

# RECORD

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## REPORTS

### REPORTING INTERNAL COMMUNICATIONS BY CORPORATE, LABOR AND MEMBERSHIP ORGANIZATIONS

Under the Federal Election Campaign Act (the Act) and Commission Regulations, corporations\* and labor organizations are permitted to communicate with their respective "restricted classes" on any subject. 2 U.S.C. §441b; 11 CFR 114.3. However, the Act requires that costs incurred for communications which expressly advocate the election or defeat of a clearly identified candidate be reported if they exceed \$2,000 for any election. Communications primarily devoted to subjects other than **express advocacy** of the election or defeat of a clearly identified candidate are not covered by this particular reporting requirement.

The \$2,000 threshold for reporting applies separately to each election process within a calendar year (i.e., all primary elections, the general election and any special or runoff elections). 2 U.S.C. §431(1)(A). Each corporation, each incorporated subsidiary and each state and local chapter of a labor organization has a separate \$2,000 threshold. Therefore, each entity need not report until the threshold is reached.

*\*The rules governing corporate activity apply to a broad range of incorporated organizations, including national banks, corporations with capital stock and incorporated membership organizations (including corporations without capital stock, incorporated trade associations and incorporated cooperatives).*

*\*\*The restricted class of a corporation includes its shareholders, executive and administrative personnel and their families. A labor organization's restricted class includes its members, executive and administrative personnel and their families. In the case of incorporated membership organizations, trade associations, cooperatives, and corporations without capital stock, the restricted class includes their members, executive and administrative personnel and their families.*

### What Form to Use

Corporations and labor organizations required to file a report under these provisions should use either FEC Form 7 or a letter containing the same information.

### What Must Be Reported

Each report filed under these provisions must include the following for each communication:

1. The type of communication (e.g., direct mail, telephone or telegram).
2. The class or category communicated with (e.g., members, stockholders or executive/administrative personnel).
3. The date(s) of the communication.
4. Whether the communication is in support of, or in opposition to, a particular candidate.

**Note:** This particular reporting requirement is not applicable to "political committees" as defined by 2 U.S.C. §431(4).

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5. The name of the candidate, the office sought, the district and state of the office and whether the communication was for the primary or the general election.
6. The cost of the communication.

**Note:** In the case of a communication which advocates the election or defeat of more than one candidate, the cost should be allocated among the candidates according to the benefit they are expected to derive and should be reported accordingly.

**When to Report**

Organizations required to report under these provisions must file **quarterly reports** during a calendar year in which a regularly scheduled general election is held. In addition, a **12-day pre-general election report** must be filed for **activity in connection with any general election**. Reports are required beginning with the first reporting period during which the aggregate cost for communications exceeds \$2,000 per election and for each period thereafter in which the organization makes any additional disbursements in connection with the same election. 2 U.S.C. §431(9)(B)(iii); 11 CFR 100.8(b)(4), 104.6 and 114.3. (FEC Agenda Document No. 81-151)

For more information on reporting procedures, consult the instructions on the back of FEC Form 7 or contact: Office of Public Communications, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463, or call: 202/523-4068 or toll free 800/424-9530.

**PRESIDENTIAL ELECTIONS**

**PRIMARY MATCHING FUND PAYMENTS**

On March 23, 1984, the Federal Election Commission determined that President Ronald Reagan was eligible to receive primary matching funds for his 1984 primary campaign. On the same day, the Commission certified primary matching fund payments for President Reagan and for six other Presidential candidates. (The U.S. Treasury will issue actual payments to the candidates.)

The summary chart below provides cumulative information on certifications of primary matching funds made between January 1 and April 12, 1984.

**Primary Matching Fund Certification Activity\***

Name of Candidate	Number of Requests**	Total Amount of Funds Certified
Askew, Reubin	8	\$ 897,480.40
Cranston, Alan	11	1,740,029.86
Glenn, John	8	2,867,072.10
Hart, Gary	8	948,535.29
Hollings, Ernest F.	8	753,683.98
Jackson, Jesse	3	702,157.34
LaRouche, Lyndon H.	0	100,000.00
McGovern, George	2	419,852.93
Mondale, Walter F.	11	5,878,176.29
Reagan, Ronald	1	3,578,620.76

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

On March 23, 1984, the Commission affirmed Reverend Jesse Jackson's continued eligibility for primary matching funds.

Under regulations governing the Primary Matching Payment Account, 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 votes. The individual may, however, reestablish eligibility for public funds by receiving at least 20 percent of the total popular votes in a primary election held subsequent to the election in which he/she became ineligible. 11 CFR 9033.5(b) and 9033.8(b).

Rev. Jackson was scheduled to become ineligible for primary matching funds on April 5, 1984, because he had received less than 10 percent of the vote in both the February 28 New Hampshire primary and the March 6 Vermont primary. However, he subsequently received more than 20 percent of the vote in the March 13 Georgia primary.

\*As of April 12, 1984.

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

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Accordingly, Rev. Jackson's eligibility for matching funds was not affected by the results of the New Hampshire and Vermont primary elections.

#### **FEC TERMINATES MATCHING FUND ELIGIBILITY FOR TWO CANDIDATES**

On March 23, 1984, the Commission determined that two Democratic Presidential candidates were no longer eligible for primary matching funds under the Presidential Primary Matching Payment Account. On March 15 and 16, former Senator George McGovern and Senator John Glenn respectively became ineligible for primary matching funds when they announced publicly that they would no longer actively campaign for their Party's nomination. 11 CFR 9033.5(a)(1).

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. They may receive federal matching funds for private contributions received and deposited before December 31, 1984, provided they submit a statement of net outstanding campaign obligations within 15 days after becoming ineligible. 11 CFR 9034.5. (Revised statements must be submitted with each additional request for matching funds.)

## **ADVISORY OPINIONS**

### **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 1984-5: Status of Company Employees as Solicitable Stockholders**

The Pacific Gas and Electric Company (the Company) proposed to solicit contributions to its separate segregated fund, the Pacific Gas and Electric Company Employees Good Government Fund, from certain nonmanagement employees who may qualify as solicitable stockholders as a result of

their participation in one of the Company's three employee stock ownership plans. (Under FEC Regulations, corporate PACs may solicit executive and administrative personnel and their stockholders and the families of both groups. 2 U.S.C. §441b(b)(4)(B).) Company personnel participating in stock ownership plans qualify as solicitable stockholders under Commission Regulations as long as their particular benefit plans do not significantly restrict their right to withdraw stock.

The Company offers three plans to employees who wish to participate in a Company-sponsored stock ownership program. Under one plan, employees contribute a percentage of their salary to the Company's savings plan. Employee contributions are partially matched by the Company. Employees may also make supplemental contributions to the plan, which are not matched by Company contributions. Under two other plans, the Tax Reduction Act Stock Ownership Plan Fund (TRASOP) and the Payroll-Based Stock Ownership Plan Fund (PAYSOP), the Company allocates stock to accounts established for employees (with at least three years of service) who wish to participate in the plans. While employees do not contribute to the PAYSOP plan, under certain circumstances they may make matching contributions to the TRASOP plan.

Under Commission Regulations, an employee participating in a stock ownership plan is considered a stockholder, eligible for PAC solicitations, if the employee has:

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

All the employees participating in the Company benefit plans meet the first two requirements for stockholder status. Moreover, those employees who have withdrawn at least one share of company stock credited to their accounts under any of the plans satisfy the third requirement.

With regard to employees who have not exercised their stock withdrawal rights, some do not meet the third requirement for stockholder status. Consequently they may not be solicited by the Company because of restrictions placed on their access to dividends. The stockholder status of these employees is addressed below by type of plan:

#### **Savings Plan Participants**

Employees who withdraw stock which they purchased during the three-year period prior to withdrawal may not contribute to their plans for six months after the withdrawal. As a result of this restriction, these participants do not qualify

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as stockholders. By contrast, employees who purchased stock before the current three-year period, or who purchased stock with their supplemental contributions to the plan, may withdraw this stock without being subject to the six-month suspension penalty. Hence, they qualify as stockholders.

Employees who are only eligible to withdraw stock purchased by the Company (because they have chosen not to invest their own contributions in Company stock) are not considered stockholders because of the restrictions placed on their withdrawal rights. Specifically, these employees are given one opportunity per year to withdraw stock purchased by the Company two years before. Any funds not withdrawn at this time must remain in the employee's account until he/she leaves the Company.

#### **TRASOP and PAYSOP Participants**

TRASOP and PAYSOP participants who are only eligible to withdraw stock contributed to their plans by the Company (again, because they have chosen not to contribute to the plan) do not have stockholder status as a result of restrictions placed on their right to withdraw stock. Specifically, these participants may only withdraw stock (held for at least 7 years) on a once yearly basis. If they do not exercise this withdrawal right, they may not withdraw the stock until they leave the Company.

By contrast, TRASOP participants who contribute to their plans have stock withdrawal rights, once their stock has been transferred to a savings plan. Hence, these employees would qualify as stockholders if they can withdraw stock from their savings plans without being subject to a six-month suspension penalty. Commissioner Thomas E. Harris filed a dissenting opinion. (Date issued: March 30, 1984; Length: 7 pages, including dissent)

#### **AO 1984-6: Massachusetts Cooperative Banks as Qualified Campaign Depositories**

Cooperative banks in Massachusetts may act as depositories for campaign funds used in federal elections because they qualify as state banks under relevant Massachusetts law. The fact that the cooperative banks are insured by the Cooperative Central Bank, rather than by one of the insurance institutions named in the federal election law, does not prevent the cooperative banks from serving as depositories for federal campaign funds.

Under the election law, a political committee may establish a campaign depository at either a national bank, a state bank or a depository insti-

tution which is insured by the Federal Deposit Insurance Corporation (FDIC), the Federal Savings and Loan Insurance Corporation (FSLIC) or the National Credit Union Administration (NCUA). See 2 U.S.C. §432(h)(1); 11 CFR 103.2. Any institution which falls under one of these categories qualifies as a depository for federal campaign funds. (Date issued: March 15, 1984; Length: 3 pages)

## **800 LINE**

The FEC is frequently asked whether the Federal Election Campaign Act (the Act) affects state and local elections. The answer is generally no. However, while the Act primarily governs the campaign finance activities of candidates for federal office and the political committees which support them, there are some instances in which the Act may also apply to state and local election activity. First, the Act governs contributions made by certain entities in connection with state and local elections. Second, where both federal and state laws pertain to federal election activities, the Act preempts and supercedes state law with respect to certain activities. The questions and answers presented here help define the boundaries between federal and state laws with respect to election activity.

#### **PROVISIONS OF THE ACT GOVERNING STATE AND LOCAL ELECTION ACTIVITY**

**Does the Federal Election Campaign Act, as amended (the Act), apply to the financing of any state or local election activities?**

Yes. The Act specifically prohibits national banks and corporations organized by authority of any law of Congress (e.g., a federally chartered savings and loan association) from making contributions or expenditures in connection with any election, including state or local elections. 2 U.S.C. §441b(a); 11 CFR 114.2(a). The Act also prohibits foreign nationals from making contributions or expenditures in connection with any elections. 2 U.S.C. §441e.

**Does the Act also ban contributions by corporations (organized under state law) or by labor organizations when the contributions are made solely in connection with state and local elections?**

No. 11 CFR 114.2(b). Some states, however, have adopted such prohibitions.

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**Does the Act's ban on contributions by federal contractors in connection with federal elections apply to state and local elections as well?**

No. 11 CFR 115.2(a).

**Does the Act require political committees registered with the FEC to report their state and local election activity?**

Yes, if the contributions or expenditures are made from the same account used for federal activity.

**Does the Act require state and local candidates to file reports with the FEC?**

No. The Act's filing requirements apply only to federal candidates and to committees making contributions or expenditures to influence federal elections.

### PREEMPTION QUESTIONS

**When does the federal election law preempt state laws governing election activities?**

When election activity is governed by both the Act and state law, the Act and Commission Regulations supersede and preempt the provisions of state law. 2 U.S.C. §453; 11 CFR 108.7(a) and (b). Commission Regulations specify that the Act supersedes and preempts state laws with regard to:

- The organization and registration of political committees supporting federal candidates;
- Disclosure of receipts and expenditures by federal candidates and political committees (including disclosure of information on campaign advertising); and
- Limits on contributions received, and expenditures made, by federal candidates and political committees.

**Does the Act's preemption of a state law invalidate the law?**

No. The Act's preemption of a state law means only that the law does not apply to federal election activity.

**Are there any specific cases in which the Commission has said the Act supersedes and preempts state election laws?**

Yes. In a series of advisory opinions, the Commission has said that:

- Candidates for federal office do not have to comply with state laws requiring them to disclose information on campaign advertising which is not specifically required by the Act. (See 2 U.S.C. §441d and 11 CFR 110.11(a).) For example, federal candidates do not have to comply with state laws requiring disclosure on campaign ads of their party affiliation or the names and addresses of campaign secretaries or chairmen responsible for the ads. AOs 1978-24 and 1980-36.

-- Federal candidates do not have to comply with state laws regulating the designation of their political committees. AO 1978-54.

-- Federal candidates, who are also elected state officers, do not have to comply with state laws banning lobbyists' contributions, to the extent these contributions are used for the officers' federal election campaigns. AO 1978-66.

-- Corporations do not have to comply with state laws prohibiting use of payroll deduction plans to collect contributions to federal PACs. AO 1982-29.

**Does the Act also supersede and preempt local laws and ordinances governing federal election activities?**

Yes. In AO 1981-27, the Commission ruled that the Act superseded and preempted a Houston ordinance which required federal election-related campaign materials to include an anti-littering warning.

**Under what circumstances does the Act not preempt or supersede state laws?**

Commission Regulations specify that the Act does not supersede or preempt state laws which provide for:

- Methods used to qualify as candidates or political party organizations;
- Dates and places of elections;
- Voter registration;
- Prohibition of false registration, voting fraud, theft of ballots, and similar offenses; and
- Candidates' personal financial disclosure. 11 CFR 108.7(c).

**Are there any specific cases in which the Commission has said the Act did not supersede or preempt state law?**

Yes. The Commission has said that the Act did not supersede or preempt:

- A state law prohibiting a U.S. Senate campaign from making payments for "walk around services" (i.e., payments to campaign workers for such activities as distributing campaign literature or serving as poll watchers). AO 1980-47.
- Applicable state laws governing excess campaign funds transferred from a candidate's campaign for federal office to his/her campaign for state office. AOs 1978-37, 1979-82 and 1980-32.

## INFORMATION

### EDUCATIONAL MATERIALS AND SERVICES

The FEC offers a variety of educational materials and services to acquaint political committees and the public with the requirements of the federal election campaign law and the Commission's role in administering that law. These services -- available at no charge -- include audiovisual materials, publications, a toll-free telephone number, speakers, workshops, and research facilities located at the Commission. For more information or assistance in designing an educational program tailored to the needs of your audience, contact the Public Communications Office at 202/523-4068 or toll free 800/424-9530.

#### FEC Slide and Cassette Program

"The Sources of Candidate Support," a slide and cassette program, describes permissible sources of campaign support available to federal candidates. Available upon request, the slide show explains basic concepts of federal election law as, for example: contributions, volunteer activity and independent expenditures.

#### FEC Publications

To place your order for any of the following publications, call the FEC. Since the supply of some materials is limited, if you are planning a group presentation, we suggest you contact the Office of Public Communications at least four weeks before the event.

**FEC Record.** Published as a binder insert, this monthly newsletter is the primary source of information on Commission activity. A free subscription is automatically sent to every registered political committee. Anyone (including committee staff) may call or write for individual copies or subscriptions.

**Campaign Guides.** Four separate guides explain how the law affects four different audiences. In each guide, completed FEC forms illustrate reporting requirements.

1. Campaign Guide for Congressional Candidates and Committees.
2. Campaign Guide for Party Committees.
3. Campaign Guide for Corporations and Labor Organizations.\*
4. Campaign Guide for Nonconnected Political Committees.

*\*This guide also pertains to national banks; incorporated membership organizations, trade associations and cooperatives; and corporations without capital stock.*

**House and Senate Bookkeeping Manual.** The manual presents a recommended method of bookkeeping and reporting to assist federal candidates and their authorized committees in maintaining records required by the Federal Election Campaign Act. Samples of completed FEC forms are included.

**The FEC and The Federal Campaign Finance Law.** The pamphlet gives a brief overview of the major provisions of the Federal Election Campaign Act and the Commission's role in administering it.

**Public Funding of Presidential Elections.** Written for the general public, this brochure explains the process of Presidential public funding for primary elections, conventions and the general election.

**Using FEC Campaign Finance Information.** This brochure explains how to use FEC reports and computer indexes to gather information about the financial activity of political committees and candidates involved in federal elections.

**Informational Brochures.** A series of brochures has been designed to answer questions on the following topics:

- Advisory Opinions
- Candidate Registration
- Contributions
- Corporate/Labor Facilities
- Independent Expenditures
- Local Party Activity
- Political Ads and Solicitations
- Volunteer Activity

**Special Articles.** The Commission offers reprints of special articles which appeared under the "800 Line" in the Record. The following titles may be of current interest:

- "Concert Fundraisers," December 1982, p. 3
- "Disposal of Campaign Property," January 1983, p. 4
- "Partnerships," June 1983, p. 9
- "Convention Delegates," December 1983, p. 1
- "Treasurer's Responsibilities," January 1984, p. 7
- "Annual Limit on Contributions," February 1984, p. 6
- "Spending Limits for Public Funding Recipients," April 1984, p. 1
- "Provisions of the Act Governing State and Local Election Activity," May 1984, p. 4
- "Preemption Questions," May 1984, p. 5

**Special Press Releases.** From time to time, the FEC issues press releases summarizing campaign finance information reported by political committees. Recent releases covered activity on the following topics:

- Congressional Elections
- Matching Funds for Presidential Candidates
- PAC Activity and Growth
- Political Party Spending

## Independent Expenditures Communication Costs

### Workshops and Speakers

FEC Commissioners and staff accept public speaking engagements, participate in seminars on campaign finance law, and speak informally to groups visiting the Commission.

### Personal Assistance

**Toll Free Line.** FEC staff respond to questions on the FEC's toll-free line, helping political committees to voluntarily comply with the election law. Public affairs specialists answer general questions about all aspects of the law, and reports analysts, who review reports, handle specific reporting questions. Call 800/424-9530.

**FEC Clinic.** Every Monday, between 2:00 and 4:30 p.m., auditors, reports analysts and public affairs specialists are available to help individuals comply with the Federal Election Campaign Act and to arrange tours of the FEC's public offices. To schedule an appointment, call toll free 800/424-9530 or, in Washington, 202/523-4068.

### Research Facilities

**Public Records Office.** At the FEC's Public Records Office, anyone may review and copy documents related to federal election campaign finance activity, including committee reports and computer printouts of FEC indexes. Open daily to the public, the office is located on the street floor of the Federal Election Commission.

**Clearinghouse.** The FEC's National Clearinghouse on Election Administration provides information to the public on election administration. For further information, or to obtain a list of publications and their prices, contact the Clearinghouse at 202/523-4183 or toll free 800/424-9530.

**Commission Library.** The Commission's law library is a government documents depository open to the public weekdays from 9 a.m. to 5 p.m. The library's collection includes basic legal research tools plus materials dealing with political campaign finance, corporate and labor political activity and campaign finance reform.

## PUBLICATIONS

### NEW EDITION OF PARTY GUIDE

The Commission has published an updated edition of the Campaign Guide for Political Party Committees. The new Guide reflects recently revised regulations on advertising notices and joint fundraising and includes new material on financing delegates to the national Presidential nominating conventions. Additionally, the section reproducing completed FEC forms incorporates more reporting examples than the previous Guide. The new Guide's format and design have also been updated so they conform with the other Campaign Guides in the series.

Free copies of the new Party Guide are available from the Public Communications Office, 1325 K Street, N.W., Washington, D.C. 20463; call 202/523-4068 or toll free 800/424-9530.

## COURT CASES

### ATHENS LUMBER COMPANY v. FEC

On March 19, 1984, the Supreme Court dismissed an appeal brought by plaintiffs in Athens Lumber Company v. FEC. Citing a lack of jurisdiction over the appeal, the Court treated it as a request for discretionary review (i.e., a petition for a writ of certiorari) and declined the request. (U.S. Supreme Court No. 83-1190)

The high Court's action left standing an earlier, en banc opinion of the U.S. Court of Appeals for the Eleventh Circuit. In its October 24, 1983, decision, the appeals court had rejected plaintiffs' claims that section 441b(a) of the Federal Election Campaign Act abridged First and Fifth Amendment rights by prohibiting corporations from making contributions and expenditures in connection with federal elections. The en banc Eleventh Circuit court of appeals stated: "Viewing the substantive constitutional issues as being controlled by the [Supreme] Court's unanimous opinion in Federal Election Commission v. National Right to Work Committee, et al., 459 U.S. 197 (1982), and for the reasons there stated, we find the limitations and prohibitions of which appellants complain to be constitutional." (For a summary of the opinions of the district court and the appeals court in the Athens Lumber suit, see page 10 of the January 1984 Record.)

continued

**HOPFMANN v. FEC**

On March 8, 1984, the U.S. District Court for the District of Columbia issued an opinion in Alwin E. Hopfmann v. FEC, which granted both the FEC's motion for summary judgment and its motion to dismiss certain constitutional challenges brought by Mr. Hopfmann in the suit. (Civil Action No. 82-3667)

In filing the suit with the district court in December 1982, Mr. Hopfmann had petitioned the court to declare that the FEC's dismissal of an administrative complaint, which he had filed in September 1982 against Senator Edward M. Kennedy (D-Mass.) and the Committee to Re-Elect Senator Kennedy, was contrary to law. See 2 U.S.C. §437g(a)(8)(A). Mr. Hopfmann had also asked the district court to certify to a U.S. appeals court certain constitutional challenges involving FEC actions and the Federal Election Campaign Act (the Act). 2 U.S.C. §437h.

**Background**

In seeking the Massachusetts State Democratic Party's endorsement as candidates for the U.S. Senate, both Mr. Hopfmann and Senator Kennedy participated in the Party's May 1982 pre-primary convention. Under the Party's "15 percent Rule," only candidates receiving at least 15 percent of the votes cast at the Party's pre-primary convention appear on the state's primary ballot. Senator Kennedy obtained ballot access by receiving more than 15 percent of the votes cast at the convention. Mr. Hopfmann, on the other hand, failed to receive ballot access because he received less than 15 percent of the total votes cast.

In the administrative complaint he had filed with the FEC, Mr. Hopfmann claimed that, since the convention vote had resulted in the Party's exclusive endorsement of Senator Kennedy, the convention had the authority to nominate a candidate and therefore met the election law's definition of an "election."\* Mr. Hopfmann therefore alleged that Senator Kennedy and his campaign committee had violated the election law by accepting excessive contributions for convention activities and by failing to report the funds. See 2 U.S.C. §§434(a), (b) and 441a(f), respectively.

**District Court's Ruling**

The district court found that the FEC's decision to dismiss the complaint was "sufficiently reasonable" to merit [the] Court's deference."

Specifically, the court held that the FEC General Counsel's report on the complaint adequately set out the Commission's reasons for dismissing the case. Moreover, the FEC's determination was consistent with previous FEC decisions.

With regard to constitutional challenges raised by Mr. Hopfmann, the court concluded that "plaintiff's challenges do not raise substantial constitutional questions, are frivolous and are not based on any coherent legal theory."

**NEW LITIGATION****FEC v. CAPAC**

Pursuant to 2 U.S.C. §437g(a)(5)(D), on March 27, 1984, the Commission filed suit against Citizens' Advocate Political Action Committee (CAPAC), a nonconnected political committee which had violated requirements of a conciliation agreement entered into with the FEC on August 31, 1983. Under the terms of the agreement, CAPAC had agreed, within 30 days, to: a) file amended reports disclosing the receipt of contributions from three political committees and b) to pay a civil penalty of \$200 to the U.S. Treasury. After repeatedly notifying CAPAC of its failure to comply with the conciliation agreement, the FEC sought enforcement of the agreement by petitioning the district court to:

- Declare that CAPAC had violated the conciliation agreement by failing to comply with the agreement's terms;
- Permanently enjoin CAPAC from further violations of the agreement;
- Order CAPAC to pay the \$200 civil penalty provided for in the conciliation agreement, plus interest accrued from September 30, 1983, the date on which the civil penalty was due; and
- Order CAPAC to file amended reports of receipts and disbursements with the FEC.

U.S. District Court for the District of Columbia, Civil Action No. 84-0964, March 27, 1984.

\*The Act defines an election to include "a convention or caucus of a political party which has authority to nominate a candidate." 2 U.S.C. Section 431(1)(B).



## COMPLIANCE

### SUMMARY OF MURs

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

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

#### MUR 1460: Excessive Coordinated Party Expenditures by Party Committee

On January 11, 1984, the Commission entered into a conciliation agreement which concerned impermissible expenditures made by a state party committee (the state committee) on behalf of two Congressional candidates campaigning for reelection in 1980.

#### Complaint

On August 3, 1982, the Commission referred to the Office of General Counsel findings of a final audit report which indicated that, in making expenditures to support the 1980 general election campaigns of incumbent Candidates A and B, the state committee had violated:

- 2 U.S.C. §441a(d)(3)(B) by making coordinated expenditures on their behalf which exceeded the state committee's 1980 spending limit for each candidate (i.e., \$14,720); and
- 2 U.S.C. §441a(a)(2)(A) by spending more than \$5,000 in in-kind contributions for each candidate's general election campaign.

#### General Counsel's Report

Under §441a(d)(3)(B) of the election law, in addition to making direct contributions to candidates, a state party committee and the national party committee may each make special coordinated expenditures, subject to limits, on behalf of the party's nominees for the U.S. House and Senate in the general election.

With regard to the 1980 Congressional general election, the state committee could have spent a

combined total of \$19,720 for each candidate's general election campaign (i.e., \$14,720 for coordinated expenditures and \$5,000 for in-kind contributions). See 2 U.S.C. §§441a(d)(3) (B) and 441a(a) (2)(A). In reviewing the auditors' findings, the General Counsel noted that, between October 27 and November 24, 1980, the state committee had spent a total of \$36,211 on behalf of Candidate A's campaign, or \$16,491 more than the combined spending limit allowed by the election law. With regard to Candidate B, between April 29 and October 23, 1980, the state committee had spent \$29,242, or \$9,522 more than the combined spending limit.

The state committee claimed, however, that it had also been acting as the designated agent of the national party committee. On February 17, 1982, the Commission decided that a national party committee's coordinated expenditure limits could be used by a state party committee only if an effective grant of authority was given before such expenditures were made. (The Commission also decided that a national committee could not at any time transfer use of its contribution limit under 2 U.S.C. §441a(a)(2)(A)). However, upon request of the Audit Division, neither the state committee nor the national party committee could adequately document the state committee's receipt of prior authorizations from the national party committee to make the expenditures. In a written statement, the national party committee asserted that it had authorized the state committee to make expenditures for Candidate A. The statement did not, however, indicate whether or not the national party committee had granted the authorization before the state committee actually made the expenditures. With regard to spending on Candidate B's behalf, the state committee submitted a copy of a written authorization received from the national party committee, which showed that its expenditures had occurred three days before the national party committee had granted the authorization.

After reviewing the auditors' findings, the General Counsel recommended that the Commission find reason to believe that:

- The state committee had violated 2 U.S.C. §§441a(d)(3)(B) and 441a(a)(2)(A) by making total expenditures on behalf of each candidate's campaign which exceeded the combined limits for coordinated expenditures and in-kind contributions for each candidate; and
- The principal campaign committees of Candidates A and B had violated 2 U.S.C. §441a(f) by accepting the excessive in-kind contributions (i.e., funds the state committee had spent in excess of the permissible limits).

*continued*

On October 5, 1982, the Commission accepted the General Counsel's recommendations with regard to the state committee and candidate A, but it voted to take no further action on Candidate B's possible violation of the election law.

Acting on the Commission's determination, the Office of General Counsel conducted an investigation of the state committee's expenditures on behalf of Candidate A. As part of its investigation, the General Counsel asked the state committee to submit evidence documenting the national party committee's prior authorization of the spending. In response, an official of the state committee supplied two written statements which indicated that, during a telephone conversation some time between October 1 and October 15, the national party committee's counsel had granted the prior authorization. The state committee official also supplied a copy of an unsigned letter (dated October 31) from the national party committee to the state committee purporting to grant the authorization. (The letter had been kept on file at the national party committee's offices.)

The General Counsel noted that, even if the national party committee had provided evidence

confirming that it had granted the state committee prior authorization to make the expenditures, the state committee's total spending for Candidate A would still have exceeded the combined statutory limits.

#### Commission Determination

On January 10, 1984, the Commission voted to enter into conciliation agreements with Candidate A and the state party committee, in which the respondents agreed that:

- Candidate A had violated 2 U.S.C. §441a(f) by accepting excessive in-kind contributions and coordinated expenditures from the state committee; and
- The state committee had violated 2 U.S.C. §441a(d)(3)(B) and 441a(a)(2)(A) by making expenditures on behalf of the general election campaigns of Candidates A and B which had exceeded the statutory spending limits available under these provisions. (See page 9.)

As part of the conciliation agreements, Candidate A agreed to pay a civil penalty of \$750 and the state committee, a civil penalty of \$1,500.

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