



THE FEDERAL ELECTION COMMISSION

RECORD

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THE CONTINUING ROLE OF THE FEDERAL ELECTION COMMISSION

In the case of *Buckley v. Valeo*, 423 U.S. ____, 96 S. Ct. 612 (1976), the U.S. Supreme Court ruled that since a majority of the voting Commissioners on the Federal Election Commission were nominated either by the House or Senate and approved by both Houses of Congress—instead of by the President with Senate confirmation—the Commission lacked the constitutional authority to exercise certain powers in administering the *Federal Election Campaign Act of 1971*, as amended.

The Court stayed its judgment for 30 days—allowing the FEC to continue without interruption until Feb. 29—while Congress had the opportunity to take legislative action to re-establish the Commissioners as appointees of the President.

Recognizing that the Congress was on the verge of passing a bill re-establishing the Commission, the Supreme Court on Feb. 27 extended the stay through March 22 to give both Houses an opportunity to compromise their separate proposals into a single bill which the President hopefully would sign into law.

* * *

However, as legislation was not enacted by the time the stay had expired, at midnight on March 22, the Federal Election Commission officially, if only temporarily, lost some of the powers granted it under the Act.

The essential powers which the Commission cannot exercise as a result of the *Buckley* ruling include:

1. rendering Advisory Opinions;
2. promulgating regulations;
3. processing complaints;
4. initiating civil enforcement actions;
5. certifying candidates for Presidential primary matching funds; and
6. certifying payments to national parties for Presidential nominating conventions.

POLITICAL COMMITTEES —INCLUDING PACs— TAKE NOTE

*Under the requirement of 2 U.S.C. §435(b):
"Each political committee shall include on the face or front page of all literature and advertisements soliciting contributions the following notice: 'A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C.'"*

Under the residual and continuing authority left to the Commission by the Court's decision, the following functions will continue:

1. The Commission will continue to receive disclosure reports filed with it in compliance with the Federal Election Campaign Act and will continue to make such reports promptly available for public inspection in its Public Records Section.
2. The Commission will continue to examine all such reports filed with it and to notify the filing candidates or committees of apparent errors and omissions, and to invite them to correct the record.
3. The Commission will continue to conduct all appropriate audits and investigations for the purpose of assuring the integrity of the information contained in the reports.
4. The Commission will continue to offer information relating to the requirements of the Act, as modified by the Court's decision and to advise persons how to proceed with its disclosure requirements. The informational process will include the answering of routine inquiries to the information Office as well as specific questions addressed to the Office of the General Counsel.
5. The Commission will continue to receive submissions from Presidential primary candidates seeking matching funds and, while no formal certification for payment can be made by the Commission, the staff will continue with preliminary processing of such submissions during the interim period so that any backlog of requests can be promptly certified at such time as the Commission's authority to do so may be restored.
6. The Commission's legal staff will continue informally to do preparatory research and editorial revisions on proposed regulations in anticipation of statutory requirements to transmit such material promptly to the Congress.

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ADVISORY OPINIONS

The Commission has determined that it will not render any Advisory Opinions pursuant to the provisions of 2 U.S.C. §434f until legislation has been enacted re-establishing the Commission. Under the statute, Federal officeholders, candidates for Federal office, and political committees could request and the Commission could render an Advisory Opinion with respect to whether any specific transaction or activity by such persons would constitute a violation of the Federal election laws. Furthermore, any person who acted in good faith in accordance with the provisions and findings of such an Advisory Opinion was presumed to be in compliance with the provisions of the Federal election laws touched upon by the Opinion.

In the *Buckley* case, however, the Supreme Court ruled that because of its composition, the Commission lacked constitutional authority to continue rendering Advisory Opinions pursuant to the statute. All Advisory Opinions which were rendered by the Commission before the date of the Court's decision were, nevertheless, accorded *de facto* validity by the Court.

The General Counsel of the Commission, John G. Murphy, Jr., issued several Opinions of Counsel between Jan. 30 and March 22. The Commission will continue to accept requests for Opinions but until the Commission has been re-established, persons requesting either Advisory Opinions or Opinions of Counsel will be provided only with prior decisions of the Commission.

AUDITS

The 1976 General Audit Schedule, as approved by the Commission, will make it possible to monitor the accuracy of financial reports filed on the public record by various categories of candidates and political committees.

The Audit and Investigation Division will conduct a limited audit series of the 42 multi-candidate non-party committees which received or expended in excess of \$100,000 during 1975.

The 1974 Amendments have caused considerable problems for multi-candidate committees as they attempt to comply with the Act. The Commission hopes that information gathered during the course of the new audit schedule will enable it to identify general problem areas and ways to resolve them.

* * *

On Wednesday, March 24, 1976, the Senate passed, by a vote of 55-28, S. 3065—a bill re-establishing the Commission and making other changes in the Act.

On Thursday, April 1, 1976, the House passed a similar piece of legislation by a vote of 241-155.



MATCHING FUNDS AND CANDIDATE WITHDRAWALS

Candidates for the Presidential nomination who qualify for primary matching funds *remain eligible by statutory provision for these funds until they withdraw as candidates.*

Terry Sanford, Sargent Shriver, Milton Shapp, Senators Lloyd Bentsen and Birch Bayh have publicly stated that they are no longer "active" candidates, but

until they finally disavow candidacy, they are eligible to receive matching funds.

Funds received can only be used for qualified campaign expenses or they must be repaid. After all debts and obligations have been paid, the candidate must repay to the Treasury that portion of leftover funds representing matching funds (see 26 U.S.C. §9038(b)).

The Federal Election Commission is required to conduct an audit of each candidate who received matching funds after the end of the matching payment period, i.e., after the national nominating conventions. *Re-payments—of both a proportion of leftover funds and for non-qualified campaign expenses—are made on the basis of that audit.* The candidate is allowed a six-month period after a national convention in which to pay debts and obligations, and to then repay a portion of the remaining funds.

The Commission's Policy Statement of Withdrawal of Presidential Candidates provides that when a candidate withdraws, thereby becoming ineligible for matching funds, the Commission will commence an audit within 30 days of withdrawal, or later if the candidate has not completed winding up activities.



PREEMPTION OF STATE ELECTION LAWS

A matter of significant concern to Federal candidates and political committees is the extent to which Federal law preempts any conflicting State election laws. Prior to the special effective date of the Act's preemption provision (Oct. 15, 1974), candidates and committees could generally rely on the Supremacy Clause of the U.S. Constitution in cases of conflict between Federal and State law, but they never could be certain that such reliance was justified in their specific factual circumstances. The passage of the 1974 Act did much to diminish this uncertainty.

To begin with, under 2 U.S.C. §453, any conflicting State disclosure provisions are preempted by the Act's reporting requirements. During its consideration of the 1974 Amendments to the Federal Election Campaign Act, Congress explicitly stated that this Act was intended to supersede State law with respect to the reporting and disclosure of campaign finances of candidates for Federal office and their supporting committees. Federal reporting requirements are intended to be the only reporting requirements for Federal candidates. States cannot impose additional reporting obligations upon candidates for Federal office.

The Act was also intended to clearly occupy the field with respect to criminal sanctions relating to limitations on campaign expenditures, the sources of campaign funds in Federal races, the conduct of Federal campaigns, and similar offenses. The Act does not affect a State's right to prohibit false registration, voting fraud, theft of ballots, and similar offenses under State law. Similarly, the Act supersedes a State's right to initiate investigations or legal proceedings when there is cause to believe that a Federal candidate or political committee has violated any disclosure or criminal provision of the Act. The Act provides clearly that Federal law is intended to be the sole source of criminal sanctions for offenses involving political activities in connection with a Federal election.

In passing the Act, Congress further has stated that its specific intent was to supersede and preempt any

conflicting law enacted by a political subdivision of a State, as well as those enacted directly by a State.

It should be noted that nowhere in the Supreme Court's decision in *Buckley v. Valeo* are the preemption provisions questioned; nor is Congress currently considering any proposed legislation which would directly modify these provisions.



FEC REGIONAL SEMINAR PROGRAM - PROGRESS REPORT

In February and March, the Federal Election Commission conducted 18 regional seminars in various cities around the country, including Washington, D.C.—where there were four—and in Baltimore, Richmond, Chicago, Cincinnati, Philadelphia, Salt Lake City, San Francisco, Los Angeles, Dallas, St. Louis, Detroit, Memphis, Atlanta, New York and Boston. The purpose of the seminar program was to provide people with a first-hand opportunity to learn about the *Federal Election Campaign Act of 1971*, as amended, as well as a forum in which to ask questions about their own political problems.

Each seminar was attended by at least one FEC Commissioner, a member of the legal staff, a member of the audit and investigation staff, a member of the public communications staff, and a member of the press staff. Each staff member presented a short discussion of one portion of the law and then responded to questions from the audience. Staff also were available during breaks and following each seminar for individual consultation.

Members of the local press were informally briefed and given the opportunity to interview the FEC Commissioner present. Local coverage of each seminar generally included media coverage from nearby cities as well. (For instance, the Chicago seminar was attended by representatives of WLS, WMAQ, and WNIS radio stations, WMAQ-TV, and the *Sun Times* and *City News*.) Individual Commissioners also appeared on various programs whenever possible prior to and following each seminar.

Attendance varied from seminar to seminar, with 145 persons attending the House of Representatives seminar in Washington, D.C.; 80 persons in Chicago; 60 in Philadelphia; 85 in Los Angeles; and 70 in Detroit. Participants ranged from a minor-party Presidential candidate to workers on a local campaign, from incumbent Congressmen to corporate and union political action committee representatives.

Questions asked at the seminars also were extremely varied. Following is a short listing of the most frequently asked questions together with their answers:

- **WHAT SHOULD BE DONE WITH ANONYMOUS CASH CONTRIBUTIONS?**

Contributions under \$10 do not trigger the recordkeeping requirement and thus may be accepted. With those from \$10.01 to \$100, an attempt must be made to trace the source in order to satisfy the reporting requirement. If the source cannot be traced, the money may be used for any lawful purpose *other* than in the campaign.

- **IS IT POSSIBLE TO "PASS THE HAT" AT CAMPAIGN RALLIES?**

Yes, provided that 1) some kind of card is made available for people to list their names and addresses if they are contributing more than \$10,

and 2) the audience is reminded that cash contributions over \$100 are prohibited.

- **HOW DOES ONE DETERMINE WHETHER A CORPORATE EXECUTIVE WORKING ON A CAMPAIGN IS VOLUNTEERING HIS/HER OWN TIME. OR WORKING ON COMPANY TIME, THE LATTER BEING AN ILLEGAL IN-KIND CONTRIBUTION?**

A person is deemed to be volunteering his/her time as long as 1) those normal responsibilities to his/her employer are fulfilled, and 2) there is no compensation to the person for the campaign work.

- **WHAT STEPS MUST BE TAKEN BY A MULTI-CANDIDATE COMMITTEE TO QUALIFY FOR THE \$5,000 CONTRIBUTION LIMITATION?**

1. Register with the Commission, for a period of six months;
2. Accept funds from more than 50 contributors;
3. Contribute to five or more Federal candidates (only State party committees are exempt from this five-candidate requirement).

- **DOES THE \$500 EXEMPTION FOR FOOD AND BEVERAGES AT A PARTY IN ONE'S OWN HOME APPLY TO HUSBAND AND WIFE SEPARATELY OR TOGETHER?**

Each spouse is entitled to a separate \$500 allowance. In addition, each is entitled to a separate \$500 travel allowance.

A packet of information was distributed to all attending the seminars; each included a copy of the law, reporting forms for candidates and committees, various *Federal Register* reprints containing proposed Commission regulations and Interim Guidelines, copies of the FEC newsletter (*The Record*), and an order form for further questions or requests.

Due to the favorable response to the seminars presented so far, the Commission is planning a new round of seminars beginning

Any one wishing to comment on the content of the present seminars, or to request that additional information be included in future seminars, should contact Daryl Babitz, Special Projects Coordinator, at the Federal Election Commission, or call toll-free 800/424-9530.



FEC NOTES

Matching Funds Certification

The FEC has to date certified a total of \$12,618,240.88 in Presidential primary matching funds for 14 candidates. The certifications, broken down by candidates, are as follows:

Amount of
Matching Funds Received

Birch Bayh	\$438,506.35
Lloyd Bentsen	\$511,022.61
Jimmy Carter	\$1,078,467.75
Frank Church	\$231,380.78
Gerald Ford	\$1,952,615.68
Fred Harris	\$493,278.50
Henry Jackson	\$1,559,637.18
Ellen McCormack	\$169,043.90
Ronald Reagan	\$1,679,124.19
Terry Sanford	\$246,388.32
Milton Shapp	\$278,010.60
Sargent Shriver	\$264,582.74
Morris Udall	\$930,986.25
George Wallace	\$2,785,196.03

Only "gifts of money" to a candidate of up to \$250 per individual are eligible for Federal matching payments.

In addition, the Commission to date has certified \$1,610,000.00 in Nominating Convention payments, including \$860,000.00 to the Democratic National Committee and \$750,000.00 to the Republican National Committee.

Clearinghouse Advisory Panel Activities

The FEC Clearinghouse Advisory Panel Charter originally called for 19 members to be appointed by the FEC, three of whom were State Governors. However, after receipt of the Commission's invitation for Panel membership, the three Governors felt that the Panel was more appropriate for State and local election administrators—rather than for State executives. As a result, the Commission has approved modification of the Clearinghouse Advisory Panel Charter by 1) eliminating the three gubernatorial positions; 2) increasing the size of the Panel by one (to a total of 20); and 3) appointing two additional State legislative representatives and two local election administrators.

The Commission also gave the go-ahead on three projects proposed by the Clearinghouse. These projects are to:

1. Produce a complete directory of State election-related offices and agencies (addresses, telephone numbers, present staff heads) with a structural-functional description of each State administrative system;
2. Develop a formula for local election officials to ensure that 90% of the voters will vote within a

given number of minutes after arriving at the polls, thereby avoiding lower turnout because of delays;

3. Establish an advisory board to review the history of contested elections and recounts, analyze current techniques of administering such elections and recommend a model process which could be adopted by the States.

New Non-Party Multi-Candidate Committee Registrations

This regular feature of FEC Notes is being discontinued. During the months of February and March the Commission received over 150 registrations, making it impossible to include a comprehensive list in the limited space of *The Record*. All reports of registered committees are available, as always, in the Office of Public Records.

MATERIALS AVAILABLE

- *Federal Register* Reprints
- *FEC Record*, Vol. 1, Nos. 1-4
Special Year-End Supplement
Vol. 2, Nos. 1-3
1976 First-Quarter Index
- Index of Reports and Statements
- 1976 Calendar of Pre-/Post-Election Filing Deadlines for Federal Elections
- Volunteer's Guide
- Fundraiser's Guide
- Candidate's Guide
- Contributions and Expenditures Guide
- Delegate Selection Guideline
- Revised Edition of the *Federal Election Campaign Act* (1st ed., April 1975)

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