

# RECORD

November 1983

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## REPORTS

### SPENDING LIMITS FOR PARTY COMMITTEES IN WASHINGTON AND GEORGIA SPECIAL ELECTIONS

National and state party committees may make limited, coordinated expenditures on behalf of their Congressional candidates in special elections to be held in both Washington and Georgia on November 8, 1983. 2 U.S.C. §441a(d); 11 CFR 110.7. In Washington's special general election, the national and state committees may each make coordinated expenditures of up to \$121,529.70 on behalf of the party's Senate candidate. Any expenditures by the state party committee's subordinate committees (e.g., county, district or local committees) are subject to the state party's limit.

The special election in Georgia is a runoff election, which is being held because no House candidate obtained a majority of the votes in the October 18 special election. The national and state committees are each subject to a single \$19,570 limit on spending for both the runoff election and the October 18 election. Expenditures by subordinate committees of the state party are subject to the state party's overall limit for the elections.

Special coordinated party expenditures count neither as contributions to the candidate nor as expenditures by the candidate or the candidate's authorized committees. The expenditures must, however, be reported; the party committee discloses them on Schedule F, FEC Form 3X. The FEC has sent informational notices to party committees in both Washington and Georgia. For further information, contact the Commission at 202/523-4068 or toll free 800/424-9530.

### NEW CAMPAIGN GUIDE FOR NONCONNECTED COMMITTEES

The Commission recently published a Campaign Guide for Nonconnected Political Committees. The Guide outlines the rules applicable to committees which have not been established by a candidate, a party, a corporation or a labor organization. It examines contributions and expenditures, political communications and support from a sponsoring organization. The Guide also reproduces completed FEC reporting forms and shows how to fill them out.

Based on the Act and Commission Regulations, the Guide includes citations to the election law, the regulations and selected advisory opinions. Copies of the Campaign Guide for Nonconnected Committees 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 in Washington, D.C., or toll free 800/424-9530.

## REGULATIONS

### GENERAL ELECTION REGULATIONS PRESCRIBED

On October 27, 1983, the Commission prescribed revised regulations governing the public financing of Presidential general election campaigns. 11 CFR Parts 9001-9007 and 9012. The revised regulations contain clarifications based on the Commission's experience in administering the public funding of the 1980 general election. They also ensure that the rules governing general election campaigns are consistent with recent revisions to the FEC's primary matching fund regulations. Moreover, the revised rules add new provisions to cover aspects of the Presidential general election process not previously addressed in the regulations.

*continued*

Highlights of major modifications in the general election regulations appeared on page 1 of the September 1983 Record. The full text of the proposed rules was published in the Federal Register on April 4, 1983 (48 Fed. Reg. 14532). Copies of the new regulations may be obtained by writing the FEC's Public Communications Office, 1325 K Street, N.W., Washington, D.C. 20463 or by calling: 202/523-4068 or toll free 800/424-9530.

**FEDERAL REGISTER NOTICES**

The item below identifies an FEC document that appeared in the Federal Register during September 1983. Copies of the notice is available in the Public Records Office.

**Notice Title**

1983-26 11 CFR Part 114: Trade Association Solicitation Authorization: Transmittal of Regulations to Congress (48 Fed. Reg. 48650, October 20, 1983)

**STATUS OF FEC REGULATIONS SENT TO CONGRESS**

Regulations*	Date Sent to Congress	Federal Register Publication	Date Prescribed** by the Commission
11 CFR 102.6 and 102.17 Transfer of Funds; Collecting Agents, Joint Fundraising	6/2/83	6/7/83 48 <u>Fed. Reg.</u> 26296	8/22/83
11 CFR 114.3 and 114.4*** Communications by Corporations and Labor Organizations	3/1/83 (withdrawn to obtain further public comment, 4/22/83)	3/4/83 48 <u>Fed. Reg.</u> 9236; 4/22/83 48 <u>Fed. Reg.</u> 17567	
11 CFR 114.8 (c)(2), 114.8(d)(2) and 114.8(d)(4) Trade Association Solicitation Authorizations	10/17/83	10/20/83 48 <u>Fed. Reg.</u> 48650	
11 CFR 9001 et seq. General Election Campaign Fund	7/1/83	7/11/83 48 <u>Fed. Reg.</u> 31822	10/27/83
11 CFR Part 9008 Fund for Presidential Nominating Conventions	NA****	7/21/83 48 <u>Fed. Reg.</u> 33244	7/21/83

\*The chart is cumulative, listing all amendments to FEC Regulations proposed or prescribed by the Commission since the publication of Title 11, Code of Federal Regulations (11 CFR) on July 1, 1983.

\*\*The Commission may prescribe its regulations 30 legislative days after it has transmitted them to Congress.

\*\*\*The Commission approved proposed revisions to these regulations on October 20, 1983. They will soon be resubmitted to Congress.

\*\*\*\*Since these technical, conforming amendments were not a substantive rule representing an FEC policy decision, they were not submitted for Congressional review but became effective upon publication in the Federal Register on July 21, 1983.



## OPINIONS

### ADVISORY OPINION REQUESTS

The following chart lists recent requests for advisory opinions (AORs). The full text of each AOR is available to the public in the Commission's Office of Public Records.

#### AOR Subject

- 1983-32 Lottery cash prizes awarded to contributors to PAC of membership organization; solicitation information distributed with prize. (Date made public: October 3, 1983; Length: 2 pages)
- 1983-33 Travel agency services provided to delegates of major party Presidential nominating convention; partial donation of travel commissions to party's national committee. (Date made public: October 4, 1983; Length: 8 pages)
- 1983-34 Funds (containing donations from professional corporations and local PACs) transferred from candidate's 1982 state Senate campaign to his 1984 U.S. Senate campaign. (Date made public: October 6, 1983; Length: 2 pages, plus 6-page supplement)
- 1983-35 Eligibility of employees as stockholders for purposes of PAC solicitations. (Date made public: October 13, 1983; Length: 3 pages, plus 28-page supplement)
- 1983-36 Services provided to Presidential candidate by individual who previously helped unauthorized committee make independent expenditures on behalf of the same candidate. (Date made public: October 14, 1983; Length: 2 pages)

### 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 1983-13: PAC Contributions by Testamentary Bequest

The National Maritime Union Political and Legislative Organization Watch (PLOW), the separate segregated fund of the National Maritime Union (NMU), may accept a bequest of approximately \$20,500 to be distributed to its general account in annual increments of \$5,000. The bequest was contained in the will of a deceased member of NMU. PLOW may establish a special interest-bearing escrow account for the purpose of holding the balance of the bequest and distributing it to PLOW's general account in annual increments, provided:

- PLOW does not pledge or otherwise obligate funds in the escrow account to augment other PLOW or NMU funds;
- PLOW adds any interest earned on the escrow account to the account's total funds, to be distributed in annual increments not exceeding \$5,000; and
- PLOW follows the reporting procedures described below.

Since the deceased member's estate is considered his alter ego for purposes of making contributions to PLOW, the estate is subject to the same contribution limits and prohibitions that the member would have been. This means that no more than \$5,000 of the bequest may be contributed to PLOW each year.

#### Reporting Procedures

In reporting distributions from the special escrow account to the general account, PLOW must comply with the following rules:

*continued*

The Record is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Danny Lee McDonald, Chairman; Lee Ann Elliott, Vice Chairman; Joan D. Aikens; Thomas E. Harris; John Warren McGarry; Frank P. Reiche; William F. Hildenbrand, Secretary of the Senate, Ex Officio; Benjamin J. Guthrie, Clerk of the House of Representatives, Ex Officio. For more information, call 202/523-4068 or toll-free 800/424-9530.

- It must amend its Statement of Organization to disclose the special escrow account as a PLOW bank account.
- PLOW must report the balance in the escrow account (including any interest earned) as a debt or obligation owed to PLOW. The funds should be reported on line 9 of FEC Form 3X and on Schedule D. The bank and the escrow account should be identified as a "debtor" to PLOW, and a brief description of the escrow "debt" should be disclosed on Schedule D.
- As funds are withdrawn from the escrow account and deposited in PLOW's general account, PLOW must report the transaction as a contribution from the estate, using line 11(a) of Form 3X and Schedule A. A corresponding reduction in the total debt should also be reported on line 9 (and Schedule D) of Form 3X.

The Commission cautioned that its conclusions in this opinion applied only to the specific issue raised in this request, namely, contributions made by specific testamentary bequest and distributed through the decedent's estate. Commissioner Thomas E. Harris filed a dissenting opinion. Commissioner Frank P. Reiche filed a concurring opinion. (Date issued: September 26, 1983; Length: 8 pages, including concurring and dissenting opinions)

**AO 1983-21: Trust Fund Established by Congressman for Legal Fees Arising From Non-FECA Proceedings**

Donations to and disbursements from a trust fund established by Congressman Gerry E. Studds (D-Mass.) to defray legal expenses arising from proceedings unrelated to the Federal Election Campaign Act (FECA) would not be considered "contributions" or "expenditures" under the FECA. Accordingly, donations to the trust fund would not be subject to the prohibitions and limits the Act places on contributions. Nor would any of the trust fund's receipts and disbursements have to be reported. However, upon dissolution of the trust fund, no residual funds could be transferred to Congressman Studds' campaign committee or any other political committee.

The Commission expressed no opinion on the application of House rules, tax laws or any other state or federal laws to the trust fund because they are beyond the FEC's jurisdiction. (Date issued: September 20, 1983; Length: 2 pages)

**AO 1983-22: Reimbursement of PAC's Administrative Expenses by Parent Corporation**

The Northwest Central Pipeline Corporation (Northwest) may reimburse its separate segregated fund, the Northwest Central Pipeline Corporation Political Action Committee (the Committee), for costs incurred by the Committee for having bank checks printed. The Committee should report its payment for the printing charges as an "operating expenditure" on line 19 of FEC Form 3X. The corporation's reimbursement of the charges should be reported by the Committee as an "other receipt" on line 17 of FEC Form 3X.

The election law specifically exempts a separate segregated fund's administrative expenses from the definition of "expenditure" when they are paid directly by the corporation sponsoring the fund. Under new Commission Regulations, effective August 22, 1983, however, a corporation may also reimburse its separate segregated fund for the fund's administrative expenses. The reimbursement must occur no later than 30 days after the separate segregated fund pays the expenses. 11 CFR 102.6(c)(2)(ii) and 114.5(b)(3).

Although Northwest's proposed reimbursement to the Committee did not meet the 30-day deadline, the Commission nevertheless permitted the reimbursement because: a) the Committee submitted its request for an advisory opinion within 30 days of receiving a bank statement listing the printing charge, and b) the new regulations permitting the Committee's reimbursement for the charge became effective during this period. (Date issued: September 20, 1983; Length: 2 pages)

**AO 1983-23: Reception Facility and Events Sponsored by Corporation at Presidential Nominating Conventions**

During the summer of 1984, the LTV Corporation (LTV) plans to sponsor a reception facility near the site of the Republican National Convention in Dallas, Texas. In addition, LTV and the publisher of a weekly news magazine plan to cosponsor cocktail party receptions at both the Republican and Democratic National Conventions. Attendees at these events will include convention delegates, party officials, federal and state elected officials and the press. Payments LTV makes to finance these events would constitute neither "contributions" nor "expenditures" under the Act, provided:

- LTV makes no attempt to influence the outcome of either Presidential nominating convention;
- The purpose of these events is neither to solicit contributions to, nor to advocate the

*continued*

election or defeat of, any candidate for federal office;

- The events do not serve the purpose of defraying any delegate's subsistence expenses during the convention; and
- LTV exercises full control over the proposed convention-related activities. (Date issued: October 6, 1983; Length: 3 pages)

**AO 1983-24: Sponsorship of Reception  
for Contributors to  
Membership Association PAC**

Either the American Association for Respiratory Therapy (AART) or its separate segregated fund, the American Association for Respiratory Therapy Political Action Committee (the Committee), may pay for a cocktail reception the Committee will host in conjunction with AART's annual meeting. The "thank you" reception is being held for members of AART who have made substantial contributions to the Committee. The Committee may sponsor the reception because the election law permits a separate segregated fund to expend its funds for any lawful purpose consistent with the Act and Commission Regulations. See AOs 1983-4 and 1979-42. Alternatively, AART may finance the reception because the election law specifically exempts from the definitions of "contribution" and "expenditure" payments made by an incorporated membership organization to establish, administer and solicit contributions to its separate segregated fund. 2 U.S.C. §441b(b)(2)(C). Although no contributions will be solicited at the reception, the reception is sufficiently related to the Committee's fundraising activities to qualify as an exempt fundraising expenditure by AART. 11 CFR 114.1(b); AO 1980-50.

However, corporations which supply equipment used in respiratory therapy may not finance the reception. Since these corporations are not members of AART and are not otherwise connected with AART, the election law prohibits them from using their treasury funds for such expenditures.

The Commission noted that, under its regulations, members of Congress may attend the reception in conjunction with their appearances at the AART annual meeting. 11 CFR 114.3(c)(2) and 114.7(h). (Date issued: October 6, 1983; Length: 3 pages)

## PUBLIC FUNDING

**SENATOR GLENN ELIGIBLE FOR  
PRIMARY MATCHING FUNDS**

On October 6, 1983, the Commission determined that Senator John Glenn, a Democratic candidate for President, was eligible to receive federal matching funds for his 1984 primary campaign. (For a complete explanation of the eligibility requirements, consult 26 U.S.C. §9033 and Commission Regulations at 11 CFR 9033 and 9036.1.)

Under the election law, Presidential candidates may begin seeking eligibility for primary matching funds after January 1, 1983. However, the U.S. Treasury may not make actual payments before January 1, 1984. The maximum amount of matching funds an eligible candidate may receive during 1984 for the primary elections is equal to half the overall spending limit established by law for each publicly funded Presidential primary candidate (\$10 million, plus a cost-of-living adjustment).

**FEC CERTIFIES ADDITIONAL FUNDS TO  
ANDERSON'S 1980 PRIMARY CAMPAIGN**

On September 29, 1983, the Commission certified an additional \$44,485.65 in public funds to John B. Anderson's 1980 primary campaign. This certification brought the total received by the campaign for the 1980 election to \$2,320,809.48.

Based on repayment determinations\* it had made with regard to President Reagan's publicly funded primary campaign, the Commission ruled on August 23, 1983, that it had previously required Mr. Anderson's primary campaign to repay an excessive amount of public funds to the U.S. Treasury. Following this decision, the Commission recalculated the Anderson campaign's financial position and determined that the campaign was entitled to additional funds. For further details, see FEC Agenda Document No. 82-120, available for review in the Commission's Public Records Office.

\*The Commission may require publicly funded Presidential campaigns to repay public funds to the U.S. Treasury under certain circumstances. See 11 CFR 9033.1(a)(5), 9038.2 and 9038.3. Public funding recipients may, however, appeal any FEC repayment determination by following the review procedures spelled out in the Commission's Regulations. See 11 CFR 9038.2(b) and (c).

**PUBLIC APPEARANCES**

- 11/2-4 Law, Youth and Citizenship Program  
Seventh Annual Law-Related Education Conference  
Lake Kiamesha, New York  
Larry Boyle, Public Affairs Specialist
- 11/14 Georgetown University Law Center  
Guest Lecturer Program  
Washington, D.C.  
Thomas Josefiak, Special Deputy to the Secretary of the Senate  
Douglas Patton, Special Deputy to the Clerk of the House of Representatives  
Charles N. Steele, General Counsel
- 12/2-4 Democratic National Committee  
Democratic National Training Academy  
Washington, D.C.  
Walter Moore, Executive Assistant to Chairman  
Danny L. McDonald

**COURT CASES****FEC v. NATIONAL RIGHT TO WORK COMMITTEE**

On December 13, 1982, the Supreme Court issued its decision in *FEC v. National Right to Work Committee (NRWC)*.<sup>\*</sup> The Court then remanded the case to the appeals court to consider, among other things, "the...imposition of a \$10,000 civil penalty" on NRWC for unlawful solicitations to its separate segregated fund. On September 2, 1983, the appeals court found that "the penalties imposed by the district court are unwarranted."

In an earlier decision in the same case, the appeals court had reversed a judgment of the district court that NRWC had unlawfully solicited funds to its separate segregated fund from persons who were not "members" of NRWC within the meaning of 2 U.S.C. §441b(b)(4)(C). (NRWC is a nonprofit, nonstock corporation organized with-

out members under the laws of Virginia.) Therefore, the appeals court did not consider the district court's finding that NRWC's violation of the election law was knowing and willful or the district court's orders that NRWC must: a) refund the money received from the unlawful solicitations and b) pay a \$10,000 civil penalty. Rather, in determining that the district court had erred in its ruling, the appeals court found that:

- NRWC was entitled to treat those persons solicited by NRWC as "members" of the corporation for purposes of 2 U.S.C. §441b(b)(4)(C);
- The interests served by §441b were not furthered by restricting NRWC's use of corporate funds; and
- The district court's definition of the term "member," as used in §441b(b)(4)(C), was so "narrow that it necessarily infringes on associational rights."

In its December 13 ruling on the case, the Supreme Court had unanimously reversed the appeals court's decision and determined that the 267,123 persons solicited by NRWC were not its "members" under any "reasonable interpretation" of 2 U.S.C. §441b(b)(4)(C). The Court rejected NRWC's argument that the term "member" was unconstitutionally vague. The Court also rejected as "meritless" NRWC's contention that the Commission's actions in the administrative proceedings against NRWC were "misleading" or "arbitrary."

In considering the case on remand, the appeals court reversed the district court's orders concerning the money refund and civil penalty, basing its decision on: "(1) the ambiguities in the statute; (2) the failure of the FEC to provide any guidance whatsoever...; and (3) our own prior doubts about the applicability of a state law standard" which, the appeals courts found, indicated that NRWC's violations were not "deliberate." The court also found that NRWC's first solicitation, conducted on May 7, 1976, four days before the 1976 amendments to the election law became effective, was permitted by former 18 U.S.C. §610. The court observed that, on its face, Section 610 "expressly exempted from the definition of 'contribution or expenditure' the 'establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization.'" Consequently, the court found that the first solicitation involved "no violation and certainly no knowing and willful violation" of the election law.

On October 17, 1983, the Commission petitioned the appeals court for a rehearing of the court's decision. The Commission also suggested a rehearing before the court's full panel of judges.

<sup>\*</sup>For a summary of the Supreme Court's decision in *FEC v. NRWC*, see p. 3 of the February 1983 *Record*.

## INFORMATION

### FEC CO-HOSTS THREE REGIONAL CONFERENCES

During September and October 1983, the Commission sponsored three regional conferences, one in the Midwest, one in the Northeast and one in the Southeast, in cooperation with state and local election officials. The 36 workshops conducted at each conference focused on the financing of federal elections and on the administration of elections at the local, state and federal levels. Six hundred and twenty attendees participated in the Midwest Regional Conference, held in Itasca, Illinois, a suburb of Chicago. Five hundred and forty persons attended the Northeast Regional Conference held in Albany, New York. Five hundred and forty attendees participated in the Southeast Regional Conference, held in Charleston, South Carolina. Conference participants included: national, state and local party officials; staff representatives of Congressional campaigns; representatives from corporate, labor, trade asso-

ciation and special interest PAC's;\* state and local election officials; foreign election officials; and students of election law.

Two more conferences will be held in November and December. The schedule for the remaining conferences is:

- Southwest Regional Conference, Tulsa, Oklahoma, November 13-15; and
- Far West Regional Conference, Los Angeles, California, December 4-6.

For more information on the conferences, contact the FEC's Public Communications Office at 202/523-4068 or toll free 800/424-9530.

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*\*PAC is a popular term used to define a political committee that has not been authorized by a candidate or political party. The term includes separate segregated funds sponsored by corporations and labor organizations, as well as political committees without any sponsoring organization.*

### 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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