2 U.S.C. §441a(d). Expenditures by county, district and local party committees are subject to the state party limit.

The FEC has sent notices on reporting requirements and filing dates to all individuals on the ballot in the election. All other committees supporting candidates in the Pennsylvania special election should contact the Commission for more information on required reports. Call 202/523-4068 or toll-free 800/424-9530.

# OPINIONS

## 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
1981-25	Excess funds (undesignated) used for travel expenses of wife accompanying Congressman to district.	5/20/81	2
1981-26	Costs of party on behalf of incumbent who is not yet a candidate.	5/21/81	1
1981-27	Act's preemption of notices required by city on political advertising, locally posted.	5/25/81	3

## 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 1981-19: Combined Funds of Political and Administrative Accounts Invested in Money Market Fund

The Louisiana State Medical Society Political Action Committee (LAMPAC), the separate segregated fund of the Louisiana State Medical Society (the Society), may invest in a money market fund by using the combined funds of its federal political account (which contains only those funds that were voluntarily contributed for use in federal elections) and its administrative account (which contains the Society's treasury funds and other monies which may not be used in connection with federal elections). Funds from the political account alone are sufficient to invest in a money market fund. Funds from the administrative account, however, are not. Under the proposed plan, funds from both accounts would be joined to invest in a money market fund, thus permitting the administrative account to take advantage of the high interest rate offered by a money market fund. Interest paid to each account would be proportionate to its investment.

The joint investment would be permissible because, first, the investment would not result in a prohibited corporate contribution from the administrative account to the political account since the administrative account would not be conferring a financial benefit on the political account. To the contrary, any financial benefits resulting from the joint investment would be conferred on the administrative account; while the political account has sufficient funds to make the money market investment by itself, the administrative account could only meet the minimum investment requirement by adding its funds to those of the political fund.

Secondly, the joint investment would be permissible because it would not result in a commingling of political and treasury funds, prohibited by 2 U.S.C. §441b. At no time during the investment transaction would treasury funds be transferred from the administrative account to the political account (for political or investment purposes). Rather, each account would pay separately for its portion of the investment.

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The Commission expressly conditioned its approval of the joint investment on LAMPAC's compliance with the following investment guidelines, which would ensure that funds of the two accounts remained strictly segregated:

1. *No Preferred Treatment for Joint Investment.* The money market fund may not provide any more benefits to the joint investment (e.g., a higher interest rate or more favorable terms of withdrawal) than it would have given to an investment of a similar amount made by the political account alone. Additionally, if the political account earned a higher interest income as a result of the joint investment, its share of the interest income would have to be reduced to avoid an in-kind contribution from the administrative account.
2. *Reporting of Interest Paid.* LAMPAC must report any interest earned on the political account's portion of the investment. Itemized information on the money market fund must be disclosed when total interest on the political account's portion of the investment income exceeds \$200 during the calendar year. 11 CFR 104.3(a)(4)(iv).
3. *Withdrawal of Investment.* LAMPAC may withdraw its investment from the money market fund by using either one of the following methods:
  - a. The money market fund may issue separate checks to the political and administrative accounts, respectively, each check representing the principal invested by the account and the proportionate interest earned on the funds provided by that account; or
  - b. The money market fund may issue a single combined check to LAMPAC. The check must be deposited in a special clearing account established with a depository (e.g., a bank) designated by LAMPAC and identified on LAMPAC's Statement of Organization (FEC Form 1). 11 CFR 102.2 and 103.2. The principal and earned interest payable to each fund would then be separated and transmitted to the respective accounts.

In either case, the political fund could not make any expenditures from the investment until both the principal and interest had been returned to a designated campaign depository. 11 CFR 103.3(a).

The Commission did not address any tax issues involving the investment since they are not within its jurisdiction. (Date issued: June 4, 1981; Length: 8 pages)

#### **AO 1981-20: Joint Purchase of Treasury Bill by State and Federal Separate Segregated Funds**

If the federal and state separate segregated funds (Federal and State PACs) of Sunkist Growers, Inc. (Sunkist) jointly invested their excess funds in a single treasury bill, the State PAC would make a prohibited contribution to the Federal PAC.

Under procedures proposed by Sunkist for purchasing the treasury bill, each PAC would issue a separate check to the bank. When the bill matured, the bank, as the depository for the investment, would issue a separate check to each PAC representing the PAC's original investment plus any accrued interest. Under these procedures the investment would, nevertheless, result in a prohibited contribution from the State to the Federal PAC because the State PAC would confer a financial benefit (i.e., a "thing of value") on the Federal PAC. 2 U.S.C. §441b(b)(2)(A). Specifically, by

combining its funds with the Federal PAC's funds to meet the treasury bill's requirement for minimum purchase price, the State PAC would give the Federal PAC the ability to make an investment with a higher interest rate than that which would have been earned on an investment using only funds of the Federal PAC.

A joint investment would be permissible, however, if the State PAC:

1. Registered, filed reports and operated as a political committee under the Act; and
2. Divested itself of any contributions not permissible under the Act (e.g., corporate contributions). 2 U.S.C. §§433 and 434; 11 CFR 104.12.

Since the joint investment proposed by Sunkist would result in a prohibited corporate contribution to the Federal PAC, the Commission did not address the issue of whether it would result in a prohibited commingling of State and Federal PAC funds. (Date issued: June 4, 1981; Length: 3 pages)

#### **AO 1981-21: Funds Transferred from Employees' Individual Accounts with State Committees to Federal Committee**

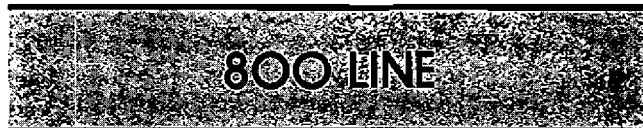
An executive or administrative employee of Hallmark, Inc. who participates in a voluntary payroll deduction plan administered by HALLPAC, the separate segregated fund of Hallmark, may authorize the payment of funds from his/her individual account, administered by the company's state committee, to an individual account in the federal committee, HALLPAC-Federal. Each committee (HALLPAC-Missouri, HALLPAC-Kansas and HALLPAC-Federal) maintains and administers the individual accounts, with each employee retaining control over funds that are earmarked as contributions to candidates from his or her account. Since HALLPAC-Federal is a registered "political committee," funds paid to the employee's individual account in HALLPAC-Federal would constitute "contributions" from that employee rather than a "transfer" of funds from the state to the federal committee. These contributions would be subject to the Act's prohibitions and the following limits and reporting requirements:

1. For each employee, total contributions to HALLPAC-Federal would be subject to the \$5,000 limit on contributions to a multicandidate committee (11 CFR 110.1(c)). HALLPAC-Federal would report the contributions according to the procedures of 11 CFR Part 104.
2. Since the employee would retain control over the contributions he or she later earmarked to specific candidates from his/her individual account in HALLPAC-Federal, the earmarked contributions would be subject to the \$1,000 per candidate, per election, limit. 11 CFR 110.1(a). HALLPAC-Federal, as the conduit for the earmarked contributions, would report them according to the special earmarking procedures of 11 CFR 110.6(c).

**Note:** The Commission specifically declined to address the issue of whether contributions the employee earmarked for federal candidates from the individual account with HALLPAC-Federal would also be counted against HALLPAC-Federal's per election contribution

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limits because the advisory opinion request did not provide information on that issue. (Date issued: June 4, 1981; Length: 4 pages)



#### **AO 1981-22: Funds Raised to Retire Interest on Candidate's Primary Debt**

Funds collected to pay the outstanding debts of John M. Cogswell's 1980 primary campaign constitute "contributions" to the primary campaign and are subject to the Act's prohibitions and dollar limits for the primary. 2 U.S.C. §441a(a)(1)(A) and 11 CFR 110.1(a)(1); 2 U.S.C. §§441b, 441c, 441e and 441f. A special committee authorized by John Cogswell to collect contributions to pay the interest on the campaign debt, the Cogswell for Citizen Committee (Citizen Committee), is therefore a "political committee," subject to the Act's registration and reporting requirements. 2 U.S.C. §431(4). The Citizen Committee and the candidate's principal campaign committee, the Cogswell for Senate Committee, are together subject to a single contribution limit. Thus, an individual's combined contributions to both the Citizen Committee and the Senate Committee may not exceed \$1,000. (Date issued: May 29, 1981; Length: 4 pages)

#### **"TESTING-THE-WATER" ACTIVITIES**

**Must an individual who raises and spends funds for the sole purpose of determining the feasibility of a potential candidacy register and report this activity with the FEC?**

No. Funds used solely to determine whether an individual should become a candidate are not considered "contributions" or "expenditures" under the Act, unless the individual subsequently becomes a candidate. (See below.) Therefore, such "testing-the-water" activity would not trigger candidate status for the individual or the registration and reporting requirements of the Act. 11 CFR 100.7(b)(1) and 100.8(b)(1). AO 1979-26.

**Must records be kept of funds received or spent for "testing-the-water" activities?**

Yes. Records must be kept of the name and address of each donor and the date and amount of funds received. Records must also be kept of all payments made. 11 CFR 100.7(b)(1), 100.8(b)(1) and 101.3.

**What types of payments may an individual make to test a potential candidacy?**

Permissible "testing-the-water" payments would include (but are not limited to) payments for a poll, telephone calls or travel that help determine whether an individual should become a candidate. 11 CFR 100.7(b)(1) and 100.8(b)(1).

**Are there payments that would not be considered "testing-the-water" payments exempted under the Act?**

Yes. Funds received or spent for general public political advertising (e.g., purchase of television or newspaper advertising) or for activities designed to amass campaign funds to be used when the individual becomes a candidate (e.g., a fundraiser or mail solicitation) are examples of payments that would not be considered exempted "testing-the-water" payments. 11 CFR 100.7(b)(1) and 100.8(b)(1). Such payments are considered "contributions" and "expenditures" under the Act. Therefore, once funds accumulated or spent for such activities exceeded \$5,000, they would be subject to the Act's registration and reporting requirements. 11 CFR 100.3

**May an individual spend more than \$5,000 on "testing-the-water" activities and still not be required to register as a candidate?**

Yes, unless the individual becomes a candidate. (See below.)

**What happens if an individual who has been "testing-the-waters" becomes a candidate?**

Once an individual becomes a candidate, any funds previously received or disbursed to test-the-waters are considered contributions and expenditures, subject to the

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#### **ANNUAL REPORT**

The Commission submitted its *Annual Report 1980* to the President and Congress on June 1, 1981. A set of legislative recommendations contained in Chapter I of the *Report* offers both substantive and technical changes aimed at reducing the reporting burdens on political committees while preserving the core of the federal campaign finance law. The rest of the *Report* focuses on the Commission's administration of the public funding program for the 1980 Presidential elections and its implementation of the 1979 Amendments to the Federal Election Campaign Act of 1971. Summaries of major legal issues are included as well.

Fourteen appendices provide supplemental information on the Commission and its activities. Several appendices contain information on the 1980 Presidential elections as, for example, an appendix on Primary Matching Fund Certifications and Audits.

The FEC's *Annual Report 1980* is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; telephone 202/275-2091. The order number is 052-006-00017-1. Purchase price, payable in advance to the Superintendent of Documents, is \$4.75.

Act's limits and prohibitions. These contributions and expenditures must be reported on the first report filed by the candidate's principal campaign committee, regardless of when the funds were received or spent. 11 CFR 100.7(b)(1) and 100.8(b)(1).

**Does the amount that a donor has given to an individual for "testing-the-water" activities count against the amount the donor may contribute when the individual becomes a candidate?**

Yes. Funds donated to the individual for "testing-the-water" activities, when added to funds contributed to his/her election campaign (e.g., Senate primary campaign), would be subject to a single contribution limit for that election (\$1,000 per election on contributions from an individual and \$5,000 per election on contributions from a multicandidate committee).



## FEC FILES SUBPOENA ENFORCEMENT SUITS AGAINST DRAFT COMMITTEES

Between December 1980 and January 1981, the FEC filed four separate suits in U.S. district courts seeking enforcement of subpoenas it had issued to three "draft Kennedy" political committees registered with the Commission, which had been engaged in promoting the Presidential candidacy of Senator Edward Kennedy during 1979, and to the Machinist Non-Partisan Political League (MNPL), the separate segregated fund of the International Association of Machinists, which had supported the formation of "draft Kennedy" groups in several states during 1979. The Commission filed suit against MNPL and Citizens for Democratic Alternatives in 1980 in the U.S. District Court for the District of Columbia (*FEC v. Citizens for Democratic Alternatives in 1980*, Civil Action No. 800-0009 and *FEC v. Machinists Non-Partisan Political League*, Civil Action No. 79-0291), against Wisconsin Democrats for Change in 1980 in the U.S. District Court for the Western District of Wisconsin (*FEC v. Wisconsin Democrats for Change in 1980*, Civil Action No. 80-C-124) and against the Florida for Kennedy Committee in the U.S. District Court for the Southern District of Florida (*FEC v. Florida for Kennedy Committee*, Civil Action No. 79-5964-CIV-JLK).

### Complaint

The suits resulted from defendants' failure to comply with subpoenas to produce information, which the FEC had issued as part of an investigation of alleged violations of the election law. 2 U.S.C. §437d. The FEC had received a complaint from the Carter/Mondale Presidential Committee, Inc. on October 4, 1979, alleging that nine named political committees were affiliated within the meaning of 2

U.S.C. §§433, 441a(a)(5) and 11 CFR 110.3(a)(i)(ii)(D). The complaint claimed that, as affiliated political committees, the nine committees were subject to a single \$5,000 limit on contributions they accepted from a multicandidate committee. 2 U.S.C. §441a(a)(1)(C)(2)(C). The complaint further alleged that the draft committees had received, and MNPL had given to them, contributions in excess of the \$5,000 limit. 2 U.S.C. §441a(a).

After finding reason to believe that the draft committees and MNPL had violated the Act, the Commission issued 13 subpoenas to various draft committees and to MNPL in an effort to investigate the draft committees' alleged affiliation.

### Enforcement of the Subpoenas

Continued refusal by the four defendants to comply with their subpoenas prompted the FEC to seek enforcement of the subpoenas in the U.S. district courts. The FEC argued that the subpoenas clearly conformed to the guidelines for the enforcement of an administrative agency's subpoenas established by the Supreme Court in *United States v. Morton Salt Co.* Specifically, the FEC's inquiries were authorized by 2 U.S.C. §437d(a)(1), they were not too indefinite and the information they sought was reasonably relevant to the FEC's investigation. Further, in seeking court-mandated enforcement of the subpoenas, the Commission had followed the procedures prescribed by 2 U.S.C. §437d(b).

Defendant committees raised collateral issues that challenged the Commission's jurisdiction over political committees organized to draft candidates for federal office and that raised First Amendment questions. Defendants argued that, for purposes of the Act, the Supreme Court had restricted the definition of a "political committee" in *Buckley v. Valeo* to a group whose major purpose is to influence the nomination or election of a candidate. (*Buckley v. Valeo*, 424 U.S. at 79.)

### District Court Rulings

The district courts ordered enforcement of the Commission's subpoenas. The courts maintained that the subpoenas met the guidelines for enforceability and were within the authority of the agency.

The Wisconsin Democrats for Change in 1980 complied with the Wisconsin district court's subpoena enforcement order. However, Citizens for Democratic Alternatives in 1980 and MNPL filed notices appealing the D.C. district court's decisions to the U.S. Court of Appeals for the District of Columbia Circuit, and the Florida for Kennedy Committee filed a notice appealing the Florida district court's decision to the U.S. Court of Appeals for the Fifth Circuit.

The Florida for Kennedy Committee has not yet complied with the FEC's subpoena because the appeals court for the fifth circuit granted its application for a stay of the district court's order pending its appeal. The situation was different in the case of MNPL and Citizens for Democratic Alternatives in 1980. The D.C. district and appeals courts denied the stay applications requested by Citizens for Democratic Alternatives in 1980 and MNPL; the Supreme Court also denied a further application made by MNPL. The appellants then produced all documents requested by the Commission.

### D.C. Appeals Court Decision

On May 19, 1981, the appeals court for the D.C. circuit issued its opinions in *FEC v. MNPL* and *FEC v. Citizens for Democratic Alternatives in 1980*. The appeals court found that the Commission "lacked subject matter jurisdiction over the draft activities it sought to investigate." (*FEC v. MNPL*, slip op. at 7; *FEC v. Citizens for Democratic Alternatives in 1980*, slip op. at 2). The appeals court vacated the D.C. district court's orders enforcing the subpoenas and remanded the cases to the district court for further proceedings consistent with its ruling. The appeals court limited its decision to the provisions of the Federal Election Campaign Act prior to the 1979 Amendments: "Whatever the post-1979 situation, it is clear to us that in this case the contribution limitations did not apply to the nine groups whose activities did not support an existing 'candidate.'" (*FEC v. MNPL*, slip op. at 31). The court did note that the 1979 Amendments to the Act appeared to require that "draft" committees comply only with the Act's reporting requirements.

The appeals court departed from the standard for judicial review of agency subpoenas and established a new "extra-careful scrutiny" standard for judicial enforcement of FEC subpoenas. The appeals court reasoned that such a standard was warranted since "the activities which the FEC normally investigates differ in terms of their constitutional significance" from those of concern to other federal agencies.

On June 9, 1981, the Commission decided to seek review of the D.C. appeals court's decisions by petitioning the Supreme Court for a writ of *certiorari*.

### Motions to Intervene Filed

On June 3, 1981, shortly after the D.C. appeals court had handed down its decisions, the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee filed a motion to intervene in the FEC's suit against MNPL, claiming that the appeals court's decision in the suit "dramatically and adversely" affected their interests and those of the candidates they represented. The committees argued that the "court's decision to exclude 'draft' committees from the statute's contribution limitation strikes at the very heart of the law and its proper enforcement," creating two classes of political committees: one which observes limits in collecting funds for a clearly federal-election-related purpose, and one which observes no such limits at all.

On June 5, 1981, the FEC filed a motion opposing the Democratic Senatorial Campaign Committee's and the Democratic Congressional Campaign Committee's joint motion to intervene in the MNPL suit. The FEC argued that it had exclusive primary jurisdiction over enforcement of the Act and that the intervenors' petition was untimely since it was filed after the appeals court had issued its decision. The court's order on the motion has not yet been entered.

### JOHN B. ANDERSON v. FEC

On April 10, 1981, the U.S. District Court for the District of Maine dismissed *John B. Anderson v. FEC* (Civil Action No. 80-0272P) in response to a motion to dismiss the suit filed by plaintiffs on the same day. The suit had been remanded to the district court after certification of constitutional questions to the U.S. Court of Appeals for the First Circuit. Several plaintiffs — John B. Anderson, a candidate in the 1980 Presidential elections, the National Unity Campaign 441a(d) Committee and three individual plaintiffs — had brought suit on September 8, 1980, asking the district court to certify the following constitutional questions to the appeals court:

- Does §441a(a)(1)(B), which entitles a national party committee to receive contributions of up to \$20,000 per year from individuals, infringe on plaintiffs' First and Fifth Amendment rights; and
- Does §441a(d), which permits a national party committee to make special "coordinated party expenditures" on behalf of its Presidential candidate, infringe on plaintiffs' First and Fifth Amendment rights?

Plaintiffs had also sought a preliminary injunction from the district court, directing the Commission to permit the application of Sections 441a(a)(1)(B) and 441a(d) to the National Unity Campaign 441a(d) Committee, which had registered as a political committee the day before plaintiffs filed suit.

### District Court Ruling

On October 14, 1980, the district court certified plaintiffs' constitutional questions to the appeals court but denied plaintiffs' motion for a preliminary injunction. The court held that plaintiffs had not exhausted the administrative relief available to them under the election law. Moreover, the court noted that any injunction granted would have been permanent, rather than temporary, since the election would be held within two and one-half weeks of its ruling.

### Appeals Court Ruling

On October 30, 1980, the appeals court granted the FEC's motion to remand the case to the district court for further fact finding. The court noted that, if plaintiffs had sought an advisory opinion from the FEC before filing suit, the court "... would likely have had more facts before us than we do presently and would have been better able to evaluate plaintiffs' constitutional claims."

### Plaintiffs Seek Administrative Relief from FEC

On November 4, 1980, prior to seeking dismissal of their suit, plaintiffs requested an advisory opinion from the Federal Election Commission on the status of the National Unity Campaign and the National Unity Campaign 441a(d) Committee as national party committees operating on Mr. Anderson's behalf. In AO 1980-131, issued on November 20, 1980, the Commission determined that neither committee qualified as the national committee of a political party and, therefore, that neither committee was entitled to receive up to \$20,000 in contributions from individuals or to make coordinated party expenditures. (See the January 1981 issue of the *Record* for a summary of AO 1980-131.)

## NEW LITIGATION

### FEC v. National Rifle Association of America

The FEC seeks a declaratory judgment from the U.S. District Court for the District of Columbia that the National Rifle Association of America (NRA), an incorporated association, the Institute for Legislative Action (ILA), NRA's lobbying organization, and the NRA Political Victory Fund (PVF), NRA's separate segregated fund, violated 2 U.S.C. §441b(a). Specifically, the FEC alleges that:

- NRA and ILA made corporate expenditures in connection with the 1978 and 1980 Congressional elections and the 1980 Presidential elections;
- NRA and ILA made corporate contributions to PVF in the form of advanced payments of expenditures on behalf of PVF, for which they were later reimbursed by PVF; and
- PVF received corporate contributions by accepting (and subsequently reimbursing) the advanced payments of expenditures by NRA and ILA.

The FEC asks the court to permanently enjoin the NRA, ILA and PVF from violating §441b(a) in the future and to assess a civil penalty of \$5,000 against each defendant or, in the alternative, to assess penalties equal to total prohibited contributions made in 1978 and 1980.

(U.S. District Court for the District of Columbia, Civil Action No. 81-1218, May 26, 1981)

## COMPLIANCE

### SUMMARY OF MURs

Selected compliance cases, which have been closed and put on the public record, are summarized in the *Record*. Compliance matters stem from possible violations of the Federal Election Campaign Act of 1971, as amended, which come to the Commission's attention either through formal complaints originating outside the Commission or by the FEC's own monitoring procedures. The Act gives the FEC the exclusive jurisdiction for the civil enforcement of the Act. Potential violations are assigned case numbers by the Office of General Counsel and become "Matters Under Review" (MURs). All MUR investigations are kept confidential by the Commission, as required by the Act.

MURs may be closed at any one of several points during the enforcement process, including when the Commission:

- Determines that no violation of the Act has occurred;
- Determines that there is no reason to believe or no probable cause to believe a violation of the Act has occurred;

- Enters into a conciliation agreement with the respondent;
- Finds probable cause to believe a violation has occurred and decides to sue; or
- Decides at any point during the enforcement process to take no further action.

After the MUR is closed and released by the Office of General Counsel, the Commission makes the MUR file available to the public. This file contains the complaint, the findings of the General Counsel's Office and the Commission's actions with regard to the case, including the full text of any conciliation agreement. The Commission's actions are not necessarily based on, or in agreement with, the General Counsel's analysis.

Selection of MURs for summary is made only from MURs closed after January 1, 1979. The *Record* article does not summarize every stage in the compliance process. Rather, the summary provides only enough background to make clear the Commission's final determination. The full text of these MURs and others which were closed between 1976 and the present are available for review and purchase in the Commission's Public Records Office.

### MUR 1101: Contributions by Husband and Wife

On December 15, 1980, the Commission entered into a conciliation agreement with an individual who, during 1977 and again in 1979, had exceeded the \$25,000 per year limit on contributions by individual donors.

*Complaint:* On December 11, 1979, the Reports Analysis Division referred to the Office of General Counsel the name of an individual who appeared to have violated 2 U.S.C. §441a(a)(3) by contributing more than \$25,000 to various party committees in both 1977 and 1979.

*General Counsel's Report:* In reviewing contribution information on the G Index and reports filed by party committees, the General Counsel discovered that the respondent had contributed \$27,000 to party committees during 1977 and \$34,994 during 1979. The respondent filed a statement asserting that the contributions were made from community property, held jointly by him and his wife. Therefore, he maintained that 50 percent of each contribution should automatically have been attributed to the respondent's wife. The General Counsel noted, however, that Sections 104.8(c) and (d) of Commission Regulations stipulate that if a contribution in the form of a check (or other written instrument) is to count as a contribution from both a husband and a wife, both individuals must sign the check (or another written instrument accompanying the check) and specify that portion of the contribution to be attributed to each.

The General Counsel concluded that, since the information required for joint contributions by spouses had not been included on the respondent's contributions or in any accompanying letters, the contributions could only be attributed to the respondent – regardless of California's

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community property laws. The General Counsel therefore recommended that the Commission find probable cause to believe the respondent had violated 2 U.S.C. §441a(a)(3).

*Commission Determination:* On February 4, 1980, the Commission determined there was reason to believe that the respondent had violated 2 U.S.C. §441a(a)(3) by making contributions totaling more than \$25,000 in each of two years: 1977 and 1979. On December 15, prior to finding probable cause to believe the respondent had violated the Act, the Commission entered into a conciliation agreement with him in which he agreed to pay a civil penalty of \$250 for the violation. The respondent also agreed that he and his wife would file a joint statement with each recipient committee, indicating their intent to attribute one-half of the contribution to each spouse.

### **FEC PUBLISHES NAMES OF PRESIDENTIAL NONFILERS**

On May 1, 1981, as required by law, the Commission published the names of five authorized Presidential committees that had failed to file their April quarterly reports by April 15, 1981. Three of the committees, authorized by 1980 Presidential candidates, had failed to disclose financial activity related to the 1980 Presidential elections. The remaining two committees, authorized by 1976 Presidential candidates, had failed to report activity for their 1976 Presidential campaigns. (Under the election law, a candidate's authorized campaign committee may terminate only when its debts and obligations have been extinguished and when all the debts of any affiliated authorized committees have also been extinguished. 11 CFR 102.3.)

During the 1981 nonelection year, authorized committees of Presidential candidates have the option of reporting on a monthly or quarterly basis. (See p. 1 for reporting requirements of Presidential committees.) The five committees cited by the Commission chose the quarterly reporting option, but then failed to file the April quarterly report on time.



### **FEC TESTIFIES ON IMPACT OF MEDIA PROJECTIONS ON VOTER TURNOUT**

On May 7, 1981, FEC Chairman John Warren McGarry testified before the Senate's Committee on Rules and Administration concerning the impact of election projections made by broadcast media commentators on voter turnout in 1980. He was accompanied by Dr. Gary Greenhalgh, Assistant Staff Director for the FEC's Information Services Division and Director of the FEC's National Clearinghouse on Election Administration. In its testimony, the Commission noted that this issue was in need of "substantial additional study." There is no consensus on "the exact nature and extent of the impact of media election projections." Moreover, structural changes in the election system designed to eliminate the impact of media projections would have substantial cost impacts.

The Commission's testimony suggested that research and analysis conducted on the issue should assess:

- Whether media election projections actually affected the turnout of voters at the polls - for both federal and state or local elections;
- Whether media election projections affected the turnout of one group of voters (e.g., voters identified by educational level or age) more than another; and
- Whether media election projections affected the way individuals voted.

The Commission offered a few cautionary notes:

- Surveys of voters, and nonvoters, can be very inaccurate;
- The memories of voters, and nonvoters, have a tendency to fade over time; and
- Any study on voter turnout in the November 1980 elections will have to distinguish the impact of media election projections from the impact of President Carter's concession speech.

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