THE FEDERAL ELECTION COMMISSION

RECORD

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REPORTS

FEC ADOPTS PROCEDURES FOR ADMINISTRATIVE TERMINATION OF POLITICAL COMMITTEES

On August 17, 1981, the Commission approved new guidelines for administrative termination of political committees registered with the FEC. Under the guidelines (FEC Directive No. 45: *Administrative Termination Policy and Procedures*), the Commission will conduct a review of all registered committees during each nonelection year to determine their eligibility for administrative termination. Reviews may also be initiated by committees seeking termination. In either case, the Commission will notify those committees it has approved for administrative termination. (Committees initiating reviews will also be notified if they have not been approved for administrative termination.) A committee will then be terminated unless it objects to the FEC's determination within 30 days of receiving the notice.

General Guidelines

The Commission will apply three general guidelines to administrative termination of committees.

1. *The Commission will not terminate a committee that is part of a pending (or possible) compliance action or audit* without the concurrence of the Office of General Counsel and/or Audit Division.
2. *The Commission will not terminate a committee that has pending debt settlement statements before the Commission.* In the event that a committee has remaining debts after debt settlement statements have been approved, the Commission will examine its files to determine the committee's eligibility for administrative termination.
3. *The Commission will not terminate an authorized committee if the candidate has become a candidate for a future federal election.* Evidence of candidacy would include a Statement of Candidacy (or a letter stating the same information) filed with the FEC; or the appearance of the individual's name on a state ballot as a candidate for nomination or election to a federal office.

Specific Criteria

The Commission will terminate authorized Congressional and Presidential committees whose financial activity during the previous calendar year was minimal enough to meet the criteria listed in Alternatives I or II below:

Criteria for Administrative Termination: Alternative I

- Total receipts and/or expenditures were less than $5,000 (for Congressional committees) or $10,000 (for Presidential committees);
- Total outstanding debts were less than $2,500; and
- Total assets (i.e., cash-on-hand, excess funds, and debts and obligations owed to the committee) did not exceed the committee's total liabilities (i.e., outstanding debts and obligations) by more than $5,000.

Criteria for Administrative Termination: Alternative II

- Total committee receipts and/or expenditures were less than $5,000 (for Congressional committees) or $10,000 (for Presidential committees);
- Total outstanding debts exceeded cash-on-hand and accounts receivable; and
- Any debt or obligation that may have constituted a violation of Parts 110 or 114 of FEC Regulations* did not exceed $2,500, per violation.

Any authorized committee that does not meet these termination criteria and any other political committee may also be considered for administrative termination if the committee meets one or more of the criteria for administrative termination spelled out in Section 102.4 of Commission Regulations.

Post-Termination Responsibilities

Committees terminated by the Commission no longer have to report. If, however, a terminated committee has remaining debts or obligations after it has been terminated, it must continue liquidating the debts and obligations. The committee must also maintain all records required by the Act and FEC Regulations.

A copy of FEC Directive No. 45 is available for review and copying in the FEC's Office of Public Records.

* These Parts govern contribution and expenditure limits and prohibitions and corporate and labor organization activity, respectively.

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
1981-36	Treasury funds of incorporated association (with foreign corporate members) contributed to its PAC for non-federal elections.	8/18/81	20
1981-37	Tickets and broadcast media ads purchased by corporations and labor organizations in connection with public affairs program featuring federal candidate.	8/21/81	4
1981-38	Commercial use of names/addresses of candidates and campaign-related persons listed in FEC's public files.	8/24/81	1
1981-39	Administrative costs of union payroll deduction plan reimbursed to corporation.	8/25/81	2
1981-40	Mementos provided by corporations to PAC contributors.	8/28/81	3
1981-41	Trade association's use of its magazine and general membership meeting to solicit approvals from member corporations for PAC solicitetions; acceptance of contributions at meeting.	8/28/81	2
1981-42	Consulting corporation's liebility for costs of leased equipment used by candidate.	9/8/81	2
1981-43	Nonpartisan get-out-the-vote posters sponsored by trade association's PAC end posted on premises of member corporations.	9/11/81	2

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 1981-29: New Mexico Pre-primary Nominating Convention Not a Separate Election

A New Mexico pre-primary convention held by a major party to select nominees for the U.S. House of Representatives is not a separate election under the Act (2 U.S.C. §§431(1)(B) and 441a(a)(1)(A)), but rather constitutes one step in the primary election campaign. Therefore, contributions made by individuals to advance Arthur E. Trujillo's nomination at the convention would be subject to the overall $1,000 limit for his primary election campaign. 2 U.S.C. §441a(a)(1)(A). A separate $1,000 limit would apply to his general election campaign.

The New Mexico pre-primary convention does not constitute a separate "election" because, under New Mexico law, the convention does not have the "authority to nominate a candidate" to the House seat. Rather, the convention serves only as one method by which individuals may obtain access to the primary election ballot. Specifically, an individual who obtains 20 percent of the convention's delegate vote qualifies for the primary ballot as a designated nominee of the convention. Alternatively, an individual may qualify for the ballot by filing a nominating petition directly with the Secretary of State. 1-8-39 *NMSA* * 1978. The major political parties are required to select their candidates by secret ballot during the primary election held after the preliminary party convention. 1-8-11, 12 *NMSA* 1978. (Date issued: August 13, 1981; Length: 3 pages)

* Citations refer to the *New Mexico Statutes Annotated.*

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.*

AO 1981-30: Liability and Status of New Political Organization and Old Political Committee with Similar Names

A group that plans to "organize a national political party" for conservatives may adopt a name, the Constitution Party of the U.S. (the 1981 Committee), that is similar to that used by a political committee organized in 1979 to promote the Presidential candidacy of Governor Meldrim Thomson, the Constitution Party (the 1979 Committee). The Act and FEC Regulations restrict the choice of a committee name only for separate segregated funds and candidate-authorized committees; they also prohibit use of a candidate's name by an unauthorized committee. 11 CFR 102.14. Further, the similarity in the committees' names would not by itself make the 1981 Committee liable for excessive contributions (if any) accepted by the 1979 Committee. An FEC determination of liability for possible violations of the Act would be based on **all** the facts and circumstances surrounding the operation of the two committees.

The Commission further noted that, even though the 1979 Committee had ceased all activity, it would remain a "political committee" until it filed an acceptable termination report with the FEC or the FEC made an administrative decision to terminate the committee. 2 U.S.C. §433(d)(1) and (2); 11 CFR 102.3 and 102.4. Moreover, the Commission recognized the 1979 Committee as a political committee, despite the fact that the committee had never "formally organize[d]" or adopted any organizational documents (e.g., bylaws or a constitution) because it evidently met one of the thresholds for political committee status spelled out in 2 U.S.C. §431(4). By contrast, recognition of a political committee as a **national committee** of a political party is dependent, in part, on the committee's adoption of bylaws. 2 U.S.C. §431(14), 11 CFR 100.13. (Date issued: August 20, 1981; Length: 3 pages)

PUBLICATIONS

ADVISORY OPINION INDEX AVAILABLE

An updated edition of the Commission's cumulative *Index to Advisory Opinions* is now available. The August 1981 *Index* includes three parts: a subject index and an index by U.S. Code, both covering all opinions issued from April 1975 through August 1981; and an index by FEC Regulations covering opinions from 1977.

Requests for the *Index to Advisory Opinions* should be addressed to the FEC's Office of Public Records. Purchase price (for duplication costs) is $5.10, payable in advance. Checks, made payable to the United States Treasurer, should be sent to the FEC's Office of Public Records.

LEGISLATION

FEC PROPOSES AMENDMENTS GOVERNING DRAFT COMMITTEES

On August 28, 1981, the Commission sent a letter to the Speaker of the House and the President of the Senate recommending immediate legislative action on amendments to the election law that would clarify the Act's coverage of the activities of "draft" committees organized to support or influence the nomination of undeclared federal candidates. The proposed amendments (outlined below) were prompted by a recent decision of the U.S. Court of Appeals for the District of Columbia Circuit in *FEC* v. *Machinists Non-Partisan Political League* and *FEC* v. *Citizens for Democratic Alternatives in 1980.* The appeals court held that the Act, as amended in 1979, regulated only the **reporting requirements** of draft committees. The Commission has also filed a petition for a writ of *certiorari* with the Supreme Court seeking reversal of the appeals court decision. (For a detailed summary of the suits, see the July 1981 issue of the FEC *Record.*)

The Commission noted in its letters to Congress that, if left standing, the appeals court ruling would "create a serious imbalance in the election law and the political process" because "any group organized to gain grass roots support for an **undeclared** candidate would operate completely outside the strictures of the Federal Election Campaign Act. . . .However, any group organized to support a declared candidate [would] be subject to the Act's [registration and reporting] requirements and contribution limitations." Therefore, the Commission noted, "the potential exists for funneling large aggregations of money, both corporate and private, into the federal electoral process" through unlimited contributions made to draft committees that support undeclared candidates.

Legislative Recommendations

The Commission recommended that Congress consider the following amendments to the Act in order to prevent a proliferation of "draft" committees during the 1982 Congressional elections and to reaffirm Congressional intent that draft committees are "political committees" subject to the Act's provisions.

Bring Funds Raised and Spent for Undeclared Candidates Within the Act's Purview. Section 431(8)(A)(i) should be amended to include in the definition of "contribution" funds contributed by persons "for the purpose of influencing a clearly identified **individual** to seek nomination for election or election to federal office. . . ." Section 431(9)(A)(i) should be similarly amended to include within the definition of "expenditure" funds expended by persons on behalf of such "a clearly identified **individual.**"

Restrict Corporate and Labor Organization Support for Undeclared Candidates. Section 441b(b) should be revised to expressly state that corporations, labor organizations and national banks are prohibited from making contributions or expenditures "for the purpose of influencing a clearly

identified **individual** to seek nomination for election or election. . ." to federal office.

Limit Contributions to Draft Committees to $1,000. Section 441a(a)(1) should include explicit language stating that "no person shall make contributions to **any** committee [including a draft committee] established to influence the nomination or election of a clearly identified **individual** for any Federal office which, in the aggregate, exceed $1,000."

FEC REQUESTS FY '83 BUDGET AT "REDUCTION" LEVEL

On August 27, 1981, the Commission voted to submit to the Office of Management and Budget a $10,545,642 budget request for fiscal year 1983. The request represents a seven percent reduction in funding from the amount that would be required to maintain the Commission's FY 1981 level of activity (i.e., $11,341,111). The requested budget would result in some reductions in Commission staffing and programs.

REGULATIONS

FEC PUBLISHES NOTICE OF PROPOSED RULEMAKING: CORPORATE/LABOR COMMUNICATIONS

On September 8, 1981, the Commission published a Notice of Proposed Rulemaking in the *Federal Register* (46 *Fed. Reg.* 44964) seeking comments on possible revisions to Sections 114.3 and 114.4 of FEC Regulations. (On September 16, corrections to this notice were also published. See 46 *Fed. Reg.* 45784.) The proposed revisions concern communications by labor organizations and corporations (including incorporated membership organizations and trade associations) to their solicitable classes and to the general public. All written comments on the proposed revisions are due by October 8, 1981. The Commission will then hold a public hearing on October 26, 1981. If necessary, the hearing will be continued on October 28 and 30, 1981. Those interested in testifying at the hearing should so indicate on their written comments.

Possible revisions to Section 114.4 concern **nonpartisan** communications that corporations and labor organizations may **direct to the general public.** Specifically, they pertain to preparation and distribution of voting materials, voting records of Members of Congress and voter guides that set forth the positions of candidates on various issues.

Subsequent to receiving written comments and conducting hearings, the Commission will submit the revised regulations to Congress. If neither the House nor the Senate objects to them within 30 legislative days, the proposed revisions will take effect.

Copies of the Notice, as well as information on submitting written comments, may be obtained by calling toll-free (800)424-9530 or (202)523-4068.

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.**

10/22 Congressional Quarterly
Seminar on Election 1982
Washington, D.C.
Chairman John Warren McGarry

11/5 Chamber of Commerce of the U.S.
Conference on Political Activity
Minneapolis, Minnesota
Chairman John Warren McGarry

11/10 The Federal Bar Association
Conference on Election Law
Washington, D.C.
Charles N. Steele, General Counsel

11/16 The Washington Journalism Center
Conference for Journalists on Politics 1982
Washington, D.C.
Chairman John Warren McGarry

FEDERAL REGISTER NOTICES

The list below identifies all FEC documents which appeared in the *Federal Register* between May 29 and September 8, 1981. Copies of these notices are **not** available from the FEC.

Notice	Title	Federal Register Publication Date	Citation
1981-7	Filing Dates for Pennsylvania Special Election	5/29/81	46 *Fed. Reg.* 28942
1981-8	11 CFR Part 114 Communications by Corporations and Labor Organizations (Notice of Proposed Rulemaking and Corrections to Notice)	9/8/81	46 *Fed. Reg.* 44964 and 45784

THE LAW IN THE COURTS

NEW LITIGATION

Athens Lumber Company v. FEC

Pursuant to 2 U.S.C. §437h(a), plaintiff seeks the district court's certification of questions challenging the constitutionality of 2 U.S.C. §441b(a) to an *en banc* court of appeals. Plaintiff claims this provision of the election law abridges its First and Fifth Amendment rights by prohibiting corporations and national banks from making contributions and expenditures in connection with federal elections.

Plaintiff further seeks a declaratory judgment from the court of appeals that:

- 2 U.S.C. §441b(a) is unconstitutional, null and void on its face and as applied to contributions and expenditures that the Athens Lumber Co. proposes to make on behalf of federal candidates; and
- The Athens Lumber Co.'s proposed contributions and expenditures would not violate the election law.

Plaintiff therefore asks the court of appeals to enjoin the FEC from initiating enforcement proceedings against it as the result of applying §441b(a) to the company's participation in federal elections.

(U.S. District Court for the Middle District of Georgia, Athens Division, Docket No. 81-79-Ath., August 5, 1981)

Reagan Bush Committee v. FEC

Plaintiff asks the district court to issue an order:

- Preliminarily enjoining the FEC from releasing an audit report dealing with the Reagan Bush campaign;
- Requiring disclosure of certain materials under the Freedom of Information Act; and
- Requiring expedited court action on plaintiff's suit, pursuant to 5 U.S.C. §552(a)(4)(D).

Plaintiff also asks the court to enjoin the FEC from taking any further action with respect to plaintiff's "alleged violations" of the Act or repayments of public funds recommended by the FEC, until the Commission:

- Makes available all the documents requested by plaintiff under the Freedom of Information Act;
- Provides plaintiff with a further opportunity to respond to the alleged violations and recommended repayments; and
- Conducts a hearing on these disputed matters.

(U.S. District Court for the District of Columbia, Docket No. C.A. 81-1893, August 10, 1981)

S. Louis Wind v. FEC

Plaintiff asks the district court to quash an FEC subpoena requiring him to produce bank records with respect to an FEC investigation of a 1980 Presidential campaign committee. Plaintiff claims the subpoena is overbroad and does not substantially comply with the Right to Financial Privacy Act of 1978.

(U.S. District Court for the Middle District of Florida, Tampa Division, Docket No. 81-19 Misc. T-GC, August 17, 1981)

COMPLIANCE

FEC PUBLISHES NAMES OF NONFILERS

On August 17, 1981, the Commission published the names of 443 committees authorized by U.S. House and Senate candidates that had failed to file their 1981 semiannual reports, due on July 31, 1981. This report should have covered all financial activity from January 1 (or the closing date of the last report) through June 30, 1981.

The Federal Election Campaign Act (the Act) requires the authorized committees of all candidates in House and Senate races to file reports on a semiannual basis in a nonelection year. This includes committees with debts from previous campaigns and newly registered campaign committees that are raising and spending money in 1981 for future campaigns.

All committees are notified by the FEC of their reporting obligations approximately one month before each reporting date. Committees that fail to file timely reports are again notified that their reports have not been received. As required by law, only authorized committees of candidates are published.

Further Commission action against committees that fail to file their reports on time will be decided on a case-by-case basis. The Act gives the Commission broad authority to initiate enforcement actions against such committees, including civil enforcement and the imposition of civil penalties.

* The Commission is authorized by 26 U.S.C. §9007, *et seq.* to conduct audits of the general election campaigns of publicly funded Presidential candidates.

AUDITS

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 August 14 and August 27, 1981.

Audit	Date Made Public
1. Carter/Kennedy Unity Dinner Committee	8/14/81
2. The Carter/Mondale Reelection Committee, Inc. (Final Audit Report for the General Election Campaign)	8/18/81
3. Tennessee Campaign '80 (Joint fund-raising committee for President Carter and the Tennessee Democratic Party)	8/27/81

STATISTICS

COSTS OF CAMPAIGNING INCREASE

Commission data shows that a total of 2,265 Congressional candidates collectively spent $242 million on their 1979-80 campaigns, whereas 1,909 candidates spent $197 million for 1977-78 Congressional elections.

During the 1979-80 election cycle, those Congressional candidates who waged successful 1980 primary campaigns, and then went on to be contenders in the general election, spent most of the money. Candidates who lost in the primaries spent less than a combined total of $50 million.

Congressional candidates raised $252 million during 1979-80, and $202 million during the 1977-78 election cycle. Of the $252 million raised by 1980 Congressional candidates,* nonparty (noncandidate) committees contributed $55.3 million (or 22 percent). Again, most of these contributions were made to campaigns involved in both primary and general elections. Losing primary candidates received less than $4 million from nonparty committees.

* For a detailed breakdown of how each type of nonparty committee divided its contributions among 1980 Congressional candidates, see the graphs on p. 6 of the September 1981 *Record*.

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WASHINGTON, DC 20463

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