

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. _____

HARVEY FURGATCH,

Petitioner,

V.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF CALIFORNIA (Leland C. Nielsen,J.),

Respondent,

FEDERAL ELECTION COMMISSION,

Respondent.

PETITION TO THE COURT EN BANC FOR ISSUANCE OF A
WRIT OF MANDAMUS TO THE HONORABLE LELAND C. NIELSEN,
UNITED STATES DISTRICT JUDGE FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

To the Honorable Judges of the Ninth Circuit:

Pursuant to Rules 21 and 35 of Federal Rules of Appellate
Procedure, Petitioner Harvey Furgatch states as follows:

1. On March 6, 1985, Petitioner filed an action under
2 U.S.C. § 437h against the Federal Election Commission ("FEC")
in U.S. District Court for the Southern District of California.
On March 7, 1985, Petitioner moved to certify to this court en
banc two questions regarding the constitutionality of the Federal
Election Campaign Act ("the Campaign Act") raised in that
declaratory judgment action.

2. The District Court (Leland C. Nielsen, J.) denied certification and dismissed the action as moot, on the ground that Petitioner had prevailed in a related enforcement action brought by the FEC under 2 U.S.C. § 437g, which case was then on appeal to this Court (CA No. 85-5524).

3. After reversing Petitioner's dismissal in the enforcement action on January 9, 1987, the panel of this court on January 21, 1987 reversed the dismissal of the declaratory judgment action and remanded to Judge Nielsen for further proceedings (CA No. 85-5963). On remand Petitioner renewed his motion for certification of the constitutional issues to this court en banc, as was his right under 2 U.S.C. § 437h.

4. On April 6, 1987, at a hearing on this motion to certify, the District Court, believing himself bound by the Court of Appeals' decision in the enforcement action, which he characterized as "wrong", orally declined to certify the constitutional questions to the court of appeals en banc.

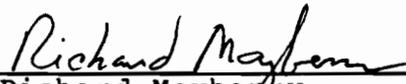
Wherefore, Petitioner prays that a Writ of Mandamus issue out of this court directed to the said Leland C. Nielsen, Judge of the District Court for the Southern District of California

(1) commanding him as such judge to vacate the order complained of, and certifying to this Court en banc the constitutional questions regarding the Campaign Act;

(2) declaring that 2 U.S.C. §§ 434(c) and 441d, on their face and as applied by the Federal Election Commission, are unconstitutionally vague and overbroad under the First and Fifth Amendments to the United States Constitution; and

(3) declaring that the Campaign Act, as amended, on its face and as applied by the Commission, violates the First Amendment and the due process clause of the Fifth Amendment in that individuals are subject to the reporting and disclaimer requirements of 2 U.S.C. §§ 434(c) and 441d while members of the institutional press are exempted from such requirements pursuant to 2 U.S.C § 431(9)(B)(i).

Respectfully submitted,


Richard Mayberry
RICHARD MAYBERRY & ASSOCIATES
1055 Thomas Jefferson St., N.W.
Suite 202
Washington, D.C. 20007
(202) 337-4172

Clinton L. Blain
LANE, BLAIN & WOODS
111 Elm Street
Suite 450
San Diego, California 92101
(619) 236-9069

Of Counsel:

Robert B. Hummel
6213 Dahlonga Road
Bethesda, Maryland 20816

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CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of April, 1987, caused to be served, by first class mail, postage pre-paid, a copy of the foregoing Petition for a Writ of Mandamus on the following:

Honorable Leland C. Nielsen
United States District Court for the
Southern District of California
940 Front Street
San Diego, California 92189

Lawrence Noble
Acting General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Richard Mayberry
Richard Mayberry