

# RECORD

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1325 K Street NW Washington DC 20463

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## SPECIAL ELECTIONS

### SPECIAL ELECTIONS IN WISCONSIN

On **February 21**, Wisconsin will hold a special primary election in its 4th Congressional District to nominate candidates for the House seat left vacant by the death of Clement J. Zablocki. A special general election will be held on **April 3**.

The principal campaign committees of candidates participating in these special elections must file the appropriate pre- and post-election reports. All other political committees which support candidates in the special elections (and which do not report on a monthly basis) must also follow the reporting schedule detailed below. (Quarterly reports must also be filed, as appropriate.)

Report	Closing Date of Books	Mailing Date	Filing Date
Pre-primary	2/1/84	2/6/84	2/9/84
Pre-general	3/14/84	3/19/84	3/22/84
Post-general	4/23/84	5/3/84	5/3/84

The FEC will send notices on reporting requirements and filing dates to individuals known to be actively pursuing election to this House seat. All other committees supporting candidates in the special elections should contact the Commission for more information on required reports. Call 202/523-4068 or toll free 800/424-9530.

## REPORTS

### PRIMARY ELECTION REPORTS DUE IN 1984

The chart on the following pages provides filing dates for primary election reports due during 1984. Note, however, that primary election dates are subject to change.

During 1984, reporting forms and additional information will be sent to all registered committees. Questions and requests for additional forms should be addressed to the Office of Public Communications, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463; or call 202/523-4068 or toll free 800/424-9530.

*continued on pp. 2-3*

### TABLE OF CONTENTS

	<b>SPECIAL ELECTIONS</b>
1	Special Elections in Wisconsin
	<b>REPORTS</b>
1	Primary Election Reports Due in 1984
4	<b>ADVISORY OPINIONS</b>
	<b>800 LINE</b>
6	Annual Limit on Contributions
	<b>PRESIDENTIAL ELECTIONS</b>
7	New Presidential Computer Index
	<b>COURT CASES</b>
8	New Litigation
	<b>COMPLIANCE</b>
9	Summary of MURs
10	<b>FEDERAL REGISTER NOTICES</b>
	<b>STATISTICS</b>
11	1982 Party Activity

PRIMARY ELECTION REPORTS  
CONGRESSIONAL

## 12-Day Pre-Election Report

State or Territory	Date of Election	Closing Date of Books	Mailing Date (if sent by registered or certified mail)	Filing Date
*Alabama	September 4	August 15	August 20	August 23
Runoff	September 25	September 5	September 10	September 13
*Alaska	August 28	August 8	August 13	August 16
**American Samoa	November 6	October 17	October 22	October 25
Arizona	September 11	August 22	August 27	August 30
*Arkansas	May 29	May 9	May 14	May 17
Runoff	June 12	May 23	May 28	May 31
California	June 5	May 16	May 21	May 24
*Colorado	September 11	August 22	August 27	August 30
Connecticut	September 11	August 22	August 27	August 30
*Delaware	September 8	August 19	August 24	August 27
Florida	September 4	August 15	August 20	August 23
Runoff	October 2	September 12	September 17	September 20
*Georgia	August 14	July 25	July 30	August 2
Runoff	September 4	August 15	August 20	August 23
**Guam	September 1	August 12	August 17	August 20
Hawaii	September 22	September 2	September 7	September 10
*Idaho	May 22	May 2	May 7	May 10
*Illinois	March 20	February 29	March 5	March 8
Indiana	May 8	April 18	April 23	April 26
*Iowa	June 5	May 16	May 21	May 24
*Kansas	August 7	July 18	July 23	July 26
*Kentucky	August 28	August 8	August 13	August 16
*Louisiana	September 29	September 9	September 14	September 17
Runoff	November 6	October 17	October 22	October 25
*Maine	June 12	May 23	May 28	May 31
Maryland	May 8	April 18	April 23	April 26
*Massachusetts	September 18	August 29	September 3	September 6
*Michigan	August 7	July 18	July 23	July 26
*Minnesota	September 11	August 22	August 27	August 30
*Mississippi	June 5	May 16	May 21	May 24
Runoff	June 26	June 6	June 11	June 14
Missouri	August 7	July 18	July 23	July 26

\*States holding Senate elections.

\*\*The District of Columbia and the U.S. territories of American Samoa, Guam and the Virgin Islands will each hold an election for Delegate to the U.S. House of Representatives. Puerto Rico will hold an election for Resident Commissioner to the U.S. House of Representatives. Candidates running in Puerto Rico's election will be selected through party conventions rather than primaries.

PRIMARY ELECTION REPORTS  
CONGRESSIONAL

## 12-Day Pre-Election Report

State or Territory	Date of Election	Closing Date of Books	Mailing Date (if sent by registered or certified mail)	Filing Date
*Montana	June 5	May 16	May 21	May 24
*Nebraska	May 15	April 25	April 30	May 3
Nevada	September 4	August 15	August 20	August 23
*New Hampshire	September 11	August 22	August 27	August 30
*New Jersey	June 5	May 16	May 21	May 24
*New Mexico	June 5	May 16	May 21	May 24
New York	September 11	August 22	August 27	August 30
*North Carolina	May 8	April 18	April 23	April 26
Runoff	June 5	May 16	May 21	May 24
North Dakota	June 12	May 23	May 28	May 31
Ohio	May 8	April 18	April 23	April 26
*Oklahoma	August 28	August 8	August 13	August 16
Runoff	September 18	August 29	September 3	September 6
*Oregon	May 15	April 25	April 30	May 3
Pennsylvania	April 10	March 21	March 26	March 29
*Rhode Island	September 11	August 22	August 27	August 30
*South Carolina	June 12	May 23	May 28	May 31
Runoff	June 26	June 6	June 11	June 14
*South Dakota	June 5	May 16	May 21	May 24
*Tennessee	August 2	July 13	July 18	July 21
*Texas	May 5	April 15	April 20	April 23
Runoff	June 2	May 13	May 18	May 21
Utah	August 21	August 1	August 6	August 9
Vermont	September 11	August 22	August 27	August 30
**Virgin Islands	September 11	August 22	August 27	August 30
*Virginia	June 12	May 23	May 28	May 31
Washington	September 18	August 29	September 3	September 6
**Washington, D.C.	May 1	April 11	April 16	April 19
*West Virginia	June 5	May 16	May 21	May 24
Wisconsin	September 11	August 22	August 27	August 30
*Wyoming	September 11	August 22	August 27	August 30

\*States holding Senate elections.

\*\*The District of Columbia and the U.S. territories of American Samoa, Guam and the Virgin Islands will each hold an election for Delegate to the U.S. House of Representatives. Puerto Rico will hold an election for Resident Commissioner to the U.S. House of Representatives. Candidates running in Puerto Rico's election will be selected through party conventions rather than primaries.

## ADVISORY 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

- 1983-45 Individual's eligibility for primary matching funds as political party's Presidential candidate; matchability of contributions. (Date made public: December 14, 1983; Length: 3 pages, plus 2-page supplement)
- 1983-46 Affiliation of state membership associations and their PACs with national membership association and its PAC; state associations' financing of national PAC fundraising activities. (Date made public: December 23, 1983; Length: 2 pages, plus 17-page supplement)
- 1983-47 Individual's eligibility for primary matching funds as Presidential candidate of political party. (Date made public: December 23, 1983; Length: 9 pages, plus 33-page supplement)
- 1983-48 PAC formed by cable t.v. corporation; PAC's solicitation of personnel of partnerships affiliated with corporation. (Date made public: December 28, 1983; Length: 5 pages, plus 6-page supplement)
- 1984-1 Disposition of deceased Congressman's campaign funds; refund of contribution received after his death. (Date made public: January 5, 1984; Length: 1 page)
- 1984-2 Candidate's use of contributor information contained in report filed by unauthorized candidate committee using his name. (Date made public: January 9, 1984; Length: 1 page)
- 1984-3 Individual's use of political trust fund to retire debts of his 1980 Presidential campaign. (Date made public: January 17, 1984; Length: 3 pages, plus 12-page supplement)

### ALTERNATE DISPOSITION OF ADVISORY OPINION REQUEST

- **AOR 1983-36** (Services provided to Presidential candidate by individual who previously helped unauthorized committee make independent expenditures on behalf of the same candidate.) In a letter issued on January 20, 1984, the General Counsel informed the requester that the Commission had determined that the situation presented in the request was hypothetical and therefore did not qualify as an advisory opinion request. 2 U.S.C. §437f and 11 CFR 112.1(b).

### 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 1983-25: Reporting and Recordkeeping Requirements for Media Costs Paid by Publicly Funded Presidential Campaign

Mondale for President, Inc. (the Committee) may report its payments to a media consulting firm as expenditures without having to itemize separately the firm's payments to other persons for services and goods used in the performance of its contract with the Committee. Consultants '84, Inc. will handle the predominate portion of the Committee's media campaign during the primaries (e.g., media production and the purchase of television and radio time and newspaper space).

In disclosing the payments as operating expenditures, the Committee must provide an adequate description of their purpose as, for example, "media buy" or "media production" expenses. (For full reporting requirements, see 2 U.S.C. §434(b)(5)(A) and 11 CFR 104.3(b).)

To fulfill its recordkeeping requirements, the Committee must retain the media firm's invoices and the canceled checks issued to the firm in payment of the Committee's bills. Under the terms of the contract, the media firm, in turn, has agreed to maintain, and make available for audit, records of all production and placement

costs billed to the Committee. See 11 CFR-9033.1(b)(1).

The Commission based its approval of these reporting and recordkeeping procedures on the assumption that Consultants '84 is a vendor of media services. In support of this view, the Commission cited the following facts:

- The media firm had a legal existence separate and distinct from the Committee; its principals were not members of the Mondale campaign staff.
- The Committee was conducting arms-length contract negotiations with the media firm.
- The media firm expected to have three or four other campaign media contracts as well as contracts with businesses; the Committee had no interest in these contracts.

Commissioner Frank P. Reiche filed a dissent with which Commissioner Thomas E. Harris concurred. Commissioners Joan D. Aikens, Lee Ann Elliott, Danny L. McDonald and John Warren McGarry filed a response to the dissent. (Date issued: December 22, 1983; Length: 13 pages, including dissent and response)

#### **AO 1983-38: PAC Information Article**

##### **Published in Company Newsletter**

E.I. du Pont de Nemours and Company (DuPont) may publish an article announcing the organization of its separate segregated fund, the DuPont Good Government Fund (the fund), in a company newspaper distributed only to DuPont employees and retirees. DuPont's article (two versions proposed) would not be considered an improper solicitation of the company's nonsolicitable personnel (i.e., employees who are not stockholders or executive or administrative personnel) because the article does not praise employees for making contributions, encourage their participation in the fund or facilitate the making of contributions to the fund. Neither does the article inform readers that DuPont will accept unsolicited contributions from nonsolicitable persons. Rather, the article provides only factual information about the fund and the legal requirements that apply to its activities. See also AOs 1979-66, 1980-65 and 1982-65. (Date issued: December 16, 1983; Length: 3 pages)

#### **AO 1983-40: PAC Funding of Nonpolitical Ad for Senator**

Campaign America, a multicandidate political committee of which Senator Robert Dole (R-Kansas) is the honorary chairman, may pay for an advertisement on Senator Dole's behalf, which will appear in a statewide directory of Republican elected officials. (The Kansas Republican Party will publish the directory during 1984.) Campaign America's payments for the ad will not be considered a contribution to Senator Dole's 1986 reelection campaign because the ad is intended to support Senator Dole's activities as a federal officeholder rather than to influence his reelection campaign. The ad will include a "non-political" greeting from Senator Dole, his picture and a listing of his Senate offices in Kansas. Moreover, the ad will identify Senator Dole as an incumbent rather than as a candidate. 2 U.S.C. §439a; 11 CFR 113.1 and 113.2. While Campaign America must report the payments for the ad as disbursements, the ad does not have to include a statement identifying Campaign America as its sponsor. Statements of authorization or sponsorship are required only for ads that solicit contributions or expressly advocate the election or defeat of a candidate. 2 U.S.C. §434(b)(6)(B)(V); 11 CFR 104.3(b)(3)(ix).

The Commission did not address the applicability of U.S. Senate rules to Campaign America's sponsorship of the ad because they are beyond the Commission's jurisdiction. Nor did the Commission address the issue of whether Campaign America's payments would be considered contributions to the Kansas Republican Party. (Date issued: January 5, 1984; Length: 3 pages)

#### **AO 1983-42: Transfer of Funds from PAC's Federal Account to State Account**

A local union of the Allied Building Inspectors may transfer funds from its PAC's federal fund, a registered political committee which exclusively supports federal candidates, to its state fund. The PAC proposed making the transfer because funds in the federal account exceed the amount needed to support federal candidates.

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The Record is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Lee Ann Elliott, Chairman; Thomas E. Harris, Vice Chairman; Joan D. Aikens; Danny Lee McDonald; 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.

Under the Act and FEC Regulations, transfers may be made without limit between affiliated committees (e.g., campaign accounts). Moreover, since the Act's contribution limits are placed only on contributions to political committees (i.e., committees that make expenditures to influence federal elections) and the state account is not a registered political committee, the contribution limits would not apply to transfers made to the state account. 11 CFR 100.5(g)(2) and 102.6(a).

In reporting the transactions, the PAC must itemize each transfer of funds from the federal account to the state account. See 2 U.S.C. §434(b)(5)(C) and 11 CFR 104.3(b)(1)(ii).

The Commission did not address the application of state laws to the transfers. The Commission noted, however, that the Federal Election Campaign Act would not preempt or supersede any applicable state law which limited or prohibited the transfers. (Date issued: January 5, 1984; Length: 2 pages)

#### **AO 1983-44 Commercial Use of Candidate Information on FEC Reports**

Cass Communications, Inc., a firm that facilitates national advertising in college newspapers, may use the names and addresses of federal candidates listed on FEC campaign finance reports to solicit candidates as potential advertising clients. Although Section 438(a)(4) of the Act places restrictions on the use of information contained in FEC campaign finance reports, the purpose of the provision is to protect contributors -- not candidates -- from having their names used for contribution solicitations or for commercial purposes (e.g., list brokering).

The Commission relied on previous opinions which concluded that information on candidates contained in FEC reports could be used for commercial purposes, such as soliciting subscriptions from candidates for periodicals covering campaign activity. See AO's 1980-78 and 1981-38. Commissioner Frank P. Reiche filed a concurring opinion. (Date issued: January 6, 1984; Length: 4 pages, including concurring opinion)

## **800 LINE**

### **OVERALL ANNUAL LIMIT ON CONTRIBUTIONS FROM INDIVIDUALS**

The Public Communications Office frequently receives questions concerning the overall annual limit that the election law places on contributions which an individual may make to candidates for federal office and to the political committees which support them. This article responds to those questions.

#### **What is the maximum amount that an individual may contribute to all federal candidates and political committees during a calendar year?**

An individual may contribute up to \$25,000 per year to all federal candidates and to the political committees which support them. 2 U.S.C. §441a(a)(3); 11 CFR 110.5. (For procedures on allocating contributions to the annual limit, see below.) Moreover, within this annual limit on total contributions, an individual may not exceed the specific limits that the election law prescribes for contributions: to a national party committee, to a committee authorized by a candidate and to any other type of political committee. (See 2 U.S.C. §§441a(a)(1)-(a)(3) and 11 CFR 110.1-110.3. A special chart on contribution limits also appears in the FEC's Campaign Guide series and the FEC's information brochure.)

#### **If, during 1983, an individual contributed to a candidate's 1984 primary or general election campaign, does the contribution count against the contributor's annual limit for 1983 or for 1984?**

The contribution counts against the contributor's overall annual limit for 1984. Contributions to a candidate's campaign count against the limit applicable to the year in which the election is held, regardless of when the contribution is made. 11 CFR 110.5(b)(1).

#### **If an individual makes a contribution in 1984 to retire a candidate's 1982 campaign debts, does the contribution count against his/her overall annual limit for 1984 or 1982?**

The contribution counts against the individual's overall annual limit for 1982. For example, during 1982, Joe Smith contributed \$800 to Samantha Jones' primary campaign. During 1984, in order to help Ms. Jones retire debts remaining from the 1982 primary campaign, Smith contributes an additional \$200 to the primary campaign.\*

\*Contributions designated to retire a candidate's campaign debts are also subject to the donor's \$1,000 limit for that particular election (e.g., a primary, runoff or general election). 11 CFR 110.1(g)(2).

Both contributions count against Smith's overall annual contribution limit for 1982, even though the first contribution was made in 1982 and the second contribution, in 1984. 11 CFR 110.5(b)(1).

**If a multicandidate political committee uses contributions made by an individual during 1983 to support candidates running for office in 1984, do those contributions count against the contributor's overall limit for 1983 or for 1984?**

The contributions count against the individual's overall annual limit for 1983. Contributions made to a political committee (not authorized by a candidate) count against the annual limit for the year in which the contribution is actually made, as long as the contribution is not earmarked for any particular candidate. For example, an undesignated \$20,000 contribution which Joe Smith made to his party's national committee during 1983 counts against his overall annual limit for 1983, even though the party may eventually use some of the funds to support candidates running for office in 1984. 11 CFR 110.5(b)(2).

**If, in contributing to a multicandidate committee in 1983, an individual earmarked his/her contribution for a particular candidate's 1984 primary or general election campaign, would the contribution count against the individual's overall annual limit for 1983 or for 1984?**

The contribution would count against the individual's overall annual limit for 1984. If a donor earmarks his/her contribution to a political committee for a particular candidate, the contribution counts against the donor's overall limit for the year in which the candidate runs for office.

**Does the overall annual limit apply to contributions which an individual gives to a political committee which plans to make independent expenditures during 1984?**

Yes. 11 CFR 110.5(c).

**Does the overall annual limit apply to the contributions which an individual makes to either a delegate or a delegate committee\* to help finance the selection of one or more delegates to a national nominating convention?**

Yes. 11 CFR 110.5(d).

*\*For detailed information on financing the selection of delegates to the national nominating conventions of political parties, see Commission Regulations at 11 CFR 110.5(d) and 114. In addition, a detailed summary of FEC rules pertaining to the financing of convention delegates was published on p. 1 of the December 1983 issue of the FEC Record.*

## PUBLIC APPEARANCES

- 2/4 Texas Medical Association  
1984 Leadership Conference  
Austin, Texas  
Chairman Lee Ann Elliott
- 2/10 Oregon Medical Association  
Portland, Oregon  
Chairman Lee Ann Elliott
- 2/14 National City Christian Church  
Conference  
Understanding Election '84  
Washington, D.C.  
Chairman Lee Ann Elliott  
Commissioner Joan D. Aikens
- 2/16 Federal Bar Association  
1984 Federal Campaign Law Conference  
Washington, D.C.  
Charles N. Steele, General Counsel

## PRESIDENTIAL ELECTIONS

### NEW PRESIDENTIAL COMPUTER INDEX

In November 1983, the Commission introduced a new computer index that provides a concise summary of the financial activity of major Presidential campaigns. The 1984 Presidential Campaign Summary Report extracts information from reports filed by Presidential campaigns and adjusts numbers to reflect actual amounts raised and spent. For example, the index provides updated figures on total contributions from individuals, minus any refunds made to those contributors, and total expenditures, minus any refunds or rebates. Although researchers may still refer to the Presidential reports for information on specific contributors and vendors, they no longer have to leaf through reports, calculating offsets to gross totals.

The new index also includes information reported by Presidential campaigns on:

- Total primary matching funds received by each campaign;
- Amount spent by each campaign on legal and accounting services exempt from the campaign's overall national spending limit; and

*continued*

- Total campaign expenditures of each campaign which are subject to the overall national spending limit.

Computer print-outs of the new Presidential index may be reviewed in the Commission's Public Records Office, located on the first floor of the Commission. The print-outs are available free of charge. For more information, contact the Public Records Office, 1325 K Street, N.W., Washington, D.C. 20463 or call toll-free 800-424-9530 or locally 523-4181.

## COURT CASES

### NEW LITIGATION

#### **FEC v. Edward M. Kennedy/ Kennedy For President Committee**

On December 21, 1983, the FEC filed suit against Senator Edward M. Kennedy, a candidate for the Presidency in 1980, and the Kennedy for President Committee, Senator Kennedy's principal campaign committee for the 1980 primaries. The Commission's suit was precipitated by the Kennedy campaign's failure to repay primary matching funds (amounting to \$55,500.33) which, on April 14, 1983, the FEC had determined the campaign must repay. 26 U.S.C. §§9040(b) and (c). On May 13, 1983, the Kennedy campaign had filed a petition with the U.S. Court of Appeals for the District of Columbia Circuit seeking the court's review of the FEC's repayment determination. (*Kennedy for President Committee v. FEC*; Civil Action No. 83-1521) However, the Kennedy campaign had not applied for a stay of the FEC's determination pending the appeals court's review of the determination.

The FEC therefore asked the district court to:

- Declare that the defendants violated 26 U.S.C. §9038(b) and former 11 CFR 9038.2(e) (1979)\* by failing to make the repayment determined by the Commission;
- Declare that the defendants are jointly and severally liable for the \$55,500.33 repayment; and

\*Under Commission Regulations, primary matching fund recipients are required to make repayments to the U.S. Treasury within 20 days of receiving notice of the FEC's final repayment determination. See 11 CFR 9038.2(d)(2) (formerly 9038.2(e)).

- Order defendants to pay the \$55,500.33 to the U.S. Treasury, together with interest on the repayment since May 5, 1983, the date on which the repayment was due.

U.S. District Court for the District of Columbia, Civil Action No. 83-3820, December 21, 1983.

#### **Orloski v. FEC**

On November 22, 1983, Richard B. Orloski filed a new suit against the FEC in the U.S. District Court for the District of Columbia. Mr. Orloski claimed that the FEC's October 14 dismissal of the administrative complaint he had filed on June 6 was "arbitrary and capricious and contrary to law." (*Richard B. Orloski v. FEC*; Civil Action No. 83-3513) Pursuant to 2 U.S.C. §437g(a)(8), Mr. Orloski asked the court to reverse the FEC's October 14 decision to dismiss his complaint. He also asked that his administrative complaint be remanded to the FEC for further proceedings.

In an earlier suit, filed with the district court in January 1983, Mr. Orloski had petitioned the district court to review and reverse the FEC's decision to dismiss his September 1982 administrative complaint. (Civil Action No. 83-0026) In that complaint, Mr. Orloski had alleged that a picnic organized by a group of senior citizens was a political event on behalf of a candidate, and that, as such, the group was required to register as a political committee. Mr. Orloski had also alleged that, in sponsoring the picnic, the group had accepted prohibited corporate contributions.

After filing his first suit with the district court, Mr. Orloski discovered grounds for new factual allegations regarding his complaint. Both Mr. Orloski and the FEC agreed that these new allegations should not be reviewed by the court before the FEC had an opportunity to review them in order to determine whether they established reason to believe that the election law had been violated. 2 U.S.C. §437g(a)(1) and (2).

Accordingly, on May 27, 1983, the district court issued an order and stipulation, allowing Mr. Orloski to file a second complaint with the FEC. The new complaint, filed on June 6, 1983, contained the new allegations. The FEC, in turn, considered Mr. Orloski's new complaint and, on October 4, 1983, once again, found no reason to believe that the respondents named in the complaint had violated the election law. As a result of the FEC's action, Mr. Orloski decided to file his new suit against the Commission.



## COMPLIANCE

### SUMMARY OF MURs

The Act gives the FEC exclusive jurisdiction for its civil enforcement. 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. (For a summary of compliance procedures, see 2 U.S.C. §§437g and 437(d)(a) and 11 CFR Part 111.)

This article does not summarize every stage in the compliance process. Rather, the summaries provide only enough background to make clear the Commission's final determination. Note that the Commission's actions are not necessarily based on, or in agreement with, the General Counsel's analysis. The full text of these MURs is available for review and purchase in the Commission's Public Records Office.

### MUR 1272: Independent Expenditures Alleged To Be In-Kind Contributions

On May 12, 1983, the Commission entered into a conciliation agreement with a political committee not authorized by any candidate (the unauthorized committee), which had violated the election law by making excessive in-kind contributions to a Senate candidate's 1980 primary campaign (the Senate campaign). The unauthorized committee had reported certain media disbursements as "independent expenditures" for the defeat of the Senate candidate's opponent. The Commission determined that the unauthorized committee's media expenditures had not been made independently of the Senate campaign because the founder of the unauthorized committee had also acted as a fundraiser for the campaign.

### Complaint

On August 7, 1980, the Senate candidate's opponent in the primary campaign filed a complaint naming three respondents: the Senate candidate and his principal campaign committee; the founder of the unauthorized committee and the committee; and an advertising firm. The complainant alleged that:

- The unauthorized committee's media expenditures on behalf of the Senate campaign (totaling \$21,050.39) constituted excessive in-kind contributions to the campaign (in violation of 2 U.S.C. §441a(a)(1)(A));
- The Senate campaign had knowingly accepted the excessive in-kind contributions (in violation of 2 U.S.C. §441a(f)); and

- An advertising firm had made prohibited corporate contributions to the Senate campaign by providing services at less than the fair market cost, which benefited the campaign (in violation of 2 U.S.C. §441b(a)).

On January 27, 1981, the Commission found reason to believe that the respondents had violated these provisions of the election law and initiated an investigation of the matter.

### General Counsel's Report

**Excessive In-Kind Contributions.** Section 109.1(b)(4)(i)(B) of Commission Regulations presumes that a committee's expenditures on behalf of a candidate are not independent if they are made by or through any person who has also been acting as an agent of the candidate's campaign. The founder of the unauthorized committee had been a fundraiser for the candidate's campaign. Evidence indicated that, during the period he was planning the formation of the unauthorized committee (which later made the alleged independent expenditures), the founder, still functioning in his role as a fundraising agent, attended a campaign strategy meeting where proposed campaign film footage was viewed. Even if the unauthorized committee was formed after the founder had left the candidate's campaign, the founder made the alleged independent expenditures only after he had obtained important information about the campaign. Thus, the General Counsel concluded, the unauthorized committee's expenditures resulted from the founder's contact with the campaign and were not independent. The General Counsel therefore recommended that the Commission find probable cause to believe that the unauthorized committee had made excessive in-kind contributions.

**Senate Campaign's Acceptance of Excessive In-Kind Contributions.** The General Counsel recommended that the Commission take no further action with regard to the Senate campaign's knowing acceptance of excessive contributions which resulted from the unauthorized committee's media spending. The General Counsel found that the Senate campaign had not been aware of plans to form the unauthorized committee. Nor had any of the Senate candidate's campaign staff worked for the unauthorized committee while employed by the candidate's campaign.

**Media Firm's Prohibited Corporate Contributions to the Senate Candidate's Campaign.** The General Counsel's Office found no evidence to support the allegation that the media firm had made prohibited corporate contributions to the Senate campaign by charging the campaign less than the

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"usual and normal" fee for its services. The General Counsel therefore recommended that the Commission find no probable cause to believe that the media firm had violated the Act's ban on corporate contributions. 2 U.S.C. §441b(a).

#### Commission Determination

- On December 1, 1982, the Commission found:
- Probable cause to believe that the unauthorized committee had made excessive in-kind contributions to the Senate campaign in violation of 2 U.S.C. §441a(a)(1)(A); and
  - No probable cause to believe that the media firm had made prohibited corporate contributions to the Senate campaign in violation of 2 U.S.C. §441b(a).

The Commission voted to take no further action with regard to the Senate campaign's acceptance of excessive contributions from the unauthorized committee.

On May 12, 1983, the Commission entered into a conciliation agreement with the unauthorized committee in which the committee agreed to pay a civil penalty of \$2,500 to the U.S. Treasurer and not to undertake any activity in violation of the Act.

#### MUR 1495: Prohibited Use of Information on Campaign Finance Reports

On March 24, 1983, the Commission entered into a conciliation agreement with the principal campaign committee of a House candidate. The committee had violated 2 U.S.C. §438(a)(4) by using information copied from reports and statements filed with the FEC for the purpose of soliciting political contributions from individuals.

#### Complaint

On October 20, 1982, the Commission received a complaint from the treasurer of the principal campaign committee of a Congressional candidate (Candidate A), alleging that the candidate's opponent, Candidate B, and the opponent's principal campaign committee had violated 2 U.S.C. §438(a)(4). That provision prohibits the use of information copied from reports and statements filed with the FEC for solicitation or commercial purposes, other than the solicitation of political committees.

#### General Counsel's Report

Candidate A's treasurer based his allegation on the discovery that Candidate B's campaign committee had mailed a fundraising letter to a fictitious name listed on the report of Candidate A's committee. On any given report, a political committee may include the names of up to 10 fictitious contributors (referred to as pseudonyms) in order to protect the committee from the illegal use of contributors' names and addresses.

In an affidavit to the Commission, Candidate B's campaign committee explained that, in compiling a mailing list for a fundraising letter, one of its volunteers had consulted reports that Candidate A's campaign had filed with the FEC. Candidate B's committee stated that when this improper use was discovered (prior to the mailing), the committee had tried to purge its mailing list of those names and addresses copied from the complainant's reports. The committee admitted to having failed in this attempt. In a separate affidavit, the respondent Congressman (Candidate B) stated that he was unaware of the erroneous use of FEC reports and the subsequent attempt of his own committee to correct the error. The General

Counsel recommended that the Commission find reason to believe that the respondent committee had violated 2 U.S.C. §438(a)(4) and no reason to believe that the Congressman had violated the Act. On January 11, 1983, the Commission approved these recommendations.

#### Commission Determination

On March 24, 1983, the Commission entered into a conciliation agreement with the respondent committee in which the committee agreed:

1. It had violated 2 U.S.C. §438(a)(4), which prohibits political committees from soliciting contributions from individuals whose names are copied from campaign finance reports; and
2. To pay a civil penalty of \$250.



#### FEDERAL REGISTER NOTICES

The item below identifies an FEC document that appeared in the Federal Register on January 10, 1984. Copies of the notice are available in the Public Records Office.

#### Notice Title

- |        |  |
|--------|--|
| 1984-1 | Filing Dates for Wisconsin Special Primary and General Elections (49 <u>Fed. Reg.</u> 1284, January 10, 1984)  |
| 1984-2 | 11 CFR Parts 100 and 101: Payments Received for Testing-the-Water Activities: Advanced Notice of Proposed Rule-making (49 <u>Fed. Reg.</u> 1995, January 17, 1984) |

## STATISTICS

### FINANCIAL ACTIVITY OF PARTY COMMITTEES

During the 1981-82 election cycle, Republican party committees at the national, state and local levels spent more than five times as much as their Democratic counterparts and contributed three times more funds to federal candidates. Information released by the FEC during December 1983 showed that, of the \$214 million they spent, Republican party committees contributed 2.6 percent (\$5.6 million) to federal candidates. They also made special coordinated party expenditures\* on behalf of their candidates in the general election, which amounted to 6.7 percent (or \$14.3 million) of the total they spent. By contrast, of the \$40.1 million the Democratic party spent, 4.5 percent (or \$1.8 million) was contributed to federal candidates. The Democratic party committees made special coordinated expenditures amounting to 8.2 percent (or \$3.3 million) of their total disbursements.

The FEC study also showed a significant increase in spending by both parties during the 1981-82 election cycle. Total spending by Republican party committees represented a 32 percent increase over their spending during the 1979-80 Presidential election cycle, and a 150 percent increase over 1977-78. Democratic party committees, on the other hand, spent only 14.5 percent more during the 1981-82 election cycle than they had during 1979-80. However, when compared to the 1977-78 figures, Democratic spending during 1981-82 increased by 49 percent.

Republican party committees began the 1981-82 election cycle with \$6.7 million cash on hand. They raised an additional \$215 million\*\* and had a cash-on-hand balance of \$7.5 million at the close of December 1982. Their debts totaled \$5.3 million. By contrast, Democratic party committees started the cycle with \$2.5 million cash on hand. After raising a total of \$39.3 million, their remaining cash-on-hand balance was \$1.5 million, and their debts at the end of 1982 totaled \$4.1 million.

*\*These limited expenditures are separate from contributions made by national and state party committees to candidates and therefore do not count against contribution limits. They are, however, subject to separate expenditure limits. See 2 U.S.C. Section 441a(d) and 11 CFR 110.7.*

*\*\*Receipt figures have been adjusted for transfers between certain committees of the same political party.*

The receipt figures for the two major parties showed a variation in their sources of support. For example, PAC contributions amounted to 7.9 percent (or \$3.1 million) of Democratic party committees' total receipts (\$39.3 million). PAC contributions to Republican party committees, on the other hand, constituted only .6 percent (or \$1.1 million) of their total receipts (\$215 million).

More detailed information on party activity may be obtained from the four-volume study, FEC Reports on Financial Activity: 1981-82, Final Report: Party and Non-Party Political Committees. The study may be purchased (\$5.00 per volume) from the FEC's Public Records Office, 1325 K Street, N.W., Washington, D.C. 20463. Checks should be made payable to the FEC.

### 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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