THE FEDERAL ELECTION COMMISSION

RECORD

1325 K Street N.W., Washington, D.C. 20463

Volume 6, Number 9 September 1980

PUBLICATIONS

NEW PUBLICATIONS FOR CONGRESSIONAL CANDIDATES AND PARTY ORGANIZATIONS

During August 1980, the Commission distributed three new publications designed to assist Congressional candidate committees and party organizations in complying with the Act. All three publications reflect the 1979 Amendments to the Act.

1. A *Record Supplement for State and Local Party Organizations* was sent to all registered party committees. It provides general information on sections of the Act which directly affect party political committees and other party organizations. The *Supplement* covers such activities by state and local parties as: coordinated party expenditures (expenditures covered by 2 U.S.C. §441a (d)); activities that benefit candidates for federal office but which are exempt from the definition of "contribution" and "expenditure"; volunteer activity; and record-keeping and reporting requirements. The *Supplement* is not, however, comprehensive.
2. A revised edition of the *Campaign Guide for Congressional Candidates and Committees* was distributed to the authorized campaign committees of all Congressional candidates registered with the Commission. The *Guide* focuses on those requirements affecting candidates for the U.S. House and Senate, their principal campaign committees and any other authorized committees. The revised *Guide,* printed as a binder insert, covers information needed by these committees to understand the definition of "contribution" and "expenditure" under the Act, to start their campaigns, to conduct their campaigns, to keep records, to file reports and to wind down their campaigns. Appendices provide additional information on contribution limits, independent expenditures, earmarked contributions and assistance provided by the Commission.
3. A revised *Bookkeeping Manual for Congressional Candidates* was also distributed to all authorized committees of Congressional candidates registered with the Commission. The *Manual* provides information on uniform methods of bookkeeping and reporting to assist Congressional candidates and their authorized committees in keeping records and preparing reports required under the Act.

Additional copies of these publications are available free of charge through the FEC's Office of Public Communications, 1325 K Street, N.W., Washington, D.C. 20463; or by calling 202/523-4068 or toll-free 800/424-9530.

STAFF

FEC APPOINTS NEW STAFF DIRECTOR

On August 21, 1980, the Commission unanimously named B. Allen Clutter, III, as FEC Staff Director. Mr. Clutter, who is currently serving as Executive Director of the Minnesota Ethical Practices Board, will assume the position in mid-September.

Mr. Clutter has served as Executive Director of the Minnesota Ethical Practices Board since January 1976. He has prior experience as an Assistant Professor at the U.S. Air Force Academy and with the Air Force Administrative Units in Thailand and California. He has also worked with the World Press Institute, Macalester College, St. Paul, Minnesota.

A native of Oskaloosa, Iowa, he holds a graduate degree in geography from Eastern Michigan University, and has attended business administration courses at the University of Colorado, Colorado Springs. Mr. Clutter, who was listed among the Outstanding Young Men in America in 1978, currently serves as a faculty member of Hamline University Law School, Continuing Legal Education Program.

REPORTS

MONTHLY FILING

During October 1980, political committees reporting on a monthly basis must file a 12-day pre-general election report in addition to a monthly report covering September activity. These committees are **not** required to file monthly reports for November and December 1980, and January 1981. The filing schedule for October 1980 through January 1981 is:

Report Due	Filing Date	Coverage Dates 1980
October 20 Monthly	October 20, 1980	9/1 - 9/30
12 Day Pre-General	October 23, 1980	10/1 - 10/15
30 Day Post-General	December 4, 1980	10/16 - 11/24
Year End	January 31, 1981	11/25 - 12/31

OPINIONS

ADVISORY OPINION REQUESTS

Advisory Opinion Requests (AOR's) pose questions on the application of the Act or Commission Regulations to specific factual situations described in the AOR. The following chart lists recent AOR's with a brief description of the subject matter, the date the requests were made public and the number of pages of each request. The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject	Date Made Public	No. of Pages
1980-87	Expenditures by subordinate party committee for 1980 Republican Presidential ticket.	7/22/80	1
1980-88	Personal services donated to Presidential campaign committee.	7/24/80	1
1980-89	Beverages and food donated to Congressman's district office receptions.	7/29/80	1
1980-90	Presidential candidates' participation in televised public affairs program produced and distributed by corporation.	7/31/80	5
1980-91	Combined billing notice and contribution solicitation of separate segregated fund of membership organization.	8/1/80	2
1980-92	Corporate and foundation support for nonprofit, nonpartisan organization's voter registration drives.	8/7/80	24
1980-93	Candidate's distribution of coin as campaign item.	8/13/80	1
1980-94	Essay contest sponsored by candidate's campaign committee.	8/13/80	1
1980-95	National bank's contribution to fund supporting amendments to state constitution.	8/13/80	19
1980-96	Post-election public funding for independent Presidential candidate.	8/13/80	52
1980-97	Pre-election donations to Presidential transition committee.	8/18/80	5
1980-98	Name of national bank's separate segregated fund.	8/19/80	20
1980-99	Reporting multiple contributions from one contributor.	8/19/80	2
1980-100	Separate segregated fund for corporation wholly owned by foreign nationals.	8/20/80	4

ALTERNATE DISPOSITION OF ADVISORY OPINION REQUESTS

- In response to **AOR 1980-66** (voter registration activities conducted by a nonpartisan, nonprofit association and a corporation), the General Counsel informed the requester in a letter issued July 3, 1980, that the Commission had failed to approve an advisory opinion by the requisite four-vote majority.
- **AOR 1980-73** was withdrawn by its requester on August 20, 1980.

The RECORD *is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Max L. Friedersdorf, Chairman; John Warren McGarry, Vice Chairman; Joan D. Aikens; Thomas E. Harris; Frank P. Reiche; Robert O. Tiernan; J.S. Kimmitt, Secretary of the Senate, Ex Officio; Edmund L. Henshaw, Jr., Clerk of the House of Representatives, Ex Officio. For more information, call 202/523-4068 or toll-free 800/424-9530.*

ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR's. 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 1980-33 and Supplement: Trade Association's Nonpartisan Voter Drive

The National Association of Realtors (the Association), a nonprofit, incorporated trade association, may finance voter registration and get-out-the-vote programs directed to both Association members and the general public.

Program for Members. The Association may make either partisan or nonpartisan communications to its members through phone banks. 11 CFR 114.3(c)(3), 114.7(h) and 114.8(h). It may also distribute voting materials prepared by election officials. 11 CFR 114.4(c)(2).

Program for General Public. With regard to four radio announcements submitted for Commission approval, the Association may transmit three to the general public. These three transcripts, which urge voter registration, satisfy the criteria that the Commission applied to a newspaper advertisement in AO 1980-20:

1. The communications lack any suggestion that a person designate a political party preference when registering to vote;
2. The communications do not appeal to any identifiable group to ensure their political well-being; and
3. By appealing to the general public in a radio broadcast, the Association has not tried to determine the political preference of the audience.

The fourth communication (considered in the Supplement to AO 1980-33) also satisfies the nonpartisan criteria, but differs from the other three in its suggestion that the public obtain registration information at the real estate offices of certain Association members. The Association may use this transcript in communications with the general public, provided the information supplied by the realtors is prepared by local election officials for distribution to the general public and is distributed in a nonpartisan manner, without endorsing, supporting or promoting registration with a particular party. 11 CFR 114.4(c)(2).

Eight proposed get-out-the-vote announcements, encouraging voting rather than registration, also meet the three nonpartisan criteria set out in AO 1980-20 and summarized above. One of these announcements, however, which suggests that the public obtain absentee voting information at realtor offices, may be used only if it also complies with the provisions of 11 CFR 114.4(c)(2).

Commissioners Robert O. Tiernan and Thomas E. Harris filed dissenting opinions. (Opinion/Date Issued: June 2, 1980; Length: 8 pages, including dissenting opinions; Supplement/Date Issued: August 6, 1980; Length: 6 pages)

AO 1980-50: Corporate Payment of Expenses in Connection with Separate Segregated Fund

The United Merchants and Manufacturers, Inc. (the Corporation) may pay for certain expenses relating to a meeting that would introduce executive and administrative personnel to the Corporation's separate segregated fund (UM&M PAC).

At the proposed breakfast or luncheon meeting, the UM&M PAC directors would discuss the PAC's structure, philosophy and purpose, and would explain the contribution mechanisms available to solicitable employees, though contributions would not be collected at the meeting. The cost of food and transportation to the meeting would range from $9 to $22 per employee. The corporation may pay these expenses since they are incurred in establishing, administering and soliciting contributions to a separate segregated fund. 11 CFR 114.1(b). Because the meeting would not impart a prize or entertainment benefit to the employee, UM&M PAC need not reimburse the corporation for the meeting's expenses.

The Commission could not reach agreement on the question of whether the Corporation's payment of employee salaries for time spent traveling to and attending the meeting would be considered a cost of establishing, administering and soliciting contributions to a separate segregated fund, or whether the payment would constitute a prohibited corporate expenditure. If UM&M PAC were to hold the meeting on a non-working day, however, the question would not arise. Commissioner Joan D. Aikens filed a dissenting opinion. (Date Issued: July 11, 1980; Length: 5 pages)

AO 1980-59: Corporate Funds Donated to Defray Administrative Costs of Trade Association's Separate Segregated Fund

The Lawyers Title Insurance Company (LTIC), a corporation, may donate funds to an account maintained by the American Land Title Association (ALTA), a trade association, to defray the administrative and solicitation expenses of ALTA's separate segregated fund, the Title Industry Political Action Committee. Because the Act exempts administrative and solicitation expenses from the definition of "contribution" or "expenditure," LTIC may make this donation to ALTA (in addition to its membership dues) without violating the Act's prohibition on corporate contributions. 2 U.S.C. §441(b)(2)(C) and §431(8)(B)(vi) and 9(B)(v). Commissioners Thomas E. Harris and Robert O. Tiernan filed a dissenting opinion. (Date Issued: July 11, 1980; Length: 3 pages, including dissenting opinion)

AO 1980-65: Solicitation Authorization Published in Trade Association Magazine

The National Tire Dealers and Retreaders Association (NTDRA) may publish an authorization form in its bimonthly magazine, *Dealer News,* which requests authorization from member corporations to solicit their personnel. The form proposed by NTDRA must, however, be revised to adequately explain the purpose and use of the form.

Although the *Dealer News* is distributed to both NTDRA members and nonmembers (nonmembers may not be

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solicited under the Act), an authorization request could be published because it would not be considered a solicitation for contributions. Instead, the publication of the request form would be considered a method of obtaining approval from NTDRA's corporate members to solicit their stockholders, executive and administrative personnel and their families.

However, the authorization request, as proposed, is not sufficiently specific in stating its purpose. To meet the requirements of FEC Regulations and to avoid an improper solicitation of nonmembers, the form must make clear that: 1) only corporate members of NTDRA may approve the solicitation; 2) approval may not be given if the corporation has already approved a solicitation by another trade association during the year; and 3) a corporation which is not already a member will not become a member by signing and returning the authorization form. 11 CFR 114.8(d)(3). (Date Issued: July 29, 1980; Length: 4 pages)

AO 1980-67: Notices on Invitations; Contributions by Spouses

Authorization/Nonauthorization Notice. Invitations to receptions hosted on behalf of the Russell B. Long Committee (the Committee) do not require a disclaimer notice stating who authorized and paid for the invitations. Although the primary purpose of the receptions is to gain support for Senator Long's campaign for the Senate, and those invited may be solicited for contributions at the reception, a disclaimer notice is not required because the invitations will not include any statement which expressly advocates the election of Senator Long or any statement which specifically solicits contributions (or mentions the possibility of soliciting contributions) to his campaign.

Contributions by Spouses. If a check contributed to the Committee is to count as a contribution from husband and wife, both individuals must sign either the check or an accompanying letter which specifies what portion of the contribution is to be attributed to each. 11 CFR 100.7(c) and 104.8(d). If not so attributed, the entire amount of the check is considered a contribution from the person signing the check. This requirement applies regardless of the property laws of the state where the contributors reside.

A portion of a contribution drawn on a partnership account may not be attributed to a spouse of a partner, unless the spouse is also a member of the partnership. (Date Issued: August 12, 1980; Length: 5 pages)

AO 1980-68: Contributions to Runoff Campaign

The Zell Miller for U.S. Senate Committee (the Committee) may, before the primary election takes place, establish an escrow account (or authorize a separate campaign committee) to accept contributions for a possible runoff election in Georgia. Moreover, the Committee may accept contributions for the runoff election from persons who have contributed up to $1,000 to Mr. Miller's primary campaign. However, these contributions must be returned to the donors if Mr. Miller does not run in the primary runoff. 11 CFR 102.9(e).

The Commission did not express an opinion on the Committee's acceptance of post-dated checks. (Date Issued: July 11, 1980; Length: 3 pages)

AO 1980-69: Solicitation Form Used by Labor Union's Separate Segregated Fund

The 101 Political Fund (the Fund), the separate segregated fund of the Hoisting and Portable Engineers Local Union 101 (the Union), may use a solicitation form that, when signed by a union member, authorizes the Fund to deduct a portion of the member's Vacation Fund. The Vacation Fund consists of payments made by the member's employer.

In a previous advisory opinion requested by the Fund on the permissibility of this solicitation system (AO 1979-60), the Commission concluded that the Vacation Fund could be used as a source of voluntary contributions to the Fund because it was maintained as an escrow account separate from the Union's treasury funds. Modified to reflect that advisory opinion, the new authorization form states that the amount to be deducted from the Vacation Fund (five cents per hour worked) is only a suggested amount and that a member may authorize an amount more or less than five cents per hour. Further, the revised form states that the Union will not favor or discriminate against a member based on the amount contributed to the Fund or based on a decision not to contribute. 11 CFR 114.5(a)(2). (Date Issued: July 24, 1980; Length: 4 pages)

AO 1980-70: Purchase of Materials from Independent Expenditure Committee

The Committee for Independent Expenditures for Republicans (the Committee) is a political committee which intends to make independent expenditures on behalf of several federal candidates during the 1980 general elections. The Committee may sell campaign materials it produces to an individual who intends to use the materials to make his own independent expenditures. The individual must observe the following guidelines:

1. The individual may publish advertisements purchased from the Committee without disclosing the name of the Committee. These advertisements must, however, disclose the individual's full name as well as a statement that the advertisement is **not** authorized by any candidate or candidate's committee. 2 U.S.C. §441d.
2. The individual may make contributions of up to $5,000 to the Committee during 1980. 2 U.S.C. §441a(a)(1)(C). However, funds spent to purchase campaign materials from the Committee are considered contributions to the Committee and count against the $5,000 limit.

In addition, the individual may make independent expenditures in his own name (from personal funds) while acting as an officer of the Committee. (Date Issued: August 11, 1980; Length: 4 pages)

AO 1980-71: Notices Required for Corporate Employee Solicitations

The Oak Industries, Inc. Political Action Association (the Association), the separate segregated fund of Oak Industries, Inc., is not required to include a disclaimer notice on literature used to solicit contributions from the corporation's stockholders and their families and its executive or administrative personnel and their families. Since the disclaimer notice is required only for communications directed to the general public, and since Commission Regulations prohibit corporate separate segregated funds from soliciting the general public, the disclaimer notice would not apply to the Association's solicitation literature. 2 U.S.C. §441d and §441b(b)(4)(A)(i).

Although the 1979 Amendments to the Act repealed the requirement for a notice stating that a copy of a separate segregated fund's report was available for purchase from the FEC, the Association may continue to use the notice if it so desires. (Date Issued: July 29, 1980; Length: 2 pages)

AO 1980-72: Law Partnership's Political Contribution Plan

The law firm of Kilpatrick and Cody (the Partnership) may pay costs of establishing and operating a voluntary political contribution plan for its members without registering and reporting as a political committee provided the partnership does not spend in excess of $1,000 to undertake certain activities that would "influence federal elections." Under the proposed contribution plan, each member of the partnership who wished to contribute to candidates for public office would establish a special bookkeeping account with the partnership. By writing a personal check, the partner could withdraw personal funds from this account to make contributions to the candidate or political committee of his/her choice. Any special account funds not contributed would be refunded at the end of the year to the individual who had set the funds aside. The partnership's bookkeeper would maintain records of the special accounts, as well as any contributions from the accounts, at a negligible cost to the partnership.

The costs incurred by the partnership in establishing and maintaining the contribution plan would not constitute "expenditures" because their purpose is not to influence federal elections. Rather, the purpose of the plan is to "facilitate the management of personal funds of participating partners." Moreover, the partnership indicates no

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REGULATIONS

STATUS OF FEC REGULATIONS

Regulations*	Date Sent to Congress	Federal Register Publication	Date Prescribed** by the Commission
11 CFR 9033.9 Suspension of Primary Matching Fund Payments	4/10/80	4/15/80 (45 FR 25378)	7/3/80
11 CFR Part 4 Public Records and the Freedom of Information Act	Not applicable	5/13/80 (45 FR 31291)	6/12/80
11 CFR Part 5 Access to Public Disclosure Division Documents	Not applicable	5/13/80 (45 FR 31292)	6/12/80
11 CFR, Parts 100 and 110 Contributions to and Expenditures by Delegates to National Nominating Conventions	5/14/80	5/23/80 (45 FR 34865)	8/7/80
11 CFR, Parts 100, 106, 110, 140-146 and 9001-9007 Public Financing of Presidential General Election Campaign	6/13/80	6/27/80 (45 FR 43371)	Congressional approval pending

*The chart is cumulative, listing all amendments to the FEC Regulations proposed after the 1980 edition of 11 CFR was published, including any technical amendments.

**The Commission may prescribe its regulations 30 legislative days after it has transmitted them to Congress, provided neither the House nor the Senate disapproves them during this period.

intention to create a political committee since the member's decision to contribute funds to a candidate would be an individual, not a group, decision.

The proposed contribution program would become a political committee, however, if the partnership spent more than $1,000 to influence federal elections. An attempt to influence elections would occur if:

1. The partnership distributed information within the firm which identified partners participating in the plan, the amounts of their contributions and the candidates to whom they contributed.
2. Participation in the plan was conditioned on a formal or informal agreement to make, or to refrain from making, contributions to any particular candidate or class of candidates.
3. The program included any arrangement whereby several contributions for the same candidate would be accumulated and collectively forwarded to the candidate. (Date Issued: August 12, 1980; Length: 3 pages)

AO 1980-74: Labor Organization's Membership Solicitation Program

Operating Engineers Local 37 (Local 37) may use a proposed solicitation plan, provided that Local 37 modifies its contribution authorization form to indicate how the member can contribute an amount other than that suggested by the union. Under the proposed solicitation program, a member of the Local voluntarily signs an authorization card permitting the deduction and transfer of funds from his or her Vacation Fund to the separate segregated funds established, respectively, by the national labor organization of which Local 37 is a member and by a labor federation with which the national labor organization is affiliated. The Vacation Fund is a permissible source of voluntary contributions because it consists of funds earned by union members and does not include funds commingled with union treasury monies or funds required as a condition of employment or union membership.

The proposed deduction authorization/card is acceptable because it contains a clear statement informing contributors of the political purpose of the funds and assurances that the contribution guidelines are merely suggestions and the union will not penalize anyone because his/her contribution is too small or because he/she decides not to contribute at all. However, the form must be revised to indicate the contributor can contribute an amount other than that suggested by the authorization form.

The Commission noted that Commission Regulations governing joint fundraising and tranfers of contributions between affiliated committees also apply to the solicitation program. 11 CFR 102.6, 102.8 and 103.3. (Date Issued: August 12, 1980; Length: 3 pages)

AO 1980-75: National Trade Association's Solicitation of "Designated" Members

The National Restaurant Association (NRA), a national trade association, must obtain written approval from its member corporations before soliciting contributions to its separate segregated fund from employees who have been designated by these corporations as individual NRA members.

Under NRA's membership policy, a member organization may designate its executive and administrative employees as individual members of NRA. The corporate member "transfers portions of its membership rights" to the individual it designates as a member. It may also pay the annual NRA dues of the designated member. While the individuals designated as NRA members are entitled to all the rights and benefits accorded to individuals who obtain membership by initiating their own application, the designated members enjoy these rights and benefits solely by virtue of their employers' membership in NRA. In effect, the designated member acts as a representative of his or her employer in the exercise of membership rights. NRA would, therefore, be precluded from soliciting these individuals without prior approval by their corporate employers. 11 CFR 114.8. By contrast, under 11 CFR 114.7, NRA could directly solicit noncorporate individual members who had independently applied for membership. Commissioner Joan D. Aikens and Chairman Max L. Friedersdorf filed a dissenting opinion. (Date Issued: August 18, 1980; Length: 8 pages, including dissenting opinion)

AO 1980-76: Fees for Regular Radio and Television Appearances

Fees received by Senator William Proxmire for regular appearances on a monthly radio program and a weekly television program do not count against his $25,000 per year honorarium limit. The fees are considered "stipends" under Commission Regulations — as distinct from "honoraria" — because they constitute "payment for services on a continuing basis, including a salary or other compensation paid by news media for commentary on events other than the campaign of the individual compensated." 11 CFR 110.12(c)(3).

The Commission expressed no opinion on the application of tax laws and Senate rules to the stipends. (Date Issued: August 1, 1980; Length: 2 pages)

AO 1980-78: Use of Campaign Finance Information in Candidate's Solicitation Letter

Using information obtained from disclosure reports filed with the FEC, Senate candidate Don L. Richardson may, in a solicitation letter, publish the total disbursements made by candidates in previous elections. Since the letter would not disclose the identity of contributors, use of this information would not be prohibited by 2 U.S.C. §438(a)(4) or 11 CFR 104.15. (Dated Issued: August 12, 1980; Length: 2 pages)

AO 1980-79: Name of Independent Expenditure Committee Advocating Presidential Candidate's Defeat

Mr. Brad Sherman may not use the name "Americans Against Reagan" for a proposed political committee which would be "totally independent of any other political committee, candidate or political party" and which would advocate the defeat of the Republican nominee in the general election. Under the Act and Commission Regulations, any political committee which is not authorized by a candidate may not include the name of any candidate in its title. 2 U.S.C. §432(e)(4) and 11 CFR 102.14(a). (Date Issued: August 1, 1980; Length: 2 pages)

AO 1980-80: Separate Campaign Committees for Special and Primary Elections

Mr. George W. Crockett may use the principal campaign committee established for his Congressional primary election to campaign in a special election held on the same date to fill the same Congressional seat. Since the two campaigns would be for different terms of the same office, Mr. Crockett would not be subject to 11 CFR 110.8(d)(1), which requires a candidate to designate separate campaign committees when running "for more than one Federal office." (Date Issued: July 11, 1980; Length: 2 pages)

THE LAW IN THE COURTS

DISTRICT COURT DISMISSES MOTT VS. FEC

On June 30, 1980, the United States District Court for the District of Columbia dismissed a suit in which Stewart R. Mott, Rhonda K. Stahlman and the National Conservative Political Action Committee (NCPAC) had sought declaratory and injunctive relief against the FEC. In its motion to dismiss the suit (*Mott et al.* v. *FEC,* Civil Action No. 79-3375), the FEC argued that some of the claims presented in the suit were not ripe for consideration by the Court while others failed to state a claim on which relief could be granted. In its role as *amicus curiae,* Common Cause had also filed a brief arguing dismissal of the suit.

Plaintiffs had challenged the constitutionality of provisions of the Act, FEC Regulations, advisory opinions and other written interpretations which regulate independent political activity by prescribing limits on contributions from individuals, groups and political committees to other individuals, groups and political committees which make independent expenditures. Plaintiffs claimed that these provisions define the terms "contribution" and "expenditure" in overly broad and vague language.

Mr. Mott proposed that, together with other "like-minded individuals," he would purchase advertising space in *The New York Times* to express his views on political issues and expressly advocate the election or defeat of several clearly identified federal candidates. Specifically, he claimed that the First Amendment rights of those purchasing the ad would be restricted by provisions of the Act illegally requiring that:

1. This group of individuals register with the FEC as a political committee when their expenditures for the advertising exceed $1,000; and
2. The amount spent in the joint advertising purchase count against the limits imposed on individual contributions to political committees.

The District Court determined that the constitutional issues raised by Mr. Mott were not ripe for judicial decision in the absence of a more fully developed factual record. The claim that Mr. Mott wished to "join with others" in purchasing the advertising was broad enough to encompass a single purchase of advertising space as well as a series of advertisements and solicitations by a full-fledged political committee. Further, the Court noted that Mr. Mott should have requested an advisory opinion from the FEC on the application of the Act to this proposed activity before seeking a review by the Court.

Both NCPAC and Ms. Stahlman challenged the constitutionality of limits on contributions by individuals to political committees which make independent expenditures. Ms. Stahlman's and NCPAC's claims raised three constitutional issues:

1. Whether the definition of "contribution" in 2 U.S.C. §431(8) abridges First Amendment rights since it limits contributions which individuals may make to political committees undertaking independent expenditures;
2. Whether 2 U.S.C. §441a(a)(3), which limits total contributions by an individual within any calendar year to $25,000, is unconstitutional under the First and Fifth Amendments; and
3. Whether 2 U.S.C. §441a(a)(1)(c), which limits contributions by a person to a political committee to $5,000 in any calendar year, is unconstitutional under the First and Fifth Amendments.

The District Court pointed out that, in the *Buckley* v. *Valeo* decision, the Supreme Court had upheld the constitutionality of the contribution limits. (*Buckley* v. *Valeo,* 424 U.S. 1 at 38 (1976)). The District Court said that, although the Supreme Court had not specifically addressed the $5,000 limit on individual contributions to political committees, its "reasoning . . . clearly indicated that the restriction is constitutional." The Supreme Court had reasoned that a limit on contributions infringed far less on First Amendment rights than did a limit on expenditures, because the contribution limits involved restrictions on indirect, rather than direct, political expression. Further, whatever infringement did occur was justified by the need to curb the "actuality and appearance of corruption" flowing from large individual contributions. (*Buckley* v. *Valeo,* 424 U.S. 1 at 26 (1976))

continued

FEC PUBLIC APPEARANCES

In keeping with its objective of making information available to the public, the Commission regularly accepts invitations to address public gatherings. This column lists upcoming scheduled Commission appearances, the name of the sponsoring organization, the location of the event and the name of the Commission's speaker. For additional information on any scheduled appearance, please contact the sponsoring organization.

9/5	Pennsylvania Election Officials Harrisburg, Pennsylvania Commissioner Joan D. Aikens
9/24	Northeast City and Town Clerks Chatham, Massachusetts Vice Chairman John Warren McGarry

FELICE M. GELMAN AND CITIZENS FOR LAROUCHE, INC. VS. FEC

On July 22, 1980, the U.S. Court of Appeals for the District of Columbia Circuit issued an opinion affirming the FEC's determination that Lyndon H. LaRouche had failed to reestablish his eligibility for primary matching funds in the Democratic Presidential primary held in Michigan on May 20, 1980. In its May 28, 1980, ruling, the Commission found that Mr. LaRouche had failed to receive at least 20 percent of all votes cast for Democratic contenders in the Presidential primary, the minimal amount necessary to reestablish eligibility.

Felice M. Gelman and Citizens for LaRouche, Inc. had filed a petition on June 11, 1980, contending that the Commission should have applied the definition of "candidate" provided by 26 U.S.C. §9033(2) in determining whether Mr. LaRouche had reestablished his eligibility for primary matching funds. That provision stipulates that, for purposes of establishing *initial* eligibility for primary matching funds, a Presidential primary candidate must be "actively conducting campaigns in more than one State." In calculating total votes in the Michigan Democratic primary, Mr. LaRouche argued, this definition of "candidate" would have excluded votes cast for a candidate who had ceased to campaign actively in more than one state and votes cast for "uncommitted" delegates (i.e., those not pledged to any specific candidate). The FEC argued that the provisions of 26 U.S.C. §9033(c)(4)(B) required the Commission to count total votes cast for **all** Presidential primary candidates in a particular primary — including all votes cast for inactive or write-in candidates or "uncommitted" delegates.

In upholding the FEC's method of determining Mr. LaRouche's reeligibility for primary matching funds, the Court maintained ". . . petitioners' narrow focus on the word 'candidate', to the exclusion of the phrase within which that word appears, results in a strained and artificial construction that is at odds with the Act's underlying concern that federal matching funds should go only to those candidates who have demonstrated at least minimal public support for their candidacies."

LITIGATION STATUS INFORMATION

The following is a list of new litigation involving the Commission, together with the date the suit was filed, the court involved, the docket number and a brief description of the major issue(s) involved in the case. Persons seeking additional information on a particular case should contact the court where the suit is filed or the Commission.

John B. Anderson et al. v. FEC, U.S. District Court for the District of Columbia, Docket No. 80-1911, July 31, 1980.

Pursuant to 26 U.S.C. §9011(b)(2), plaintiffs seek prompt convening of a three-judge court to rule that John B. Anderson is entitled to the same post-election public funding for the 1980 Presidential general election as that provided Presidential candidates of "new parties" by the Presidential Election Campaign Fund Act (the Fund). Plaintiffs also seek a declaratory judgment from the Court that, to the extent the Fund does not provide post-election funding for independent candidates, the Fund violates First and Fifth Amendment rights. Plaintiffs further seek an injunction requiring the FEC to grant post-election public funding to Mr. Anderson, provided he submits the agreements and certifications required under the Federal Election Campaign Act and receives five percent or more of the popular vote in the 1980 Presidential general election.

Common Cause et al. v. Harrison Schmitt et al. and Federal Election Commission (Intervening Defendant), U.S. District Court for the District of Columbia, Docket No. 80-1609: FEC Motion to Intervene (July 11, 1980); FEC Motion to Dismiss (July 21, 1980).

On July 1, 1980, Common Cause and others filed suit against Americans for Change (an independent expenditure committee), Harrison Schmitt (committee chairman) and Carl T. Curtis (committee treasurer). Common Cause alleged defendants had made (or were about to make) independent and coordinated expenditures in violation of 26 U.S.C. §9012(f), which prohibits expenditures by unauthorized political committees in excess of $1,000 on behalf of a publicly funded Presidential nominee of a major party.

On July 11, 1980, the FEC filed a motion to intervene as defendant in *Common Cause et al. v. Harrison Schmitt et al.* (Civil Action No. 80-1609). FEC sought dismissal of the suit on grounds that it had exclusive jurisdiction over civil enforcement of violations alleged in the suit (2 U.S.C. §§437c(b)(1) and 437g) and that plaintiffs lacked standing to bring suit. On August 5, 1980, the Court granted the FEC's motion to intervene.

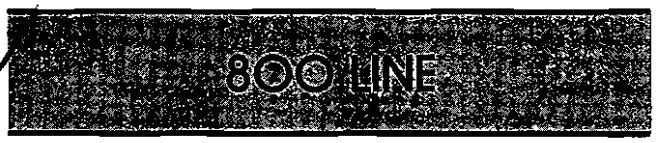
On July 15, 1980, the FEC filed its own suit against Americans for Change and two other political committees (see below).

FEC v. Americans for Change, Americans for an Effective Presidency and Fund for a Conservative Majority, U.S. District Court for the District of Columbia, Docket No. 80-1754, July 15, 1980.

Pursuant to 26 U.S.C. §§9011(b)(2) and 9010(c), FEC seeks expedited review by a three-judge district court of certain provisions of the Presidential Election Campaign Fund Act. Specifically, the FEC seeks the Court's declaratory judgment that: 1) expenditures defendants propose to make on behalf of a publicly funded Presidential nominee of a major party are in violation of 26 U.S.C. §9012(f)(1) and 2) 26 U.S.C. §9012(f)(1), which limits expenditures made by unauthorized political committees on behalf of a Presidential nominee receiving public funds, is constitutional as applied to defendants' expenditures.

Carter Mondale Reelection Committee, Inc. et al. v. FEC, U.S. Court of Appeals for the District of Columbia Circuit, Docket No. 80-1842, July 24, 1980.

Plaintiffs sought a stay from the Appeals Court that would prevent FEC certification of the Republican Presidential nominee's eligibility for public funds pending resolution of an administrative complaint filed by plaintiffs against the nominee and other parties. On July 24, 1980, the Appeals Court denied plaintiffs' motion for a stay.



SUPPORT FOR PUBLICLY FUNDED PRESIDENTIAL CANDIDATES

The Office of Public Communications has received many inquiries about how individuals, political parties, corporations and unions may support Presidential candidates who accept public financing for their general election campaigns. The following information responds to some of these questions.

What may an individual do to support the Presidential candidate of his or her choice?

Individuals may not make direct contributions to major party candidates who accept public funding. They may, however, make direct contributions of up to $1,000 to any other type of Presidential candidate, including a minor or new party candidate who accepts partial or retroactive public funding. In addition, an individual may support the Presidential candidate of his or her choice by:

- Contributing up to $1,000 to the candidate's compliance fund.*
- Contributing up to $5,000 to a state or local party committee which may, in turn, make certain disbursements that may benefit the Presidential nominee.
- Contributing up to $20,000 to the national committee of the candidate's political party,** which may, in turn, make "coordinated party expenditures" on behalf of the Presidential nominee.
- Making his or her own independent expenditures to advocate the candidate's election (or to oppose the election of another Presidential candidate), provided the expenditures are not made "with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate." 11 CFR 109.1(a). The individual making "independent expenditures" must report them when they exceed $250 per calendar year. 11 CFR 109.2(a).
- Volunteering his or her services (not compensated by anyone) to the candidate's campaign or to the candidate's political party. 11 CFR 100.7(b)(3).
- Conducting a campaign activity on behalf of the nominee in his/her home, or in a church or community room used on a regular basis by members of the community for noncommercial purposes. Costs of invitations, food and beverages provided by the volunteer may not, however, exceed $1,000. 11 CFR 100.7(b)(5) and (6), 100.8 (b)(6) and (7).
- Traveling on behalf of the candidate, provided the costs for travel do not exceed $1,000. 11 CFR 100.7(b)(8) and (9).

What role may a Presidential candidate's political party play in supporting the candidate if he or she accepts public funding?

The **National Party committee or its agents** may make special "coordinated party expenditures" to promote the election of its Presidential nominee in the general election. These expenditures are subject to a spending limit based on the national voting age population ($4,637,653.76 in 1980). Although these expenditures may be made in cooperation with the candidate, the party committee — not the candidate — is responsible for actually making and reporting them. (See 11 CFR 110.7.)

The **state and local party committees** may engage in certain activities that also benefit the Presidential nominee. They may, for example, produce certain campaign materials (e.g., pins and bumper stickers) which are used in connection with volunteer activities. Or, they may distribute a sample ballot identifying the nominee and conduct voter registration and get-out-the-vote drives on behalf of the nominee. All such activities are subject to specific provisions of the Act and FEC Regulations. 11 CFR 100.7(b)(9) and (15).

May corporations and labor organizations issue communications that support Presidential candidates in the general election?

Yes. Corporations and labor organizations may engage in certain partisan and nonpartisan communication activities which support Presidential candidates — regardless of whether the candidates accept public funding for their general election campaigns. These activities are subject to the specific requirements of Commission Regulations. (See 11 CFR Part 114.)

Partisan Communications. Corporations and labor organizations may expressly advocate the election or defeat of Presidential candidates, for example, by publishing printed materials or setting up a phone bank on behalf of a candidate. In the case of a corporation, these communications must be limited to the corporation's stockholders, executive and administrative personnel and their families. In the case of labor organizations, partisan communications must be limited to the labor organization's membership and their families. 11 CFR 114.3. Moreover, expenditures for these internal communications may be reportable. 11 CFR 100.8(b)(4).

Nonpartisan Communications. Corporations and labor organizations may also sponsor certain nonpartisan communi-

continued

*A publicly funded Presidential candidate may establish a separate Legal and Accounting Compliance Fund to pay costs of complying with the Act. Contributions to the fund are subject to the limits and prohibitions of the Act. See 11 CFR 9003.3(a).

**Total contributions by individuals in connection with federal elections may not exceed $25,000 per year.

cations made to the general public, provided these communications meet the requirements of Commission Regulations. 11 CFR 114.4. For example, in assisting a nonpartisan civic or nonprofit organization, a corporation or labor organization may jointly sponsor nonpartisan registration and get-out-the-vote drives directed to the general public.

May corporations or labor organizations pay for legal and accounting services rendered to a Presidential campaign?

Yes. Corporations and labor organizations (as well as partnerships) may pay for **legal and accounting services** rendered by their regular employees to Presidential candidate committees, provided the services are rendered solely to ensure compliance with the Act. Costs incurred by the regular employer for these services must be reported by the committee in accordance with 11 CFR 104.3(h). 11 CFR 100.7(b)(14).

For a summary of recent revisions to the regulations governing public financing of Presidential general elections, see the August 1980 *Record,* page 1.

FEC CERTIFIES REPUBLICAN GENERAL ELECTION FUNDS

On July 24, 1980, the Commission approved payment of $29,440,000 in federal funds for the general election campaign of Republican Presidential nominee Ronald Reagan and his Vice Presidential running mate, George Bush. Mssrs. Reagan and Bush had requested the funding in a July 18th letter to the Commission. In that letter, the candidates agreed to abide by the overall spending limit, to use only public funds for the campaign and to comply with other legal requirements. They designated the Reagan for President General Election Committee, based in Arlington, Virginia, as the recipient of the funds.

By law, the Presidential nominee of each major party is entitled to full public financing of the general election campaign ($20 million plus a cost-of-living adjustment). Major party candidates accepting public financing for their general election campaigns are subject to a spending limit of $29,440,000 (the amount of the grant). In addition, the use of the nominees' personal funds is limited to $50,000. (All expenditures made by or on behalf of a Vice Presidential candidate are considered to be made on behalf of the Presidential candidate.) Private funds, subject to contribution limits, may be raised and spent for legal and accounting costs solely to ensure compliance with the Act.

As of July 24, 1980, the Commission had also certified $8,832,000 in Presidential nominating convention payments to the Democratic and Republican National Committees ($4,416,000 each), and $29,624,936.78 in Presidential primary matching funds to ten Presidential primary candidates.

TWO NEW INDEPENDENT EXPENDITURE INDEXES AVAILABLE

Two new FEC computer indexes provide detailed information on independent expenditures advocating the election or defeat of federal candidates. Initiated on July 14, 1980, both indexes are produced on a monthly basis and cover the periods 1977-78 and 1979-80.

One index, a more efficient version of the previous independent expenditure index, indicates on a candidate-by-candidate basis the details of independent expenditures made for or against a candidate as reported by political committees and persons making the independent expenditures. Total independent expenditures for or against each candidate are also shown as well as grand totals for all candidates.

The second index of independent expenditures is completely new. It organizes information on a filer-by-filer basis. For each political committee or person making independent expenditures, the index lists the candidates supported and opposed. This new index is available in two versions: in the summary version, aggregate amounts spent for or against a candidate are shown; in the detailed version, the particulars of each expenditure are displayed. Total figures are also included.

The monthly independent expenditures indexes are available for review in the FEC's Public Records Office. Copies are available at five cents per page. For further information, contact: Office of Public Records, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463 or telephone 202/523-4181 or toll free, 800/424-9530.

FEC REPORTS ON FINANCIAL ACTIVITY OF PRESIDENTIAL PRIMARY CAMPAIGNS

The FEC released summary figures on July 29, 1980, on funds raised and spent by 16 Presidential contenders from the start of their campaigns through May 31, 1980. Each of these campaigns had topped the $100,000 mark in total receipts and expenditures. The figures were part of an ongoing study on the 1980 Presidential primaries entitled *Reports on Financial Activity: Presidential Pre-Nomination Campaigns.* Interim Report No. 7, the most recent installment of the study, indicated that the Presidential candidates had collectively raised $115.6 million in their primary campaigns and spent $111.4 million. Funds raised for their campaigns came from the following sources:

- $67.2 million (58 percent) from private (individual) contributions;
- $25.1 million (22 percent) from federal matching funds;
- $1.3 million (one percent) from nonparty political committees;

- $.5 million (.4 percent) from candidates' personal funds and $.8 million (.7 percent) in loans from candidates to their campaigns; and
- $15.4 million (13 percent) in other loans.

Some of the information contained in the study is presented in the chart below. In those instances where no figures appear, available figures were of minimal value or unverified.

Copies of Nos. 1-7 of the *Reports on Financial Activity* for selected 1980 Presidential candidates are available for purchase ($1.00 per report) from the Public Records Office of the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463; or call 202/523-4181 locally or toll-free 800/424-9530.

PRIMARY ELECTION CAMPAIGNS*

Candidate	Net Receipts	Individual Contributions	"PAC" Contributions	Total Matching Funds Certified as of 5/31/80	Net Disbursements	Expenditures Subject to Limits**
DEMOCRATS						
Brown	$ 3.0	$ 1.7	$ .03	$ .8	$ 2.9	$ 2.0
Carter	16.5	11.8	.43	3.6	16.3	12.1
Kennedy	13.6	6.3	.11	2.9	13.2	8.7
LaRouche	1.6	1.1	---	.5	1.6	1.5
REPUBLICANS						
Anderson	7.0	3.9	.02	2.7	6.5	5.8
Baker	7.9	3.8	.11	2.1	7.8	3.2
Bush	20.5	10.0	.12	5.3	20.4	12.8
Connally	13.0	10.7	.20	0	12.8	N/A
Crane	5.2	3.5	---	1.6	5.2	4.2
Dole	1.5	.9	.04	.4	1.5	1.2
Fernandez	.2	.2	.002	0	.2	N/A
Reagan	24.5	13.0	.20	5.2	22.0	12.6
Stassen	.1	---	0	0	.1	N/A
LIBERTARIANS						
Clark	.7	.3	0	0	.7	N/A
Hunscher	.2	---	0	0	.1	N/A
SOCIALIST WORKERS						
Pulley	.1	.06	0	0	.1	N/A
TOTAL	**$115.6**	**$67.2**	**$1.3**	**$25.1**	**$111.4**	**$64.1**

*Figures given in the chart represent millions of dollars.

**Presidential primary candidates who accept matching funds are subject to both national and state-by-state spending limits. See FEC Regulations at 11 CFR 9035.1.

FEC TESTIFIES ON BILINGUAL STUDY

On July 30, 1980, FEC Chairman Max L. Friedersdorf testified before the House Subcommittee on Civil and Constitutional Rights on the *Bilingual Election Services* study, a multiyear study of bilingual election practices conducted by the University of Mexico under contract to the FEC's Clearinghouse on Election Administration. (See the June 1980 *Record* for a detailed description of the study.)

Chairman Friedersdorf explained that the primary purpose of the study was to provide local election officials with a broad range of ideas and suggestions for designing programs to administer bilingual elections. The study did not, however, attempt to assess the need for or success of the bilingual provisions of the 1975 Voting Rights Act, nor did it measure the effectiveness of such programs.

Volumes I and III of *Bilingual Election Services* are available from the National Technical Information Service, U.S. Dept. of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Identify report numbers (Vol. I, No. PB300432AS, $7.00; Vol. III, No. PB300433AS, $11.00) and enclose a check or money order payable to National Technical Information Service.

Volume II of *Bilingual Election Services* is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20404. Identify report title and GPO stock number (052-006-00007-4). Enclose a check or money order for $3.50, payable to Superintendent of Documents.

SUBSCRIPTIONS TO THE ELECTION LAW UPDATES AND THE ELECTION CASE LAW SERIES

The following publications from the FEC's Clearinghouse are now available on a subscription basis from the Government Printing Office:

- *Election Law Updates* is a quarterly series which summarizes all new state and federal election legislation. The series is cumulative through the year, culminating in an annual summary. It is indexed by topic and state. Subscription price: $11.00 per year.
- *Election Case Law* is a quarterly series which summarizes recent state and federal litigation relating to election matters. The series is cumulative through the year, culminating in an annual summary. It is indexed by topic and case. Subscription price: $10.00 per year.

You may order these subscriptions by mail from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Identify report title. Enclose a check or money order for subscription price(s) payable to Superintendent of Documents. Please do **not** send checks or money orders to the Federal Election Commission.

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