

# RECORD

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## REGULATIONS

### ACCESS TO FEC INFORMATION: NOTICE OF PROPOSED RULEMAKING PUBLISHED

In May, the Commission published a notice of proposed rulemaking concerning amendments to FEC Regulations governing information made available to the public by the FEC's Public Records Office or through the Freedom of Information Act (FOIA). The notice, which appeared in the May 29, 1984, issue of the Federal Register (49 Fed. Reg. 22335), sought comments on three topics.

#### Updated Fee Schedule

The proposed rules would update current fee schedules to reflect the actual costs of documents the FEC makes available under the FOIA rules (11 CFR Part 4) or the Access to Public Disclosure Documents rules (11 CFR Part 5). In addition, to allow for pricing of new publications or increased fees for expanded publications, the fee schedule would generally describe the costs of reproducing documents rather than listing a specific fee for each document.

#### Billing Procedure for Microfilm and Computer Tape Requests

The Commission receives numerous requests for information contained on microfilm and computer tape. In response, the Commission pays outside firms to duplicate microfilm and computer tape because the FEC does not have the facilities to perform this service. Since, by statute, federal agencies may only accept Congressionally appropriated funds, a requester's fee for the duplicating service (paid to the FEC) must be returned to the U.S. Treasury. The FEC then pays the outside firm from its Congressional appropriation.

Under the amended rule, the requester would pay the outside firm directly, thereby eliminating the need for the FEC to debit its Congressional appropriation for the duplicating costs.

#### Technical Amendment to FOIA Rules

A proposed amendment to the FOIA rules would make clear that the FEC does not charge

for staff time devoted to duplicating information made available under the FOIA.

Copies of the FEC's notice of proposed rulemaking are available from the Public Communications Office, 1325 K Street, N.W., Washington, D.C. 20463 or by calling: 202/523-4068 or toll free 800/424-9530.

## PRESIDENTIAL ELECTIONS

### PRIMARY MATCHING FUND PAYMENTS

On June 20, 1984, the Federal Election Commission certified primary matching fund payments for four Presidential candidates, bringing total funds certified to 10 Presidential candidates to *continued*

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\$30,922,486.94. President Reagan's campaign received \$59,110.92, bringing its total matching fund receipts to \$10,100,000, the maximum entitlement available to publicly funded Presidential primary campaigns during 1984.

**Primary Matching Fund Certification Activity\***

Name of Candidate	Number of Requests**	Total Amount of Funds Certified
Askew, Reubin	7	\$ 897,533.71
Cranston, Alan	13	1,780,553.57
Glenn, John	11	3,001,951.00
Hart, Gary	14	4,194,803.21
Hollings, Ernest F.	9	821,599.85
Jackson, Jesse	9	1,913,097.95
LaRouche, Lyndon H.	5	453,586.62
McGovern, George	6	505,108.70
Mondale, Walter F.	17	7,254,252.33
Reagan, Ronald	7	10,100,000.00

**FEC REAFFIRMS JACKSON'S MATCHING FUND ELIGIBILITY**

On June 14, 1984, the Commission determined that Reverend Jesse Jackson had reestablished his eligibility for primary matching funds under the Presidential Primary Matching Payment Account by receiving at least 20 percent of the votes cast in the June 5 New Jersey primary. The Commission's action superseded a May 21 determination that, as of June 21, 1984, Rev. Jackson would no longer be eligible for public funds because he received less than 10 percent of the total popular votes cast in consecutive May primaries: the May 15 Nebraska and Oregon primaries and the May 22 Idaho primary.

A candidate becomes ineligible for primary matching funds on the 30th day following the date of the second consecutive primary in which he/she receives less than 10 percent of the total popular

\*As of June 20, 1984.

\*\*Includes requests made after the candidate's initial request for matching fund eligibility.

votes.\* The candidate may, however, reestablish eligibility for public funds by receiving at least 20 percent of the total votes in a primary election held subsequent to the one in which he or she became ineligible. See 11 CFR 9033.5(b) and 9033.6(b).

**ADVISORY OPINIONS**

**ADVISORY OPINION REQUESTS**

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

AOR	Subject
1984-26	Contributions to Senate candidate from individuals associated with his state office duties. (Date made public: May 22, 1984; Length: 2 pages)
1984-27	Presidential primary campaign's conversion of credit card contributions to matchable contributions. (Date made public: May 22, 1984; Length: 3 pages, plus 5-page supplement)
1984-28	Endorsement of President included in House candidate's direct mail advertising. (Date made public: May 30, 1984; Length: 1 page)
1984-29	Travel and subsistence, associated with Senator's honorarium, extended to family members. (Date made public: May 30, 1984; Length: 1 page)

\*Ineligible candidates may continue to receive primary matching funds to retire outstanding campaign debts incurred before the last date of ineligibility and to pay for costs of winding down their campaigns.

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

### ALTERNATE DISPOSITION OF ADVISORY OPINION REQUEST

- AOR 1984-20 (Executive's leave of absence to work on Presidential campaign) was withdrawn by its requester on May 22, 1984.

### ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR. Any qualified person who has requested an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

#### AO 1984-12: Nonconnected PAC Established by Board Members of Nonprofit Corporation

Acting in an unofficial capacity, members of the Board of Regents of the American College of Allergists, Inc. (the College), a nonprofit corporation, may establish a nonconnected political committee, the Independent Allergists Political Action Committee (IAPAC), which will be operated and governed independently of the College. IAPAC may obtain administrative support from a management firm used by the College, but that use must be consistent with the firm's relations with other client organizations. IAPAC will pay for the firm's services exclusively with its contributed funds. Since FEC Regulations do not prohibit individuals associated with a membership organization from establishing a nonconnected political committee and since the College will provide no direct or indirect financial support to IAPAC, the College will not be considered IAPAC's "connected organization." IAPAC will, therefore, be subject to FEC rules governing nonconnected political committees rather than the rules governing separate segregated funds (i.e., political committees established and administered by a corporation, labor organization or incorporated membership organization). Accordingly, IAPAC may solicit any individual, group or committee for contributions. IAPAC may not accept administrative support from the College because it is a corporation, prohibited by the election law from making contributions of anything of value.

The Commission noted several factors indicating that IAPAC will operate independently of the College:

- All IAPAC's operational expenses will be paid exclusively from IAPAC contributions.

- The College's certified public accountant will review the financial records of the College and of IAPAC to ensure that IAPAC is financially independent of the College.
- IAPAC's organizational structure ensures its operational independence from the College. For example, IAPAC's bylaws provide that IAPAC contributors (including nonmembers of the College) will elect a governing board whose membership does not have to include members of the College's board.

To ensure that the College does not become IAPAC's connected organization, the College and IAPAC must satisfy the following conditions (11 CFR 100.6(a) and (c) and 114.1(b)):

- Since those individuals responsible for IAPAC also hold positions of responsibility with the College, the College must exercise extreme caution not to make direct or indirect contributions (i.e., provide anything of value) to IAPAC.
- To avoid receiving administrative support from the College, IAPAC must pay the management firm the "normal and usual charge" for the use of office facilities and services. 11 CFR 100.7(a)(1)(iii)(B); 114.9(c) and (d). Moreover, in utilizing the firm's personnel for support services, IAPAC must pay them "commercially reasonable" fees. The fees should not be affected by the fact that the College retains the same firm for similar services.
- The College may not favor or appear to favor IAPAC's solicitation activities by, for example, allowing IAPAC to use the College's letterhead for solicitation and administrative purposes.
- If IAPAC's Board of Directors fails to develop a diverse membership which includes individuals who are not the College's members, the relationship between IAPAC and the College (i.e., whether the College is the "connected organization") would be subject to reexamination.

If a political committee wishes to adopt IAPAC's title or acronym, neither IAPAC nor the College may assert a proprietary interest in the nonconnected political committee's title. The Act and Commission Regulations govern only the official title of a separate segregated fund, which must include the full name of the sponsoring corporation or labor organization.

The Commission did not address the situation in which individuals who are associated with a corporation, labor organization, cooperative or non-stock corporation seek to establish a nonconnected political committee which might solicit members or employees of the organization. Nor

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did the Commission express any opinion on how IAPAC's organization and operation would be affected by the College's tax-exempt status under IRS rules. (Date issued: May 31, 1984; Length: 4 pages)

**AO 1984-13: Partisan Candidate Appearances  
Cosponsored by Trade Association**

In August 1984, at the same time the Republican Party will hold its Presidential nominating convention in Dallas, the National Association of Manufacturers (NAM), an incorporated trade association, and the Dallas Study Group (DSG), an unincorporated membership group for public affairs professionals, plan to cosponsor a public affairs conference in Dallas. Whether the conference is sponsored solely by NAM or jointly by NAM and DSG, the appearances of Republican Congressional candidates at the conference would mean that the event involved partisan communications. Accordingly, the speeches may only be delivered to a limited audience at the conference consisting of: NAM members and their families; a limited number of invited guests and observers; representatives of the news media; and NAM employees (outside NAM's restricted class\*) who are necessary to administer the meeting. If the audience included members of the general public, the candidates' appearances would result in NAM's making a corporate contribution prohibited by Section 441b of the election law.

Commission Regulations specify that a trade association may not sponsor federal election-related, partisan communications that are directed to the general public. Trade associations may, however, invite party representatives or candidates to make partisan appearances before the limited audience described above. See 11 CFR 114.3(c)(2).

Although NAM and DSG will neither endorse nor support candidates appearing at the conference and although the candidates will not solicit campaign assistance, the NAM/DSG conference may be characterized as a partisan event because of its timing and purpose. Specifically, the conference will be held a few weeks before the 1984 general election and shortly before the primary elections for Congressional candidates in many states. Furthermore, NAM and DSG plan to invite certain individuals to speak solely because they are Congressional candidates and to solicit assistance from the Republican party committees in obtaining such speakers. (If the audience includes potential voters from a speaker's Congressional district, the partisan nature of the conferences

would be reinforced.) Under these circumstances, the Republican candidates' participation in the conference would inevitably be partisan communications subject to FEC Regulations. See 11 CFR 114.3.

The Commission distinguished this advisory opinion from earlier opinions in which candidate appearances were not considered partisan communications because they did not serve an election-influencing purpose. See AOs 1978-4, 1978-15, 1980-16, 1980-22 and 1983-23. Chairman Lee Ann Elliott filed a concurring opinion. (Date issued: May 17, 1984; Length: 9 pages, including concurrence)

**AO 1984-14: Voter Guides and Voting Records  
Prepared and Distributed  
by Nonprofit Corporation;  
Supplemental Request  
to AO 1983-43**

This opinion reaffirms the Commission's conclusion in AO 1983-43. On March 29, 1984, after the FEC had prescribed revised regulations governing partisan and nonpartisan communications by corporations and labor organizations, the United States Defense Committee (USDC), a nonprofit membership corporation, requested this advisory opinion, which concerns USDC's plans for nonpartisan communication activities. Two months earlier, before the revised regulations became effective, the Commission had issued another advisory opinion (AO 1983-43) to USDC based on the old rules. (For a summary of AO 1983-43, see page 5 of the March 1984 Record.) In this second opinion, based on the revised rules, the Commission reiterated the conclusions it had reached in AO 1983-43 with regard to USDC's nonpartisan communications.

**Voter Guides**

Since USDC is a nonprofit, tax-exempt organization, its voter guides do not have to comply with the criteria for determining whether guides prepared and distributed by profit corporations and labor organizations are nonpartisan. Under the revised rules, USDC's voter guides may not, however, "favor one candidate or political party over another." 11 CFR 114.4(b)(5)(i) and (ii). In this opinion the Commission reaffirmed its decision in AO 1983-43 that, while some of USDC's voter guides are permissible because they do not serve an election-influencing purpose, other guides prepared by USDC do not qualify for the nonpartisan communications exemption because they favor particular candidates.

**Voting Records**

The revised regulations permit incorporated organizations, such as USDC, to prepare and distribute voting records of Members of Congress to the general public, provided the records do not

\*A trade association's restricted class includes its members, executive and administrative personnel and their families.

serve an election-influencing purpose. See new 11 CFR 114.4(b)(4). The Commission reaffirmed the conclusion it had reached in AO 1983-43. None of USDC's proposed voting records are permissible because they serve an election-influencing purpose. Commissioner Joan D. Aikens filed a concurring opinion. (Date issued: May 25, 1984; Length: 7 pages, including concurrence)

**AO 1984-15: National Party Committee Expenditures for T.V. Ads**

Expenditures by the Republican National Committee (RNC) for proposed national television ads advocating the defeat of Democratic Presidential candidates would be in-kind contributions or coordinated party expenditures on behalf of the eventual Republican Presidential candidate in the general election. If the Republican nominee accepts public funding and is therefore prohibited from accepting contributions, the expenditures would be regarded as coordinated party expenditures, even if the RNC televises the ads before the Presidential nominations take place. Coordinated party expenditures are not restricted to the time period between the nomination and the general election.

The proposed RNC ads, to be televised both before and after the nomination of the Democratic Presidential nominee, feature a current Democratic Presidential candidate, challenge the candidate's position and record, and conclude with the statement, "Vote Republican." Since the clear purpose of the ads is to diminish support for any Democratic Presidential nominee and favor the choice of the eventual Republican Presidential candidate in the general election, the expenditures for the ad benefit the Republican nominee. Therefore, the expenditures would be in-kind contributions to that candidate for the 1984 general election (limited to \$5,000) or coordinated party expenditures. (The national party committee may make coordinated party expenditures, which are limited, on behalf of its Presidential nominee in the general election. 2 U.S.C. §441a(d) (2).) If the Republican nominee accepts public funding, the expenditures would be coordinated party expenditures since publicly funded Presidential nominees are not permitted to accept campaign contributions. 26 U.S.C. §9003(b)(2); 11 CFR 9003.2(a)(2).

Expenses for the ads would be considered coordinated party expenditures even if the ads were aired before the Presidential nominations because nothing in the Act, its legislative history, Commission Regulations or court cases restricts the time period for making coordinated party expenditures.

If the RNC's ad referred to all Democratic Presidential candidates without singling out one candi-

date, the expenditures for the ad would still benefit the eventual Republican candidate in the general election. However, if the ad referred to all Democratic candidates generally, without identifying a specific candidate or office, the expenditures would not be attributable to any candidate or campaign but, rather, would be considered RNC operating expenditures. 11 CFR 106.1(c). Commissioners Lee Ann Elliott and Joan D. Aikens voted against this opinion and will file dissenting opinions at a later date. (Date issued: May 31, 1984; Length: 7 pages)

**AO 1984-18: Plan for Member Participation in Partnership Contributions**

A plan proposed by the law partnership of Hamel & Park (the partnership) to facilitate members' participation in contributions by the partnership to federal candidates would not cause the partnership to become a political committee under the Act.

Under the plan, several members of the partnership would provide an information clearinghouse that catalogued and distributed solicitation letters received in connection with campaigns for federal office. The group would encourage partners to designate a total annual amount they intended to contribute to federal candidates. The partnership would keep records of members who wished to participate in partnership contributions, including the amount a partner wished to designate to a particular candidate. When the partnership made a contribution to a campaign committee, it would send a partnership check with a cover letter itemizing each member's share of the contribution. The account of each member participating in that contribution would then be charged for his/her share of the contribution.

Under the Act and Commission Regulations, partnerships do not become political committees by virtue of contributing to federal candidates. Partnerships may make contributions as long as 1) they do not exceed the contribution limit for persons (\$1,000 per candidate, per election) and 2) they attribute their contributions to both the partnership and the individual partners. 11 CFR 110.1(e).

Under the proposed plan, the partnership would meet these requirements. Additionally, there would be no separate fund established to collect contributions from members for transmittal to federal candidates. The plan would not require members to designate any specific amount or to contribute to any particular candidate or class of candidates. The incidental expenditures for implementing the plan -- less than \$1,000 -- would be considered part of the partnership's effort to

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obtain the consent of members who wished to share in a partnership contribution.

The situation and Commission's response described in this opinion were virtually identical to those presented in AO 1981-50. Commissioner Frank P. Reiche filed a concurring opinion. (Date issued: May 25, 1984; Length: 5 pages, including concurrence)

**AO 1984-19: Mock Convention to Nominate Fictitious Presidential Ticket**

Promotion of a fictional Presidential candidate by the Macklin/Clemens Corporation to pursue educational and fundraising goals of the corporation does not fall within the purview of the federal election law. The nonprofit, educational corporation plans to sponsor a mock convention to nominate a fictitious candidate (i.e., Mark Twain) for the Presidency and distribute related campaign items. Proceeds received and disbursements made in connection with this activity are not subject to the election law, as long as the corporation does not attempt to influence the election or defeat of an actual person to federal office. (Date issued: May 25, 1984; Length: 2 pages)

**AO 1984-25: Matching Funds for Presidential Primary Candidate of Several Nonmajor Political Parties; Ballot Access Fees**

Ms. Sonia Johnson is seeking the Presidential nomination of a national political party, the Citizens Party, and two state political parties, the California Peace and Freedom Party and the Consumers Party in Pennsylvania. Each party plans to hold a separate convention. Assuming Ms. Johnson becomes eligible for primary matching funds in 1984, her matching payment period could end on the date of the last convention held by the three political parties (i.e., the mid-August convention of the California Peace and Freedom Party), provided this convention is held no later than the last day of the last major party's nominating convention. 26 U.S.C. §9032(6); 11 CFR 9032.6. Ms. Johnson may pay for general election ballot access fees with primary matching funds, as long as the fees are incurred no later than the last day of her matching payment period. (See AO 1984-11, summarized on p. 6 of the June 1984 Record.) (Date issued: May 25, 1984; Length: 4 pages)

## COURT CASES

**KENNEDY FOR PRESIDENT COMMITTEE v. FEC**

On May 15, 1984, the U.S. Court of Appeals for the District of Columbia Circuit issued an opinion in Kennedy for President Committee v. FEC (Civil Action No. 83-1521), which reversed a repayment determination that the FEC had made with regard to the Kennedy for President Committee. The committee was established by Senator Edward M. Kennedy (D-Mass.) as his principal campaign committee for the 1980 Presidential primaries. On the same day, for reasons set forth in the Kennedy opinion, the court also vacated an FEC repayment determination with regard to the Reagan for President Committee, President Reagan's principal campaign committee for his 1980 Presidential primary campaign. The Reagan campaign had challenged an \$87,708 repayment determination made by the FEC in June 1983. (Reagan for President Committee v. FEC; Civil Action No. 83-1666) The appeals court then remanded both cases to the Commission for further proceedings consistent with its opinion in the Kennedy case.

**Background to the Court's Ruling on the Kennedy Case**

On April 14, 1983, based on findings of statutorily mandated audits of the Kennedy campaign, the Commission determined that the campaign had exceeded the 1980 state-by-state spending limits for publicly funded candidates\* by \$14,889 in New Hampshire and by \$40,611 in Iowa. FEC Regulations require publicly funded Presidential primary candidates to repay to the U.S. Treasury nonqualified expenditures\*\* that are made with primary matching funds or private contributions. 11 CFR 9038.2(b) (2)(i). Consequently, the Commission determined that the Kennedy campaign had to repay the full amount of nonqualified campaign expenditures incurred by the campaign (i.e., \$55,500).

In its December 21, 1983, petition to have the court review the FEC's repayment determination, the Kennedy campaign had not challenged the

\*Presidential primary campaigns that receive public funds must agree to limit spending to both a national limit and a separate limit for each state.

\*\*Nonqualified campaign expenditures include noncampaign-related expenses, certain expenditures made before or after candidacy and expenditures exceeding the limits for publicly funded Presidential primary campaigns.

FEC's determination with regard to the amount of nonqualified expenditures the campaign had incurred. Rather, the Kennedy campaign contended that the repayment formula spelled out in the FEC's Regulations exceeded the Commission's statutory authority because it required the repayment of the entire amount of nonqualified expenditures. The Kennedy campaign argued that the election law required publicly funded campaigns to repay only the portion of their nonqualified expenditures made with primary matching funds. As an alternative to the FEC's repayment formula, the Kennedy campaign proposed that its repayment be calculated by "multiplying the total amount of [non]qualified expenditures by the proportion of matching funds to total campaign funds."

#### Appeals Court Ruling

The appeals court noted that Section 9038(b) (2) of the Presidential Primary Matching Payment Account Act did not provide a specific formula for determining repayments resulting from nonqualified campaign expenditures. Nevertheless, the court held that "the statute gives rise to a repayment obligation only when the FEC determines that federal matching funds were used for nonqualified purposes." The court reasoned that "if Congress had intended the total amount of every unqualified expenditure to be repaid, the statute would not have expressly limited the repayment obligation to unqualified expenditures paid out of matching fund sources." The court maintained, however, that the FEC should not be bound by the Kennedy campaign's proposed repayment formula but should have discretion "in formulating a proper method for calculating the amount of unqualified campaign expenditures attributable to matching fund sources."

The court noted that, in promulgating the repayment regulation that implements the statutory provision, the FEC had reasoned that "if a candidate spends private campaign contributions . . . on nonqualified campaign expenditures, those private funds would obviously not be available to defray the candidate's qualified campaign expenditures. The net result would be that the candidate would subsequently require more public funding to meet his or her qualified expenses. In essence, this additional public funding would restore private campaign funds diverted by the candidate to nonqualified campaign purposes." The court maintained, however, that the "Commission's regulation . . . indulges the unreasonable presumption that all unqualified expenditures are paid out of federal matching funds." The court concluded that "the true 'net result' of the depletion of the overall campaign fund will be either an increase in the campaign's final deficit or a decrease in the campaign's final surplus. In the case of a deficit, the total federal funds would have been spent

regardless of the unqualified expenditures. In the case of a surplus, the government is entitled to recover only its pro rata share of the final campaign surplus."

#### FEC v. LAROCHE

On May 8, 1984, the Commission entered into a stipulation dismissing with prejudice FEC v. LaRouche (Civil Action No. 83-3743), a suit that the FEC had brought in the U.S. District Court for the District of Columbia against Lyndon H. LaRouche, Jr., a candidate for the Democratic Party's Presidential nomination in 1980, and Citizens for LaRouche, his principal campaign committee. In its suit, filed on December 15, 1983, the FEC had sought a court ruling that would require the LaRouche campaign to repay \$54,672 in primary matching funds to the U.S. Treasury, as determined by the Commission on December 16, 1982. Since the LaRouche campaign subsequently made the repayment during April 1984, the Commission filed the stipulation dismissing the case as moot.

#### FEC V. GUS SAVAGE FOR CONGRESS '82 COMMITTEE

On June 8, 1984, the U.S. District Court for the Northern District of Illinois entered a default judgment against Gus Savage for Congress '82, the principal campaign committee of Congressman Gus Savage (D-IL), and Thomas J. Savage, the campaign's treasurer. The Savage campaign had failed to answer the FEC's suit against the campaign (FEC v. Gus Savage for Congress '82 Committee; Civil Action No. 84-C1076; January 6, 1984).

Pursuant to the FEC's petition for a declaratory judgment, the court ordered the Savage campaign to file, within 30 days, the following reports required by the election law:

- The July and October quarterly reports, the pre- and post-general election reports and the year-end report required during the 1982 election year (see 2 U.S.C. §434(a)(2)(A)(i)-(ii)); and
- The mid-year report required during the 1983 nonelection year (see U.S.C. §434(a)(2)(B)(i)).

The court further ordered the Savage campaign to file all reports due in the future and assessed a \$5,000 civil penalty against the campaign.

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**NEW LITIGATION****FEC v. Tom Anderson For Senator Committee**

The FEC seeks action against the Tom Anderson for Senator Committee (the Anderson campaign); the Pennsylvania Service Station Dealers Association (the Association), an incorporated trade association; and the wife of the Senate candidate, Mrs. Mary Anderson.

Specifically, the FEC asks the court to declare that:

- By paying Association employees approximately \$4,300 in wages for services they provided to the Anderson campaign, the Association made a prohibited in-kind contribution to the campaign, in violation of 2 U.S.C. §441b(a).
- By cosigning a \$50,000 campaign loan with Tom Anderson, Mrs. Mary Anderson made a \$25,000 contribution to his Senate campaign, thus exceeding the \$1,000 contribution limit, in violation of 2 U.S.C. §441a(a)(1)(A).
- By knowingly accepting these unlawful contributions from the Association and Mrs. Anderson, the Anderson campaign violated 2 U.S.C. §441a(f).

U.S. District Court for the Eastern District of Pennsylvania, May 7, 1984, Docket No. 84-2180.

**Antosh v. FEC**

Pursuant to 2 U.S.C. §437(g)(a)(8), Edward Antosh of Oklahoma asks the district court to:

- Declare that the FEC's failure to act on his administrative complaint within 120 days after he had filed the complaint is contrary to law; and
- Issue an order directing the FEC to proceed with an investigation into the complaint within 30 days.

Plaintiff filed the administrative complaint against the separate segregated fund of the AFL-CIO, an international labor organization, and against the three separate segregated funds of international/national unions allegedly affiliated with the AFL-CIO. Plaintiff alleged that, as affiliated committees within the meaning of 2 U.S.C. §441a(5), the respondents had violated the election law by failing to:

- Disclose their affiliation on their respective Statements of Organization; and
- Comply with a single contribution limit on contributions they made to each of 17 federal candidates.

Furthermore, plaintiff's complaint claimed that the election law and FEC Regulations recognize automatic affiliation between business federations and their members, on the one hand, while only a discretionary affiliation between a labor

federation and its members, on the other. Plaintiff alleged that this was discriminatory treatment in violation of the First and Fifth Amendments.

U.S. District Court for the District of Columbia, Docket No. 84-1552, May 17, 1984.

**Simeon Golar v. FEC**

Pursuant to 2 U.S.C. §437g(a)(8), Mr. Golar asks the district court to review an FEC decision dismissing an administrative complaint he filed on January 4, 1984. In the complaint, plaintiff alleged that fundraising services provided by the personnel of two corporations constituted illegal contributions by the two individuals and their respective corporations to Congressman Joseph P. Addabbo, Mr. Golar's opponent in the 1982 New York democratic primary.

U.S. District Court for the District of Columbia, Docket No. 84-1659, May 29, 1984.

**FEC PUBLISHES NONFILERS**

On June 1, 1984, as required by the election law, the Commission published the names of two Presidential campaigns (one authorized by a Presidential candidate, the other by a Vice-Presidential candidate) that had failed to file their May monthly report, due May 20. The report should have covered each committee's financial activity for April.

Also on June 1, the Commission published the names of four House campaigns (two in California, one in Iowa and one in New Jersey) that had failed to file the pre-primary report required for the June 5 Congressional primary elections held in those states. Due by May 24 (or by May 21 if sent by certified mail), the pre-primary report should have covered activity from April 1 through May 16.

On June 8, the Commission published the name of one House campaign (South Carolina) that had failed to file its pre-primary report for the June 12 Congressional primary. The report, covering financial activity from April 1 through May 23, was due by May 31 (or May 28 if sent by certified mail).

Commission compliance actions against nonfilers are decided on a case-by-case basis. The election law gives the Commission broad authority to initiate enforcement actions resulting from



infractions of the law, including civil court enforcement and imposition of civil penalties.

### SUMMARY OF MURs

The Act gives the FEC exclusive jurisdiction for its civil enforcement. Potential violations are assigned case numbers by the Office of General Counsel and become "Matters Under Review" (MURs). All MUR investigations are kept confidential by the Commission, as required by the Act. (For a summary of compliance procedures, see 2 U.S.C. §§437g and 437(d)(a) and 11 CFR Part 111.)

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

#### MUR 1363: Corporate Solicitations Beyond Solicitable Class and Failure to Identify Connected Organization

On September 23, 1983, the Commission entered into a conciliation agreement with a media firm (the corporation) and a political committee in which both parties agreed that they had violated the election law by soliciting contributions on behalf of the committee from unsolicitable persons (i.e., persons other than the corporation's executive and administrative personnel and its stockholders, and their respective families); by failing to disclose on the committee's Statement of Organization that the corporation was the committee's connected organization; by failing to include the corporation's name in the committee's name; and by failing to amend, in a timely way, the committee's Statement of Organization to reflect a new treasurer.

#### Complaint

On January 15, 1981, three affiliated national party committees filed a complaint alleging that:

1. The registered political committee had:
  - Violated 2 U.S.C. §433(b)(2) by failing to report its connected organization on its Statement of Organization (FEC Form 1);
  - Violated 2 U.S.C. §441b(b)(4)(A)(i) by soliciting contributions from persons other than the executive and administrative personnel and stockholders (and their families) of the connected organization;
  - Violated 2 U.S.C. §434(a)(1) by submitting reports signed by someone other than the committee treasurer; and
  - Violated 2 U.S.C. §441d(a)(3) by failing

to include a required notice in its solicitations;

2. The treasurer of the committee had failed to sign all reports in violation of 2 U.S.C. §434(a)(1) and had failed to indicate the name of the committee's connected organization;
3. The incorporated media firm was either the connected organization of a political committee or, if it was not, it had violated 2 U.S.C. §441b(a) by subsidizing the committee's overhead expenses and extending it credit for the rental of mail lists;
4. If the corporation was not the connected organization of the committee, then its director had violated 2 U.S.C. §441b(a) by consenting to the subsidization of the committee's overhead and the extension of credit to the committee; and
5. An individual had signed the committee's report when he was not the treasurer or, if he was the treasurer, had failed to amend the committee's Statement of Organization to disclose that he was treasurer.

#### General Counsel's Report

An FEC investigation revealed that an incorporated media firm had extended a large amount of credit (approximately \$14,000) for services rendered to a political committee; that the political committee shared office space with the firm; that the political committee solicited contributions from individuals outside of the solicitable class of the media firm; that the media firm made all the decisions concerning the political committee; and that the employees of the corporation operated the committee on a day-to-day basis. Respondents acknowledged that the firm rendered services to the political committee but contended that the relationship between the two entities was that of vendor/vendee rather than that of connected organization/separate segregated fund.

The General Counsel refuted this argument, citing evidence that the relationship between the two entities was not a bona fide vendor/vendee situation. First, the extension of credit appeared to be outside the ordinary course of the media firm's business. Second, the political committee did not come to the firm to procure its services on an arm's length basis; rather, firm officials appeared to have established and controlled the committee. Third, the investigation suggested that the media firm was formed to help certain political groups reduce their direct mail costs, again not a feature of the normal vendor/vendee relationship. Finally, the authority exercised by the firm over the political committee resulted in the committee's failure to repay in full a \$12,000 debt to the firm, which had been outstanding over a year. This too

*continued*

was not typical of the normal vendor/vendee situation.

The General Counsel said that these circumstances led to two possible results: either the media firm was the connected organization of the political committee or it had made corporate expenditures in connection with federal elections by subsidizing the political committee. The counsel recommended, therefore, that the Commission find probable cause to believe that:

- The media firm and the political committee had violated 2 U.S.C. §441b(b)(4)(A)(i) by making solicitations beyond the restricted class of the corporation; and
- The political committee had violated 2 U.S.C. §433(b)(2) for its failure to list the media firm as its connected organization and 2 U.S.C. §432(e)(5) for its failure to include the name of the firm in its name; or
- In the alternative, both the firm and the committee had violated 2 U.S.C. §441b(a) by, respectively, extending and knowingly accepting corporate credit;
- The president of the media firm had violated 2 U.S.C. §441b(a) by consenting to the firm's extension of credit to the committee; and
- The Committee had violated 2 U.S.C. §433(c) by failing to amend its Statement of Organization to list a new treasurer.

#### Commission Determination

On July 14, 1981, the Commission adopted the General Counsel's recommendations and found probable cause to believe that the corporation, the committee and the corporation's president had violated the Act. The agency entered into a conciliation agreement with the firm and the political committee on September 23, 1983. They agreed that:

- The corporation had violated 2 U.S.C. §441b(b)(4)(A)(i) by soliciting contributions on behalf of the committee from unsolicitable persons (i.e., persons other than the executive and administrative personnel and its stockholders and their families);
- The committee had violated 2 U.S.C. §§433(b)(2), 432(e)(5) and 441b(b)(4)(A)(i) by failing to report that the corporation was the connected organization of the committee, by failing to include the name of the corporation in its name and by soliciting contributions from persons other than the solicitable class;
- The committee had violated 2 U.S.C. §433(c) by failing to amend its Statement of Organization in a timely manner to list a new treasurer;
- Respondents would pay a \$1,000 civil penalty to the U.S. Treasurer; and
- The committee would change its name to include the name of the corporation.

## STATISTICS

### 1984 PRESIDENTIAL PRIMARY CAMPAIGNS

#### Financial Activity of 1984

##### Presidential Primary Campaigns

During the period through February 29, 1984, 13 Presidential primary campaigns raised a total of \$53.4 million and spent \$46.2 million. This information was contained in an FEC study, released June 13, 1984. The study provides campaign finance information on the 13 Presidential primary campaigns whose activity exceeded \$100,000.

Chart I provides information on the sources of campaign support provided to each campaign through February 1984. Chart II, on the last page, details how each campaign spent its funds.

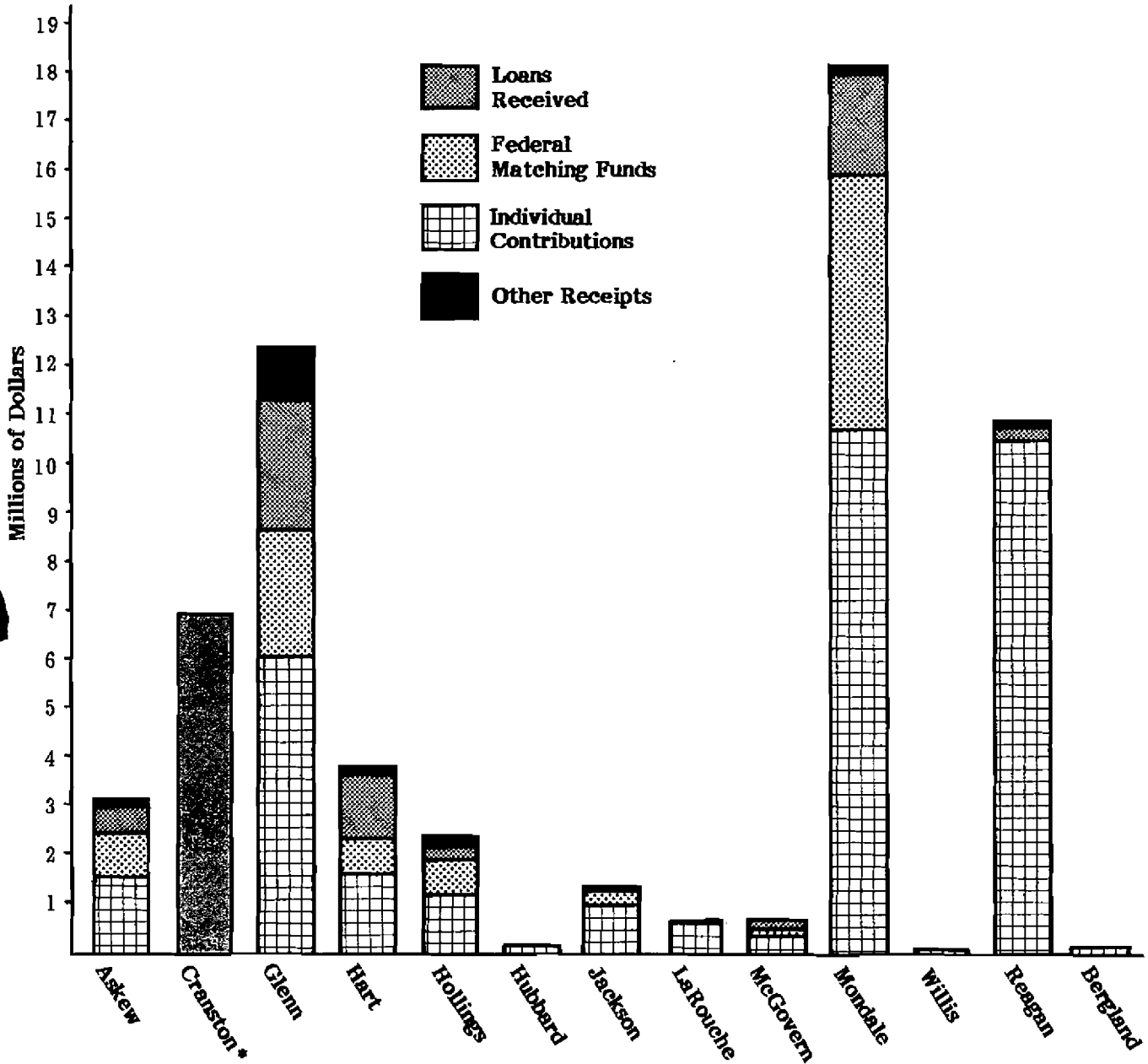
#### Interim Reports on Presidential Campaigns Available

The FEC report, entitled FEC Reports on Financial Activity, 1983-1984, Interim Report No. 3, Presidential Pre-Nomination Campaigns, is the third in a series on the financial activity of all Presidential campaigns with activity exceeding \$100,000. The Commission will continue to issue the Interim Reports periodically during the 1984 Presidential election year. A final report will be issued in early 1985, covering activity from the start of each Presidential campaign through December 31, 1984.

The Interim Reports include 19 financial tables and graphs that show the sources of funds, the distribution of large and small contributions from individuals, the types of PAC money, when the funds were contributed, the spending allocated to individual states, independent expenditures and expenditures for communications made by individuals, PACs, corporations, unions, and delegate committees for and against the Presidential primary candidates. Other charts show the net financial activity of individual campaigns for each reporting period throughout the campaign.

Copies of the FEC Reports on Financial Activity, 1983-1984, Interim Report No. 3, Presidential Pre-Nomination Campaigns are available for \$1.00 per copy from the FEC's Office of Public Records, 1325 K Street, N.W., Washington, D.C. 20463. Checks for the report should be made payable to the Federal Election Commission.

**CHART I  
RECEIPTS OF  
PRESIDENTIAL PRIMARY CANDIDATES THROUGH 2/29/84**



\*The Cranston for President Committee has not identified all the sources of funds received during 1984. The committee had received approximately \$1.7 million in federal matching funds through February 29, 1984.

**CHART II  
DISBURSEMENTS OF  
PRESIDENTIAL PRIMARY CANDIDATES THROUGH 2/29/84**

Candidate	Adjusted Campaign Total*	Expenditures Subject to Limit**	Latest Cash on Hand	Debts Owed By Campaign
Askew	\$ 2,447,826	\$ 1,769,500	\$ 37,269	\$ 91,526
Cranston	5,114,398	3,437,935	47,944	45,300***
Glenn	10,268,061	8,694,833	738,680	2,729,083
Hart	3,010,777	2,251,781	-3,726	1,209,964
Hollings	2,123,521	1,899,811	75,984	82,207
Hubbard	169,045	0	3,308	56,325
Jackson	1,326,860	1,305,748	-84,687	237,506
LaRouche	599,961	529,906	98,789	94,946
McGovern	404,259	251,163	329,260	358,496
Mondale	15,489,933	10,448,711	650,172	583,445
Willis	126,731	0	21	112,742
Reagan	5,028,877	3,153,518	5,565,345	0
Bergland	92,978	0	56,003	0
Dem. Subtotal	41,081,372	30,589,388	1,893,014	5,601,540
Rep. Subtotal	5,028,877	3,153,518	5,565,345	0
Other Subtotal	92,978	0	56,003	0
<b>GRAND TOTAL</b>	<b>\$46,203,227</b>	<b>\$33,742,906</b>	<b>\$7,514,362</b>	<b>\$5,601,540</b>

\*Includes total reported disbursements minus transfers among authorized committees of the same campaign. The total excludes refunds, rebates, loan repayments and refunded contributions.

\*\*Does not include certain expenditures for campaign fundraising and compliance costs that are exempt from each publicly funded candidate's overall spending limit and his/her state-by-state spending limits.

\*\*\*Debts owed by the Cranston for President Committee include only outstanding loans and do not include debts owed to vendors.

FEDERAL ELECTION COMMISSION  
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