



FEDERAL ELECTION COMMISSION
Washington, DC 20463

DISSENTING OPINION IN ADVISORY OPINION 1981-51

of

COMMISSIONER THOMAS E. HARRIS

I dissent from the majority opinion which labels volunteer services by a foreign national as a prohibited contribution. 2 U.S.C. 441e. In reaching its decision, the Commission has ignored the statutory definition of contribution contained in 2 U.S.C. 431(8) and the specific exception from the definition of services provided without compensation. 431(8)(B)(i). The activity in question falls squarely within the exception and "...the Congress has intentionally and unambiguously crafted a particularly broad, all-inclusive definition, it is not our function...to subvert that effort." *Consumers Union of U.S., Inc. v. Heimann*, 589 F. 2d 531, 533 (1978).

While this result would allow foreign nationals to have some limited participation in American elections, which might be seen as a loophole in the FECA, it is, nevertheless, a loophole which Congress, and not the Commission, has the authority to remedy. Indeed, Congressman William Frenzel (R-Minn) addressed this very issue in the House Report which accompanied the 1974 Amendments to the FECA. In referring to the exceptions to the definitions of contributions and expenditures, he stated:

"...these loopholes make ambiguous the prohibitions on contributions in the name of another and contributions by unions, corporations and foreign nationals. Since the exemptions apply to these sections as well, if the Committee bill passes with the loopholes intact, the courts may decide that certain types of donations by unions, corporations and foreign nationals are permissible." H. Rpt. No. 93-1239, 93rd Cong., 2d sess, July 30, 1974 p. 141. (supplemental minority view).