



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2682^E

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Before the Federal Election Commission

COMPLAINT

(Pursuant to Title 2, U.S.C. § 437g and Title 11, CFR Part 110)

TO: GENERAL COUNSEL
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

COMPLAINANT:

PHILIP M. STERN
2000 P Street, N.W. Suite 408
Washington, D.C. 20036

COMPLAINANT'S ATTORNEY:

Brown & Seymour
100 Park Avenue, Room 2606
New York, New York 10007
(212) 599-0068

RESPONDENTS:

GENERAL ELECTRIC COMPANY
3135 Easton Turnpike
Fairfield, CT 06431

Each of the Officers and Directors
of the General Electric Company during
the 1986 election cycle, whose names and
addresses are set forth on Appendix A to
this complaint.

VIOLATION ALLEGED:

Unlawful corporate expenditures during the 1986
election cycle for the establishment, administration, and
solicitation of contributions to a separate segregated fund
to be utilized for lobbying rather than for political
purposes, in violation of Title 2, United States Code,
Section 441b(a) and b(b)(2)(C).

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DETAILED ALLEGATIONS

Complainant, PHILIP M. STERN, for his complaint herein states on information and belief as follows:

In 1975, the General Electric Company established the "Non-Partisan Political Support Committee for General Electric Employees" (originally called the "Non-Partisan Political Support Committee" and hereinafter referred to as "GE/PAC"). Since that time, on information and belief, General Electric's management has expended substantial sums from the corporation's treasury for the administration of GE/PAC and for the solicitation of GE/PAC contributions from GE executives and administrative personnel.

As operated under the management of General Electric Company the GE/PAC has been converted from an instrument of political electioneering activity to one of legislative activity, in direct violation of the explicit intent and purpose of the statute. Such misuse of the GE/PAC is evidenced by the nature of its expenditures during the 1985-1986 election cycle:

In the 1986 election, the GE/PAC gave money to thirty-four House candidates who faced no opponent, and to another thirty-four who had won by at least three-to-one margins in their last four elections, and hence could be predicted to coast to easy victories. GE/PAC contributions

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served no political purpose in bringing about the reelection of these sixty-eight Members of Congress.

In 1986, GE/PAC made contributions without regard to candidates' attitudes toward business, as measured by the approval rating given lawmakers' Congressional voting records by the U.S. Chamber of Commerce. In the 1986 California U.S. Senate race, the GE/PAC gave funds to Democrat Alan Cranston (average Chamber of Commerce approval rating: 12.8%) in preference to the Republican challenger, Congressman Edward Zschau, whose voting record in the House had received a 74% Chamber approval rating in 1984, and 100% the year before.

In 1986, GE/PAC contributed to both opposing candidates in six Senate elections. In two instances, when the preelection contribution recipients lost, the GE/PAC made postelection contributions to the opposing candidates who turned out to be winners.

In 1986, out of 214 House contests in which the incumbent sought reelection, GE backed the incumbent in 212 races (including 34 in which the incumbent had no opponent). That is, GE selected the incumbent 98% of the time. Aside from a single instance where GE backed both the incumbent and the challenger, in only 2 of 214 cases -- 1% -- did the GE/PAC managers find the challenger preferable to the incumbent.

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Not once in twenty-seven Senate races in which the GE/PAC made contributions and the incumbent sought reelection did the PAC forsake the incumbent -- although in five, it gave to both incumbent and challenger.

The nature of these contributions during the 1986 election cycle demonstrates that the GE/PAC is not being operated by the corporation in most cases for bona fide political purposes to support electioneering activities, but rather is being used as a vehicle for making payments to incumbent Senators and Congressmen to advance the company's legislative lobbying interests.

Section 441b(a) of Title 2, United States Code expressly states that:

(a) It is unlawful *** for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which *** a Senator or Representative *** are to be voted for *** or any officer of any director of any corporation *** to consent to any contribution or expenditure by the corporation *** prohibited by this section.

The relevant exception to this prohibition is contained in Section 441b(b)(2)(C) which excludes corporation expenditures for:

(C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, ***.

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The separate segregated fund (GE/PAC) in this instance was not utilized for "political purposes" by the corporation -- as distinct from legislative lobbying purposes -- and the exclusion does not apply.

Accordingly, the Commission should find that during the 1986 election cycle the General Electric Company made unlawful expenditures in connection with numerous Congressional elections, and that the officers and directors of General Electric who authorized or approved such expenditures acted in violation of Section 441b(a), and the Commission should impose appropriate sanctions against respondents and take appropriate steps to prevent continuing violations of this section.

Philip M. Stern

Philip M. Stern

Sworn to before me this
15 day of July, 1988

Michael Thomas
Notary Public

My Commission Expires August 31, 1991

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Appendix A

INDIVIDUAL RESPONDENTS

(Officers and Directors of the
General Electric Company during
the 1986 election cycle)

Officers

John F. Welch, Jr.,
Chairman and Chief Executive Officer

Lawrence A. Bossidy,
Vice Chairman and Executive Officer

Edward E. Hood, Jr.,
Vice Chairman and Executive officer

Directors

Richard T. Baker
Lawrence A. Bossidy
James G. Boswell II
Silas S. Cathcart
Charles D. Dickey, Jr.
Lawrence E. Fouraker
Henry H. Henley, Jr.
Henry L. Hillman
Edward E. Hood, Jr.

Robert E. Mercer
Gertrude G. Michelson
Barbara Scott Preiskel
Lewis T. Preston
Frank H.T. Rhodes
Andrew C. Sigler
John F. Welch, Jr.
Walter B. Wriston

Addresses

The address for each of the foregoing individual
respondents is:

c/o General Electric Company
3135 Easton Turnpike
Fairfield, CT 06431

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flm



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 6, 1988

Phillip M. Stern
2000 P Street, NW
Suite 408
Washington, DC 20036

RE: MUR 2682

Dear Mr. Stern:

This letter acknowledges receipt on August 29, 1988, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by the General Electric Company and each of the General Electric Officers and Directors. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 2682. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints. If you have any questions, please contact Petra Dixon, Pocket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois F. Lerner
Associate General Counsel

Enclosure
Procedures

cc: Brown & Seymour
100 Park Avenue
Room 2606
New York, NY 10007

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 6, 1988

John F. Welch, Jr.
Chief Executive Officer
General Electric Company
3135 Easton Turnpike
Fairfield, CT 06431

RE: MUR 2582
The General Electric
Company and each of the
Officers and Directors

Dear Mr. Welch:

The Federal Election Commission received a complaint which alleges that the General Electric Company and each of the Officers and Directors of General Electric may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2582. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the General Electric Company or any of the General Electric Company Officers and Directors in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

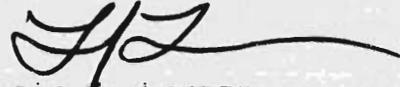
This matter will remain confidential in accordance with Section 437g(a)(4)(B) and Section 437g(a)(12)(A) of Title 2 unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Jim Brown, the staff member assigned to this matter, at (202) 376-8200. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel



By: Lois E. Lerner
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

cc: Robert W. Nelson, Treasurer
Non-Partisan Political Support
Committee For General Electric
Employees
3135 Easton Turnpike
Fairfield, CT 06431

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QCCA#387

STATEMENT OF DESIGNATION OF COUNSEL

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NO. 2682

NAME OF COUNSEL: Robert B. Fiske, Jr.

ADDRESS: Davis, Polk & Wardwell

1 Chase Manhattan Plaza

New York, NY 10005

TELEPHONE: (212) 530-4000

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

12 Sept. 1988
Date

General Electric Company
by: Martin F. Connor
Signature

RESPONDENT'S NAME: General Electric Company

ADDRESS: c/o Martin F. Connor

Washington Counsel

1331 Pennsylvania Ave., NW

HOME PHONE: Washington, D.C. 20004

BUSINESS PHONE: 202 637-4116

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WRITER'S DIRECT NUMBER:

(212) 530-4508

FEDERAL ELECTION COMMISSION
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FRANK S. MOSELEY
JEFFREY SMALL
DAVID C. ORMAN
WILLIAM PARSONS, JR.
CHARLES S. WHITMAN, III
LEWIS B. KADEN
WILLIAM G. SIFFORD
ARTHUR F. GOLDEN
STEVEN F. GOLDSTONE
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WINTHROP S. CONRAD, JR.
LOWELL GORDON HARRISS
WM F. KROENER, III
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ODDEN N. LEWIS
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WILLIAM E. WURTZ
HOWARD A. ELLINS
PATRICK S. KEHADJIAN
WILLIAM HOWARD WEIGEL
BEVERLY FANBERG CHASE
KEITH L. HEARNEY
PETER C. KORNMAN
JAMES R. LAWTON
SCOTT W. MULLER
WILLIAM L. ROBOFF
GEORGE R. SABON, JR.
DONALD S. BERNSTEIN
ALAN DEAN
JOHN R. ETTINGER
RICHARD MOE (D.C. BAR ONLY)
JAMES D. PHYFE
E. WADE WARNER, JR.
THOMAS PATRICK GORE, JR.
DAVID W. FERGUSON
AVISHAI SHAGHAR
LINDA A. SIMPSON
DAVID M. WELLS
D. SCOTT WISE
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RICHARD A. DRUCKER
DENNIS E. GLAZER
EDWARD J. KELLY, III (D.C. BAR ONLY)
PAUL KUMLEBEN
KAREN E. WAGNER

September 14, 1988

Re: MUR 2682 - General Electric Company and Directors

James Brown, Esq.
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Mr. Brown:

This will confirm our telephone conversation of today's date in which you have agreed to extend the Respondents' time to submit a response to the complaint filed in the above referenced matter until October 7, 1988.

Sincerely,

Sharon Katz
Sharon Katz

cc: Martin F. Connor

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FEDERAL ELECTION COMMISSION

Brown

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PHILIP M. STERN,

MEMORANDUM OPINION AND ORDER

Plaintiff.

86 Civ. 4055 (MJL)

- against -

MUR 2682

GENERAL ELECTRIC COMPANY, JOHN F.
WELCH, JR., LAWRENCE A. BOSSIDY,
EDWARD E. HOOD, JR., RICHARD T.
BAKER, JAMES G. BOSWELL II,
SILAS C. CATHCART, CHARLES D.
DICKEY, JR., LAWRENCE E. FOURAKER,
HENRY H. HENLEY, JR., HENRY L.
HILLMAN, ROBERT E. MERCER, GERTRUDE
G. MICHELSON, BARBARA SCOTT
PREISKEL, LEWIS T. PRESTON,
FRANK H.T. RHODES, ANDREW C.
SIGLER, and WALTER B. WRISTON,

Defendants.

----- x

APPEARANCES:

BROWN & SEYMOUR
Attorneys for Plaintiff
100 Park Avenue
New York, New York 10017

BY: PETER M. BROWN, ESQ.

DAVIS POLK & WARDWELL
Attorneys For Defendants
One Chase Manhattan Plaza
New York, New York 10005

BY: BY: ROBERT B. FISKE, JR.

JAMES BRUCE ESQ.
Antitrust and Litigation Counsel
General Electric Company
Fairfield Connecticut 06431

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MARY JOHNSON LOWE, D. J.

Plaintiff commenced this derivative action on behalf of himself and all other shareholders of General Electric ("GE") who are similarly situated. This action is brought under the diversity jurisdiction of this court.

Defendant GE and its directors have moved pursuant to Fed.R.Civ. P. 12(b)(6) to dismiss the complaint for failure to state a claim for which relief can be granted and pursuant to Fed.R.Civ.P. 12(b)(1) for lack of subject matter jurisdiction.

Plaintiff alleges in this complaint that since 1975, GE has expended substantial sums from the corporation's treasury for the solicitation of contributions to, and the administration of the "Non-Partisan Political Support Committee for General Electric Employees" ("GE/PAC").

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The verified complaint alleges four causes
of action:

- (1) Breach of fiduciary duty by the Board of Directors (the "Board") in wasting corporate assets by authorizing, directing and acquiescing in GE/PAC payments made to incumbent members of Congress without regard to their position on legislative issues of concern to GE;
- (2) Breach of fiduciary duty by the Board in authorizing, directing and acquiescing in violations of the Federal Regulation of Lobbying Act;
- (3) Breach of fiduciary duty by the Board in authorizing, directing and acquiescing in violations of the prohibitions against bribing Members of Congress; and
- (4) Breach of fiduciary duty by the Board's excessive expenditures of corporate funds for the administration of, and solicitation of contributions for GE/PAC.

The complaint alleges, in part that:

In 1972, Congress enacted the Federal Election Campaign Act of 1971 (PL 92-225) which included a provision (now incorporated in 2 U.S.C. §441b(b)(2)(C)) expressly authorizing the expenditure of corporate treasury funds for "the establishment, administration, and solicitation of contributions to a separate segregated fund [PAC] to be utilized for political purposes.

Complaint, ¶12 (emphasis in original). The complaint further states that:

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As operated under the management of General Electric Company the GE/PAC has been converted from an instrument of political electioneering activity to one of legislative activity, in direct violation of the explicit intent and purpose of the statute. Such misuse of the GE/PAC is evidenced by the nature of its expenditures during the 1983-1984 election cycle.

Complaint, ¶14 (emphasis in original).

Plaintiff asks this court to issue an order:

(a) Requiring defendants other than General Electric Company jointly and severally to account and pay over to General Electric Company all corporate funds improperly expended on the administration of and solicitation of contributions for GE/PAC;

(b) Prohibiting further use of corporate funds for GE/PAC or any other Political Action Committee; and

(c) Granting plaintiff the reasonable costs and disbursements incident to the prosecution of this action, including reasonable attorneys fees.

Complaint, p. 12.

Defendants move to dismiss the complaint on three grounds. First, the defendants argue that the complaint fails because all of the alleged acts of the GE/PAC are legal and proper under the Federal Election Campaign Act ("FECA"), the regulations promulgated thereunder, and every other statute cited in the complaint. Second, they contend that a private party has no standing under the FECA, or under any of the other federal laws cited in the complaint to seek the relief plaintiffs requests. Third, the defendants assert that the complaint fails because all of the alleged actions of the individual defendants were properly within their sound business judgment.*/

*/ Because of our disposition under defendants' arguments one and two above, we do not reach the business judgment rule.

Discussion

A motion to dismiss a complaint should not be granted unless it appears to a certainty that the plaintiff would not be entitled to relief under any state of facts which could be proved in support of the claim. In addition, the complaint must be viewed in the light most favorable to the plaintiff and the truth of all facts well pleaded, admitted. Costello, et al. v. Town of Fairfield, Nos. 342, 393, slip. op. at 1482 (2d Cir. February 12, 1987).

The essence of plaintiff's complaint is his allegation that the legislative history of the FECA discloses that its purpose was to facilitate the collection of voluntary contributions to be used by a corporation PAC for the support of electioneering activities. Plaintiff alleges that Congressman Hansen, sponsor of the bill, stated on the floor of the House that the statute was not designed to cover corporate legislative activities and lobbying. Defendant directors, plaintiff complains, have unlawfully operated the PAC by expending its funds for legislative activity, lobbying, and bribery in violation of 18 U.S.C. § 203, thereby wasting corporate assets and breaching their fiduciary duties.

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Plaintiff brings his action under the diversity jurisdiction of this court alleging state common law claims. The apparent reason for plaintiff's reliance on state law is that the action would be barred if plaintiff attempted to directly attack the operation of the GE/PAC as being in violation of the FECA since Congress has decreed that the Federal Election Commission ("FEC") has exclusive initial jurisdiction over alleged violations of the Act.*/

*/ A person who believes that the Act has been violated must first file a complaint with FEC. In cases where the FEC determines that the complaint is supported by probable cause, the FEC must attempt to correct or prevent the alleged violation "by informal methods of conference, conciliation, and persuasion..." 2 U.S.C. §437g(a)(4). If conciliation fails, the FEC may institute a civil action for relief. 2 U.S.C. §437g(a)(6).

The complainant may bring an action against the FEC in federal court where the FEC has dismissed the complaint or failed to act on it within 120 days. 2 U.S.C. §437g(a)(8)(A). Where the court finds that the FEC acted "in a manner contrary to law", it may direct the FEC to conform to the law within 30 days. If the FEC fails to comply with the court's directives, the complainant may bring a civil action to remedy the violation. 2 U.S.C. §437g(a)(8)(C).

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Plaintiff may believe he is entitled to invoke the jurisdiction of this court by reliance on obiter dicta in Corte v. Ash, 422 U.S. 66, 84 (1974). In that case, Ash, a stockholder in Bethlehem Steel Corporation, brought a derivative action seeking an injunction and damages claiming that the corporate directors had authorized expenditure of general corporate funds for political purposes in the 1972 presidential election. Ash claimed that this use of corporate funds was a violation of 18 U.S.C. § 610.* / Since Section 610 was a criminal statute, Ash asked the court to imply a private remedy for the criminal violation. After stating its reasons why a private cause of action would not be implied, the court said:

*/ Ash also alleged pendant claims that the use of corporate funds was ultra vires and a breach of the directors' fiduciary duty. For reasons not material here, the pendant claims were dropped before appeal to the circuit court.

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Fourth, and finally, for reasons already intimated, it is entirely appropriate in this instance to relegate respondent and others in his situation to whatever remedy is created by state law. In addition to the ultra vires action presented here, [cite omitted] the use of corporate funds in violation of federal law may, under the law of some States, give rise to a cause of action for breach of fiduciary duty. See e.g., Miller v. American Telephone & Telegraph Co., 507 F.2d 759 (3rd Cir. 1974). Corporations are creatures of state law, and investors commit their funds to corporate directors on the understanding that, except where federal law expressly requires certain responsibilities of directors with respect to stockholders, state law will govern the internal affairs of the corporation.

Ash, 422 U.S. at 84.

Plaintiff, in order to bring himself within the Corte v. Ash dictum must allege that these defendants used corporate funds in violation of federal law and that such use gives rise to a cause of action under the law of New York for breach of fiduciary duty. This plaintiff has failed to do.

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Plaintiff argues that:

There is nothing in the Verified Complaint alleging violations of the FECA. As noted above, the Verified Complaint charges the Board with breaches of their fiduciary duties for directing and abetting violations of their common law responsibilities as well as the disclosure requirements of the Federal Regulation of Lobbying Act ("FRLA")[*/] and bribery statutes.

(Plaintiff's Brief In Opposition, p. 17).

*/ The FRLA, 2 U.S.C. §§ 261-270, established a reporting and disclosure system with respect to persons engaged in lobbying activities. 2 U.S.C. §§266, 267; United States v. Harris, 347 U.S. 612, 620, 623 (1954). Specifically excluded from the provisions of the FRLA are "political committee[s] as defined in the Federal Corrupt Practices Act" (repealed and replaced by the FECA). 2 U.S.C. § 266. Furthermore, the provisions of the FRLA do "not apply to practices or activities regulated by the [FECA]." 2 U.S.C. § 270.

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Plaintiff's claims that the defendants have violated the FRLA and federal bribery statutes have no merit.

FRLA

Plaintiff contends that:

Defendants urge that since GE/PAC is a separate segregated fund established under FECA, it is exempt from the registration and disclosure requirements of FRLA. While this is true as to the PAC, the argument misses the point of the Verified Complaint, namely, that the corporation is not exempt from FRLA, and GE's expenditure of corporate funds for the solicitation and administration of GE/PAC to be used principally to influence the passage or defeat of legislation constitutes expenditures which must be reported under FRLA.

(Plaintiff's Brief In Opposition, p. 9).

This argument misses the mark. The GE/PAC is a "political committee", 2 U.S.C. § 266. As such its activities are regulated by the FECA, and not the FRLA, 2 U.S.C. § 270. If plaintiff's complaint is that corporate funds used to administer the GE/PAC are expended improperly by the GE/PAC for lobbying purposes, this is precisely the type of complaint the FEC was designed to adjudicate. Plaintiff may not raise this claim in the first instance in the district court. 2 U.S.C. §437q(a)(4).

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Bribery

Plaintiff's claim that the GE/PAC's distribution of funds to incumbent congressmen in non-election years constitutes bribery is inconsistent with the regulations and rulings of the FEC. See, 11 C.F.R. § 110.5(b)(1), (2); 1977 Opinion F.E.C. 24, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5260, at 10,207 (June 28, 1977); 1985 Opinion F.E.C. 5, 1 Fed. Election Camp. Fin. Guide (CCH) ¶3 5810 (March 6, 1985).

Since plaintiff's claims of violation of the FRLA and the federal bribery statute have no merit in fact or law and plaintiff concedes he does not charge a violation of the FECA, plaintiff's reliance upon state common law is to no avail.

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The preemption provision of the FECA, 2 U.S.C. § 453, explicitly nullified any inconsistent provision of state law regulating the election of federal officers. If plaintiff's complaint relies upon the application of state common law to either avoid the exclusive primary jurisdiction^{*/} of the FEC or to, in any way, diminish the effect of the FECA provisions and regulations enacted thereunder, such reliance is misplaced. Where, as in the instant case, the plaintiff does not claim that the defendants violated any provisions of the FECA in administering the GE/PAC, defendants are insulated by their conforming behavior from any end run attacks based upon state law. This is the meaning of federal preemption. When a person acts according to the dictates of federal law, in an area where Congress has expressly preempted the areas of concern, state statutes or the common law cannot create liability for damages for these same acts nor in any way diminish or interfere with the exercise of federally created rights.

^{*/} The doctrine of primary jurisdiction is designed to allocate the power of courts and administrative agencies to make initial determinations. 4 K. Davis, Administrative Law Treatise § 22.1 (2d Ed. 1983). Congress created the FEC as a body which would have particular expertise concerning the application of the FECA to disputes and vested in the FEC primary jurisdiction to resolve competing claims. Judicial authority may only be invoked after the FEC has acted. 2 U.S.C. § 437g(a)(8).

Where the corporate action complained of is authorized by federal law, "state law to the contrary is nullified to the extent it actually conflicts with federal law." Fidelity Federal Savings & Loan Association v. De La Cuesta, 458 U.S. 141, 153 (1982).

For all of the above reasons, defendants motion to dismiss the Complaint is granted, the complaint is dismissed.

It Is So Ordered.

Dated: New York, New York
May 4, 1987


United States District Judge

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JLW



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 4, 1988

Sharon Katz
Davis, Polk & Wardwell
1 Chase Manhattan Plaza
New York, N.Y. 10005

RE: MUR 2682
General Electric Co.

Dear Ms. Katz:

This is in response to your letter dated September 14, 1988, which we received on September 19, 1988, regarding an extension of 10 days until October 7, 1988, to respond to a complaint filed with the Federal Election Commission by Philip M. Stern against General Electric Company, the General Electric Officers and Directors.

While it is customary for such requests to be affirmatively made in writing, I have interpreted your September 14, 1988, letter as such a formal request. After considering the circumstances presented in your telephone and written contacts with this office, I have granted the requested extension. Accordingly, your response is due by the close of business on October 7, 1988.

If you have any questions, please contact Jim Brown, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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DAVIS POLK & WARDWELL

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SAMUEL B. PRYOR, III
ROBERT B. FISKE, JR.
EDWARD S. REID
PHILIP C. POTTER, JR.
JAMES F. DOLAN
RICHARD E. NOLAN
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HERBERT M. LOBL
JOHN J. MCATEE, JR.
JONATHAN M. CLARK
CHRISTOPHER CROWLEY
LYDIA E. RESS
JAMES W. S. BENKARD
COLIN E. HARLEY
DANIEL F. KOLS
DONALDSON C. PILLSBURY
DAVID J. STRUPP
GUY MILLER STRUVE
JOSEPH CHUBB

JAMES WOODMAN LLOYD
BARTLETT H. MCQUIRE
STEPHEN H. CASE
FRANCIS J. MORSON
FRANK S. MOSELEY
JEFFREY SMALL
DAVID C. OXMAN
WILLIAM PARSONS, JR.
CHARLES S. WHITMAN, III
LEWIS S. KADEN
WILLIAM C. GIFFORD
ARTHUR F. GOLDEN
STEVEN F. GOLDSTONE
DENNIS S. HERSCH
WINTHROP B. CONRAD, JR.
LOWELL GORDON HARRISS
W. F. KROENER, III
RICHARD J. SANDLER
ROBERT F. WISE, JR.
JOHN R. COONEY, JR.
ROBERT LEE HECKART
OSDEN H. LEWIS
BRADLEY Y. SMITH
MIRIAM M. ROLLYSON
MARLENE ALVA
PETER R. DOUGLAS
JOHN FOUNEY
CHRISTOPHER MAYER
PIERRE DE SAINT PHALLE
ROBERT J. LEVINE
JOHN J. MCCARTHY, JR.

JEROME G. SNIDER
WILLIAM E. WURTZ
HOWARD A. ELLINS
PATRICK S. KENADJIAN
WILLIAM HOWARD WEIGEL
BEVERLY FANGER CHASE
KEITH L. KEARNEY
PETER C. KORNMAN
JAMES P. LAWTON
SCOTT W. MULLER
WILLIAM L. ROSOFF
GEORGE R. BASON, JR.
DONALD S. BERNSTEIN
ALAN DEAN
JOHN R. ETTINGER
RICHARD MOE (D.C. BAR ONLY)
JAMES D. PHYFE
E. WADE WARNER, JR.
THOMAS PATRICK BOWE, JR.
DAVID W. FERGUSON
AVISHAI SHACHAR
LINDA A. SIMPSON
DAVID M. WELLS
D. SCOTT WISE
PAUL W. BARTEL, II
RICHARD A. DRUCKER
DENNIS E. GLAZER
EDWARD J. KELLY, III (D.C. BAR ONLY)
PAUL RUMLESEN
KAREN E. WAGNER

(212) 530-4508

October 6, 1988

Re: MUR 2682 - General Electric Company and Directors

Lois G. Lerner
Associate General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Ms. Lerner:

Enclosed for filing are an original signed
affidavit and memorandum of law in response to the complaint
in the above referenced matter.

Sincerely,

Sharon Katz
Sharon Katz

cc: Martin F. Connor

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FEDERAL ELECTION COMMISSION

FEDERAL ELECTION COMMISSION

IN THE MATTER OF THE
GENERAL ELECTRIC COMPANY
AND EACH OF ITS OFFICERS
AND DIRECTORS

File No. MUR-2682

AFFIDAVIT

DAVIS POLK & WARDWELL
1 Chase Manhattan Plaza
New York, New York 10005
(212) 530-4000

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FEDERAL ELECTION COMMISSION

----- x
:
IN THE MATTER OF THE :
GENERAL ELECTRIC COMPANY :
AND EACH OF ITS OFFICERS :
AND DIRECTORS :
----- x

File No. MUR-2682

CITY OF WASHINGTON)
DISTRICT OF COLUMBIA) ss.:

Phillips Peter, being duly sworn states:

1. I am Vice President - Corporate Government Relations of the General Electric Company ("GE"), in which capacity I am responsible for, among other things, the overall administration of the General Electric Company Political Action Committee ("GE/PAC").

2. The GE/PAC was established by GE in 1975 as a "separate segregated fund" under the provisions of the Federal Election Campaign Act. It has been registered with the FEC since that time.

3. The GE/PAC solicits voluntary contributions from GE management personnel and distributes those funds as

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FEDERAL ELECTION COMMISSION RECEIVED

campaign expenditures or contributions in connection with federal elections. None of the funds distributed by the GE/PAC as contributions or expenditures made in connection with federal elections are provided by GE.

4. GE management employees who contribute to the GE/PAC may specify the candidates or political parties to which their contributions are to be distributed. Otherwise, decisions regarding distribution are left to the discretion of those employees who operate the GE/PAC.

5. Since its inception the GE/PAC has received contributions each year from more than 50 individuals and has distributed those contributions to more than five federal candidates.

6. All of the individually named respondents were members of the Board of Directors during 1986 and, except for James G. Boswell and Silas S. Cathcart, are currently members of the Board. Messrs. Welch, Bossidy, and Hood are also officers of the Company. None of the individually named respondents have had any role whatsoever in the operation of the GE/PAC or the distribution by it of contributed funds. The Board of Directors has, since the establishment of the GE/PAC, voted to provide it with administrative funding.

7. Attached as Exhibit A is a copy of a complaint filed on or about May 21, 1986 in the United States District

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Court for the Southern District of New York by Philip Stern against GE and the then current members of the Board of Directors.

8. Attached as Exhibit B is a copy of the Memorandum Opinion and Order of District Court Judge Mary Johnson Lowe, dated May 4, 1987, dismissing that complaint for failure to state a claim and as subject to the primary jurisdiction of the Commission.

Phillips S. Peter

Sworn to before me this
5th day of October, 1988

Janis Hickok
Notary Public

Janis Hickok
Notary Public, District of Columbia
My Commission Expires January 1 1993

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

PHILIP M. STERN,

Plaintiff,

-against-

GENERAL ELECTRIC COMPANY, JOHN F. WELCH,
JR., LAWRENCE A. BOSSIDY, EDWARD E. HOOD,
JR., RICHARD T. BAKER, JAMES G. BOSWELL II,
SILAS C. CATHCART, CHARLES D. DICKEY, JR.,
LAWRENCE E. FOURAKER, HENRY H. HENLEY, JR.,
HENRY L. HILLMAN, ROBERT E. MERCER,
GERTRUDE G. MICHELSON, BARBARA SCOTT
PREISKEL, LEWIS T. PRESTON, FRANK H.T.
RHODES, ANDREW C. SIGLER, and WALTER B.
WRISTON.

Defendants.

-----x

VERIFIED
COMPLAINT

86 Civ.

PLAINTIFF
DEMANDS
TRIAL BY
JURY

Plaintiff, by his undersigned attorneys, for his
complaint against defendants herein alleges:

1. Jurisdiction is conferred upon this Court by
Section 1332 of the Judicial Code (28 U.S.C. § 1332). The
amount in controversy exceeds \$10,000.

2. Plaintiff brings this action on behalf of
himself and all other shareholders of General Electric
Company similarly situated, and fairly and adequately
represents the interests of the shareholders similarly
situated.

3. Plaintiff is now and was at the time of the
transactions herein complained of a shareholder of the

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defendant General Electric Company, holding 500 shares its common stock in his own name, and 2400 shares beneficially through two family trusts, with a total value in excess of \$50,000.

4. This action is not a collusive one to confer on a court of the United States jurisdiction of any action of which it would not otherwise have jurisdiction.

5. On information and belief, each of the defendants named above either:

(a) Participated in the actions, transactions, conduct and practices complained of in this complaint; and/or

(b) Approved, agreed and conspired with respect to the actions, transactions, conduct and practices complained of in this complaint; and/or

(c) Aided and abetted, in a knowing and willful manner, said actions, transactions, conduct and practices; and/or

(d) Was negligent and derelict in his or her duty to exercise due care to protect the interests of the corporation.

THE PARTIES

6. Plaintiff is a resident of the District of Columbia. He brings this action derivatively on behalf of the corporate defendant.

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7. Defendant General Electric Company is incorporated in the State of New York, and has a principal place of business here.

8. Defendant John F. Welch, Jr. is Chairman of the Board of Directors and Chief Executive Officer of General Electric Company and is a resident of Connecticut.

9. Defendant Lawrence A. Bossidy is Vice Chairman of the Board of Directors and an Executive Officer of General Electric Company and is a resident of Connecticut.

10. Defendant Edward E. Hood, Jr., is Vice Chairman of the Board of Directors and an Executive Officer of General Electric Company and is a resident of Connecticut.

11. Defendants Richard T. Baker (Ohio), James G. Boswell II (California), Silas C. Cathcart (Illinois), Charles D. Dickey, Jr. (Pennsylvania), Lawrence E. Fouraker (Massachusetts), Henry H. Henley, Jr. (New York), Henry L. Hillman (Pennsylvania), Robert E. Mercer (Ohio), Gertrude G. Michelson (New York) Barbara Scott Preiskel (New York), Lewis T. Preston (New York), Frank H.T. Rhodes (New York), Andrew C. Sigler (Connecticut) and Walter B. Wriston (New York), are all Directors of General Electric Company and are residents, respectively, of the states indicated after each of their names.

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BACKGROUND

12. In 1972, Congress enacted the Federal Election Campaign Act of 1971 (PL 92-225) which included a provision (now incorporated in 2 U.S.C. § 441 b(b)(2)(C)) expressly authorizing the expenditure of corporate treasury funds for "the establishment, administration, and solicitation of contributions to a separate segregated fund [PAC] to be utilized for political purposes...." (Emphasis added.) The legislative history of the provision, known as the "Hansen Amendment", clearly shows that its purpose was to facilitate the collection of voluntary contributions to be used by the corporation to support electioneering activities.

Congressman Hansen, sponsor of the amendment, stated on the floor of the House during debate on the bill that the statute was not designed to cover corporate legislative activities, and that lobbying was to continue to be subject to separate regulation.

13. In 1975, the General Electric Company established the "Non-Partisan Political Support Committee for General Electric Employees" (originally called the "Non-Partisan Political Support Committee" and hereinafter referred to as "GE/PAC"). Since that time, on information and belief, General Electric's management has expended substantial sums from the corporation's treasury for the administration of GE/PAC and for the solicitation of GE/PAC

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contributions from GE executives and administrative personnel.

14. As operated under the management of General Electric Company the GE/PAC has been converted from an instrument of political electioneering activity to one of legislative activity, in direct violation of the explicit intent and purpose of the statute. Such misuse of the GE/PAC is evidenced by the nature of its expenditures during the 1983-1984 election cycle:

(a) GE/PAC gave funds totalling \$109,125 to committees for incumbent Congressmen during the calendar year 1983, which was a non-election year. At that time, there were virtually no opposition candidates publicly announced and therefore no opportunity to choose which candidates GE/PAC might wish to support on the merits in the upcoming 1984 election;

(b) GE/PAC paid over funds to the committees for 27 incumbent House Members who had no opponents at all in the general election, 18 of whom had no primary opposition either;

(c) GE/PAC made payments to committees for 103 incumbent Members of the U.S. House of Representatives who were virtually guaranteed re-election (winning by 70% or more of the vote);

(d) Overall, 98.5% of the GE/PAC payments went to committees for incumbent House Members who ran for

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re-election in 1984. In the 1983-1984 cycle, GE/PAC contributed to challengers in only 3 out of 210 races prior to the 1984 election in which an incumbent was running for re-election.

(e) In 2 of the 1984 House races, GE/PAC contributed to challengers after the election, when they turned out to be the winners.

(f) GE/PAC payments were made to committees for incumbent House Members without regard for their voting records or public positions on business issues. Eighty-six (86) of the 203 incumbent House Members who received GE/PAC funds had approval ratings of less than 40% from the U.S. Chamber of Commerce. Fourteen (14) had approval ratings of 30% or less. Moreover, many of those who received GE/PAC funds had high approval ratings from the ADA and AFL-CIO, whose legislative ratings generally reflect an anti-business viewpoint.

(g) GE/PAC made payments to every Senate incumbent running for re-election in 1984. In not a single instance did GE/PAC consider the challenger preferable to the incumbent, although in three states, (Illinois, Iowa and North Carolina) GE/PAC paid funds to the committees for both incumbents and challengers.

(h) GE/PAC made payments to committees for eleven (11) Senators who were assured of re-election and effectively had no contest (winning by 70% or more).

(i) Four of the Senators who received funds from GE/PAC had overall approval ratings by the U.S. Chamber of Commerce of less than 40%, two of whom were below 20%.

(j) GE/PAC also made contributions during 1983-1984 to eighteen (18) members of the Senate whose terms of office did not even expire during the period and therefore who had no election races at all during those years.

FIRST CAUSE OF ACTION

15. Many, if not most, GE/PAC payments have been indiscriminately turned over for the benefit of incumbent Members of Congress without regard to their position on legislative issues of concern to the corporation. No benefit has been realized by the corporation from these payments, and the expenditure of corporate funds to solicit and administer them has constituted a waste of corporate assets.

SECOND CAUSE OF ACTION

16. Management's use of GE/PAC funds has been intended to buy influence and build good will for legislative purposes rather than to choose between candidates on their merits for political electioneering purposes. Expenditures of corporate funds for the solicitation and administration of PAC funds to be used for such purposes constitute expenditures made with the intent of influencing, directly or indirectly, the passage or defeat of legislation

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by the Congress of the United States. As such, those expenditures are required to be reported under the Federal Regulation of Lobbying Act, Title 2 U.S.C. Section 261 et seq., and to be disclosed to the public, including the Corporation stockholders. Defendants have wholly failed to comply with those reporting requirements.

17. In addition to the failure to disclose the expenditure of corporate funds in support of Congressional lobbying activities, defendants have compounded that unlawful conduct by permitting or directing the corporation's lobbyists to file incomplete and misleading lobbying reports which fail to reveal the corporation's specific legislative interests, as required by 2 U.S.C. § 267, thereby frustrating the public disclosure intended by such statute.

18. Each failure to file a report of expenditures for legislative purposes and each failure to properly disclose information concerning specific legislative interests constitutes a misdemeanor under 2 U.S.C. § 269, punishable in each case by a fine of not more than \$5,000 and/or imprisonment for not more than twelve months. In addition, a conviction for such violation automatically prohibits the violator from carrying on any lobbying activities in Congress or from appearing before any Committee of Congress in support of or in opposition to proposed legislation for a period of three years.

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19. Defendants, by authorizing, directing and acquiescing in such unlawful conduct in violation of the Federal Regulation of Lobbying Act have breached their fiduciary obligations to the corporation and to its stockholders, have negligently wasted corporate assets, have exposed officers, employees and legislative representatives of the corporation to potential prosecution and punishment, and have exposed the corporation itself to potential penalties which could seriously affect its future economic welfare.

THIRD CAUSE OF ACTION

20. On information and belief, the timing and circumstances of GE/PAC fund payments to committees for certain incumbent Members of Congress and particularly to those who are permitted by law (2 U.S.C. § 439a) to apply excess campaign contributions for their personal use when they retire from Congress, are potential grounds for the institution of criminal prosecution as unlawful payments of compensation to Members of Congress for services rendered or to be rendered, in violation of Title 18 U.S.C. § 203. A violation of that statute is punishable by a fine of not more than \$10,000 and/or imprisonment for not more than two years, and permanent bar from any U.S. office of honor, trust or profit.

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21. Defendants, by authorizing, directing and acquiescing in activities which may result in future prosecutions have breached their fiduciary obligations to the corporation and its stockholders, have wasted corporate assets, and have exposed officers and employees of the corporation to potential prosecution and punishment. They have also exposed the corporation to the potential disallowance of the deductibility of such expenditures for tax purposes under Section 162 of the Internal Revenue Code as constituting funds used in facilitating the payment of unlawful bribes.

FOURTH CAUSE OF ACTION

22. On information and belief, the level of expenditures of corporate funds for the administration of, and solicitation of contributions for the GE/PAC have been unreasonable and excessive in relation to the amount of contributions collected, and have constituted an improper use and waste of corporate assets.

EFFORTS TO SECURE ACTION FROM DIRECTORS

23. On January 30, 1986, plaintiff caused to be delivered to the Directors of General Electric Company a demand that the Board of Directors investigate the aforesaid unlawful use of corporate funds. Plaintiff demanded that the Directors take the necessary steps to prevent further use of

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corporate funds for the operation of Political Action Committees, and to recover for the corporation, by whatever means necessary, the company funds wasted.

24. The Directors of General Electric Company have failed and refused to take appropriate action to prevent the further waste of corporate funds, or to obtain redress on behalf of the corporation for the funds which have been wasted in the past.

25. By letter dated April 29, 1986, GE's senior vice president, general counsel and secretary informed plaintiff through counsel that the Board of Directors had considered plaintiff's demand of January 30, 1986 at a regular meeting, and did not feel it was desirable or appropriate to "interfere with the free decisions of the participants in this program." This response itself demonstrates the deception and fraud with which these activities have been and are still being carried on. On information and belief, the bulk of the payments made out of the GE/PAC have not been the "free decisions of the participants" in the program but have been decisions made by management and the managers of GE/PAC explicitly for legislative purposes and in plain violation of law.

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RELIEF REQUESTED

WHEREFORE, plaintiff demands judgment:

(a) Requiring defendants other than General Electric Company jointly and severally to account and pay over to General Electric Company all corporate funds improperly expended on the administration of and solicitation of contributions for GE/PAC;

(b) Prohibiting further use of corporate funds for GE/PAC or any other Political Action Committee; and

(c) Granting plaintiff the reasonable costs and disbursements incident to the prosecution of this action, including reasonable attorneys fees.

**New York, New York
May 21, 1986**

BROWN & SEYMOUR

by 
**100 Park Avenue, Room 1608
New York, New York 10017
(212) 599-0068
Attorneys for Plaintiff**

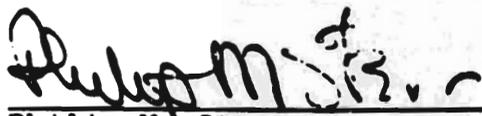
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VERIFICATION

DISTRICT OF)
COLUMBIA) s.s.:

PHILIP M. STERN, being duly sworn, deposes and
says:

1. I am the plaintiff in this action.
2. I have read the foregoing complaint and know
the contents thereof.
3. The same is true to the best of my knowledge
and belief.


Philip M. Stern

Sworn to before me this
1st day of May, 1986


Notary Public

Commission Expires August 31, 1986

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
PHILIP M. STERN,

Plaintiff,

MEMORANDUM OPINION AND ORDER

86 Civ. 4055 (MJL)

- against -

GENERAL ELECTRIC COMPANY, JOHN F.
WELCH, JR., LAWRENCE A. BOSSIDY,
EDWARD E. HOOD, JR., RICHARD T.
BAKER, JAMES G. BOSWELL II,
SILAS C. CATHCART, CHARLES D.
DICKEY, JR., LAWRENCE E. FOURAKER,
HENRY H. HENLEY, JR., HENRY L.
HILLMAN, ROBERT E. MERCER, GERTRUDE
G. MICHELSON, BARBARA SCOTT
PREISKEL, LEWIS T. PRESTON,
FRANK H.T. RHODES, ANDREW C.
SIGLER, and WALTER B. WRISTON,

Defendants.
----- X

APPEARANCES:

BROWN & SEYMOUR
Attorneys for Plaintiff
100 Park Avenue
New York, New York 10017

BY: PETER M. BROWN, ESQ.

DAVIS POLK & WARDWELL
Attorneys For Defendants
One Chase Manhattan Plaza
New York, New York 10005

BY: BY: ROBERT B. FISKE, JR.

JAMES BRUCE ESQ.
Antitrust and Litigation Counsel
General Electric Company
Fairfield Connecticut 06431

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MARY JOHNSON LOWE, D. J.

Plaintiff commenced this derivative action on behalf of himself and all other shareholders of General Electric ("GE") who are similarly situated. This action is brought under the diversity jurisdiction of this court.

Defendant GE and its directors have moved pursuant to Fed.R.Civ. P. 12(b)(6) to dismiss the complaint for failure to state a claim for which relief can be granted and pursuant to Fed.R.Civ.P. 12(b)(1) for lack of subject matter jurisdiction.

Plaintiff alleges in this complaint that since 1975, GE has expended substantial sums from the corporation's treasury for the solicitation of contributions to, and the administration of the "Non-Partisan Political Support Committee for General Electric Employees" ("GE/PAC").

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The verified complaint alleges four causes
of action:

- (1) Breach of fiduciary duty by the Board of Directors (the "Board") in wasting corporate assets by authorizing, directing and acquiescing in GE/PAC payments made to incumbent members of Congress without regard to their position on legislative issues of concern to GE;
- (2) Breach of fiduciary duty by the Board in authorizing, directing and acquiescing in violations of the Federal Regulation of Lobbying Act;
- (3) Breach of fiduciary duty by the Board in authorizing, directing and acquiescing in violations of the prohibitions against bribing Members of Congress; and
- (4) Breach of fiduciary duty by the Board's excessive expenditures of corporate funds for the administration of, and solicitation of contributions for GE/PAC.

The complaint alleges, in part that:

In 1972, Congress enacted the Federal Election Campaign Act of 1971 (PL 92-225) which included a provision (now incorporated in 2 U.S.C. §441b(b)(2)(C)) expressly authorizing the expenditure of corporate treasury funds for "the establishment, administration, and solicitation of contributions to a separate segregated fund [PAC] to be utilized for political purposes."

Complaint, ¶12 (emphasis in original). The complaint further states that:

As operated under the management of General Electric Company the GE/PAC has been converted from an instrument of political electioneering activity to one of legislative activity, in direct violation of the explicit intent and purpose of the statute. Such misuse of the GE/PAC is evidenced by the nature of its expenditures during the 1983-1984 election cycle.

Complaint, ¶14 (emphasis in original).

Plaintiff asks this court to issue an order:

(a) Requiring defendants other than General Electric Company jointly and severally to account and pay over to General Electric Company all corporate funds improperly expended on the administration of and solicitation of contributions for GE/PAC;

(b) Prohibiting further use of corporate funds for GE/PAC or any other Political Action Committee; and

(c) Granting plaintiff the reasonable costs and disbursements incident to the prosecution of this action, including reasonable attorneys fees.

Complaint, p. 12.

Defendants move to dismiss the complaint on three grounds. First, the defendants argue that the complaint fails because all of the alleged acts of the GE/PAC are legal and proper under the Federal Election Campaign Act ("FECA"), the regulations promulgated thereunder, and every other statute cited in the complaint. Second, they contend that a private party has no standing under the FECA, or under any of the other federal laws cited in the complaint to seek the relief plaintiffs requests. Third, the defendants assert that the complaint fails because all of the alleged actions of the individual defendants were properly within their sound business judgment.*/

*/ Because of our disposition under defendants' arguments one and two above, we do not reach the business judgment rule.

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Discussion

A motion to dismiss a complaint should not be granted unless it appears to a certainty that the plaintiff would not be entitled to relief under any state of facts which could be proved in support of the claim. In addition, the complaint must be viewed in the light most favorable to the plaintiff and the truth of all facts well pleaded, admitted. Costello, et al. v. Town of Fairfield, Nos. 342, 393, slip. op. at 1482 (2d Cir. February 12, 1987).

The essence of plaintiff's complaint is his allegation that the legislative history of the FECA discloses that its purpose was to facilitate the collection of voluntary contributions to be used by a corporation PAC for the support of electioneering activities. Plaintiff alleges that Congressman Hansen, sponsor of the bill, stated on the floor of the House that the statute was not designed to cover corporate legislative activities and lobbying. Defendant directors, plaintiff complains, have unlawfully operated the PAC by expending its funds for legislative activity, lobbying, and bribery in violation of 18 U.S.C. § 203, thereby wasting corporate assets and breaching their fiduciary duties.

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Plaintiff brings his action under the diversity jurisdiction of this court alleging state common law claims. The apparent reason for plaintiff's reliance on state law is that the action would be barred if plaintiff attempted to directly attack the operation of the GE/PAC as being in violation of the FECA since Congress has decreed that the Federal Election Commission ("FEC") has exclusive initial jurisdiction over alleged violations of the Act.*/

*/ A person who believes that the Act has been violated must first file a complaint with FEC. In cases where the FEC determines that the complaint is supported by probable cause, the FEC must attempt to correct or prevent the alleged violation "by informal methods of conference, conciliation, and persuasion..." 2 U.S.C. §437g(a)(4). If conciliation fails, the FEC may institute a civil action for relief. 2 U.S.C. §437g(a)(6).

The complainant may bring an action against the FEC in federal court where the FEC has dismissed the complaint or failed to act on it within 120 days. 2 U.S.C. §437g(a)(8)(A). Where the court finds that the FEC acted "in a manner contrary to law", it may direct the FEC to conform to the law within 30 days. If the FEC fails to comply with the court's directives, the complainant may bring a civil action to remedy the violation. 2 U.S.C. §437g(a)(8)(C).

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Plaintiff may believe he is entitled to invoke the jurisdiction of this court by reliance on obiter dicta in Corte v. Ash, 422 U.S. 66, 84 (1974). In that case, Ash, a stockholder in Bethlehem Steel Corporation, brought a derivative action seeking an injunction and damages claiming that the corporate directors had authorized expenditure of general corporate funds for political purposes in the 1972 presidential election. Ash claimed that this use of corporate funds was a violation of 18 U.S.C. § 610.* / Since Section 610 was a criminal statute, Ash asked the court to imply a private remedy for the criminal violation. After stating its reasons why a private cause of action would not be implied, the court said:

* / Ash also alleged pendant claims that the use of corporate funds was ultra vires and a breach of the directors' fiduciary duty. For reasons not material here, the pendant claims were dropped before appeal to the circuit court.

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Fourth, and finally, for reasons already intimated, it is entirely appropriate in this instance to relegate respondent and others in his situation to whatever remedy is created by state law. In addition to the ultra vires action presented here, [cite omitted] the use of corporate funds in violation of federal law may, under the law of some States, give rise to a cause of action for breach of fiduciary duty. See e.g., Miller v. American Telephone & Telegraph Co., 507 F.2d 759 (3rd Cir. 1974). Corporations are creatures of state law, and investors commit their funds to corporate directors on the understanding that, except where federal law expressly requires certain responsibilities of directors with respect to stockholders, state law will govern the internal affairs of the corporation.

Ash, 422 U.S. at 84.

Plaintiff, in order to bring himself within the Corte v. Ash dictum must allege that these defendants used corporate funds in violation of federal law and that such use gives rise to a cause of action under the law of New York for breach of fiduciary duty. This plaintiff has failed to do.

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Plaintiff argues that:

There is nothing in the Verified Complaint alleging violations of the FECA. As noted above, the Verified Complaint charges the Board with breaches of their fiduciary duties for directing and abetting violations of their common law responsibilities as well as the disclosure requirements of the Federal Regulation of Lobbying Act ("FRLA")[*/] and bribery statutes.

(Plaintiff's Brief In Opposition, p. 17).

*/ The FRLA, 2 U.S.C. §§ 261-270, established a reporting and disclosure system with respect to persons engaged in lobbying activities. 2 U.S.C. §§266, 267; United States v. Harris, 347 U.S. 612, 620, 623 (1954). Specifically excluded from the provisions of the FRLA are "political committee[s] as defined in the Federal Corrupt Practices Act" (repealed and replaced by the FECA). 2 U.S.C. § 266. Furthermore, the provisions of the FRLA do "not apply to practices or activities regulated by the [FECA]." 2 U.S.C. § 270.

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Plaintiff's claims that the defendants have violated the FRLA and federal bribery statutes have no merit.

FRLA

Plaintiff contends that:

Defendants urge that since GE/PAC is a separate segregated fund established under FECA, it is exempt from the registration and disclosure requirements of FRLA. While this is true as to the PAC, the argument misses the point of the Verified Complaint, namely, that the corporation is not exempt from FRLA, and GE's expenditure of corporate funds for the solicitation and administration of GE/PAC to be used principally to influence the passage or defeat of legislation constitutes expenditures which must be reported under FRLA.

(Plaintiff's Brief In Opposition, p. 9).

This argument misses the mark. The GE/PAC is a "political committee", 2 U.S.C. § 266. As such its activities are regulated by the FECA, and not the FRLA, 2 U.S.C. § 270. If plaintiff's complaint is that corporate funds used to administer the GE/PAC are expended improperly by the GE/PAC for lobbying purposes, this is precisely the type of complaint the FEC was designed to adjudicate. Plaintiff may not raise this claim in the first instance in the district court. 2 U.S.C. §437q(a)(4).

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Bribery

Plaintiff's claim that the GE/PAC's distribution of funds to incumbent congressmen in non-election years constitutes bribery is inconsistent with the regulations and rulings of the FEC. See, 11 C.F.R. § 110.5(b)(1), (2); 1977 Opinion F.E.C. 24, 1 Fed. Election Camp. Fin. Guide (OCH) ¶ 5260, at 10,207 (June 28, 1977); 1985 Opinion F.E.C. 5, 1 Fed. Election Camp. Fin. Guide (OCH) ¶ 3 5810 (March 6, 1985).

Since plaintiff's claims of violation of the FRLA and the federal bribery statute have no merit in fact or law and plaintiff concedes he does not charge a violation of the FECA, plaintiff's reliance upon state common law is to no avail.

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The preemption provision of the FECA, 2 U.S.C. § 453, explicitly nullified any inconsistent provision of state law regulating the election of federal officers. If plaintiff's complaint relies upon the application of state common law to either avoid the exclusive primary jurisdiction^{*/} of the FEC or to, in any way, diminish the effect of the FECA provisions and regulations enacted thereunder, such reliance is misplaced. Where, as in the instant case, the plaintiff does not claim that the defendants violated any provisions of the FECA in administering the GE/PAC, defendants are insulated by their conforming behavior from any end run attacks based upon state law. This is the meaning of federal preemption. When a person acts according to the dictates of federal law, in an area where Congress has expressly preempted the areas of concern, state statutes or the common law cannot create liability for damages for these same acts nor in any way diminish or interfere with the exercise of federally created rights.

^{*/} The doctrine of primary jurisdiction is designed to allocate the power of courts and administrative agencies to make initial determinations. 4 K. Davis, Administrative Law Treatise § 22.1 (2d Ed. 1983). Congress created the FEC as a body which would have particular expertise concerning the application of the FECA to disputes and vested in the FEC primary jurisdiction to resolve competing claims. Judicial authority may only be invoked after the FEC has acted. 2 U.S.C. § 437g(a)(8).

Where the corporate action complained of is authorized by federal law, "state law to the contrary is nullified to the extent it actually conflicts with federal law." Fidelity Federal Savings & Loan Association v. De La Cuesta, 458 U.S. 141, 153 (1982).

For all of the above reasons, defendants motion to dismiss the Complaint is granted, the complaint is dismissed.

It Is So Ordered.

Dated: New York, New York
May 4, 1987


United States District Judge

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FEDERAL ELECTION COMMISSION

----- X
In re: :
IN THE MATTER OF THE :
GENERAL ELECTRIC COMPANY :
AND EACH OF ITS OFFICERS : File No. MUR-2682
AND DIRECTORS :
: :
Debtors. :
: :
----- X

MEMORANDUM ON BEHALF OF
RESPONDENTS GENERAL ELECTRIC COMPANY
AND EACH OF ITS OFFICERS AND DIRECTORS

DAVIS POLK & WARDWELL
1 Chase Manhattan Plaza
New York, New York 10005
(212) 530-4000

89040731016

FEDERAL ELECTION COMMISSION

----- X
:

IN THE MATTER OF THE :

GENERAL ELECTRIC COMPANY : File No. MUR-2682

AND EACH OF ITS OFFICERS :

AND DIRECTORS :

----- X

MEMORANDUM ON BEHALF OF
RESPONDENTS GENERAL ELECTRIC COMPANY
AND EACH OF ITS OFFICERS AND DIRECTORS

The General Electric Company and each of the individual respondents (collectively "GE")* submit this memorandum of law in response to a letter from the Federal Election Commission ("the Commission") dated September 6, 1988, advising GE of a complaint filed by Philip A. Stern alleging that GE violated the Federal Election Campaign Act of 1971, as amended (the "FECA"), and inviting GE's response to that complaint.

Simply stated, the complaint has no merit. It fails to set forth any violation of the FECA or to state any reason

* Of the individual respondents named by the Complaint, James G. Boswell II and Silas S. Cathcart are no longer members of the Board of Directors of the General Electric Company.

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to believe that any violation is likely to occur. The Commission's file in this matter should therefore be closed.*

FACTS

A. The Background and Operation of the GE/PAC

The GE/PAC is a political action committee which solicits voluntary contributions from GE management personnel and distributes those funds as campaign expenditures or contributions in connection with federal elections. GE established the GE/PAC in 1975 as a "separate segregated fund" under the provisions of the FECA. While the FECA generally prohibits corporations from making campaign contributions or expenditures in connection with federal elections, see 2 U.S.C. § 441b(a) (1982), it specifically authorizes the expenditure of corporate funds for "the establishment, administra-

* In 1986, Philip Stern filed a complaint in the United States District Court for the Southern District of New York, a copy of which is attached as Exhibit A to the affidavit of Phillips Peter (the "Peter Aff."), in which he alleged that in 1984 the GE/PAC had made contributions identical to the types of contributions which he now alleges in this complaint violate the FECA. The complaint filed in the District Court alleged that these contributions violated the Federal Regulation of Lobbying Act and federal bribery statutes. Mr. Stern conceded in the District Court that he had not alleged violations of the FECA, Peter Aff. Ex. B p. 11, and the District Court, in dismissing the complaint for failure to state a claim and as subject to the jurisdiction of the Commission, found that GE and the individual defendants were "insulated by their conforming behavior from any end run attacks based upon state law." Peter Aff. Ex. B p. 12.

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tion, and solicitation of contributions to a separate segregated fund to be utilized for political purposes" 2 U.S.C. § 441b(b)(2)(C) (1982). Separate segregated funds such as the GE/PAC are included under the FECA's definition of "political committee," 2 U.S.C. § 431(4)(B) (1982).

None of the funds distributed by the GE/PAC as contributions or expenditures made in connection with federal elections are provided by GE. Such funds are comprised solely of contributions from GE management personnel. GE management employees may specify the candidates or political parties to which their contributions are to be distributed, or leave the decisions regarding distribution to the discretion of those employees who operate the GE/PAC. None of the individually named respondents, all of whom are members of the GE Board of Directors and some of whom are also members of GE's Executive Office, have any role whatsoever in the operation of the GE/PAC or the distribution by it of contributed funds.

B. The Nature of the Allegations of the Complaint

The complaint alleges that GE violated the FECA by "misusing" the GE/PAC. The nature of the alleged "misuse" is not clear. The complaint does not allege acts constituting violations of the FECA or any of the rules promulgated thereunder. Indeed, as shown below, each of the allegations in the complaint describes activities explicitly authorized by or

consistent with the FECA and the regulations.

The complaint alleges that the GE/PAC has been "converted from an instrument of political electioneering activity to one of legislative activity." (Complaint p. 2; emphasis in original). The basis for the allegation is that in 1986, the GE/PAC:

- (1) gave money to House candidates who either faced no opponent or who "could be predicted to coast to easy victories" (complaint p. 2);
- (2) gave money to a Senate candidate whose average approval rating by the U.S. Chamber of Commerce was 12.8%, while his opponent's rating was 74% in 1984 and 100% in 1983 (complaint p. 3);
- (3) contributed funds to opposing candidates in six Senate elections (complaint p. 3);
- (4) made post-election contributions to candidates who won their elections (complaint p. 3); and
- (5) made contributions to incumbents in 212 out of 214 House contests and in 27 Senate races (complaint p. 3).

The complaint urges the Commission to find that by engaging in these perfectly legal, commonplace activities, GE violated the FECA by establishing and administering the GE/PAC, because, the complaint states, the distributions set forth above did not serve "bona fide political purposes" (complaint p. 4; emphasis in original). The complaint would

like the Commission to reach beyond the FECA and its regulations to establish criteria setting forth a limited number of "bona fide political purposes" that would dictate which particular candidates may receive contributions from corporate political action committees, and that would classify non-conforming contributions as prohibited "legislative" activity. There is no basis for such action.

ARGUMENT

POINT I

EVERY ONE OF THE ACTIVITIES OF THE GE/PAC
DESCRIBED IN THE COMPLAINT IS AUTHORIZED
BY THE FECA, ITS REGULATIONS OR THE COMMISSION

The predicates for GE's alleged wrongdoing concern the GE/PAC's contributions to various types of candidates in the 1986 election year, primarily incumbents and unopposed candidates. However, each of the activities complained of is authorized explicitly or implicitly by the FECA, its regulations or the opinions of the Commission.

- A. The FECA and regulations authorize contributions to unopposed candidates and candidates who "could be predicted to coast to easy victories"

Mr. Stern complains that the GE/PAC made contributions to candidates who were unopposed and to candidates who "could be predicted to coast to easy victories" (complaint p. 2). Nothing in the FECA or regulations prohibits contribu-

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tions where an "easy victory" is predicted, and the regulations specifically allow contributions to unopposed candidates. The regulatory scheme limits the maximum contribution made by a political action committee to a candidate for each separate election. A separate election specifically includes those elections where a candidate is unopposed:

"(2) An election in which a candidate is unopposed is a separate election for the purposes of the limitations on contributions of this section.

"(3) A primary or general election which is not held because a candidate is unopposed or received a majority of votes in a previous election is a separate election for the purposes of the limitations on contributions of this section." 11 C.F.R. § 110.2(i) (1988).*

Thus contributions to unopposed candidates are permitted, as long as they do not violate the contribution limitations for separate elections or some other regulatory condition. The complaint nowhere suggests that the GE/PAC's contributions to unopposed candidates exceeded any regulatory limit or

* The 1986 regulations provide:

"(2) An election in which a candidate is unopposed is a separate election.

"(3) If no primary election is held because a candidate is unopposed, the date on which the primary would have been held shall be deemed to be the date of the primary for purposes of the contribution limitations." 11 C.F.R. § 110.2(d) (1986).

condition. The complaint on this point simply has no legal basis.

B. The FECA and regulations do not prohibit contributions to opposing candidates

Mr. Stern complains that the GE/PAC made contributions to opposing candidates in certain elections. However, the GE/PAC is a multi-candidate political committee, and therefore is permitted to make contributions to many candidates. The regulations provide that a separate segregated fund may qualify as a "multi-candidate committee" if it receives contributions from more than 50 persons, has been registered for at least six months, and has contributed to at least five federal candidates. 11 C.F.R. § 100.5(e)(3) (1986), (1988). The GE/PAC meets these requirements, and there is no allegation to the contrary in the complaint.

A qualifying separate segregated fund may contribute up to \$5,000 to each candidate in each election, as opposed to the \$1,000 contribution limit imposed upon non-qualifying funds. 2 U.S.C. § 441(a)(1); 11 C.F.R. §§ 110.1(b)(1) and 110.2(b)(1) (1988); 11 C.F.R. §§ 110.1(a)(1) and 110.2(a)(1) (1986). Nothing in the regulations prohibits a multi-candidate committee from making contributions to a variety of

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candidates, including candidates opposing one another.* For committees who limit their contributions to one candidate or one party, the regulatory scheme recognizes other forms of political committees, such as a "single candidate committee" or a "party committee". See 11 C.F.R. § 100.5(e) (1986), (1988).

C. The FECA and regulations authorize post-election contributions

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Mr. Stern complains that the GE/PAC made post-election contributions to candidates who won their elections, defeating candidates supported by the GE/PAC during the campaign. The regulations, on their face, authorize certain non-election year contributions. 11 C.F.R. § 110.5(b)(1), (2) (1986), (1988); see also 11 C.F.R. § 110.2(b)(2)(ii), (3)(i) (1988). The Commission's opinions also authorize post-election and non-election year contributions, so long as such contributions are properly applied either to a candidate's outstanding campaign debt or to a future election. In a 1977 opinion, the Commission considered a candidate's transfer of surplus funds from his 1976 campaign committee to his 1978 committee and explained that "except to the extent of out-

* Any limitation on contributions to opposing candidates would be a practical impossibility since contributors may designate the candidate for whom their contribution is intended. See, e.g., 11 C.F.R. § 110.6 (1986), (1988); 110.2(b) (1988).

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standing debts from a 1976 election, each 'contribution' (as defined in 2 U.S.C. § 431(e)) after the date of the general election in 1976 is charged against the contribution limits of the original contributor with respect to a future election." 1977 Opinion F.E.C. 24, 1 Fed. Election Camp. Fin. Guide (CCH) P 5260, at 10,207 (June 28, 1977); see also 1985 Opinion F.E.C. 5, 1 Fed. Election Camp. Fin. Guide P 5810 (March 6, 1985) (contributions received after an election must be attributed to the next election if there are no campaign debts outstanding); 1980 Opinion F.E.C. 60, 1 Fed. Election Camp. Fin. Guide (CCH) P 5499 (May 30, 1980) (same); see also, 1980 Opinion F.E.C. 30, 1 Fed. Election Camp. Fin. Guide (CCH) P 5498 (May 30, 1980) (where campaign was terminated, excess funds could be applied to next campaign). Nothing contained in the FECA, the regulations or the Commission's opinions suggests that a contribution may not be made to a successful candidate where prior to the election, contributions were made to other candidates for the same office.

D. The Commission has approved contributions to incumbent candidates

Mr. Stern complains that the GE/PAC backed the incumbent in 212 House elections and in 27 Senate elections but only backed the challenger in two House elections and backed both the incumbent and challenger in five Senate elec-

tions. There is simply nothing in the FECA, regulations or opinions of the Commission that makes contributions to incumbents improper. A multi-candidate political action committee such as the GE/PAC is authorized to contribute to many candidates, and incumbents are, of course, legitimate candidates.

In a 1986 advisory opinion, the Commission found that a corporation should form a political action committee if it wished to carry out a proposed corporate-sponsored political contributions program aimed primarily at incumbent members of Congress. 1986 Opinion F.E.C. 4, 1 Fed. Election Camp. Fin. Guide (CCH) P 5846 (February 27, 1986). The Commission advised that such a program would be allowed under the Act if the corporation established, administered, and solicited contributions to a separate segregated fund that qualified as a political action committee. The Commission in no way indicated that there was anything improper in having such a program target incumbents for distributions.

- E. The FECA and regulations do not require corporate political action committees to tailor contributions to ratings by the United States Chamber of Commerce

Finally, Mr. Stern complains that contributions went to candidates without consideration of relative voting record approval ratings published by the United States Chamber of Commerce. Under the FECA, corporate political action commit-

tees are free to choose the candidates to whom they will make contributions. The GE/PAC, moreover, allows its contributors to earmark funds so that those funds will, if the contributor so desires, be sent to a specific candidate or to a specific political party. When offered as support for a claimed violation of the FECA, this allegation is frivolous.

POINT II

NOTHING IN THE COMPLAINT PROVIDES
THE COMMISSION WITH A REASON TO ADOPT
MR. STERN'S UNPRECEDENTED AND IMPRACTICAL
INTERPRETATION OF THE ACT

The complaint alleges that the authorized, legitimate activities described above have converted the GE/PAC "from an instrument of political electioneering activity to one of legislative activity, in direct violation of the explicit intent and purpose of the statute." (Complaint p.2; emphasis in original). However, the complaint does not allege any violation of law. With this complaint, Mr. Stern would have the FECA and its regulations completely transformed through some entirely new interpretation that would break down the contributions of political action committees between those that serve "bona fide" political purposes, and those that, although otherwise proper under the FECA, serve political purposes that are not "bona fide" and that must therefore be seen as improper or illegal. The law, however, does not draw

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whatever distinction Mr. Stern might have in mind here, and for good reason.

The FECA provides that separate segregated funds may be established for "political purposes". 2 U.S.C. § 441b (1982). The FECA does not define political purposes as "political electioneering activity", and indeed the statute never even uses the term "political electioneering activity". There is also nothing in the statute that contrasts "political electioneering activity" with "legislative activity". It is of course true that the FECA is generally intended to regulate expenditures and contributions made "in connection with" federal elections. See 2 U.S.C. § 441b (1982) (using phrase "in connection with"); 2 U.S.C. §§ 431(8)(A), 431(9)(A) (1982) (defining "contributions" and "expenditures" made "for the purpose of influencing any election for Federal office.") But this is a far cry from introducing a distinction that would give substance to the complaint.

The reason the FECA does not use Mr. Stern's proposed distinction, or contain a basis for the Commission to introduce such a distinction, is that it would put the government in an impossible position. Mr. Stern wants the Commission to analyze various characteristics of candidates, ie:, incumbency, Chamber of Commerce approval, and likelihood of election, to determine which candidates the GE/PAC should

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support, and then to declare that contributions to other candidates do not serve "bona fide political purposes" and are therefore impermissible. This would leave the Commission with the daunting and disturbing task of evaluating the political wisdom of any particular contribution a corporate political action committee might make. This is not a proper task for a governmental body. Nothing in the statute or regulations could justify the commencement of a program under which the Federal Government determines the permissible political interests of a political action committee such as the GE/PAC, and dictates which federal candidates deserve financial support from that committee. The FECA never contemplated such a regulatory scheme, and Mr. Stern's complaint provides no reason for the Commission to go forward in such a novel and impractical direction.

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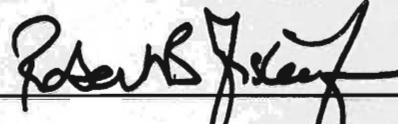
CONCLUSIONS

For the reasons set forth above, GE respectfully requests that the Commission close the file on this matter.

Dated: New York, New York
October 6, 1988

Respectfully submitted,

DAVIS POLK & WARDWELL

By 

1 Chase Manhattan Plaza
New York, New York 10005
Tel.: (212) 530-4000

Attorneys for Respondents

Of Counsel:

Robert B. Fiske, Jr.
Sharon Katz
Michael R. Hepworth

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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR 2682
DATE COMPLAINT RECEIVED
BY OGC: August 29, 1988
DATE OF NOTIFICATION TO
RESPONDENTS: September 6, 1988
STAFF MEMBER: J. Albert Brown

COMPLAINANT: Philip M. Stern
RESPONDENTS: General Electric Company

General Electric Officers
John F. Welch, Jr.
Lawrence A. Bossidy
Edward E. Hood, Jr.

General Electric Directors
Richard T. Baker
Lawrence A. Bossidy
James G. Boswell II
Silas S. Cathcart
Charles D. Dickey, Jr.
Lawrence E. Fouraker
Henry H. Henley, Jr.
Henry L. Hillman
Edward E. Hood, Jr.
Robert E. Mercer
Gertrude G. Michelson
Barbara Scott Preiskel
Lewis T. Preston
Frank H.T. Rhodes
Andrew C. Sigler
John F. Welch, Jr.
Walter B. Wriston

RELEVANT STATUTES: 2 U.S.C. § 441b(a)
2 U.S.C. § 441b(b)(2)(C)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

Philip M. Stern filed a complaint on August 29, 1988, with the Office of the General Counsel which alleged that the above

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captioned Respondents violated 2 U.S.C. § 441b(a) and 2 U.S.C. § 441b(b)(2)(C) of the Federal Election Campaign Act ("FECA"). Mr. Stern alleged General Electric Company and all of its officers and directors ("GE") violated the Act by making unlawful corporate treasury expenditures during the 1986 election cycle for the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for lobbying rather than for political purposes.

Mr. Stern had previously filed a shareholders derivative action in the New York Southern Federal District Court on behalf of himself and all other similarly situated shareholders, only to have it dismissed on the basis that the matter is within the exclusive jurisdiction of the FEC. A copy of the court's opinion is attached. The basis for Mr. Stern's suit in that case was an alleged GE Board of Directors breach of fiduciary duty caused by the wasting of corporate assets since 1975 through expenditures soliciting contributions to and administrating the GE separate segregated fund called the Non-Partisan Political Support Committee for General Electric Employees ("GE/PAC").

On October 7, 1988, a response to the present complaint was filed by counsel for the Respondents. This answer states that GE/PAC did not distribute any contributions or make any expenditures, in connection with federal elections, that were out of GE corporate funds. At the same time, it is noted in the response that the GE Board of Directors has, since the establishment of the GE/PAC in 1975, voted to provide it with

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administrative funding. This response asserts that none of the individually named respondents have had any role whatsoever in the operation of the GE/PAC or the distribution by it of contributed funds.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), makes it unlawful for any corporation, or any of its officers or directors, to consent to any contribution or expenditure by the corporation in connection with any election to any political office. 2 U.S.C. § 441b(a). Section 441b(b)(2)(C) goes on to define "contribution or expenditure" by providing:

"For purposes of this section and section 79(h) of title 15, the term "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section, but shall not include--

(C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock. [emphasis added] 2 U.S.C. § 441(b)(2)(C).

B. ANALYSIS

It is Mr. Stern's position that General Electric's

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separate segregated fund, GE/PAC, has illegally distributed funds since its inception for lobbying instead of political election purposes. Mr. Stern alleges that in these activities GE/PAC is merely acting as a conduit for General Electric Corporation's lobbying efforts, and thereby General Electric loses its exemption, granted by Section 441b(b)(2)(C), for the establishment, administration, and solicitation of contributions on behalf of GE/PAC. He apparently alleges that the loss of this exemption would in turn mean GE violated the corporate prohibition on donating or making expenditures in connection with a federal election campaign. In support of the assertion that GE/PAC is mainly involved in advocating GE's legislative agenda, rather than merely supporting political candidates for election, Complainant points to non-election year GE/PAC expenditures "seemingly" unnecessary to the candidates' success in the following election. Complainant provides statistics showing GE/PAC frequently gave money to incumbent House candidates who had no opponent or who had won by margins of at least three-to-one in their last four elections, and thus might be predicted to achieve an easy victory. Complainant maintains that in such cases the GE/PAC contribution could not serve a political purpose, and therefore could only be seen as a manner by which GE could gain influence over the recipients. Another alleged indicator of "lobbying" which Complainant notes is that GE/PAC made contributions to incumbents with low Chamber of Commerce business approval rates, but failed to contribute to challengers with high

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Chamber of Commerce business ratings. Complainant impliedly asserts this is inconsistent with the political purposes of a political action committee which one would assume to be most supportive of pro-business candidates. Complainant further points to the fact that GE/PAC contributed to both candidates in several Senate elections in 1986, which would seem to be self-defeating if a political purpose was envisioned. Overall, Complainant notes that out of 214 House contests in which the incumbent sought reelection, GE/PAC supported the incumbent in 212 races, or 98% of the time. In contrast GE/PAC only contributed to 2 challengers in the same year, or 1% of the time.

GE/PAC Federal Election Commission year-end reports for the years involved in the present complaint show that GE/PAC had total receipts of \$230,259.30 and \$254,208.67 in 1985 and 1986, respectively. During those same time periods GE/PAC gave contributions to federal candidates and other political committees totaling \$209,875.00 in 1985 and \$275,820.00 in 1986. Other disbursements totaled \$1,850.03 in 1985 and \$2,143.28 in 1986.

GE maintains that its actions regarding GE/PAC are explicitly authorized by, or consistent with, the FECA and related regulations. The response notes that GE/PAC collects contributions from GE management personnel and that those contributors may specify the candidates or political parties to which their contributions are to be distributed. If the contribution is not designated for a particular candidate,

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decisions determining the recipient of GE/PAC contributions are left to the discretion of those employees who operate the GE/PAC.

In answering the allegations, GE correctly asserts that nothing in the FECA or regulations prohibits contributions where an "easy victory" is predicted. When discussing limitations on contributions, the regulations, in fact, specifically allude to contributions to unopposed candidates. See 11 C.F.R. § 110.2(i)(2). Thus, it is legal to contribute to those unopposed or "easy victory" candidates. There is no indication that Complainant alleges that GE/PAC contributions to unopposed candidates are in excess of any legal limit or otherwise in violation of the Act.

Several Advisory Opinions deal with Commission determinations regarding the allocation of contributions made before an election, but not actually received by the candidate committees until after the election. See, AO 1977-24, and AO 1985-5. The New York court in which Stern previously brought suit interpreted past Commission action, allotting funds received after the election to the next coming election cycle limitations, to imply Commission recognition that non-election year contributions are not by their very nature illegal "lobbying." As the New York court stated in its dismissal of the Stern suit:

Plaintiff's claim that the GE/PAC's distribution of funds to incumbent congressmen in non-election years constitutes bribery is inconsistent with the regulations and rulings of the FEC. See, 11 C.F.R. § 110.5(b)(1),

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(2); 1977 Opinion F.E.C. 24, 1 Fed. Election Camp. Fin. Guide (CCH) p. 5260, at 10,207 (June 28, 1977); 1985 Opinion F.E.C. 5, 1 Fed. election Camp. Fin. Guide (CCH) (sic). Stern v. General Electric Company, No. 86 Civ. 4055 (S.D.N.Y., May 14, 1987) (WESTLAW, Allfeds Library).

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The Commission has said that a separate segregated fund may make expenditures "for any lawful purpose consistent with the Act and regulations." See, Advisory Opinion 1983-4; Advisory Opinion 1983-24; and Advisory Opinion 1986-32. Even if GE/PAC's expenditures are viewed as "lobbying expenditures," the Commission in Advisory Opinion 1983-4 held that funds collected by the political action committee of a labor union may be used to pay the expenses of lobbying activities conducted by union officials even though they are not "expenditures" for the purposes of influencing a federal election as defined in 2 U.S.C. § 431(9). Advisory Opinion 1983-4. Although the use of political action committee segregated funds in non-election year contributions may or may not constitute lobbying, neither the Act nor Commission regulations explicitly define such expenditures as prohibited on the grounds that they are not for "political purposes" as the complainant argues. For this reason, such expenditures appear to meet the Commission standard of a lawful purpose consistent with the Act and regulations.

An investigation of the Act's legislative history also shows that the paramount concern in enacting prohibitions on corporate contributions was the segregation of corporate and political action committee funds. See 93 Cong. Rec. 6522. In

a U.S. Supreme Court case, argued before the effective date of the FECA, but decided after its effective date in 1971, the Court confirmed that the direct corporate expenditure prohibition did not apply to voluntarily financed segregated funds established for political purposes. Pipefitters Local Union No. 562 et al. v. United States, 407 U.S. 385 (1972). The Court in Pipefitters went on to clarify that political funds need only be separate from the sponsoring union in that strict segregation from union dues be required. The Court in Pipefitters stated:

Nowhere, however, has Congress required that the political organization be formally or functionally independent of union control or that union officials be barred from soliciting contributions or even precluded from determining how the monies raised will be spent. Pipefitters at 415.

In contrast to an actual violation of the Act, here there is no allegation that GE/PAC's contribution expenditures were derived from other than voluntary donations made by individuals. There is no allegation here that GE/PAC contribution funds were commingled with corporate GE funds. A central basis of complainants allegation remains an assertion that the GE/PAC political contribution expenditures constitute "lobbying" for General Electric Company.

Based on the foregoing, this Office recommends that the Commission find no reason to believe the General Electric Company or any of its officers or directors violated 2 U.S.C. § 441b(a) or 2 U.S.C. § 441b(b)(2)(C) with respect to the 1986 election cycle contributions of GE/PAC.

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III. RECOMMENDATIONS

1. Find no reason to believe that General Electric Company or any of its past or present officers or directors violated 2 U.S.C. §§ 441b(a) and 441b(b)(2)(C).
2. Approve the attached letters.
3. Close the file.

Lawrence M. Noble
General Counsel

11/15/88
Date


BY: Lois G. Lerner
Associate General Counsel

Attachments

- Respondents answer dated October 6, 1988
- Letter to Respondent
- Letter to Complainant

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
)
General Electric Company) MUR 2682
)
)
General Electric Officers)
John F. Welch, Jr.)
Lawrence A. Bossidy)
Edward E. Hood, Jr.)
)
General Electric Directors)
Richard T. Baker)
Lawrence A. Bossidy)
James G. Boswell II)
Silas S. Cathcart)
Charles D. Dickey, Jr.)
Lawrence E. Fouraker)
Henry H. Henley, Jr.)
Henry L. Hillman)
Edward E. Hood, Jr.)
Robert E. Mercer)
Gertrude G. Michelson)
Barbara Scott Preiskel)
Lewis T. Preston)
Frank H. T. Rhodes)
Andrew C. Sigler)
John F. Welch, Jr.)
Walter B. Wriston)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on November 18, 1988, the Commission decided by a vote of 5-0 to take the following actions in MUR 2682:

1. Find no reason to believe that General Electric Company or any of its past or present officers or directors violated 2 U.S.C. §§ 441b(a) and 441b(b) (2) (C).

(Continued)

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2. Approve the letters, as recommended in the First General Counsel's report signed November 15, 1988.
3. Close the file.

Commissioners Aikens, Elliott, Josefiak, McGarry, and Thomas voted affirmatively for the decision; Commissioner McDonald did not cast a vote.

Attest:

November 18, 1988

Date

Hilda Arnold
for Marjorie W. Emmons
Secretary of the Commission

Received in the Office of Commission Secretary: Wed., 11-16-88, 10:07
Circulated on 48 hour tally basis: Wed., 11-16-88, 4:00
Deadline for vote: Fri., 11-18-88, 4:00
jm

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 30, 1988

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Philip M. Stern
2000 P. St. N.W.
Suite 408
Washington, D.C. 20036

RE: MUR 2682

Dear Mr. Stern:

On November 18, 1988, the Federal Election Commission reviewed the allegations of your complaint dated July 15, 1988, and found that on the basis of the information provided in your complaint, and information provided by counsel for General Electric Company, there is no reason to believe General Electric Company or any of its Officers or Directors violated 2 U.S.C. § 441b(a) or 2 U.S.C. § 441b(b)(2)(C). Accordingly, on November 18, 1988, the Commission closed the file in this matter. The Federal Election Campaign Act of 1971, as amended ("the Act") allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

cc: Brown & Seymour
100 Park Avenue, Room 2606
New York, New York 10007

89040731042



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 30, 1988

Robert B. Fiske, Jr.
Davis, Polk & Wardwell
1 Chase Manhattan Plaza
New York, NY 10005

RE: MUR 2682
General Electric Company and
each of its Officers and
Directors

Dear Mr. Fiske:

On September 6, 1988, the Federal Election Commission notified your clients, General Electric Company and its Officers and Directors, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On November 18, 1988, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe General Electric Company or any of its Officer or Directors violated 2 U.S.C. § 441b(a) or 2 U.S.C. § 441b(b)(2)(C). Accordingly, the Commission closed its file in this matter.

This matter will become a part of the public record within 30 days. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2688^E

DATE FILMED 1/6/89 CAMERA NO. 4

CAMERAMAN AS

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