

# RECORD

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## REGULATIONS

### LOANS TO CANDIDATES FROM LENDING INSTITUTIONS: NOTICE OF PROPOSED RULEMAKING

On July 27, 1989, the Commission published a Notice of Proposed Rulemaking in the Federal Register seeking comments on proposed changes in the rules on loans from lending institutions to candidates and political committees (11 CFR Parts 100, 9004 and 9034). See 54 Fed. Reg. 31286. A public hearing is scheduled for October 4, 1989.

#### Assuring Repayment

The notice requests comments on three proposed methods of satisfying the statutory requirement that loans be made on a basis which assures repayment. 2 U.S.C. §431(8)(B)(vii)(II). The three alternative methods are:

1. A candidate or political committee could secure a bank loan with some form of traditional collateral, such as real estate, personal assets, etc.
2. A candidate or committee could, alternatively, pledge such nontraditional forms of collateral as future receipts of public funds (in the case of Presidential candidates) or

future receipts of contributions or interest. The committee would have to deposit such assets in a separate "collateral account" used to retire the debt. Furthermore, publicly funded candidates would be required to authorize the Secretary of the Treasury to directly deposit public funds used as collateral into this account. Finally, loans could not exceed the amount reasonably expected in future receipts.

3. In the absence of either traditional or non-traditional collateral, a candidate or committee would have to demonstrate that the unsecured loan was made on some other basis that assured repayment. Without this evidence, the Commission would presume that the loan was not made on a basis that assured repayment.

#### Disclosure of Loans

In addition to these proposed rules, the Commission proposes a supplement to Schedules C and C-P (to be filed the first time a loan is reported) in order to improve the monitoring and disclosure

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### FEC SPECIALISTS TO VISIT ATLANTA

Campaign workers, PAC workers, candidates and all others in the Atlanta, Georgia, area who are interested in campaign finance will have an opportunity in September to meet personally with public affairs specialists from the Federal Election Commission.

Dorothy Hutcheon and Ian Stirton, specialists trained to answer questions in most areas of federal election law and FEC regulations, will be in Atlanta **September 20-21**. On these days, Ms. Hutcheon and Mr. Stirton plan to hold informal meetings to discuss registration, reporting, recordkeeping, the rules on contributions and expenditures and other aspects of the election law and FEC policy.

Anyone wishing to schedule a meeting with the specialists should contact Ms. Hutcheon or Mr. Stirton at the FEC. Call 800/424-9530 or 202/376-3120.

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of loans from lending institutions. Draft forms have been included in the Federal Register notice so that the public may comment on them.

In addition to requiring loan information provided by the borrowing committee, the proposed form includes a section for the lender to confirm that the loan has been made according to standard practice.

#### Other Issues

The Commission also welcomes comments on several other related issues, including:

- o The practicality of analogizing political loans to loans a bank makes to its officers or boards of directors—so-called "insider" loans, which are governed by 12 CFR 215.4(b)(1)-(2), 563.43(b)(1)-(2) and 337.3(b);
- o Whether additional documentation should be submitted to assist the Commission in monitoring compliance, such as loan agreements, security agreements or financial plans;
- o Whether there should be guidelines or limits on total loans outstanding to a committee at any given time;
- o Whether the proposed rules are applicable to lines of credit granted by lending institutions to candidates and committees;
- o Whether loans made shortly before an election should be reported immediately, similar to the requirements of 11 CFR 104.5(f); and
- o Whether to require that loans include a due date at or near the election.

Persons wishing to submit comments or requests to appear at the October 4 public hearing should address them to Ms. Susan Propper, Assistant General Counsel, 999 E Street, NW, Washington, DC 20463. All comments and requests must be received by September 15, 1989.

#### AFFILIATION AND EARMARKING REGULATIONS REVISED

On August 10, 1989, the Commission approved final revisions to the rules governing affiliation and earmarking. The Commission will promulgate the rules, which were published in the Federal Register on August 17, 1989 (54 Fed. Reg. 34098) after they have been before Congress for 30 legislative days. The principal areas affected by the changes (with cites to revised rules) are:

- o The factors used to evaluate whether committees are commonly established, financed, maintained or controlled, and therefore affiliated (11 CFR 110.3(a)(3));
- o Transfers of funds between previous and current federal campaign committees of the same candidate (11 CFR 110.3(c)(4));
- o Transfers of funds between principal campaign committees of a candidate who is concurrently seeking more than one office (11 CFR 110.3(c)(5));
- o New language defining the term "conduit or intermediary" (11 CFR 110.6(b)(2)); and
- o Reporting of earmarked contributions by both the recipient candidate committee and the conduit or intermediary (11 CFR 110.6(c)).

The Commission also clarified the rules governing:

- o Prohibited contributions (11 CFR 110.4); and
- o The annual contribution limitation for individuals (11 CFR 110.5).

A detailed summary of the changes will appear in next month's Record.

## 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 from the FEC's Public Records Office.

AOR	Subject
1989-14	Restaurant's method of billing political committees using its facilities for fundraising. (Date made public: July 13, 1989; Length: 4 pages)
1989-15	Contributions to special election nominee not running in primary runoff election (Date made public: July 25, 1989; Length: 4 pages)

The Record is published by the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. Commissioners are: Danny L. McDonald, Chairman; Lee Ann Elliott, Vice Chairman; Joan Aikens; Thomas J. Josefiak; John Warren McGarry; Scott E. Thomas; Walter J. Stewart, Secretary of the Senate, Ex Officio; Donald K. Anderson, Clerk of the House of Representatives, Ex Officio. For more information, call 202/376-3120 or toll-free 800/424-9530. (TDD For Hearing Impaired 202/376-3136)

## ALTERNATE DISPOSITION OF ADVISORY OPINION REQUESTS

### AOR 1989-11: Sponsorship of Nonconnected PAC by Members of a Partnership That Is a Government Contractor

On August 10, 1989, the Associate General Counsel sent the requesters a letter informing them that the Commission was unable to approve a draft advisory opinion by the required four votes.

## ADVISORY OPINION SUMMARIES

### AO 1989-10: Candidate Committee's Financial Situation after Embezzlement by Former Treasurer

Senator Dennis DeConcini, who has established a committee for a 1994 reelection campaign, anticipates that his 1988 campaign will have debts resulting from an alleged misappropriation of about \$500,000 by the committee's former treasurer. Should an auditor hired by the committee find that the 1988 committee's funds were depleted as a result of the embezzlement, the committee may:

- o Accept a personal loan from the Senator to retire its debts;
- o Report costs of the audit as a debt of the 1988 campaign;
- o Use funds transferred from the 1994 committee to pay the debts of the 1988 committee; and
- o Raise funds for the 1988 campaign to cover its debts, but not to replace the embezzled funds.

**Candidate's Personal Loan.** The Senator may lend money from his personal funds to the campaign to help it extinguish its outstanding debts. Such a loan would be reportable as a debt owed by the 1988 committee to the Senator.

A loan from the candidate to his authorized committee, like any other debt, must be continuously reported on FEC Form 3 until extinguished. 2 U.S.C. §434(b)(8); 11 CFR 104.3(d) and 104.11.

**Transfer of Funds.** Payments owed to the auditor hired by the 1988 campaign are reportable as debts owed by that committee; they can be extinguished, however, with funds transferred from the 1994 campaign. FEC regulations permit unlimited transfers between a candidate's previous and current campaign committees, subject to certain rules. 11 CFR 110.3(a)(2)(iv).

**Fundraising.** The committee may also raise funds to cover any debts from the 1988 campaign, as long as the funds raised do not exceed the debts. (Alternatively, the Senator's 1994 campaign committee may pay the debts of the 1988 campaign.) Contributions solicited and accepted for this purpose must be designated by the donors as contributions for the 1988 general election and must be aggregated with any contributions previously made by the same donors to the Senator's

1988 general election campaign. 11 CFR 110.1(b)(3), 110.1(g) and 110.2(b)(3). See also AO 1983-2. Furthermore, the 1988 committee may not accept more than the "adjusted amount of net debts outstanding on the date the contribution is received," even if the amount embezzled exceeds the "net debts outstanding." 11 CFR 110.1(b)(3)

(iii).

**Reporting.** The committee must report the amount embezzled as an "Other Disbursement" on line 21 of Form 3 and should explain the entry on Schedule B, giving the name of the former treasurer, the amount misappropriated, the date and a brief description of the circumstances. (Date issued: July 21, 1989; Length: 5 pages)

### AO 1989-12: Act's Preemption of State Law Governing Contributions

The Federal Election Campaign Act (FECA) preempts an Indiana statute governing contributions to statewide candidates to the extent that the law affects contributions to federal candidates.

Section 4-3-30-19 of the Indiana Code, added by the recently passed Indiana House Enrolled Act 1409, affects contributions to federal candidates in two ways:

1. It forbids a person who enters into a contract as a "vendor" with the Indiana State Lottery Commission to make a contribution to a "candidate for statewide elected office" during the three years following the last award or renewal of the contract.
2. It prohibits the Lottery Commission and its director from entering into contracts for goods or services with persons who have made contributions to candidates for "statewide elected office" within the three years preceding the award of the contract.

Only contributions made after March 15, 1989, are subject to the Indiana Act, which prescribes criminal penalties for violators.

The FEC concludes that section 19 was intended to prohibit contractors with the Lottery Commission from making contributions to candidates for the U.S. Senate, since no Indiana statute or regulation excludes federal candidates from the definition of "candidate for statewide elected office." The federal election law, however, states that the provisions of the FECA "supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. §453. Because the FECA alone occupies the field with respect to contributions for federal elections, it preempts section 19's prohibition against contributions to statewide federal candidates by individuals who have entered into contracts with the Lottery Commission.

Furthermore, section 19's second prohibition, stated above, is also preempted by the FECA.

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The restriction on the Lottery Commission's contracting authority effectively penalizes vendors who contribute to candidates for statewide federal office. Because this provision inherently restricts the federal political activity of vendors wishing to do business with the Lottery Commission, it has the same effect as the part of section 19 that precludes contractors from making contributions. (Date issued: July 31, 1989; Length: 5 pages)

The Commission will publish final standards at a later date, after reviewing the comments received on the proposed standards and companion plans. Anyone wishing to review the proposals, or to comment upon them, should contact Ms. Penelope Bonsall, Director, National Clearinghouse on Election Administration, Federal Election Commission, Washington, DC 20463. Telephone 202/376-5670 or 800/424-9530. All comments must be received by September 7, 1989.

**COMMISSIONERS ISSUE DISSENTS TO ADVISORY OPINIONS**

In recent weeks, FEC Chairman Danny L. McDonald and Commissioner John W. McGarry issued dissents to advisory opinions approved by the Commission earlier this year.

On July 20, Chairman McDonald filed dissenting opinions to two advisory opinions issued by the Commission on June 30. Advisory Opinions 1989-7 and 1989-9 permitted two corporations to use general treasury funds to match their employees' PAC contributions with donations to charity. The two opinions were summarized in the August Record.

On July 25, Chairman McDonald and Commissioner McGarry issued a joint dissent to the Commission's reconsideration of AO 1987-31, concerning the solicitability of different classes of members of a commodities exchange. The reconsideration was summarized in the April Record.

**CLEARINGHOUSE**

**COMMISSION PUBLISHES PROPOSED VOTING SYSTEM STANDARDS**

In August the Commission published a notice in the Federal Register requesting comments on proposed voluntary standards for computerized voting systems (e.g., Punchcard, Marksense and Direct Recording systems). See 54 Fed. Reg. 32479. Comments are also sought on three related plans:

- o A plan for implementing the standards;
- o The system escrow plan; and
- o A process for evaluating independent test authorities.

The standards were developed to provide state and local voting jurisdictions, as well as vendors of voting systems software, with guidelines to ensure the accuracy and reliability of the various computerized ballot tabulation systems in use throughout the country. The standards do not apply to noncomputerized systems, and they do not incorporate specifications for mainframe computer hardware.

**SPECIAL ELECTIONS**

**TEXAS SPECIAL ELECTION REPORTING UPDATE**

A special runoff election has been scheduled on September 12, 1989, to fill the 12th Congressional District seat vacated by the resignation of House Speaker Jim Wright. Candidates eligible for the runoff were selected in an August 12 special election. All committees participating in the September 12 election should follow the schedule below.

Candidates, PACs and party committees involved in the special runoff should refer to the August Record for details on reporting requirements (including reporting of independent expenditures and last-minute contributions). Contact the Information Services Division of the FEC for further information; call 800/424-9530 or 202/376-3120.

**TEXAS 12th DISTRICT SPECIAL ELECTION REPORTING DATES**

Report	Period Covered*	Reg./ Cert. Mailing** Date	Filing Date
Pre-Runoff	7/24-8/23	8/28	8/31
Post-Runoff	8/24-10/2	10/12	10/12
Year-End	10/3-12/31	1/31	1/31

\*The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

\*\*Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

## AUDITS

### FINAL AUDIT REPORT ON GORE CAMPAIGN RELEASED

On July 13, 1989, the Commission approved the final audit report on the Albert Gore, Jr. for President Committee, Senator Gore's principal campaign committee for the 1988 Presidential primary elections. The results of the audit are described below.

#### Disclosure of Reattributed Contributions

The audit of the Gore committee's finances revealed that several contributions reattributed to donors' spouses were not itemized correctly. For example, the committee received a \$1,000 check (drawn on a joint account) from an individual on February 1 and reported the contribution as received on that date from the person who signed the check. Subsequently, the committee sent the donor a letter requesting information needed to reattribute half of the money to the donor's spouse. The committee received the information in March, but recorded the reattributed contribution as having been received on the date of the original contribution (February 1), rather than on the date it was reattributed to the spouse. Moreover, the reattribution was not included in the monthly report covering March or in any subsequent report.

Prior to the completion of the final audit report, the Gore committee corrected the problem by filing amended reports with the Commission disclosing accurate information on the reattributed contributions. The Commission took no further action with respect to this matter.

#### Transfer of Funds

In December 1987 Friends of Albert Gore, Jr., the candidate's authorized campaign committee for the 1990 Senate elections, transferred \$24,000 to the candidate's Presidential committee. The funds had been contributed by individuals and political committees and had been designated for the 1990 Senate election.

Commission regulations permit unlimited transfers between the principal campaign committees of a candidate seeking nomination to more than one federal office, as long as:

1. The candidate is "not actively seeking" nomination for more than one office;
2. The transfer does not cause contributors to exceed their contribution limits; and
3. The candidate has not chosen to receive public matching funds under Title 26.

The audit concluded that the transfer between Senator Gore's Senate and Presidential

campaigns was not permissible under 2 U.S.C. §441a(a)(5)(C) and 11 CFR 110.3(a)(2)(v). Because the Senator was a registered candidate "actively seeking election" in both the 1990 Senate election and the 1988 Presidential election, and had been certified under 11 CFR 9036 to receive matching payments for the 1988 Presidential primaries at the time of the transfer, the Commission considered the transfer of funds to be impermissible. While the Presidential committee disagreed with this finding, it transferred the \$24,000 back to the Senate committee prior to the issuance of the final audit report.

#### Stale-Dated Checks

The Gore audit revealed 21 outstanding stale-dated checks—i.e., committee checks that had never been cashed by the payees—totaling \$2,490.05.

According to the FEC's regulations, a committee receiving public funds under the matching payment program must notify the Commission of any checks outstanding to creditors or contributors that have not been cashed. The committee must also inform the FEC of any efforts made to locate the payees and to encourage them to cash the checks. Finally, the committee must repay to the U.S. Treasury an amount equal to the total of the stale-dated checks. 11 CFR 9038.6.

In response to the audit findings, the committee prepared a schedule listing the results of its efforts to have the stale-dated checks cashed, and it repaid \$292.00, the amount which the committee believed would remain uncashed. The Commission made an initial determination that \$292 was repayable to Treasury and accepted Committee repayment of this amount.

#### Nonqualified Campaign Expenses

The audit showed that the Gore committee appeared to have incurred \$13,330.38 in expenses related to the Democratic convention. Since these expenses were incurred after Senator Gore's date of ineligibility and did not relate to winding-down activities, they were considered nonqualified campaign expenses.

The Presidential public funding law requires that money received by a committee as matching payments be used only to cover "qualified campaign expenses," as defined in 26 U.S.C. §9032(9)(A). Disbursements for nonqualified expenses may be made, without incurring a repayment obligation, only after all matching funds have been spent.

In this case, the Commission determined that the nonqualified expenses for the convention were incurred before the Gore campaign had liquidated all of its matching funds. The Commission made an initial determination that the committee had to repay \$4,035.41, representing that portion of the nonqualified expenses defrayed with public funds.

The committee disagreed with this finding because it had paid the convention expenses from an account that was separate from the one containing matching funds. However, under FEC regulations, all accounts of one committee are viewed as a single account for the purpose of determining whether nonqualified campaign expenses have been made. 11 CFR 9038.2(b)(2)(iii). Moreover, the committee had used the separate account to make transactions related to the campaign. The committee made a repayment of \$4,035.41 prior to the release of the final audit report.

Copies of the final report on the Gore audit can be obtained from the FEC's Public Records Office.

## COMPLIANCE

### **MUR 2594: Contributions from Party Senatorial Committee to House Candidates and from Congressional Committee to Senate Candidates**

This MUR, initiated by a referral from the FEC's Reports Analysis Division, concerned the making of allegedly excessive contributions by a major party's Senatorial campaign committee to candidates running for the House of Representatives and by the party's Congressional campaign committee to candidates running for the Senate. The Commission found "no reason to believe" that a violation had occurred.

#### **Background**

Disclosure reports filed by the major party's national committee and Senatorial campaign committee revealed that, during the 1988 elections, the Senatorial committee had made contributions totaling \$214,500 to 29 House candidates. These contributions were in addition to those made to the same candidates by the party's Congressional campaign committee and the national committee. Similarly, FEC reports indicated that the Congressional committee had contributed \$51,929 to Senate candidates, over and above the contributions made by the Senatorial and national committees to these same Senate candidates. At issue were two questions:

1. Can the Senatorial committee contribute up to \$5,000 to a House candidate, and is this limit separate from those of the national and Congressional campaign committees?
2. Does the Congressional campaign committee have a separate \$5,000 limit on contributions to Senate candidates, in addition to the combined \$17,500 limit shared by the national and Senatorial committees?

### **General Counsel's Report**

Under the election law, the national committee and the Congressional committee of a political party are considered separate for the purposes of making contributions. 11 CFR 110.3(b)(2)(i). In elections for the U.S. Senate, however, a party's national committee and Senatorial committee share a special combined contribution limit of \$17,500 per Senate candidate for the entire election cycle. 2 U.S.C. §441a(h).

The Act and Commission regulations are silent about whether a Senatorial campaign committee of a political party may contribute to House candidates in amounts that would exceed the respective limits of the Congressional and national committees. Similarly, neither the statute nor the regulations address the question of whether the Congressional campaign committee may contribute over and above the combined \$17,500 limit imposed on the Senatorial and national committees with respect to Senate candidates. Nor does the legislative history discuss these matters. The General Counsel said, "Indeed it appears that such transactions were simply not contemplated."

In the absence of any statutory or regulatory prohibition on the contributions in question or a clearly stated legislative intent, the General Counsel recommended that the Commission find "no reason to believe" that a violation of the Act had occurred. The Commission made such a finding and closed the case.

### **CONFERENCE SERIES ON ELECTION LAW**

In upcoming months, the Federal Election Commission will hold two conferences on federal campaign finance laws. The conferences will include workshops on candidate campaigns, party and PAC activity, contributions and reporting. In addition, a representative of the Internal Revenue Service will be available to answer election-related tax questions.

The schedule for the conferences is given below. For more information, contact the FEC's Information Services Division at 800/424-9530 or 202/376-3120.

#### **Philadelphia: September 14-15**

This conference will be held at the Holiday Inn-Center City. The conference fee is \$110.

#### **San Francisco: October 12-13**

Cosponsored with the California Secretary of State's Office, this conference will feature a special workshop on the new state campaign finance law presented by the California Fair Political Practices Commission. The conference will be held at the Holiday Inn-Fisherman's Wharf; the fee is \$100.

## COURT CASES

### COMMON CAUSE v. FEC (85-1130)

On May 30, 1989, the U.S. District Court for the District of Columbia issued a memorandum opinion in Common Cause v. FEC (Civil Action No. 85-1130), denying in part the plaintiff's motion for summary judgment. The case pertained to an administrative complaint filed by Common Cause alleging excessive contributions resulting from affiliation or coordination between a non-connected committee and a national party committee. With regard to most parts of the complaint, the court found that the Commission's dismissal was not contrary to law. However, the court did remand one issue from the original complaint back to the Commission for its consideration.

#### Background

Common Cause filed suit in 1985 after the Commission had dismissed its administrative complaint, which charged that the Republican National Independent Expenditure Committee (RNIIEC), a nonconnected committee, was actually affiliated with the National Republican Senatorial Committee (NRSC) and that its expenditures during 1983 on behalf of then-Senator Dan Evans' election campaign were not independent and ought to have been aggregated with NRSC's contribution limit for that election. The Commission had investigated the matter and found "no probable cause to believe" that a violation of the law had occurred.

The plaintiff asked the court to find that RNIIEC and NRSC were affiliated committees, or that they had coordinated their expenditures on behalf of Senator Evans. (Either finding would result in excessive contributions by NRSC on behalf of the Senator's campaign.) Common Cause claimed that the FEC, after investigating the case, should have concluded that there was affiliation or coordination between the committees because:

- o Both co-founders of RNIIEC had been officers of NRSC. One co-founder was Rodney Smith, a former treasurer of NRSC; the other co-founder, Senator John Heinz, was a former chairman and member of NRSC. Both men left NRSC in 1983, but their prior involvement with that committee indicated to Common Cause that their new committee, RNIIEC, was affiliated with NRSC and that the two committees had coordinated their activities in the Evans campaign.
- o RNIIEC used a contributor list which had belonged to NRSC to solicit contributions to RNIIEC. Mr. Smith had taken the list with him

when he left that committee. Common Cause contended that this duplication of solicited persons further indicated that the two committees were not independent of each other and were affiliated.

#### District Court Decision

In deciding that the Commission's dismissal of Common Cause's principal allegations was reasonable, the court relied on the General Counsel's brief in the compliance matter.

**Affiliation.** Addressing the question of affiliation, the court determined that the General Counsel provided the Commissioners with an acceptable rationale for finding that NRSC and RNIIEC were unaffiliated committees. The Commission had considered three facts: (1) Senator Heinz's dual membership on the committees, (2) Mr. Smith's former involvement with NRSC as treasurer and (3) RNIIEC's use of NRSC's contributor list. With regard to the first matter, the General Counsel had concluded that the dual membership of Senator Heinz did not cause the committees to be affiliated because another person, Senator Richard Lugar, was the "controlling and key member" of NRSC<sup>1</sup> and because Senator Heinz had not been involved with NRSC's efforts on behalf of Senator Evans.

As to Mr. Smith's prior work as treasurer of NRSC, the court said that the plaintiff had pointed to nothing in the statute or legislative history of the Act that forbade an officer of a political committee to leave that committee and form an unaffiliated one. Mr. Smith's departure from NRSC, the court said, was a sufficient reason not to presume affiliation between RNIIEC and NRSC.

Finally, the General Counsel had noted that the use of the common contributor list might suggest a "similar pattern of contributions," which is one indication of affiliation under 11 CFR 110.3(a)(1)(ii). In this case, however, the General Counsel's investigation revealed that NRSC had expressed objections to RNIIEC's use of its contributor list; this opposition, in the General Counsel's view, undermined a presumption of affiliation based on the use of the common list. The court found this view reasonable.

**Coordination.** Common Cause claimed that the committees had coordinated their efforts during the Evans campaign (which would have disqualified RNIIEC's expenditures as "independent" under 2 U.S.C. §431(17)). As evidence, Common Cause cited the committees' use of common vendors. The General Counsel's investigation, however, revealed that the common vendors (an attorney and a consultant who had worked for both committees) had not provided the type of services that normally call for a presumption of coordination. Moreover, neither one had performed any services for RNIIEC after September 1983, when Senator Evans was initially appointed to fill

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the vacant seat of the late Senator Henry Jackson. That is, the vendors had both ceased their work with the committees before the Evans campaign began.

The plaintiff argued that the FEC should have presumed that the committees' expenditures were coordinated on the basis of Senator Heinz's and Mr. Smith's prior involvement with and knowledge of NRSC affairs and strategies. The court, however, accepted the General Counsel's view that neither man was involved in activities at NRSC that specifically related to the Evans campaign. The Commission, therefore, had acted reasonably in finding that there was no coordination between the activities of the two committees.

**Affiliation with RNC.** Finally, the court found that the Commission had failed to consider one issue raised in Common Cause's administrative complaint. Common Cause had alleged that RNEC was also a political committee of the Republican National Committee "by virtue of its ties to the national party." The court accepted the plaintiff's view that the Commission should have addressed this question as distinct from the issue of affiliation between NRSC and RNEC. The court remanded the question to the FEC for its consideration. With regard to the other issues, the court dismissed the claims with prejudice.

On July 31, 1989, Common Cause filed a notice of appeal.

#### **FEC v. CALIFORNIANS FOR A STRONG AMERICA (CV-88-6449-AWT(Ex))**

On June 22, 1989, the U.S. District Court for the Central District of California issued a final order and default judgment in FEC v. Californians for a Strong America (No. CV-88-6449-AWT(Ex)). The court decreed that the committee and its treasurer, Albert J. Cook, had violated the election law by:

- o Failing to file a 1987 mid-year report on time (2 U.S.C. §434(a)(4)(A)(iv));
- o Failing to properly report independent expenditures incurred for radio and television advertisements and fundraising letters advocating the defeat of Senator Alan Cranston in the 1986 Senate election in California (2 U.S.C. §434(b)(6)(B)(iii)); and
- o Failing to include a disclaimer notice in at least five solicitation letters (2 U.S.C. §441d(a)(3)).

The court ordered the defendants to comply with the law's reporting requirements within 15 days of the judgment and to pay a civil penalty of \$15,000 (\$5,000 for each violation). The court also ordered the defendants to pay the FEC's court costs and to refrain from future similar violations of the election law.

#### **FEC v. BOB RICHARDS FOR PRESIDENT COMMITTEE (89-0254)**

On June 29, 1989, the U.S. District Court for the District of Columbia granted the FEC's motion for summary judgment in FEC v. Bob Richards for President Committee, Waco, Texas (Civil Action No. 89-0254). The court ordered the defendants to comply fully with the terms of a conciliation agreement entered into with the Commission a year before. Under that agreement, the defendants had admitted to several violations of the Federal Election Campaign Act and had agreed to pay a civil penalty of \$12,000 and to file various reports and statements required under the election law.

#### **MILLER v. FEC**

On June 29, 1989, the U.S. District Court for the District of Columbia denied the plaintiff's motion for summary judgment in Harry P. Miller, Jr. v. FEC (Civil Action No. 89-0094).

Mr. Miller filed suit in January 1989 claiming that the Commission had acted contrary to law in dismissing an administrative complaint that he had filed the previous October against Bush-Quayle 88, the 1988 Republican Presidential general election campaign committee. The complaint had alleged that several Texas state officials had conducted fraudulent activities on behalf of the Bush-Quayle campaign. Informed of the charges by the Commission, the respondents denied any knowledge of the alleged violations. The Commission subsequently voted to find "no reason to believe" that the violations alleged by Mr. Miller had occurred and dismissed the matter.

Finding that the Commission's dismissal of Mr. Miller's complaint was reasonable, the court said that the plaintiff failed to show that the FEC had before it any evidence of illegal activity. The court concluded, "Considering the unfocused allegations...and respondents' reply [indicating no knowledge of criminal activity], the FEC's decision to dismiss Mr. Miller's complaint was clearly not 'contrary to law.'"

#### **FEC v. FRANKLIN**

On July 26, 1989, the U.S. District Court for the Eastern District of Virginia issued an order in FEC v. William Franklin, a/k/a Billy A. Franklin, requiring the defendant to respond fully to an FEC questionnaire that had been sent to him last year. Among other things, the FEC had asked Mr. Franklin—a private-investigator who is also an attorney—to identify the person who had hired him during the 1988 Senate campaign in Virginia to investigate Senator Charles Robb's personal life. The court also ordered the FEC not to disclose the identity of that person until a formal enforcement action commences, or the client



waives confidentiality, or until disclosure is mandated by the election law.

### Background

In October 1988 Mr. Robb, the Democratic nominee for the U.S. Senate in Virginia, filed a complaint with the Commission alleging that Mr. Franklin's unknown employer had violated the election law by failing to report payments made to Mr. Franklin to investigate rumors linking the candidate with persons allegedly implicated in drug use or drug trafficking. The Robb campaign also alleged that the contribution limits may have been violated by Mr. Franklin's client. Conducted during the height of the 1988 campaign, Mr. Franklin's investigation was the subject of several news stories.

After finding "reason to believe" that the law had been violated, the Commission sent Mr. Franklin a questionnaire about the nature and purpose of his investigation and asking on whose behalf it was conducted. Mr. Franklin answered some of the questions, but he refused to identify the person who had hired him, invoking attorney-client privilege. The FEC subsequently petitioned the court to order Mr. Franklin to respond fully to the questions.

### District Court Decision

Mr. Franklin challenged the FEC's actions on four grounds:

- o The FEC lacked subject-matter jurisdiction over the original complaint because the Robb campaign had identified only "John Doe, Employer of William Franklin" as the respondent. This fact, Mr. Franklin argued, prevented the FEC from fulfilling its statutory requirements in acting on the complaint.
- o The complaint from the Robb campaign was inadequate to launch an FEC investigation.
- o The FEC's finding of "reason to believe" was arbitrary, capricious and contrary to law.
- o Attorney-client privilege permitted him to preserve the anonymity of his client.

The court rejected all of these arguments.

In ruling on the FEC's jurisdiction, the court concluded that the Commission had fulfilled its statutory requirements in acting on the complaint to the extent that it was possible. The election law requires that the Commission notify respondents of complaints filed against them; the Commission must also give such persons the opportunity to respond to the allegations. 2 U.S.C. §437g(a)(1). Although the Commission did not know the name of the respondent, the court found that the Commission had "met the requirements of the law" by communicating with the unknown respondent through Mr. Franklin.

The court also rejected Mr. Franklin's argument that the Robb complaint was inadequate on the grounds that it did not identify the respondent or allege "a clear and concise recitation of the

facts which describe a violation," as required under 11 CFR 111.4(d)(3). "While the complaint did not identify the respondent by name," the court said, "the complaint clearly identified the employer of Franklin as the respondent." The court further said that the regulations did not require "a complete factual and legal account of a violation." Filing a complaint is only the first step in the enforcement process, the court emphasized.

With regard to Mr. Franklin's charge that the Commission's "reason to believe" finding was contrary to law, the court observed that "agency actions are not generally ripe for judicial review" unless they constitute "final agency actions." In most cases, a "reason to believe" finding is a preliminary action in the enforcement process, leading to a formal investigation. It is not a final action. Furthermore, the court noted, "reason to believe" findings have not previously been reviewed by courts unless the alleged violation was novel or unless the press exemption to the reporting requirements was at issue. The Robb complaint involved neither novel issues nor the press exemption. Adding that Mr. Franklin had not demonstrated that an FEC investigation would injure himself or his client, the court rejected Mr. Franklin's argument that the Commission's finding was "contrary to law."

The court also found that Mr. Franklin had not established that the attorney-client privilege applied to his case. Although he was a practicing attorney, Mr. Franklin was questioned by the FEC about his activity as a private investigator. "Franklin has not demonstrated that the client retained him in his capacity as an attorney or that [he] provided legal advice to the client relating to Franklin's investigation," the court said.

For these reasons, the court ordered Mr. Franklin to provide written answers to the FEC's questions within 75 days. Furthermore, the court ordered that "upon pain of contempt, no member or employee of the FEC, or any other person, disclose to any person who is not a member or employee of the FEC with a need to know the identity of Franklin's client in the Robb investigation." This protective order would apply unless and until a formal enforcement action was begun, or Franklin's client waived confidentiality restrictions, or disclosure was otherwise required by the law.

### NEW LITIGATION

#### FEC v. Colorado Republican Federal Campaign Committee

The Commission asks the district court to declare that the Colorado Republican Federal Campaign Committee (the federal account of the Colorado State Republican Committee) and Douglas L. Jones, as treasurer, violated the election

*continued*

law by:

- o Failing to report and to itemize expenditures made in connection with the 1986 Colorado Senatorial election (2 U.S.C. §§434(b)(4)(H)(iv) and (6)(B)(iv)); and
- o Making a coordinated party expenditure in excess of the legal limit set forth in 2 U.S.C. §441a(d)(3)(A).

The FEC contends that, during the 1986 election, the Colorado committee, after delegating its right to make coordinated party expenditures on behalf of the Republican Senatorial candidate to the National Republican Senatorial Committee, spent \$15,000 in April 1986 for a radio advertisement criticizing a Democratic candidate for the Senate. The Commission claims that the expenditure was a coordinated party expenditure under section 441a(d) of the election law. (The Democratic candidate, at the time the ads were begun, was the sole candidate for his party's nomination to the Senate; he eventually became the Democratic nominee in the November general election. The defendants' ads ran through August 1986.) Because the Colorado committee had transferred its own spending limit for the Senate general election to the Republican Senatorial committee, the Commission considered the expenditure for the ad to be excessive.

The FEC also asks the court to assess a civil penalty of the greater of \$5,000 per violation or an amount equal to the amounts involved in the violations committed, and to permanently enjoin the defendants from similar future violations of the law.

U.S. District Court for the District of Colorado, Civil Action No. 89-1159, July 7, 1989.

## 800 LINE

### NAMES OF CORPORATE AND LABOR PACS

The names of separate segregated funds—i.e., political committees established by corporations and labor organizations—are subject to specific requirements. (Separate segregated funds are popularly referred to as corporate and labor PACs.)

#### Official Name

**What requirements apply to the official name of a corporate or labor PAC?** The name of a separate segregated fund must include the full name of its connected organization. 2 U.S.C. §432(e)(5); 11 CFR 102.14(c). The connected organization is the corporation (profit or nonprofit) or labor organization that establishes, administers or financially supports the separate segregated fund

by paying for its administrative and solicitation expenses. 11 CFR 100.6.

**Does the name of a PAC established by a subsidiary or other subordinate unit also need to include the parent organization?** No. The PAC's name need only include the official name of the connected organization, which, in this case, is the lower level organization. 11 CFR 102.14(c).

**What if a PAC is jointly established by two or more affiliated organizations?** The PAC's name must include the full names of all its connected organizations. AOs 1988-42, 1988-14 and 1980-18.

**May a PAC's name include the name of an affiliated organization that is not its connected organization?** Yes. As long as the PAC's name includes the full name of its connected organization, there is nothing in the law to preclude the addition of an affiliate's name. However, the PAC should not list the affiliate as a connected organization on its Statement of Organization. AO 1989-8.

**May a PAC exclude abbreviations like "Inc." and "Corp." from its official name?** No. A PAC's official name must include the name of its connected organization in its entirety. AOs 1988-42 and 1980-10. However, PACs are permitted to use shortened versions of their official names, as explained in the section below.

**May a PAC's official name use the acronym "PAC" instead of "Political Action Committee"?** Yes. The acronym is sufficiently well known through public media usage to permit its use in an official name. AO 1988-42.

#### Abbreviated Name

**When may a PAC use a shortened form of its official name?** In several advisory opinions, the Commission has said a PAC may use an abbreviated version of its name on checks and letterhead. See, for example, AO 1987-26.

If a PAC adopts an abbreviated name, then both its full, official name and its abbreviated name must be included on:

- o Its Statement of Organization;
- o Its FEC reports; and
- o Any public advertising notices<sup>1</sup> ("disclaimers") required on communications. 11 CFR 102.14(c).

<sup>1</sup>These notices must be displayed on communications that qualify as independent expenditures and on other publicly advertised communications that expressly advocate the election or defeat of candidates or solicit funds on their behalf. 11 CFR 109.3 and 110.11.

**What other requirements apply to the abbreviated version of a PAC's name?** The PAC must use "a clearly recognized abbreviation or acronym by which the connected organization is commonly known." 11 CFR 102.14(c). An abbreviated name must adequately identify the connected organization to the public.

**What are some examples of adequate and inadequate abbreviations?** In AO 1980-10, the Commission said that "United Telecom" was an acceptable abbreviation for United Telecommunications, Inc. After considering several proposed abbreviations for Mid-America Dairymen, Inc., the Commission approved "Mid-Am Dairymen" and "Mid-America Dairymen" but rejected "Mid-Am" and "Mid-America." AO 1980-23. In disapproving "ANR" as an abbreviation for American Natural Resources, Inc., the Commission pointed out that, in previously approved abbreviations, "the most significant part of the corporations' identities were used, i.e., 'Telecom' and 'Dairymen.'" AO 1980-86. The Commission also regarded "BTNB" as an insufficient abbreviation for Birmingham Trust National Bank. AO 1980-98.

**Is an abbreviation that appears in a stock exchange listing or in a corporate directory like Standard and Poor's considered acceptable?** Not automatically. The Commission may, however, consider such sources when deciding whether an abbreviation provides adequate public notice of the connected organization. For example, in AO 1987-26 the Commission said that the Principal Mutual Life Insurance Company could use its service mark, "Principal Financial Group," as the abbreviated name of its PAC because the company publicized the service mark in its annual report and listed itself under the service mark in Standard and Poor's. See also AO 1980-86.

#### Corrections to Name

**If a PAC's official name does not include the complete name of its connected organization or if its abbreviated form is not informative enough, what should the PAC do?** The PAC should modify its name to comply with 11 CFR 102.14(c) and, within 10 days, file an amended Statement of Organization identifying the change. 11 CFR 102.2(a)(2). If necessary, the PAC should also correct its checks and letterhead.

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