

# RECORD

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## REPORTS

### ELECTION YEAR REPORTING

The following paragraphs explain the reporting schedule for the various categories of filers during the 1984 election year.

### WHEN REPORTS ARE FILED

#### 1. Authorized Candidate Committees Active in 1984 Elections

During 1984, authorized candidate committees active in 1984 elections are required to file pre-primary and pre- and post-general election reports, as appropriate. They must also file quarterly reports. (For filing dates of reports, see page 3 below.)

#### 2. Authorized Candidate Committees Not Active in 1984 Elections

Authorized candidate committees that will not be active in 1984 elections (i.e., committees authorized by candidates seeking election in future years or committees which were active in previous elections and have outstanding campaign debts) must continue to report semiannually. (For filing dates of reports, see page 3 below.)

#### 3. Authorized Presidential Filers

Authorized Presidential committees are required to report on either a monthly or quarterly basis during 1984. Committees which have received contributions or made expenditures aggregating \$100,000 or more (or which anticipate this level of financial activity) must file monthly reports during 1984. In November and December 1984 and January 1985, in lieu of the monthly reports, these Presidential committees must file a pre- and post-general election report and a year-end report. Committees with financial activity under \$100,000 file quarterly reports, a pre-primary report, pre- and post-general election reports and a year-end report. (For filing dates of reports, see page 3 below.)

**Note:** The FEC's Reports Analysis Division requests that Presidential committees that change their reporting schedule during 1984

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## COMMISSIONERS

### NEW OFFICERS ELECTED

On December 15, 1983, the Federal Election Commission unanimously elected Lee Ann Elliott as Chairman and Thomas E. Harris as Vice Chairman to serve one-year terms commencing January 1, 1984. Mrs. Elliott succeeded Commissioner Danny L. McDonald in the chairmanship. Mr. Harris succeeded Mrs. Elliott as Vice Chairman.

Mrs. Elliott, a Republican, has been a member of the Commission since December 17, 1981. Prior to her appointment to the Commission, she was Vice President of Bishop, Bryant & Associates, Inc. of Washington, D.C. From 1970 to 1979, she served as Associate Executive Director of the American Medical Political Action Committee,

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having served as Assistant Director from 1961 to 1970. Mrs. Elliott has also served on the Board of Directors of the American Association of Political Consultants and on the Board of the Chicago Area Public Affairs Group, of which she is a past president. She has been a member of the Public Affairs Committee of the Chamber of Commerce of the United States. In 1979, she received the Award for Excellence in Serving Corporate Public Affairs from the National Association of Manufacturers. A native of St. Louis, Missouri, Mrs. Elliott graduated from the University of Illinois and the Northwestern Medical Association Management Executives Program. Her term as FEC Commissioner is scheduled to expire on April 30, 1987.

Mr. Harris, a Democrat, is one of the original members of the Commission. He was first appointed to the Commission in January 1975, and, upon the FEC's reconstitution in May 1976, he received a three-year appointment. He served as FEC Chairman between May 1977 and May 1978. In 1979, President Carter reappointed Mr. Harris for a second term, which is scheduled to expire on April 30, 1985.

Before serving on the Commission, Mr. Harris was associate general counsel to the AFL-CIO in Washington, D.C., from 1955 to 1975. He had held the same position with the CIO from 1948 until it merged with the AFL in 1955. Prior to that, he was an attorney in private practice and with various government agencies. A native of Little Rock and an alumnus of the University of Arkansas, Mr. Harris graduated in 1935 from Columbia University Law School, where he was on the Law Review and was a Kent Scholar. After graduation, he clerked one year for Supreme Court Justice Harlan F. Stone.

notify the Commission of their intention in writing.

#### 4. **Unauthorized Committees**

All unauthorized committees (i.e., committees not authorized by candidates) are required to file on either a quarterly or monthly basis in 1984. (The reporting schedules for quarterly and monthly filers are detailed below.)

Those committees that choose to file quarterly must also file a post-general election report. In addition, quarterly filers that make contributions or expenditures to support specific candidates in 1984 elections must also file appropriate pre-election reports (primary, general or both), if this financial activity has not been previously disclosed. (For filing dates of reports, see below.)

Unauthorized committees which file on a monthly schedule must file pre- and post-general election reports in lieu of their November and December monthly reports and a year-end report in lieu of the January monthly report.

**Note:** Unauthorized committees that wish to change their reporting schedule during 1984 must notify the Commission of their intention by a letter submitted with a report filed under the current filing schedule. Subsequent reports, then, are filed under the new schedule. A committee may not change its filing frequency more than once during 1984. 11 CFR 104.5(c).

#### **WHERE REPORTS ARE FILED**

Committees must file all reports and statements simultaneously with the appropriate federal and state officials. 108.5

#### **Filing with the Federal Government**

1. **The principal campaign committees of House candidates and committees supporting or opposing only House candidates** file with the Clerk of the House, Office of Records and Registration, 1036 Longworth House Office Building, Washington, D.C. 20515. 104.4(c)(3) and 105.1.

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.

2. **The principal campaign committees of Senate candidates and committees supporting or opposing only Senate candidates** file with the Secretary of the Senate, Senate Public Records, 119 D Street, N.E., Washington, D.C. 20510. 104.4(c)(2) and 105.2.
3. **All other committees, including the principal campaign committees of Presidential candidates,** file with the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. 105.3 and 105.4.

#### Filing with State Governments

1. **The principal campaign committees of Congressional candidates** must file a copy of every report and statement with the Secretary of State or the appropriate elections official of the state in which the candidate seeks federal office. 108.3
2. **The principal campaign committees of Presidential candidates** must file copies of reports and statements with the Secretary of State or the appropriate election official of the state in which the committee makes campaign expenditures. These reports must contain all financial transactions which apply to that state during the reporting period covered. 108.2
3. **Unauthorized committees** making contributions or expenditures in connection with House and Senate races file in the state in which the candidate seeks election. The law requires a copy only of that portion of the report applicable to the candidates being supported. Committees supporting Presidential candidates must file in the state(s) in which the Presidential committee and donor committee have their respective headquarters. 108.4

#### HOW TO OBTAIN MORE INFORMATION

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.

#### DUE DATES FOR 1984 REPORTS

The following charts list filing dates for reports required during the 1984 election year. Reporting schedules are provided for pre- and post-general election reports, as well as monthly, quarterly and semiannual reports. The reporting dates for 1984 primary elections will be published in an upcoming issue of the Record.

#### GENERAL ELECTION

<b>Date of Election</b>	November 6
<b>Pre-Election Report</b>	
Closing date of books:	October 17
Mailing date:	October 22
Filing date:	October 25
<b>Post-Election Report</b>	
Closing date of books:	November 26
Mailing date:	December 6
Filing Date:	December 6

#### MONTHLY REPORTS

Report	Period Covered	Filing Date (and mailing date if sent by registered or certified mail)*
February	1/1 - 1/31	February 20
March	2/1 - 2/29	March 20
April	3/1 - 3/31	April 20
May	4/1 - 4/30	May 20
June	5/1 - 5/31	June 20
July	6/1 - 6/30	July 20
August	7/1 - 7/31	August 20
September	8/1 - 8/31	September 20
October	9/1 - 9/30	October 20
Pre-Election*	10/1 - 10/17	October 25
Post-Election	10/18 - 11/26	December 6
Year-End	11/27 - 12/31	January 31, 1985

#### QUARTERLY REPORTS\*\*

Quarter***	Close of Books	Filing Date (and mailing date if sent by registered or certified mail)*
First	March 31	April 15
Second	June 30	July 15
Third	September 30	October 15
Fourth	December 31	January 31, 1985
(Year-End)		

continued

\*Exception: The pre-election report must be postmarked no later than October 22, 1984 (i.e., three days before the filing date). 11 CFR 104.5 (c)(1)(ii) and (e).

\*\*Committees may also have to file pre- and post-election reports. See text above.

\*\*\*Quarterly Waiver: If a pre-election report is due within the period beginning on the 5th day and ending on the 15th day after the close of a calendar quarter, the quarterly report is waived.

**SEMIANNUAL REPORTS\***

Report	Period Covered	Filing Date (and mailing date if sent by registered or certified mail)
First	1/1 - 6/30	July 31
Second	7/1 - 12/31	January 31, 1985

**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**

- 1983-40 PAC funding of ad for Senator published in party committee directory. (Date made public: November 23, 1983; Length: 1 page)
- 1983-41 Fundraiser for candidate; transmittal of funds through nonfederal PAC account. (Date made public: November 30, 1983; Length: 2 pages)
- 1983-42 Transfer of undesignated contributions from labor PAC's federal account to its state account. (Date made public: November 30, 1983; Length: 2 pages)
- 1983-43 Voting records and information on candidates' positions prepared and distributed to general public by nonprofit corporation. (Date made public: December 2, 1983; Length: 7 pages, plus 46-page supplement)
- 1983-44 Media corporation's use of FEC's candidate mailing list to promote political advertising in college newspapers. (Date made public: December 6, 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 1983-32: PAC Contribution of Lottery Prize Paid by Parent Organization**

A local chapter of the National Association of Retired Federal Employees (NARFE), an incorporated membership organization, plans to establish a lottery for its members. In distributing the cash awards to its members, the local chapter may not include solicitation information on NARFE's separate segregated fund, NARFE-PAC, and may not ask winners to contribute their prizes to NARFE-PAC. This proposed method of encouraging contributions to NARFE-PAC would, in effect, result in a prohibited transfer of the local chapter's treasury funds to NARFE-PAC. 2 U.S.C. §441b; 11 CFR 114.5(b). NARFE-PAC, in turn, should take steps to ensure that it does not knowingly accept lottery prize money or other local chapter or NARFE treasury funds as contributions.

In establishing the lottery, the local chapter had planned to issue cash prizes of \$2.50, consisting of funds generated by its recycling program. (The recycling effort involved collecting used aluminum cans and old newspapers for delivery to recycling centers.) Such funds would constitute NARFE treasury funds. Although the Act permits NARFE to use its treasury funds to solicit contributions, the Act specifically prohibits NARFE or any of its local chapters from using treasury funds to make direct contributions or expenditures in connection with federal elections. 2 U.S.C. §441b. Nor may it use the solicitation process as a means of exchanging treasury funds for voluntary contributions. 11 CFR 114.5(b). (Date issued: November 18, 1983; Length: 3 pages)

**AO 1983-34: Funds Transferred from State Campaign to U.S. Senate Campaign**

State Senator Lloyd Doggett's state campaign committee accepted contributions from Texas professional corporations and state political

\*Only those authorized candidate committees that will not be seeking election in 1984 may file semiannually during the election year.

action committees (state PACs) for his 1982 state senate campaign. Mr. Doggett's state campaign committee may not transfer contributions from the Texas professional corporations to his 1984 campaign for the U.S. Senate (the Senate campaign committee). As "corporations" organized under Texas law, the professional corporations are specifically prohibited from making contributions in connection with federal elections. 2 U.S.C. §441b. The state campaign committee may, however, transfer up to \$1,000 of each contribution it received from a state PAC. (While permissible, transfers from state PACs are subject to the \$1,000 per candidate, per election limit. 2 U.S.C. §441a(a)(1).) Before transferring the state PAC funds to the Senate campaign committee, the state campaign committee must, however, review them. Specifically, a state PAC must be able to demonstrate that, at the time it had contributed to the state campaign committee, the state PAC had sufficient permissible funds to make the contributions. 11 CFR 100.5, 102.5(b) and 102.6(a). (Date issued: November 23, 1983; Length: 3 pages)

**AO 1983-35: Company Solicitation of Stockholder/Employees**

The Texas-New Mexico Power Company (the Company) may solicit contributions to its separate segregated fund, the Texas-New Mexico Power Company Responsible Government Association (RGA-PAC), from employees who qualify as solicitable stockholders as the result of participating in an employee benefit plan (the Thrift Plan), which the Company offers its employees. (Corporate PACs may only solicit their stockholders, executive and administrative personnel and the families of both groups. 2 U.S.C. §441b(b)(4)(B).)

Under the benefit plan, both the Company and the employee purchase stock in the Company for the employee. A trustee for the Thrift Plan credits dividends earned on the employee's stock to an account set up for him/her. The employee has the option of using the funds in the account (i.e., stock shares and accrued dividends) to purchase additional shares of stock or to make certain other investments. An employee may also obtain a portion of his/her dividends by making limited withdrawals from his/her account. In addition, a participant may withdraw the full value of the stock purchased for him/her by the Company, provided the employee has participated in the plan at least five years.

Under Commission Regulations an employee participating in the company-sponsored stock option plan is considered a stockholder, eligible to be solicited by the PAC or parent company, if the employee has:

1. A vested, beneficial interest in the stock;
2. The power to direct how the stock is voted; and
3. The right to receive dividends. 11 CFR 114.1(h).

Employees participating in the Company's Thrift Plan meet all these requirements. Although the plan discourages employees from withdrawing their accrued investment by placing certain restrictions on withdrawals, the plan nevertheless complies with the third requirement because it does not significantly impair the employee's right to receive dividends. As noted above, the employee may make partial withdrawals from his/her account; may continue making contributions to the account after a withdrawal; and, after five years of employment, may withdraw all the stock purchased for him/her by the Company and still continue to work for the Company.

This opinion differs from AO 1983-17, in which the Commission concluded that certain employees participating in a stockholder benefit plan would not qualify as solicitable stockholders because of restrictions placed on their right to receive dividends. An employee's contributions to his/her account, for example, could not be resumed until one year after a withdrawal. Moreover, stock purchased for the employee by the Company could not be withdrawn at all unless the employee left the Company. Commissioner Thomas E. Harris filed a dissent. (Date issued: December 5, 1983; Length: 6 pages, including dissent)

**AO 1983-37: State Party's Exempt Legal Expense Fund**

Donations to and disbursements from a separate legal expense fund established by the Massachusetts Democratic State Committee (the Party) would not be considered "contributions" or "expenditures" under the Act, provided the party adheres to the conditions it set forth for the fund, which are listed below. Accordingly, donations to the legal expense fund would not be subject to the prohibitions and limits the Act places on contributions. Nor would any of the fund's receipts and disbursements have to be reported.

The party has indicated that the fund:

1. Will be used only to defray "costs of defending legal actions brought by candidates against the party";
2. Will not be used to initiate legal action to remove an identified candidate from the ballot; and
3. Will be maintained apart from any other party funds. See also AO 1982-35.

*continued*

The Commission expressed no opinion on applicable tax laws because they are not within its jurisdiction. Commissioner Thomas E. Harris filed a concurring opinion. (Date issued: November 18, 1983; Length: 3 pages, including concurring opinion)

**AO 1983-39: Contributions to 1984 Runoff Election/Redesignated for 1978 Debt Retirement**

The Friends of Bob Krueger Committee (the Committee), Mr. Krueger's principal campaign committee for his 1984 election campaign, may accept contributions earmarked for a possible runoff election in 1984, provided the contributions are lawful under the Act. If no runoff election is held, contributions earmarked for the runoff may be used to retire debts of either Mr. Krueger's 1978 primary or general election campaign, provided:

- The contributor requests that the Committee redesignate his/her contribution for retiring the debts of either the 1978 primary or general election;
- The contributor has not previously exhausted his/her \$1,000 limit for either the 1978 primary or general election; and
- The contributions redesignated for debt retirement do not exceed Mr. Krueger's outstanding 1978 debts.

The Committee must refund any redesignated contributions that do not meet these requirements.

If Mr. Krueger does not participate in the 1984 general election, these same requirements would apply to general election contributions redesignated by contributors for 1978 debt retirement. (Date issued: December 5, 1983; Length: 3 pages)



**FEC CERTIFIES PRIMARY MATCHING FUNDS FOR SIX PRESIDENTIAL CANDIDATES**

During December 1983, the FEC certified a total of \$7,771,960.41 in federal matching funds for the 1984 primary campaigns of six Presidential candidates. The Commission forwarded the certifications to the U.S. Treasury, which will issue payments to the candidates after January 1, 1984. Prior to certifying the funds, the Commission had made separate determinations during 1983 with regard to each candidate's eligibility for primary matching funds. Under the Presidential Election Campaign Fund Act, however, the Treasury could not begin making actual payments to eligible candidates before January 1,

1984. (For a complete explanation of the eligibility requirements, consult 26 U.S.C. §9033 and Commission Regulations at 11 CFR 9033 and 9036.1.)

The chart below lists those eligible candidates to whom the Commission certified payments, as well as the amount certified to each candidate:

Candidate	Amount Certified
Reubin Askew	\$773,274.96
Alan Cranston	1,161,223.55
John Glenn	1,579,344.75
Gary Hart	580,417.18
Ernest F. Hollings	552,159.11
Walter F. Mondale	3,125,540.86

During 1984, an eligible Presidential candidate may submit requests for primary matching funds on the first and third Mondays of each month. The Commission will certify a percentage of the amount requested within one week of receiving a request. (See 26 U.S.C. §§9034 and 9036 and 11 CFR 9034 and 9036.1(b) and 2(d).)

**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.



**800 LINE**

### **TREASURER'S RESPONSIBILITIES**

The Public Communications Office frequently receives questions concerning the responsibilities of the treasurer of a political committee. What are the treasurer's responsibilities with regard to the committee's recordkeeping and reporting requirements? Who may assume the treasurer's responsibilities in his/her absence? Is a treasurer personally liable for a committee's debts? This article answers those questions and covers other aspects of a treasurer's duties.

#### **What are the responsibilities of the treasurer of a political committee?**

- A political committee treasurer must:
- o Deposit receipts in the designated campaign depository within 10 days;
  - o Authorize expenditures (or appoint an agent to do so);
  - o Keep records;
  - o Sign all reports and statements; and
  - o File complete and accurate reports in a timely manner.

#### **What happens if a solicited contribution is received without the required information?**

The treasurer must make "best efforts" to obtain the missing information. This means the treasurer must make at least one effort by either a written request or an oral request documented in writing. The requester should inform the contributor that the requested information is required by law. 104.7(b).

#### **What happens if the treasurer is not supplied with the information necessary to document his/her committee's disbursements?**

If a treasurer fails to receive a receipt, invoice or canceled check (required for disbursements exceeding \$200), he or she must make "best efforts" to obtain documentation, i.e., at least one written effort per transaction to obtain a duplicate copy of the documentation. 102.9(d).

#### **What happens if the treasurer receives a contribution of questionable legality?**

Within 10 days, the contribution must either be deposited and reported or returned. If deposited, the treasurer must make and retain a written record noting that the legality is in question, and include this statement with the next report. Best efforts must then be made to determine the legality of the contribution. If the treasurer cannot determine whether or not the contribution is legal, he must refund it and report it accordingly. If the check was never deposited, no reporting is required. 103.3.

#### **May any officer of a committee designate agents to make expenditures on behalf of the committee?**

No. Only the treasurer has the authority to designate others to make committee expenditures. 102.7(c).

#### **Must a treasurer's authorization for another to make expenditures be in writing?**

No. An oral authorization is permitted. 102.7(c).

#### **May a treasurer also act as "custodian of records"?**

Yes.

#### **How long must records be kept?**

Records related to a report must be kept for three years after the report has been filed. 102.9(c).

#### **What kinds of records are required for contributions and disbursements?**

Recordkeeping requirements vary depending on the size of the contribution or disbursement and the type of transaction. For specific information, treasurers should consult the Campaign Guides and 11 CFR 102.9(a) and (b) and 102.11.

#### **Are the FEC reporting forms compatible with computers?**

In part, yes. The Summary and Detailed Summary Pages for Forms 3 and 3X (Authorized and Unauthorized Committees, respectively) are pin-fed forms that can be used in a computer.

#### **Can the treasurer itemize receipts and disbursements on computer-based schedules?**

The Commission has not prepared computer-based schedules. A committee may, however, develop and use its own computer-based schedules if it first submits the proposed format for Commission approval (attention: Reports Analysis Division).

#### **How can a committee ensure that the names of the contributors listed in the committee reports will not be used by other committees for solicitation purposes?**

The use of pseudonyms (fictitious contributors) is permitted to guard against this. See 104.3(e) for details.

#### **If the treasurer is temporarily unavailable to fulfill his responsibilities (e.g., sign a report), may the chairman assume those duties?**

No. The only person permitted to assume the treasurer's responsibilities in his or her absence is an assistant treasurer who has been designated on the committee's Statement of Organization. Because all financial activity must cease when the treasurer is unavailable, the Commission encourages the appointment of an assistant treasurer

who can immediately assume the treasurer's responsibilities.

**May a committee appoint an assistant treasurer after it has filed its Statement of Organization?**

Yes. The committee discloses the new appointment by amending its Statement of Organization (FEC Form 1) or by filing a letter containing the new information. The amended form need only contain the information pertaining to the assistant treasurer.

**Is any documentation required if the committee changes its treasurer?**

Yes. Within 10 days, an amended Statement of Organization (or a letter noting the change) must be filed. The amended form need only contain the new information. It may be signed by either the out-going or the in-coming treasurer. 102.2.

**Is any special training required for becoming treasurer?**

No, although knowledge of general accounting principles is helpful. Assistance should be obtained from an accountant or bookkeeper.

**May a candidate be the treasurer for his campaign?**

Yes.

**Is a treasurer personally liable for the committee's debts?**

The Act and Commission Regulations do not impose a personal liability on the treasurer. The treasurer is personally responsible only for the timely, complete and accurate reporting of debts. "In general, debt claims and liabilities are subject to relevant State law, and the Committee's 'responsibility' for satisfying the obligations would have to be determined with reference to those laws." AO 1975-102.

**May a committee incorporate for liability purposes without affecting its status as a political committee?**

Yes. The incorporation of a committee for liability purposes only, however, has no effect on the personal responsibility of the treasurer in the fulfillment of his or her duties under the Act. 114.12(a).

## COURT CASES

### INDEPENDENT EXPENDITURES BY COMMITTEES ON BEHALF OF PRESIDENTIAL NOMINEE

In two separate actions during October and December 1983, U.S. district courts ruled on suits pertaining to 26 U.S.C. §9012(f). This provision of the Presidential Election Campaign Fund Act prohibits unauthorized committees (i.e., those not authorized by a candidate) from making expenditures exceeding \$1,000 to further the election of a publicly funded Presidential nominee in the general election.

On October 19, 1983, the U.S. District Court for the District of Columbia issued an order denying the Fund for a Conservative Majority's (FCM's) petition for further relief in a consolidated suit originally decided by the court in September 1980. (Common Cause v. Harrison Schmitt [FEC Intervenor]; FEC v. Americans for Change; Civil Action Nos. 80-1609 and 80-1754.) The court also denied a motion filed by the National Congressional Club (NCC) and the National Conservative Political Action Committee (NCPAC) to intervene in FCM's petition and dismissed the petition with prejudice.

In FEC v. NCPAC and FCM the U.S. District Court for the Eastern District of Pennsylvania on December 12, 1983, refused to allow the FEC to implement 26 U.S.C. §9012(f). (Civil Action No. 83-2823) The Federal Election Commission filed an appeal with the Supreme Court on December 16.

#### Background

In its September 1980 ruling, the U.S. District Court for the District of Columbia held that Section 9012(f) was unconstitutional as applied to Americans for Change, Americans for an Effective Presidency and FCM, three multicandidate political committees (not affiliated with any parent organization). They had planned to make expenditures in excess of \$1,000 to support the Republican Presidential nominee's general election campaign.

On January 19, 1982, the Supreme Court voted 4 to 4 to affirm the D.C. district court's September decision, with Justice Sandra O'Connor not participating. However, since the high Court's vote on the suit had been equally divided, its affirmation had no precedential value. Subsequently, the FEC issued advisory opinions\* to NCPAC and

\*For a summary of AO's 1983-10 and 1983-11, see p. 2 of the July 1983 Record.



FCM in which the FEC stated that Section 9012(f) may be enforced.

#### **FEC v. NCPAC and FCM; DNC v. NCPAC**

In an effort to obtain a final ruling by the high Court on Section 9012(f)'s constitutionality, the FEC filed a new suit with the U.S. District Court for the Eastern District of Pennsylvania on June 14, 1983. (FEC v. NCPAC and FCM; Civil Action No. 83-2823.) This suit was consolidated with another suit, DNC v. NCPAC, (Civil Action 83-2329), which had been filed on May 1, 1983. The FEC intervened in that suit as defendants and argued that the DNC lacked statutory and constitutional standing to bring that action. In these suits, plaintiffs asked that a three-judge panel of the court be convened to declare that:

- Expenditures (in excess of \$1,000) that NCPAC and FCM each intended to make on behalf of the publicly funded Republican Presidential nominee in 1984 would be prohibited by, and in violation of, 26 U.S.C. §9012(f)(1); and
- Section 9012(f)(1), as applied to the defendant committees, was constitutional.

On December 12, 1983, the Pennsylvania district court refused to allow the FEC to implement Section 9012(f) and on December 16 the FEC filed an appeal of this decision with the Supreme Court. The Pennsylvania district court based its finding that Section 9012(f) was unconstitutional on the Buckley v. Valeo opinion. That opinion, the court said, allows "restrictions on true campaign speech only to prevent corruption or its appearance." The court concluded that "plaintiffs have produced virtually no evidence of actual corruption and little admissible evidence of the appearance of corruption." The court held the view that "modest expenditures by political committees...[such as the defendant committee] have almost no potential to corrupt or to create the appearance of corruption...."

#### **FCM v. FEC**

On June 16, 1983, FCM filed a petition with the D.C. district court. (Civil Action No. CA 80-1609) Citing the D.C. district court's 1980 ruling in the first suit, FCM asked the court to:

- Order the FEC to dismiss its suit against NCPAC and FCM in the Pennsylvania district court;
- Prohibit the FEC from filing suits in state and federal courts which seek to enforce or to construe Section 9012(f)(1);
- Direct the FEC to withdraw an advisory opinion (AO 1983-11) issued to FCM on May 18, 1983, which stated that FCM would be subject to the \$1,000 spending limit imposed by Section 9012(f)(1) should FCM make expenditures on behalf of the publicly funded Republican Presidential nominee in 1984; and

- Direct the FEC to issue an alternative advisory opinion to FCM stating that FCM's proposed expenditures would not be subject to Section 9012(f)(1).

In dismissing FCM's petition, the D.C. district court judges found no merit to FCM's contention that the FEC could not file suit in the Pennsylvania district court because the issues raised by the suit had already been resolved by the D.C. district court's ruling in 1980.\* The D.C. district court found, to the contrary, that the FEC's second suit raised new issues. "The controversy in the original suit decided by the [D.C. district] court stemmed from FCM's planned expenditures for then-President hopeful Reagan's 1980 campaign, not from planned expenditures by other parties [i.e., NCPAC], and not from FCM's planned expenditures for the 1984 presidential election." The court also cited legal precedent which permitted federal agencies "to relitigate substantially legal issues raised by different transactions or events, after adverse decisions elsewhere." (Western Oil and Gas Association v. Environmental Protection Agency, 633 F. 2d 803, 808)

Furthermore, the D.C. district court found that, in filing its second suit with the Pennsylvania district court, the FEC had not intended to undermine the D.C. district court's ruling in the first suit. The court conceded that the "constitutional issues remained unsettled" as a result of the high Court's evenly divided decision.

Since the high Court has not yet resolved the constitutionality of Section 9012(f), the D.C. district court asserted that, as the federal agency charged with enforcing the provision, the "FEC must legitimately be permitted to retry the legal issue of section 9012(f)'s constitutionality" until "it is finally settled by the Supreme Court." The district court maintained that Congress had placed a special importance "on FEC participation in actions construing the Fund Act, and on quick Supreme Court review."

The D.C. district court also found that FCM had provided no evidence to indicate that the FEC's second suit had caused it "unwarranted inconvenience or harm." Moreover, the D.C. district court held that in attempting to enjoin the FEC from seeking a resolution of Section 9012(f)'s constitutionality in the Pennsylvania district court, FCM should directly petition the Pennsylvania district court.

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\*Under the doctrine of collateral estoppel, when an issue of ultimate fact has been determined by a valid judgment, that issue cannot be relitigated between the same parties.

**ATHENS LUMBER COMPANY v. FEC**

On October 24, 1983, the U.S. Court of Appeals for the Eleventh Circuit issued an en banc opinion in Athens Lumber Company v. FEC upholding the constitutionality of 2 U.S.C. §441b(a) of the Federal Election Campaign Act (the Act). (Civil Action No. 82-8102.) The court's decision also reversed an earlier order by the U.S. District Court for the Middle District of Georgia which had dismissed the case on grounds that: 1) plaintiffs lacked standing to bring suit under the Act; and 2) plaintiffs failed to present a justiciable controversy for the federal courts' consideration. The appeals court remanded the case to the district court for entry of a judgment in favor of the FEC.

**Plaintiffs' Claims**

The Athens Lumber Company and its President John P. Bondurant filed the suit with the Georgia district court on July 27, 1981. Pursuant to Section 437h(a) of the Act,\* plaintiffs asked the district court to certify their questions concerning the constitutionality of 2 U.S.C. §441b(a) to the en banc appeals court for the Eleventh Circuit. Plaintiffs claimed that this provision of the election law abridged First and Fifth Amendment rights by prohibiting corporations, labor organizations and national banks from making contributions and expenditures in connection with federal elections.

Plaintiffs further asked that the FEC be enjoined from initiating enforcement proceedings against them if the Athens Lumber Company participated in federal elections. At the same time, however, plaintiffs said that the company would not make expenditures or contributions in connection with federal elections until either: 1) 2 U.S.C. §441b was repealed or declared unconstitutional; or 2) the company obtained an opinion of counsel from the Commission stating that the proposed expenditures did not violate any federal or state law or regulation. Plaintiffs further argued that their uncertainty about a possible violation of the election law had deterred them from exercising their First and Fifth Amendments rights, thereby causing them irreparable harm.

**District Court Decision**

In an opinion issued on February 9, 1982, the Georgia district court dismissed the suit. (Civil

\*Section 437h, which provides for an expedited judicial review procedure, notes that certain designated parties "may institute such actions in the appropriate district court of the United States...to construe the constitutionality" of the Act. The district court is then directed to certify appropriate constitutional questions to the court of appeals sitting en banc.

Action No. 81-79-ATH.) The court held that, under Section 437h(a) of the election law, only the following types of plaintiffs had standing to bring suit: the national committee of a political party, individuals eligible to vote in Presidential elections and the FEC. Consequently, the court found that the Athens Lumber Company lacked standing to bring suit. While the court recognized that Mr. Bondurant was an eligible voter, he too lacked standing to bring suit since the corporation -- not Mr. Bondurant -- planned to make the expenditures.

Moreover, the district court held that plaintiffs had not presented a justiciable case or controversy ripe for the court's consideration. The court concluded that "it is obvious that the statute under attack in no way interferes with the way that the plaintiff corporation through its plaintiff president conducts its corporate affairs...." Similarly, the court found that Mr. Bondurant had not presented a justiciable claim because he was "free to independently expend his personal funds [in federal elections], including dividends from the corporate plaintiff without limitation." Moreover, the court found that Athens Lumber Company was only seeking an advisory opinion because the shareholders had not voted to spend any corporate funds in connection with federal elections as long as Section 441b remained in force.

**Appeals Court Decision**

On October 22, 1982, a three-judge panel of the Eleventh Circuit court of appeals reversed the judgment of the district court, finding that Mr. Bondurant did have standing to bring suit and to raise those issues pertaining to Athens Lumber Company's participation in federal elections. Moreover, the court found that the suit raised justiciable claims because, if Athens Lumber Company were to make contributions and expenditures in connection with federal elections, both Mr. Bondurant and the corporation would be subject to civil and criminal prosecution. The panel then certified to the en banc Eleventh Circuit eight constitutional questions adopted from appellants' complaint.

In upholding the constitutionality of Section 441b, the en banc Eleventh Circuit court of appeals stated: "Viewing the substantive constitutional issues as being controlled by the Court's unanimous opinion in Federal Election Commission v. National Right to Work Committee, et al., U.S. \_\_\_\_\_, 103 S.Ct. 552, 74 L.Ed. 2d 364 (1982), and for the reasons there stated, we find the limitations and prohibitions of which appellants complain to be constitutional." (For a summary of the Court's decision in FEC v. NRWC, see page 3 of the February 1983 Record.)

## INFORMATION

### 1982 CAMPAIGN STATISTICS AVAILABLE ON COMPUTER TAPES

During December, the Commission announced the availability of computer tapes containing final campaign finance information for the 1981-82 election cycle. The tapes cover the campaign finance activity of 1982 Senate and House candidates, political action committees and Democratic and Republican political party committees. The Commission made the tapes available for purchase after it had published printed volumes covering the same information (i.e., the FEC Reports on Financial Activity 1981-82, Final Report). Tapes on campaign finance activity for the 1977-78 and 1979-80 election cycles are also available.

The tapes may be purchased through the Commission's Data Systems Development Division, 1325 K Street, N.W., Washington, D.C. 20463. Prices for individual tapes are listed below:

- 1981-82 Campaign Finance Activity: Senate and House information, \$70; political action committee information, \$70; and political party committee information, \$55.
- 1979-80 Campaign Finance Activity: Senate and House information, \$65; Presidential information, \$80; political action committee information, \$70; and political party committee information, \$65.
- 1977-78 Campaign Finance Activity: political action committee information, \$70 and political party committee information, \$70.

Checks should be made payable to the FEC. For more information, call the Data Systems Development Division at 202/523-4020 or toll free 800/424-9530.

Also available for purchase are printed volumes utilizing the same 1981-82 information as that contained on the tapes. The five-volume FEC Reports on Financial Activity 1981-82, Final Report sells for \$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.

## STATISTICS

### FEC RELEASES FINAL REPORT ON 1982 CONGRESSIONAL ELECTIONS

#### Campaign Activity of Successful 1981-82 Congressional Campaigns

During the 1982 Congressional elections, once again spending by candidates increased. According to a final study of the 1981-82 Congressional elections released by the FEC on December 2, 1983, spending by 33 successful Senate candidates on their primary and general election campaigns rose 70.5 percent from 1980 to 1982 (i.e., from \$40 million to \$68.2 million). These same candidates raised a total of \$70.7 million for their campaigns, an increase of 69.5 percent over total funds raised by their counterparts in 1980 races.

The 439 candidates who won House races spent \$114.7 million on their primary and general elections; this spending represented a 47 percent increase over spending by successful House candidates during the 1980 election cycle (i.e., from \$78 million to \$114.7 million). Winning House candidates raised a total of \$123.1 million for their campaigns or 43.17 percent more than their counterparts in 1980 House races.

The 472 successful candidates for U.S. Senate and House seats received 70 percent (or \$58.4 million) of the \$83.7 million contributed by PACs to 1982 Congressional campaigns. Senate winners received \$15.6 million from PACs while their successful counterparts in the House received \$42.7 million.

#### Campaign Activity in All 1981-82 Congressional Campaigns

During the 1981-82 election cycle, total spending by all 1982 Congressional campaigns (i.e., 283 Senate candidates and 1,957 House candidates) increased significantly. Congressional campaigns spent a total of \$342.4 million, an increase of 43.3 percent over the \$239 million spent on 1980 Congressional races. Total campaign costs for House races alone rose 50 percent between the 1980 and 1982 elections (i.e., from \$136 million to \$204 million). Between 1980 and 1982, Senate campaigns increased their spending by 34.5 percent (i.e., from \$102.9 million to \$138.4 million).

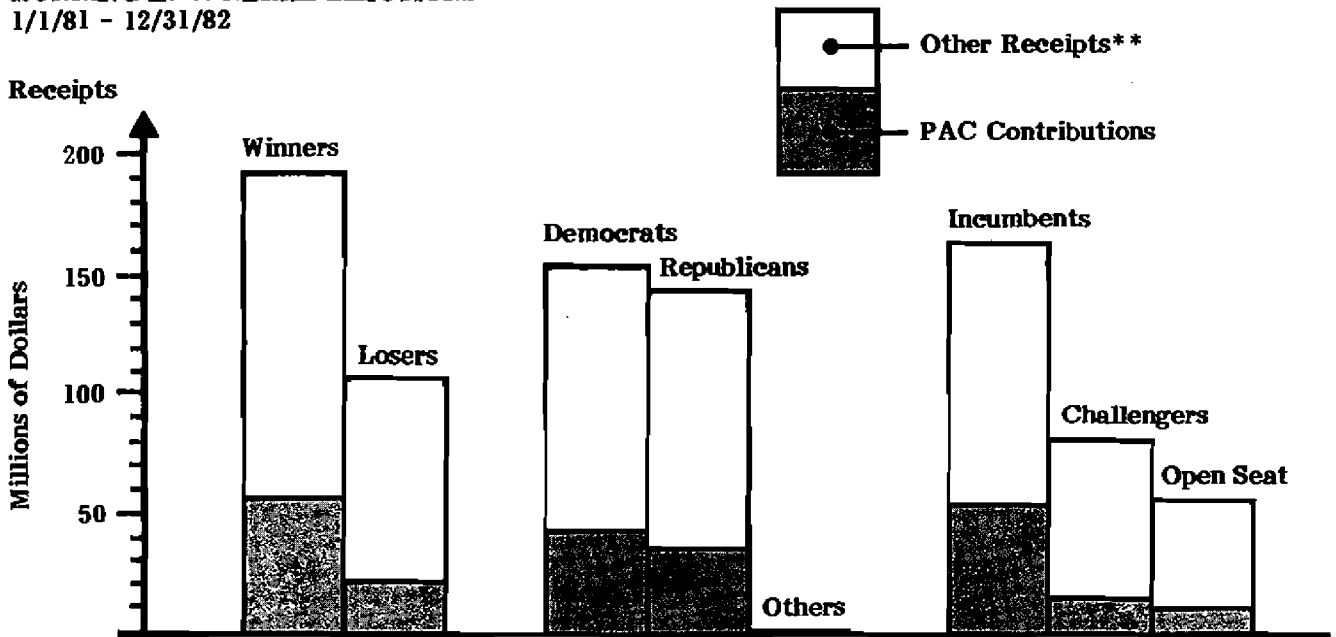
Congressional campaigns raised a total of \$354.7 million during the 1981-82 election cycle; this fundraising represented a 42.6 percent increase over total funds raised for the 1979-80 cycle (i.e.,

*continued*

\$248.8 million). Senate campaigns alone raised \$141.5 million, a 35 percent increase over the \$104.8 million raised for 1980 Senate races. Total funds raised for 1982 House campaigns represented a 48 percent increase over 1980 House fundraising (i.e., from \$144 million to \$213.2 million).

The chart below details receipts for 1982 Congressional candidates running in general elections. More information may be obtained from FEC Reports on Financial Activity, 1981-82, Final Report: U.S. Senate and House Campaigns. Copies of the study may be purchased for \$5.00 from the FEC's Public Records Office, 1325 K Street, N.W., Washington, D.C. 20463. Checks should be made payable to the FEC.

**CAMPAIGN RECEIPTS\*  
OF 1982 CONGRESSIONAL CANDIDATES  
RUNNING IN GENERAL ELECTIONS  
1/1/81 - 12/31/82**



\*Includes receipts for primary and general election campaigns of general election candidates.

\*\*Other campaign receipts include, for example, contributions from individuals, contributions from candidates to their own campaigns, contributions from other campaigns, loans, refunds, and interest income earned on investments.

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