THE FEDERAL ELECTION COMMISSION

RECORD

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

Volume 7, Number 3 March 1981

REPORTS

SPECIAL ELECTIONS IN MICHIGAN

Michigan will hold special elections in its Fourth Congressional District to fill the seat vacated by former Congressman David Stockman. The primary election is scheduled for March 24, 1981, and the general election for April 21, 1981. The principal campaign committees of candidates running in these elections must follow the same reporting schedule as that established for an election year. Thus, they must file pre- and post-election reports and quarterly reports. All other political committees which support a candidate in these elections (and which do not report on a monthly basis) must file pre- and post-election reports in addition to their semiannual reports.

The principal campaign committees of all candidates on the ballot in these elections will receive special notices from the FEC on their reporting requirements and filing dates. All other committees supporting candidates in the Michigan special elections should contact the Commission for more information on required reports. Call 202/523-4068 or toll-free 800/424-9530.

PUBLIC FINANCING

PROCEDURES FOR FINAL MATCHING FUND PAYMENTS

On January 29, 1981, the Commission adopted procedures for certifying final payments to eligible Presidential primary candidates during the last matching fund submission period (i.e., the third week of January following the election year). The new certification procedures differed from those followed throughout the election year in that the Commission certified the submission **after** reviewing it, rather than before. Within 15 days after receiving a request, the Commission reviewed the request and certified matching payments for only those contributions that met the Commission's requirements and were qualified for matching funds. These procedures eliminated the possibility of the Commission's overpaying a candidate and having to seek a repayment.

By contrast, to expedite the matching fund payments during the 1980 campaigns, the Commission had certified initial matching fund payments the same week it received requests, **before** it had time to review the submission and determine the actual matchable amount. The Commission had held back, however, a certain percentage of each requested amount as insurance against possible errors on the submission. After a subsequent review of the submission, the Commission had adjusted the payment to reflect the actual value of matchable contributions. The adjustment was then added to, or subtracted from, the candidate's next matching fund payment. The Commission decided this expedited procedure was not needed during the final matching payment period, since the candidate no longer had an immediate need for campaign funds.

FEC PUBLIC APPEARANCES

In keeping with its objective of making information available to the public, the Commission accepts invitations to address public gatherings. This column lists upcoming scheduled Commission appearances, the name of the sponsoring organization, the location of the event and the name of the Commission's speaker. For additional information on any scheduled appearance, please contact the **sponsoring organization.**

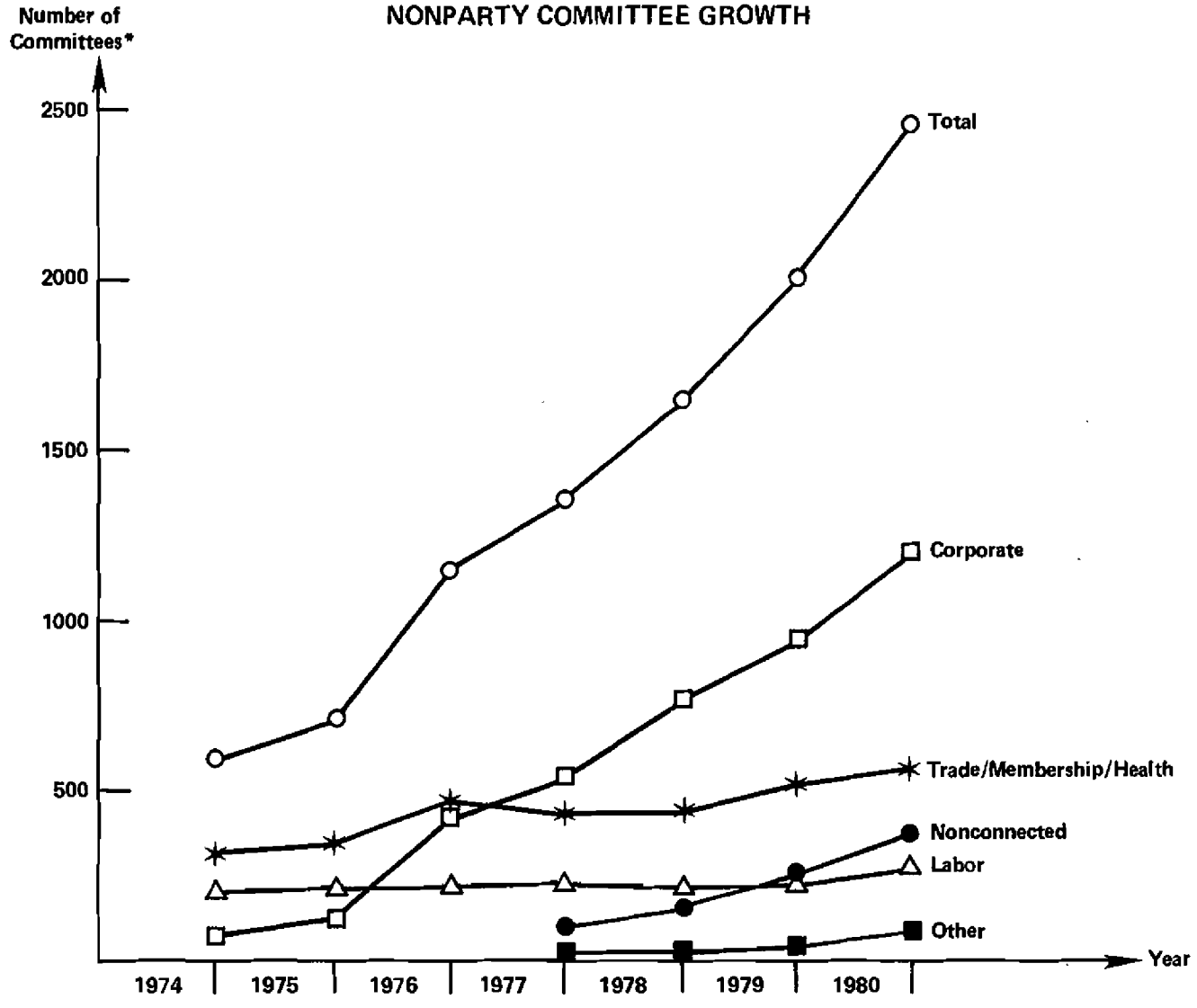
4/2-3 Citizens' Research Foundation Panel
on the Federal Election Campaign Act
and Political Reform
Washington, D. C.
Chairman John Warren McGarry

4/9 University of Georgia
Conference on the First Amendment
Athens, Georgia
Charles N. Steele, General Counsel

FEC RELEASES FIGURES ON NONPARTY COMMITTEE GROWTH

The number of (noncandidate) nonparty political committees is continuing to grow, according to figures released by the Federal Election Commission on January 16, 1981. The FEC's semiannual report charts an increase of more than 500 nonparty political committees during 1980, based on figures available in the FEC's computer data base as of December 31, 1980. FEC figures on the number of nonparty political committees date back to 1974, prior to the "SUNPAC" opinion (AO 1975-23), issued by the Commission in November 1975, and the 1976 amendments to the Act, enacted on May 11, 1976, both of which spurred this activity. The 1974 figures showed that 608 committees were in existence in December 1974. By the end of 1976, that number had risen to 1,146, and, by January 1981, it reached 2,551.

The graph below plots the growth of nonparty political committees between 1974 and 1980. Committees are grouped by sponsoring organization. The graph does **not** reflect the financial activity of these committees.



* This graph includes all political committees that are not authorized by a federal candidate and are not established by a political party.

ADVISORY OPINION REQUESTS

Advisory Opinion Requests (AOR's) pose questions on the application of the Act or Commission Regulations to specific factual situations described in the AOR. The following chart lists recent AOR's 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
1981-5*	Congressman's informational mailing to contributors listed on opponent's FEC reports.	1/21/81	1
1981-6	Funds borrowed by federal PAC from affiliated state PAC for investment.	1/26/81	2
1981-7	Fundraising by labor organization PAC through sale of membership list and jackets.	1/28/81	2
1981-8	Candidate's retirement of campaign debts through home mortgage co-signed by third party.	2/3/81	2
1981-9	Excess funds of candidate's 1980 campeign committee used to retire debts of 1978 committee.	2/3/81	1
1981-10	Honoraria paid to government employees in installments.	2/12/81	2
1981-11	Party use of Presidential candidate's mailing list.	2/11/81	1
1981-12	Earmarking contributions for party committee through PAC's voluntary payroll deduction plan.	2/13/81	1
1981-13	Corporate and individual donations to former Senator's personal legal defense fund.	2/18/81	2

*See page 5 for a summary of the advisory opinion issued in February.

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 1980-128: National Association's Distribution of Position Paper to Pro-Business Candidates

Costs incurred by the Chamber of Commerce of the United States (the Chamber), a nonprofit corporation, in preparing a position paper and distributing it to "pro-business" House and Senate candidates would not be considered a corporate contribution or expenditure because the paper did not attempt to influence the general public in connection with a federal election. The paper, which presented the Chamber's views on the causes of inflation and made specific legislative recommendations for remedying them, did not call for the election or defeat of a particular candidate or party. Rather, it asked candidates to consider the positions set forth in the paper and to compare them with their own views. While the paper, which was distributed shortly before the 1980 general election, might influence the views of the candidates, it did not constitute a contribution (i.e., it was not "a thing of value") to the candidates because it was not designed for use in their campaigns.

Noting that advisory opinions may be issued only with regard to a "specific transaction or activity," the Commission declined to rule on whether a future distribution of the position paper (or some modified version of it) would, *per se*, be exempt from the prohibitions of the Act. Specifically, the Commission did not decide whether the position paper would be exempt from the prohibitions of the Act if it were distributed, under varying circumstances, to all federal candidates, to the general public or to some combination of the general public and all or some federal candidates.

Commissioner Frank P. Reiche filed a dissenting opinion. (Date issued: February 4, 1981; Length: 8 pages, including dissenting opinion)

AO 1980-139: Cooperative's Solicitation Through Magazine Distributed to Nonmembers

Agway, Inc., an incorporated agricultural cooperative, may not solicit contributions to its separate segregated fund,

Continued

The RECORD *is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: John Warren McGarry, Chairman; Frank P. Reiche, Vice Chairman; Joan D. Aikens, Thomas E. Harris; Vernon W. Thomson; Robert O. Tiernan; William F. Hildenbrand, Secretary of the Senate, Ex Officio; Edmund L. Henshaw, Jr., Clerk of the House of Representatives, Ex Officio. For more information, call 202/523-4068 or toll-free 800/424-9530.*

AGPAC, through articles published in its magazine, the *Cooperator.* Agway distributes the periodical to both members and nonmembers.

To avoid making a prohibited solicitation, Agway had proposed publishing a caveat, stating that Agway would not accept contributions from nonsolicitable persons. Further, Agway had planned to return any donations received from nonsolicitable individuals. Nevertheless, the Commission concluded the solicitations were not permissible because they would reach approximately 8,000 corporations, institutions and individuals (slightly more than 10 percent of the magazine's total circulation) who were not eligible to be solicited. The percentage and actual number of nonsolicitable recipients were not insignificant.

The Commission distinguished this decision from that reached in Advisory Opinion 1978-97, where the Commission had permitted a similar solicitation because the nonsolicitable recipients comprised only three percent of the magazine's circulation (or approximately 1,000 recipients). Commissioner Joan D. Aikens filed a dissenting opinion. (Date issued: January 16, 1981; Length: 5 pages, including dissenting opinion)

AO 1980-143: Excess Funds of 1980 Committee Used to Retire Debts of 1978 Committee

The Courter for Congress Committee — 1980 (the 1980 Committee) may use its excess campaign funds to retire debts of the 1978 Courter for Congress Committee (the 1978 Committee). The 1980 Committee, which has no outstanding debts, may assume $58,000 in outstanding debts from the 1978 Committee because:

1. This debt retirement constitutes a "lawful" use of excess campaign funds. 2 U.S.C. §439a and 11 CFR 113.2(c); and
2. Commission Regulations do not limit the transfer of funds between a candidate's current principal campaign committee and his or her previous campaign committee. 11 CFR 110.3(a)(2)(iv).

Since the excess funds consist solely of contributions raised for Congressman Courter's 1980 campaign, they do not count against any donor's contribution limit for the 1978 campaign. (Date issued: January 26, 1981; Length: 2 pages)

REGULATIONS

STATUS OF FEC REGULATIONS

Regulations*	Date Sent to Congress	Federal Register Publication	Date Prescribed** by the Commission
11 CFR 9033.9 Suspension of Primary Matching Fund Payments	4/10/80	4/15/80 (45 FR 25378)	7/3/80
11 CFR Part 4 Public Records and the Freedom of Information Act	Not applicable	5/13/80 (45 FR 31291)	6/12/80
11 CFR Part 5 Access to Public Disclosure Division Documents	Not applicable	5/13/80 (45 FR 31292)	6/12/80
11 CFR, Parts 100 and 110 Contributions to and Expenditures by Delegates to National Nominating Conventions	5/14/80	5/23/80 (45 FR 34865)	8/7/80
11 CFR, Parts 100, 106, 110, 140-146 and 9001-9007 Public Financing of Presidential General Election Campaigns	6/13/80	6/27/80 (45 FR 43371)	9/5/80

*The chart is cumulative, listing all amendments to the FEC Regulations proposed after the April 1980 edition of 11 CFR was published, including any technical amendments.

**The Commission may prescribe its regulations 30 legislative days after it has transmitted them to Congress, provided neither the House nor the Senate disapproves them during this period.

AO 1980-147: Refund of Candidate's Donation to Principal Campaign Committee

The Yearout Campaign Committee (the Committee), the principal campaign committee of Mr. J. Gusty Yearout's Senate campaign, may use excess campaign funds to reimburse Mr. Yearout for funds he originally donated to the Committee. The Committee had planned to use the donation ($12,140), along with excess campaign funds, to refund 75 percent of each contribution given to Mr. Yearout's campaign. Since all the refunds were not cashed by contributors, the Committee was left with a cash balance of $5,651.25. The Committee wanted to return this amount to Mr. Yearout.

In receiving this refund, Mr. Yearout is not converting excess campaign funds to personal use (a violation of 2 U.S.C. §439a) because he donated the funds solely for the purpose of making refunds to contributors — not for campaign-related purposes. Specifically, Mr. Yearout made the donation:

1. After he had withdrawn from the Senate race; and
2. After the Committee had paid all its campaign debts (and after Mr. Yearout had forgiven a prior $8,200 loan to the Committee).

The refund must be reported according to procedures spelled out in 2 U.S.C. §434 and 11 CFR 104.3(b). (Date issued: February 9, 1981; Length: 2 pages)

AO 1981-2: Congressman's Use of Excess Campaign Funds for Swearing-In Ceremony

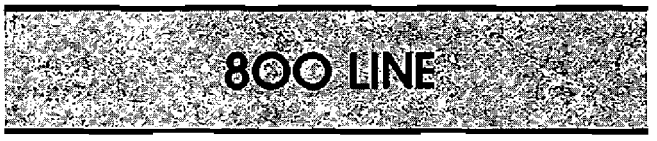
Congressman William J. Coyne could use excess funds from his 1980 campaign to pay for a constituent reception held on the day of his swearing-in ceremony. Since the reception celebrated the commencement of his official status as a federal officeholder, the payments would represent a permissible use of excess funds for "ordinary and necessary expenses" associated with Congressman Coyne's duties as a federal officeholder — not a "personal use" of excess campaign funds prohibited by 2 U.S.C. §439a.

Alternatively, if payments for the reception were made to influence a past or future election — that is, either to thank 1980 campaign workers or to encourage their assistance in 1982 — the payments could be considered campaign expenditures rather than a use of excess funds. In either case, any payments made by Congressman Coyne's campaign committee would have to be reported pursuant to 2 U.S.C. §434 and 11 CFR 104.

The Commission expressed no opinion on applicable House Rules and tax laws, which are beyond its jurisdiction. (Date issued: February 9, 1981; Length: 3 pages)

AO 1981-5: Informational Mailing Sent to Contributors Listed on FEC Reports

Congressman Paul Findley may use the names and addresses of contributors listed in the FEC reports filed by his opponent in the 1980 general election to make an informational mailing. Congressman Findley's proposed mailing to his opponent's contributors is permissible because its sole purpose is "...to set the record straight on certain defamatory charges..." made against him during the campaign. Because the mailing would not solicit contributions or serve any commercial purpose, it would not violate Section 438(a)(4) of the Act or Section 104.15(a) of Commission Regulations. (Date issued: February 9, 1981; Length: 2 pages)



JOINT CONTRIBUTIONS BY SPOUSES

May a husband and a wife make a joint contribution to a candidate's campaign?

Yes, provided certain requirements are met.

What are the requirements?

If a check is to count as a contribution from both a husband and wife, both individuals must:

1. Sign the check; **and**
2. Specify on the check what portion of the contribution is to be attributed to each.

Alternatively, they may provide their signatures and this same information in an accompanying letter. 11 CFR 100.7(c) and 104.8(d). (See also Advisory Opinion 1980-67.)

If a check (signed by both a husband and wife) does not specify the portion of the contribution to be attributed to each, should the recipient assume that each spouse is contributing one-half of the full amount?

No. Within 10 days of receiving the contribution, the recipient committee should either:

1. Return the contribution; or
2. Deposit the contribution in its campaign depository and report it. The treasurer should note on the report the questionable legality of the contribution. He or she should then obtain in writing the necessary information on how the check should be allocated. If this information cannot be obtained, the contribution should be returned. 11 CFR 103.3.

In a single-income family, may an individual make a contribution drawn on the account of a spouse?

Yes. An individual with neither a personal nor a joint checking account may make a contribution to a candidate's campaign through a check drawn on the account of a spouse. Although the spouse must sign the check, the check counts as a contribution from the individual, provided he or she:

1. Also signs the check and indicates whose contribution the check represents; or
2. Includes his/her signature and the same information in a letter accompanying the check.

Note: An individual may use a spouse's personal check to make the contribution, even if the spouse has already contributed up to $1,000 to the same candidate.

Continued

May a husband and wife make a joint contribution drawn on a partnership account?

Generally, no. A portion of a contribution drawn on a partnership account may not be attributed to a spouse, unless the spouse is also a member of the partnership. (See Advisory Opinion 1980-67.)

CONTRIBUTIONS BY MINORS

May minors (i.e., children under 18 years of age) make contributions to a candidate's campaign?

Yes. Minors may contribute up to $1,000 per election to a candidate's campaign, as long as certain qualifications are met. 11 CFR 110.1(i)(2) and 104.8(d).

What are the qualifications?

Contributions from minors must:

1. Be knowingly and voluntarily made by the minor; and
2. Consist of funds, goods or services owned or controlled by the minor (e.g., income earned by the child, the proceeds of a trust fund for which the child is the beneficiary or a savings account exclusively in the child's name). 11 CFR 110.1(i)(2)(i) and (ii).

When would a contribution from a minor not be permissible?

The minor's contribution would not be permissible if it were made from funds controlled by another person in any way (e.g., funds resulting from a gift given to the minor for the purpose of making a contribution). 11 CFR 110.1(i)(2)(iii).

INVESTING CAMPAIGN FUNDS

May a political committee invest its campaign funds?

Yes. A political committee may, for example, invest campaign funds in a money market fund or a savings account. The committee must, however, return the invested funds (and any interest earned) to its campaign depository before using them to make expenditures. 11 CFR 103.3(a). (See also Advisory Opinion 1980-39.)

How would a committee report funds used to purchase a certificate of deposit?

The committee would include funds invested in a certificate of deposit in the amount reported as "cash-on-hand." 11 CFR 104.3(a)(1).

Note: The committee should not report the purchase of a certificate of deposit as a "transfer out" of its checking account or as an "expenditure." Funds transferred to a savings account would be reported in the same way.

Is interest income reportable?

Yes. The committee must itemize on Schedule A any income earned on an investment that, in the aggregate, exceeds $200 per year. 11 CFR 104.3(a)(4)(vi). If interest does not exceed $200, the committee must nevertheless report this income as part of "other receipts" on the detailed summary page. 11 CFR 104.3(a)(3)(x).

Is interest income taxable?

Income earned on investments may be subject to federal and state taxation. For more information, committees should consult the Internal Revenue Service, 1201 E Street, N.W., Washington, D.C. 20226; Telephone: 202/488-3100. In addition, each state IRS office has an 800 line. Call the local operator for the number.

Must a committee amend its Statement of Organization (Form 1) to indicate where its funds are invested (e.g., a savings account or money market fund)?

Yes or no, depending on the type of investment. If the committee establishes a new investment account (for example, a savings account or a certificate of deposit) in any one of the campaign depositories identified by section 103.2 of Commission Regulations,* and if that depository has not already been reported on Form 1, the committee must amend its Form 1 accordingly. In the case of an investment administered by an institution not mentioned in the Regulations (for example, a money market fund), no amendment is required. (See Advisory Opinion 1980-39.)

* Permissible campaign depositories include: state banks; federally chartered depository institutions (including state banks); and depository institutions with accounts insured by the Federal Deposit Insurance Corp., the Federal Savings and Loan Insurance Corp., or the National Credit Union Administration. 11 CFR 103.2.

SELECTED BIBLIOGRAPHY OF CAMPAIGN FINANCE LAWS AVAILABLE

During February 1981, the FEC's Library issued an updated edition of its *Campaign Finance and Federal Elections Bibliography*. The *Bibliography*, which will be updated again in August 1981, provides a selected, annotated compilation of publications issued from January 1977 through January 1981. Documents are listed according to four information categories:

Part I: Documents pertaining to the legislative history of the Federal Election Campaign Act from 1971 through the passage of the 1979 amendments (Pub. L. 96-187).

Part II: Books, monographs and treatises.

Part III: Manuals, guidebooks, reference services and search tools.

Part IV: Law review articles and articles from business, political science and general periodical indexes.

Copies of the *Campaign Finance and Federal Elections Bibliography* are available for review and copying in the FEC's Office of Public Records. Requests for the *Bibliography* should be accompanied by a money order or check for $1.25, payable to the U. S. Treasurer, and sent to the FEC's Office of Public Records.

NEW LITIGATION

The Reader's Digest Assoc., Inc. v. FEC

Plaintiff seeks a temporary restraining order, as well as a preliminary injunction, enjoining the FEC from taking any further action with regard to an investigation initiated by the FEC as the result of a complaint filed against plaintiff in August 1980. The investigation concerned the dissemination by *Reader's Digest* of video tapes that provided a computer reenactment of Senator Edward Kennedy's automobile accident at Chappaquiddick. Plaintiff further seeks a declaratory judgment that Section 441b of the Act is unconstitutional as applied to plaintiff and that the FEC exceeded its scope of authority in initiating the investigation.

(U. S. District Court, Southern District of New York, Docket No. 81 Civ. 596 (PNL), January 29, 1981)

FEC v. Daniel Minchew

The FEC seeks a declaratory judgment that Daniel Minchew failed to comply with the requirements of a conciliation agreement he entered into with the Commission on October 10, 1979, pursuant to 2 U.S.C. §§437g(a)(5) and (7). The FEC further seeks a Court ruling that Mr. Minchew pay the U. S. Treasury the $4,000 civil penalty required by the agreement, as well as any additional legal fees resulting from the FEC's civil action against him. (Mr. Minchew had incurred the penalty for a violation of 2 U.S.C. §432(b). He had failed to provide the treasurer of Senator Herman Talmadge's 1974 reelection committee with detailed accounts of campaign contributions within the required five-day period.)

(U. S. District Court for the District of Columbia, Docket No. 81-0174, January 23, 1981)

FEC v. Conlin for Congress Committee

The FEC seeks a court ruling that the defendant violated Section 434(a)(1)(A)(i) of the Act, as amended in 1976, by filing a 10 day pre-general election report **after** the election. The FEC further asks the Court to assess a $5,000 civil penalty against the defendant.

(U. S. District Court for the Western District of Maryland, Docket No. G81-41CA5, Feburary 9, 1981)

Phillips Publishing Co., Inc. v. FEC

Plaintiff seeks a declaratory judgment that the FEC violated the Freedom of Information Act (FOIA) by failing to respond to plaintiff's appeal for information within the time specified by the FOIA. (The FEC had partially denied an initial request for documents made by plaintiff under the FOIA on September 16, 1980.) Plaintiff further asks the Court to order the FEC to provide **all** information requested in September. Plaintiff had requested the information in response to an FEC enforcement action initiated against the plaintiff in June 1980.

(U. S. District Court for the District of Columbia, Docket No. 81-0063, January 9, 1981)

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 January 21 and February 4, 1981.

Audit	Date Made Public
1. James E. Carter, The Carter/ Mondale Presidential Committee, Inc. (Post-Primary Audit Report)	1/21/81
2. The 1980 United Republican Committee	1/27/81
3. Automobile and Truck Dealers Election Action Committee	1/27/81
4. Hudson County Regular Democratic Organization	1/27/81
5. Ronald Reagan, Reagan for President (Post-Primary Audit Report)	2/2/81
6. Committee for the Survival of a Free Congress	2/3/81
7. George Bush, George Bush for President (Post-Primary Audit Report)	2/4/81

FEDERAL REGISTER NOTICES

The list below identifies an FEC document that appeared in the *Federal Register* on January 27, 1981. Copies of this notice are **not** available from the FEC.

Notice	Title	Federal Register Publication Date	Citation
1981-1	Clearinghouse on Election Administration; Clearinghouse Advisory Panel Meeting	1/27/81	46 *Fed. Reg.* 8723

CLEARINGHOUSE

SUBSCRIPTIONS

- *Election Law Updates* is a quarterly series which summarizes all new state and federal election legislation. $11.00 per year.
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