



# THE FEDERAL ELECTION COMMISSION

# RECORD

1325 K Street N.W., Washington, D.C. 20463

Volume 7, Number 4

April 1981

## REPORTS

### SPECIAL ELECTIONS IN MARYLAND

Maryland will hold special elections in its Fifth Congressional District to fill the seat formerly held by Congresswoman Gladys Spellman. The primary election is scheduled for April 7, 1981, and the general election for May 19, 1981. The principal campaign committees of candidates running in these elections must file the appropriate pre- and post-election reports in addition to their semiannual reports. All other political committees which support candidates in these elections (and which do not report on a monthly basis) must also follow this reporting schedule.

The FEC will send notices on reporting requirements and filing dates to all individuals on the ballot in these elections. All other committees supporting candidates in the Maryland special elections should contact the Commission for more information on required reports. Call 202/523-4068 or toll-free 800/424-9530.

### CORRECTION: SPECIAL ELECTION REPORTS

The January and March editions of the *Record* incorrectly stated that authorized committees of candidates running in special elections in 1981 must file quarterly reports, as well as pre-primary, pre-general election and post-general election reports.

The correct reporting schedule for all political committees active in 1981 special elections is as follows: both authorized and nonauthorized committees must file a pre-primary report, pre- and post-general election reports, as appropriate, and semiannual reports. Questions and requests for forms should be addressed to the Office of Public Communications, Federal Election Commission, 1325 K Street, N.W., Washington, D. C. 20463; or call 202/ 523-4068 or toll free 800/424-9530.

### SPENDING LIMITS FOR PARTY COMMITTEES IN SPECIAL GENERAL ELECTIONS

National and state party committees may make limited, coordinated expenditures on behalf of their candidates in special general elections. 2 U.S.C. §441a(d). In 1981, the national committee may make expenditures of up to \$16,710 on behalf of each candidate it supports in a special election for the U. S. House of Representatives. In addition, for these special elections, the state party committee, together with its subordinate party committees (e.g., county, district and local), may make coordinated party expenditures on behalf of their candidate. In 1981, these expenditures are subject to a single limit of \$16,710 per candidate.

Special coordinated party expenditures count neither as contributions to the candidate nor as expenditures by the candidate or the candidate's authorized committees. The expenditures must, however, be reported by the party committee on Schedule F, FEC Form 3X. The FEC will send informational notices to party committees in those states holding special elections. For further information, contact the Commission at 202/523-4068 or toll-free 800/424-9530.

### SEMIANNUAL REPORTING REMINDER

Committees that filed on a quarterly basis during the 1980 election year are required to file only two semiannual reports during 1981. The first report, covering financial activity from January 1 through June 30, 1981, must be filed by July 31, 1981. The second report, covering activity from July 1 through December 31, 1981, must be filed by January 31, 1982. **No quarterly report is required in April.** See Commission Regulations at 11 CFR 104.5(a)(2)(i).

### FREQUENT REPORTING ERRORS

In reviewing reports filed with the Commission, the FEC's Reports Analysis Division has identified a number of reporting errors frequently made by political committees. The list below identifies several common errors and then explains the correct reporting procedure.

*continued*

### 1. Failure to Report Multicandidate Committee Status

When a registered political committee (not authorized by a candidate) qualifies as a "multicandidate committee," it should report its new status, including the date it qualified, on Line 3 of its next regularly scheduled report (Form 3X). The multicandidate committee reports this information only once.

### 2. Reports Filed in Error on State Reporting Form

Many state laws require political committees supporting state or local candidates to file reports of their campaign finance activity with the Secretary of State or the equivalent state officer. State reporting forms may not, however, be used for filing reports with the FEC. The Commission will only acknowledge reports filed on FEC forms. (Federal law preempts state law in the reporting of federal campaign finance activity.)

### 3. Incorrect Reporting of Expenditures Made on Behalf of Federal/Nonfederal Candidates

If a political committee uses a single bank account for federal and nonfederal activity, it must report all receipts and disbursements — even those that pertain only to nonfederal election activity.\* Alternatively, if a committee establishes two separate bank accounts for federal and nonfederal activity respectively, it should report only the federal account's receipts and disbursements.

### 4. Incorrect Reporting of Contributions from Persons

Contributions from persons (e.g., individuals, partnerships), which are reported on Line 11a, Column A of Form 3 or 3X, should include:

- Total itemized contributions\*\* (other than loans) from persons, which are also reported on Schedule A; plus
- Total unitemized contributions\*\*\* from persons, which are reported on the memo entry line directly under line 11a.

\* A committee that uses a single bank account for federal and nonfederal activity must register the account with the FEC as a political committee. Moreover, the committee may receive only funds permitted under the Act, regardless of whether the funds are for federal or nonfederal elections. 11 CFR 102.5

\*\* Contributions of more than \$200 must be itemized on Schedule A. When several contributions from the same person aggregate more than \$200 a year, each contribution (regardless of amount) received thereafter in the same year from the same person must be itemized.

\*\*\* Contributions of less than \$200 (or aggregating less than \$200) a year from a single contributor do not have to be itemized.

## FEDERAL REGISTER NOTICE

The list below identifies FEC documents that appeared in the *Federal Register* between February 24 and March 11, 1981. Copies of these notices are not available from the FEC.

| Notice | Title  | Federal Register Publication Date | Citation                  |
|--------|--|-----------------------------------|---------------------------|
| 1981-2 | Filing Dates for Michigan Special Primary and General Elections                  | 2/24/81                           | 46 <i>Fed. Reg.</i> 13810 |
| 1981-3 | Filing Dates for Maryland Special General Elections                              | 3/11/81                           | 46 <i>Fed. Reg.</i> 16131 |
| 1981-4 | Filing Dates for Michigan Special Primary and General Elections (Amended notice) | 3/11/81                           | 46 <i>Fed. Reg.</i> 16131 |

## OPINIONS

### ADVISORY OPINION REQUESTS

Advisory Opinion Requests (AOR's) pose questions on the application of the Act or Commission Regulations to specific factual situations described in the AOR. The following chart lists recent AOR's with a brief description of the subject matter, the date the requests were made public and the number of pages of each request. The full text of each AOR is available to the public in the Commission's Office of Public Records.

| AOR     | Subject   | Date Made Public | No. of Pages |
|---------|---|------------------|--------------|
| 1981-14 | Agent authorized by employees to apportion payroll deductions among corporation's federal/non-federal PACs. | 3/3/81           | 2            |
| 1981-15 | Disposition of excess funds by campaign committee of incapacitated former candidate.                        | 3/6/81           | 3            |
| 1981-16 | Special fund to defray litigation expenses of Presidential campaign committee.                              | 3/10/81          | 5            |
| 1981-17 | Excess campaign funds loaned to state party committee.  | 3/10/81          | 1            |

The RECORD is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: John Warren McGarry, Chairman; Frank P. Reiche, Vice Chairman; Joan D. Aikens, Thomas E. Harris; Vernon W. Thomson; Robert O. Tiernan; William F. Hildenbrand, Secretary of the Senate, Ex Officio; Edmund L. Henshaw, Jr., Clerk of the House of Representatives, Ex Officio. For more information, call 202/523-4068 or toll-free 800/424-9530.

## ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR. Any qualified person who has requested an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

### AO 1981-1: Terminated Committees' Disposal of Excess Campaign Funds

Excess campaign funds from two 1972 Presidential campaign committees may be transferred to the San Mateo County Republican Central Committee (the Republican Central Committee) because excess campaign funds may be transferred without limit to "...any national, state, or local committee of any political party." 2 U.S.C. §439a and 11 CFR 113.2.

Under California law, the funds remaining in the accounts of the two committees, formed in 1972 to support the reelection of President Nixon, were scheduled to escheat to the state because the committees' bank accounts had been inactive for over seven years. (The committees had terminated in 1973.) In transferring the funds to the Republican Central Committee to avoid their escheat to the state, one of the committees (the Bay Area Committee for the Re-election of the President) would not have to register or report as a political committee since total funds transferred (\$257.59) to the Republican Central Committee would not exceed \$1,000. The Republican Central Committee would, however, be required to report the funds as a "contribution" if it deposited them in its federal account. 11 CFR 104.3(a)(4).

The other committee (the San Mateo Committee for the Re-election of the President) would have to register and report as a "political committee" if it transferred over \$1,000 of its excess funds (\$2,534) to the federal account of the Republican Central Committee.

It would not have to register and report as a political committee, however, if it contributed \$1,000 or less to the Republican Central Committee for federal elections, and donated the rest of its excess funds to the nonfederal election account of the Republican Central Committee or to a charitable organization. In either case, the Republican Central Committee would be required to disclose as "contributions" the funds it received and deposited in its federal account. (Date Issued: February 20, 1981; Length: 4 pages)

### AO 1981-4: Association's Combined Collection of Membership Dues and PAC Contributions

The National Society of Professional Engineers (the Society), an incorporated, nonprofit membership organization, may solicit contributions to its separate segregated fund (PAC) in conjunction with the collection of membership dues. Subject to the conditions listed below, individual members may voluntarily indicate on their dues statements that, in addition to their dues, an amount should be forwarded as a contribution to the PAC.

1. No portion of a contributing member's dues may be used directly or indirectly as his or her contribution.
2. A contribution from an individual who represents a corporation must be drawn on an individual account or a nonrepayable checking account the individual maintains with the corporation.
3. Contributions must be separated and forwarded to the Society's PAC for recording and deposit pursuant to 2 U.S.C. §432(b)(2) and 11 CFR 102.8(b) and 103.3.
4. The dues statement must include language (proposed by the Society) explaining the conditions under which the Society may legally solicit contributions to its PAC. (Date Issued: February 20, 1981; Length: 2 pages)

### AO 1981-7: Fundraising by Union PAC Through Sales of Membership List and Jackets

The Democratic Republican Independent Voter Education Political Action Committee (D.R.I.V.E.), the separate segregated fund of the International Brotherhood of Teamsters (the Teamsters), may not raise funds by selling the Teamsters' membership list, but it may collect contributions by selling jackets.

#### Sale of Membership List - Not Permissible

Under this plan, a credit card protection service (the firm) would use a local Teamsters' membership list to solicit business from the union's members. In exchange for the list, the firm would give D.R.I.V.E. the first yearly fee paid by members who contracted for its service. D.R.I.V.E. would then use these funds to make political contributions and expenditures.

This plan would not be permissible because:

1. The firm, if incorporated, would be making prohibited corporate contributions to D.R.I.V.E.; and
2. Even if the firm were not incorporated, its payments to D.R.I.V.E. would still be prohibited because the firm is not included in the class of persons D.R.I.V.E. may solicit. Under the Act, D.R.I.V.E. may solicit contributions only from Teamsters members and their families. (See 11 CFR 114.5(g)(2).)

The Commission distinguished this situation from that presented in AO 1979-24, where a committee sold its assets (i.e., campaign equipment) to retire its debts. That sale did not result in a contribution to the committee because the committee had used the equipment primarily for campaign operations and had not obtained it as "a thing of value" to be sold.

*continued*

### Sale of Jackets - Permissible

Under a second plan, D.R.I.V.E. would purchase jackets from a manufacturer at fair market value. D.R.I.V.E. would then sell the jackets to members of local Teamsters unions and their families. The sale offer would include a clear and visible statement that D.R.I.V.E. planned to use sale proceeds for political purposes. This plan would be a permissible fundraising method. The full amount of proceeds from the sale would be considered contributions from the individuals purchasing the jackets, rather than funds raised through a commercial transaction. The Teamsters could use general treasury funds to purchase the jackets, provided D.R.I.V.E. reimbursed the labor organization for any costs that exceeded one-third of sale proceeds. 11 CFR 114.5(b)(2). Moreover, D.R.I.V.E. could solicit jacket sales through an ad placed in the Teamsters' national magazine (.16 percent of whose circulation includes nonmembers of the Teamsters) provided D.R.I.V.E.:

1. Included an explicit caveat in the ad stating that it would not accept contributions from individuals (and their families) who were not Teamsters members; and
2. Screened and returned all contributions (whether or not from jacket sales) that were not from Teamsters members and their families. (Date Issued: March 9, 1981; Length: 5 pages)

### AO 1981-9: Excess Funds of 1980 Committee Used to Retire Debts of 1978 Committee

Congresswoman Geraldine A. Ferraro's current campaign committee, Ferraro for Congress 1980, may use its excess funds to retire debts of her 1978 campaign committee. The transfer is permissible because, under Commission Regulations:

1. The debt retirement constitutes a "lawful" use of excess funds; and
2. A transfer of funds between a candidate's current and former campaign committees is not limited. 11 CFR 110.3(a)(2)(iv) and 11 CFR 113.2(d). (Date Issued: February 20, 1981; Length: 2 pages)

### REQUIREMENTS FOR A PROPER COMPLAINT

On February 26, 1981, the Commission adopted guidelines that clarify the technical requirements for filing a proper complaint. (See Directive No. 41.) Under the guidelines, which interpret requirements contained in Sections 111.4(a) through (c) of Commission Regulations, the Office of General Counsel may, without prior approval by the Commissioners, reject complaints that do not meet all the requirements listed below:

1. A complaint must be in writing and provide the full name and address of the complainant.
2. A complaint must be notarized. The Office of General Counsel will not, however, reject a complaint that fails to meet certain technical requirements for notarization (e.g., fails to provide the expiration date of the notary's commission).\*
3. A complaint must include an appropriate phrase indicating that the complaint was sworn to, or a statement that the declarations were made under penalty of perjury.
4. A complaint must identify at least one respondent. Complaints that fail to identify all respondents will not, however, be rejected.
5. A complaint must allege a violation of the Act or Commission Regulations. The General Counsel will reject complaints that allege only a violation of laws outside the Commission's jurisdiction. However, complaints that allege a violation of the Act or FEC Regulations and which also allege a violation of another statute (e.g., federal tax laws) will be treated as an ordinary complaint. Under these circumstances, the Office of General Counsel will include a recommendation in its first report to the Commission on whether or not the complaint should be referred to another government agency.

### Refiling Complaints

If a complaint does not meet the requirements listed above, the General Counsel will notify the complainant of the deficiencies. The complainant will then have 15 days to file an amended complaint. (The complaint will remain confidential during this period.) A corrected complaint will receive a Matter Under Review (MUR) number and will remain confidential.

The Commission will provide respondents with a copy of an improper complaint, as well as a copy of any proper complaint subsequently filed. This notice will explain that the complaint filed was improper and that, unless a proper complaint is filed within 15 days, no further action will be taken. If the improper complaint is not corrected, the Commission will not send any additional notification to the respondents.

\* Under state law, however, this type of omission might be grounds for rejecting a notarized document.

### FEC PUBLIC APPEARANCES

- |       |   |
|-------|---|
| 5/6   | Federal Bar Association<br>Conference on Recent Developments<br>in Election Law Affecting Corporations,<br>Associations and Unions<br>Washington, D. C.<br>Chairman John Warren McGarry |
| 5/7-8 | Practicing Law Institute<br>Washington, D. C.<br>Charles N. Steele, General Counsel   |
| 5/15  | American Bar Association<br>Symposium on Government<br>Regulation of Campaigns<br>Washington, D. C.<br>Charles N. Steele, General Counsel   |

## FEC GRANTS EXTENSIONS IN ENFORCEMENT PROCEEDINGS

On February 26, 1981, the Commission adopted procedures designed to expedite written requests for extending deadlines in FEC enforcement proceedings. (See Directive No. 42.) Under the new procedures, the Office of General Counsel may grant or deny such requests without prior approval by the Commissioners. Previously, the Office of General Counsel had forwarded all such requests, along with its recommendations, to the Commissioners — a time-consuming procedure that often delayed FEC action until after the deadline had expired. Commissioners will, however, continue to decide on requests for renewed extensions and for extensions exceeding 30 days.

The Office of General Counsel may give respondents more time to submit a response or complete a filing if their request:

1. **Pertains directly to an FEC enforcement proceeding** (and not to deadlines pertaining to matters in litigation or the FEC's public financing regulations);
2. **Is received before the original deadline for the response expires;** and
3. **Is made for a good cause.** "Good cause" for needing additional response time in an enforcement proceeding would include, for example, the illness of a respondent's attorney or the need to spend additional time sifting through large amounts of information to prepare a proper response to a complaint.

Any requester who does not specify a new deadline in an approved request will automatically be granted 15 additional days. If the Office of General Counsel denies a request for additional time, and if it has received the request within three days before the original deadline, it will try to telephone the requester, informing him/her of the denial.

## FEC PUBLISHES NAMES OF NONFILERS

On February 19, 1981, the Commission published two separate listings of committees authorized by candidates that had failed to file, respectively, their post-general and year-end election reports. The first list included the names of 52 candidate committees that had failed to file the 30-day post-general election report, due by December 4, 1980. This report should have covered all financial activity since the last report (or the date of registration, whichever was later) through November 24, 1980.

The Commission also published the names of 419 committees of U. S. House, Senate and Presidential candidates who had failed to file 1980 year-end reports, due by January 31, 1981. All registered committees were required to file this report.

Further Commission action against nonfilers and late filers will be decided on a case-by-case basis. The Federal Election Campaign Act gives the Commission broad authority to initiate enforcement actions against nonfilers, including civil enforcement and the imposition of civil penalties.

## SUMMARY OF MUR'S

Selected compliance cases, which have been closed and put on the public record, are summarized in the *Record*. Compliance matters stem from possible violations of the Federal Election Campaign Act of 1971, as amended, which come to the Commission's attention either through formal complaints originating outside the Commission or by the FEC's own monitoring procedures. The Act gives the FEC the exclusive jurisdiction for the civil enforcement of the Act. Potential violations are assigned case numbers by the Office of General Counsel and become "Matters Under Review" (MUR's). All MUR investigations are kept confidential by the Commission, as required by the Act.

MUR's may be closed at any one of several points during the enforcement process, including when the Commission:

- Determines that no violation of the Act has occurred;
- Determines that there is no reason to believe or no probable cause to believe a violation of the Act has occurred;
- Enters into a conciliation agreement with the respondent;
- Finds probable cause to believe a violation has occurred and decides to sue; or
- Decides at any point during the enforcement process to take no further action.

After the MUR is closed and released by the Office of General Counsel, the Commission makes the MUR file available to the public. This file contains the complaint, the findings of the General Counsel's Office and the Commission's actions with regard to the case, including the full text of any conciliation agreement. The Commission's actions are not necessarily based on, or in agreement with, the General Counsel's analysis.

Selection of MUR's for summary is made only from MUR's closed after January 1, 1979. The *Record* article does not summarize every stage in the compliance process. Rather, the summary provides only enough background to make clear the Commission's final determination. The full text of these MUR's and others which were closed between 1976 and the present are available for review and purchase in the Commission's Public Records Office.

### MUR 1114: Political Committee's Acceptance of Corporate Contributions

On August 5, 1980, the Commission entered into a conciliation agreement with a political committee that had violated 2 U.S.C. §441b by accepting corporate contributions.

*Complaint:* On February 2, 1980, the Commission's Reports Analysis Division referred this matter to the Office of General Counsel, alleging that the Committee may have violated 2 U.S.C. §441b by accepting \$40,000 in prohibited corporate contributions. The matter initially came to the attention of the Reports Analysis Division because the Committee had reported a refund of \$40,000.

*General Counsel Reports:* In a letter to the Commission, the respondent explained that a bank had handled the receipt and deposit of contributions for the Committee.

*continued*

Despite the Committee's explicit instructions not to accept any contributions that might be corporate, the bank had accepted approximately 400 checks from corporations. Once learning of the mistake, the Committee had returned the corporate contributions.

Recognizing that the Committee had voluntarily achieved compliance with the Act by refunding the corporate contributions and by reviewing and amending its records, the General Counsel said it would have recommended that no further action be taken against the Committee if the Committee could demonstrate that the checks had been returned within a reasonable time period, i.e., 30 days. The General Counsel noted, however, that it was impossible to determine how long the checks had remained in the Committee's account since most of the checks were under \$100 and consequently had not been itemized on reports; and the other, itemized contributions had listed the signer of the checks as the contributor, rather than the corporation. The General Counsel further stated—that, even though the bank had erred, it was the ultimate responsibility of the Committee to ensure that its receipts had been properly screened. The General Counsel therefore recommended that the Commission:

1. Find reason to believe the Committee had violated 2 U.S.C. §441b by accepting prohibited contributions; and
2. Take no action against corporate contributors since most of the contributions were for sums of \$100 or less.

*Commission Determination:* On February 7, 1980, the Commission determined that the Committee had violated 2 U.S.C. §441b by accepting approximately \$40,000 in corporate contributions during 1978. On August 5, 1980, the Commission entered into a conciliation agreement with the Committee. The Agreement recognized that the Committee's acceptance of corporate contributions had not been knowing or willful, and it imposed a civil penalty of \$500.



### **COMPUTER TAPES ON 1977-78 PARTY/NONPARTY ACTIVITY**

Computer tapes containing final information on the campaign finance activity of party and nonparty (noncandidate) committees during the 1977-78 election cycle are now available for purchase from the Commission. The tapes contain information extracted from the FEC's disclosure data base and used to produce the Commission's final 1977-78 *Reports on Financial Activity on Party and Nonparty Political Committees*, a four-volume series released in April 1980. Since they use the same data as that used to produce the final 1977-78 *Reports on Financial Activity* series, the tapes contain information that has been verified for accuracy, that is complete as of the end of the 1977-78

election cycle and that has been summarized in a useful format.

Two separate tapes are available. One covers Democratic and Republican party committee transactions; the other, nonparty activity. The tapes provide information on each committee's gross receipts and disbursements, debts and cash-on-hand; they also contain selected itemized transactions, with an emphasis on those that supported candidates for federal office.

Potential purchasers unfamiliar with the kinds of information available in the final 1977-78 *Reports on Financial Activity* may first wish to buy the documentation booklet that accompanies each tape. Checks for the booklets, which sell for \$2.40 each, should be made payable to the Federal Election Commission and sent to: Data Systems Development Division, Federal Election Commission, 1325 K Street, N.W., Washington, D. C. 20463. Each tape may be purchased for \$70, plus shipping charges. (Production costs have been pro-rated.) For more information on purchasing the tapes, contact the Data Systems Development Division by calling 202/523-4020 or toll-free 800/424-9530.

### **CONSOLIDATED INDEX AVAILABLE**

During February 1981, the Commission announced the availability of a card index that consolidates information on Commission advisory opinions, completed compliance cases (matters under review or MURs) and completed audits. The research tool lists any organization or person who has received an advisory opinion, who has been the respondent in a MUR or who has been audited.

The index is arranged in alphabetical order by the full name of the organization or the last name of the person. Any advisory opinion, completed MUR or completed audit listed under an entry is referenced by its file number. The index also cross-references the names of candidates and states appearing in an organization's title.

The index is available for review in the FEC's Public Records Office. Documents referenced in the index may also be reviewed and copied. For further information, call 523-4181 or toll free 800/424-9530.

### **ADVISORY OPINION INDEX AVAILABLE**

An updated edition of the Commission's cumulative *Index to Advisory Opinions* is now available. The *Index* includes three parts: a subject index and an index by U.S. Code, both covering all opinions issued from April 1975 through mid-February 1981; and an index by FEC Regulations covering opinions from 1977.

Requests for the *Index to Advisory Opinions* should be addressed to the FEC's Office of Public Records. Purchase price (for duplication costs) is \$2.60, payable in advance. Checks, made payable to the United States Treasurer, should be sent to the FEC's Office of Public Records.

## CALIFORNIA MEDICAL ASSOCIATION, ET AL. v. FEC

On January 19, 1981, the Commission's General Counsel presented oral argument before the Supreme Court in the suit, *California Medical Association, et al. v. FEC* (Civil Action No. 79-4426). As of April 1, 1981, the Court's decision was pending.

The suit had been precipitated by an FEC enforcement proceeding in which the California Medical Association (CMA), an unincorporated professional association, and CALPAC, a political committee, were respondents. On April 19, 1979, the FEC had found "probable cause to believe" CMA had violated 2 U.S.C. §441a(a)(1)(C) by making contributions exceeding \$5,000 to CALPAC, which CALPAC had accepted. When it was unable to reach a conciliation agreement with the respondents, the Commission filed suit against them on May 22, 1979, in the U. S. District Court for the Northern District of California (Civil Action No. C79-U97-WHO).\*

### Claims Filed Against Commission

Anticipating the FEC enforcement action, CMA filed a separate suit against the FEC on May 7, 1979, challenging the constitutionality of those provisions of the Act it had allegedly violated. Specifically, CMA asked the District Court to certify the following constitutional questions to the U. S. Court of Appeals for the Ninth Circuit:

1. Whether 2 U.S.C. §441a(a)(1)(C), which limits contributions to multicandidate committees to \$5,000 per year, per contributor, abridges First Amendment rights of free speech and association. In particular, does §441a(a)(1)(C) unconstitutionally limit contributions by an unincorporated association (CMA) to a political committee (CALPAC) for the purpose of establishing, administering or soliciting contributions to the committee; and
2. Whether 2 U.S.C. §441b(b)(2)(C), which permits labor organizations and corporations (but not unincorporated associations) to pay costs of establishing, administering and soliciting funds to a separate segregated fund, abridges the equal protection provisions of the Fifth Amendment.

### Ruling of Appeals Court

In its opinion of May 23, the Appeals Court, sitting *en banc*, rejected all the constitutional claims asserted by CMA. Relying on the Supreme Court's decision in *Buckley v. Valeo*, the Court found that the contribution limits imposed only inconsequential restrictions on rights of free speech. The Court observed that these restrictions were minimal compared to the "potent alternative means of

expression" available to unincorporated associations like CMA. It noted that CMA, CALPAC and its members could make contributions and expenditures in connection with federal elections, as long as the per-candidate and per-committee contribution limits were respected. Further, CMA, its members and CALPAC could make unlimited independent expenditures to express their political views. Moreover, the Court concluded that the contribution limits were supported by a compelling governmental interest, namely preventing the circumvention of the contribution limits, which were intended to minimize both the actuality and appearance of corruption in federal political campaigns.

The Court also found that the Act did not abridge Fifth Amendment rights by discriminating against political activities of unincorporated associations. To the contrary, the Court concluded that unincorporated associations like CMA are regulated to a lesser degree under the Act. While corporations and labor unions are prohibited from making any contributions or expenditures in connection with federal elections, and individuals are limited to total contributions of \$25,000 per year, unincorporated associations have no overall limit imposed on the total amount they may contribute or expend in connection with federal elections. Unlike corporations and labor organizations, they may solicit contributions from anyone and make partisan communications to the general public.

### Appeal to Supreme Court

In its appeal to the Supreme Court, filed on June 4, 1980, CMA reiterated the arguments which the Appeals Court had rejected and restated its claim that the challenged provisions violated both First and Fifth Amendment rights. In challenging the constitutionality of limits on contributions to multicandidate committees, CMA argued that, in its *Buckley v. Valeo* decision, the Supreme Court had not equated contributions to political committees with contributions to candidates. CMA maintained that "...contributions to political committees are functionally different from contributions to candidates."

In its Supreme Court brief, the FEC challenged appellants' raising of constitutional issues under 2 U.S.C. §437h, a provision by which the Supreme Court may expedite its handling of constitutional challenges to the federal election law. The Commission argued that the provision was "...enacted by Congress in 1974 for the specific purpose of facilitating the resolution of a major constitutional challenge to the Act prior to the 1976 general election." In the Commission's view, appellants sought to "...invoke the extraordinary process of §437h for the purpose of avoiding the Commission's enforcement procedures."

As to the constitutional issues raised in the suit, the Commission supported the decision of the Appeals Court, reiterating its arguments that the Act violated neither the First nor Fifth Amendment rights of appellants.

*continued*

\* In its October 21, 1980, opinion in *FEC v. California Medical Association, et al.*, the District Court ordered CMA and CALPAC to pay the FEC civil penalties of \$5,000 each.

## FEC v. AMERICANS FOR CHANGE, ET AL.

On February 23, 1981, the Supreme Court agreed to hear the consolidated cases of *FEC v. Americans for Change, Americans for an Effective Presidency and Fund for a Conservative Majority* (Civil Action No. 80-1754) and *Common Cause v. Harrison Schmitt, et al.* (Civil Action No. 80-1609). The suits, which had been filed against several independent expenditure committees, will be argued before the Court in the fall.

### Claims Against Independent Expenditure Committees

On July 1, 1980, Common Cause filed suit against Americans for Change and several of its officers in the U. S. District Court for the District of Columbia. Common Cause alleged that defendants had made (or were about to make) independent and coordinated expenditures in violation of 26 U.S.C. §9012(f), which prohibits unauthorized political committees from making expenditures of more than \$1,000 on behalf of a publicly funded Presidential candidate. Common Cause asked the Court to uphold the constitutionality of §9012(f) as applied to defendants' alleged expenditures.

On July 11, the Commission was allowed to intervene in the Common Cause suit and moved to dismiss the action on the grounds that the Commission had exclusive jurisdiction over civil enforcement of the alleged violations and that Common Cause lacked standing to bring suit. Four days later, the Commission filed suit, alleging that the defendant political committees (which claimed to be independent of candidate Reagan's campaign) planned to spend large sums in support of the Republican Presidential candidate's general election campaign. The FEC also asked the Court to uphold the constitutionality of §9012(f) as applied to defendants' expenditures. On September 24, 1980, the District Court consolidated the two suits for argument before the Court.

### FEC's Argument

In the motion it filed for summary judgment, the FEC rejected the defendants' argument that the Supreme Court's decision in *Buckley v. Valeo* invalidated §9012(f). The FEC pointed out that the constitutional protection accorded political communications is not the same in every context. Citing the Supreme Court's rulings on the public funding program in *Buckley v. Valeo* (424 U. S. 1, 96, 99 and 101 (1976)) and in *Republican National Committee v. FEC*, the FEC maintained that the Court had confirmed the governmental interest served by the contribution and expenditure limits contained in the Presidential public funding program. The FEC argued that, in a similar vein, §9012(f) closed off "...the only major avenue by which enormous amounts of aggregate wealth and private financing could be interjected into a scheme designed to encompass only public funding, while avoiding any direct and substantial infringement of protected rights by permitting individuals independent expenditures and by limiting its [§9012(f)'s] reach to only those campaigns where candidates have chosen public financing as an alternative to private funding." The FEC maintained that if the defendant committees' "...stated intentions [came] to fruition, namely to raise and expend on behalf of the general

election campaign an amount approximately double that which Mr. Reagan and Mr. Bush have accepted in public financing, the Congressional purpose in enacting this legislation would clearly be subverted, with the taxpayer left footing the bill."

The FEC noted that the legislative history demonstrates that Congress was principally concerned with ensuring the effectiveness of the overall limitations imposed upon those candidates accepting public funding. As stated by Senator Taft in support of his amendment to limit committee expenditures, §9012(f)'s purpose was "...to prevent any political committees from being formed as a subterfuge so that they can go beyond the authorization of the committees and make expenditures that were not within the limitations of the expenditures which are in the bill."

The FEC further argued that the limited restrictions of §9012(f) were constitutional as applied to defendants "...because public funding of a general election presidential campaign is an option which is chosen by candidates in place of unlimited private funding." Additionally, the provision did not abridge free speech rights because "...the transformation of [political committee member] contributions into political debate involves speech by someone other than the contributor (*Buckley v. Valeo*, 424, U. S. at 21), thereby removing political committee expenditures from the core of individual political expression." (See *California Medical Association v. FEC*, Opinion at 9 n. 5, 10, 15; *Mott v. FEC*, Opinion at 7.)

### Defendant Committees' Argument

In their motion for summary judgment in the suit, defendants argued that the independent expenditures in question were a form of free speech and, as such, were protected by the First Amendment. They contended that, in its *Buckley v. Valeo* decision (424 U. S. 1 (1976)), the Supreme Court had held that statutory limits on the amounts which individual citizens or groups could spend on independent communications in political campaigns were an impermissible restraint on First Amendment freedoms. Defendants argued, therefore, that §9012(f) could be interpreted as prohibiting only coordinated expenditures authorized or requested by a candidate.

### District Court Decision

In its opinion of August 28, 1981, the Court ruled on the claims made by the FEC and Common Cause in the consolidated suits. In its rulings on the FEC's claims, the three-judge court determined that §9012(f) did apply to defendants' activities. The Court concluded, however, that the defendants' proposed expenditures constituted "independent expenditures" which, under *Buckley v. Valeo*, could not be limited. The Court said, "The compelling governmental interest to fight electoral corruption is insufficient, here, as in *Buckley*, to justify what amounts to a direct limitation on political speech... Whereas a Presidential candidate, by accepting public funds, may choose...to do without unlimited contributions and expenditures, the candidate's public supporters have a separate, protected right to express themselves, individually or jointly. This preserves free access and full participation in the public debate."

Since it had ruled on the constitutionality of §9012(f) in the FEC's suit, the Court dismissed that portion of Common Cause's suit (Count I) as moot. The Court also dismissed Count II of the Common Cause suit, which had sought enforcement of provisions of the Act allegedly violated by defendants. The Court stated that the Commission had been vested by Congress with exclusive jurisdiction over enforcement of the Act. The Court did not, however, rule on Common Cause's standing to bring suit.

## CLEARINGHOUSE

### ADVISORY PANEL MEETS

On February 23 and 24, 1981, the Advisory Panel of the Commission's Clearinghouse on Election Administration met in Washington to discuss problems encountered by election officials in administering the 1980 elections. The 22-member panel, comprised of state and local election officials, also discussed application of computer technology to the registration and election process, and a Congressionally mandated FEC proposal for a preliminary study on voting systems standards. The advisory panel provided suggestions on how the Commission's proposal could help solve problems encountered with voting systems in their jurisdictions.

The February meeting was the eighth held by the Advisory Panel since its creation in 1975. The panel's primary mission is to advise the FEC on ways it may best use its resources to help improve the administration of federal elections throughout the country. (The Commission is the only agency specifically charged by Congress with conducting research in the administration of federal elections.)

#### New Members

On January 20, 1981, the Commission appointed six new members to the Advisory Panel. The new members, who will serve a two-year term on the panel, are: Leonard Panish, Registrar-Recorder of Los Angeles County, California; Charles Kaniss, Election Supervisor, Pinellas County, Florida; Pat Crawford, Executive Deputy Secretary of the Commonwealth of Pennsylvania; George Strake, Secretary of State, Texas; Joaquin Avila, Mexican American Legal Defense and Education Fund, San Antonio, Texas; Timothy A. Bassett, Chairman, Joint Committee on Election Laws, Massachusetts House of Representatives.

### SUBSCRIPTIONS

- *Election Law Updates* is a quarterly series which summarizes all new state and federal election legislation. \$11.00 per year.
- *Election Case Law* is a quarterly series which summarizes recent state and federal litigation relating to election matters. \$10.00 per year.

You may order these subscriptions by mail from: Superintendent of Documents, U.S. Government Printing Office,

Washington, D.C. 20402. Identify report title. Enclose a check or money order for subscription price(s) payable to Superintendent of Documents.

## STAFF

### NEW EX-OFFICIO MEMBER/ DESIGNEE JOIN COMMISSION

During March 1981, William F. Hildenbrand, the new Secretary of the U. S. Senate, assumed his position as an ex-officio member of the Commission and designated Thomas J. Josefiak as his Special Deputy to the Commission.

Mr. Hildenbrand was elected Secretary of the Senate on January 5, 1981, after serving as Secretary for the Minority since 1974. A native of Pottstown, Pennsylvania, Mr. Hildenbrand began his government service in 1957 as Assistant to Congressman Harry G. Haskell, Jr. From 1959 to 1960, he served as Congressional Liaison Officer for the Department of Health and Human Services (formerly HEW). He then became Legislative Assistant to Senator J. Caleb Boggs of Delaware. From 1969 to 1974, he served as Administrative Assistant to Senator Hugh Scott of Pennsylvania, the former Senate Republican Minority Leader.

Under the election law, the Secretary of the Senate and the Clerk of the House of Representatives serve as ex-officio, nonvoting members. Edmund L. Henshaw, Clerk of the House, continues to serve as the other ex-officio member of the Commission. Douglas Patton has served as his Special Deputy since 1975.

### CHANGE OF ADDRESS

#### Political Committees

Registered political committees are automatically sent the *Record*. Any change of address by a registered committee must, by law, be made in writing as an amendment to FEC Form 1 (Statement of Organization) and filed with the Clerk of the House, the Secretary of the Senate or the FEC, as appropriate.

#### Other Subscribers

*Record* subscribers (who are not political committees), when calling or mailing in a change of address, are asked to provide the following information:

1. Name of person to whom the *Record* is sent.
2. Old address.
3. New address.
4. Subscription number. The subscription number is located in the upper left hand corner of the mailing label. It consists of three letters and five numbers. Without this number, there is no guarantee that your subscription can be located on the computer.



of private contributions plus matchings funds; matchable contributions are received and deposited before December 31 of the election year; and total payments to the candidate have not exceeded 50 percent of the total expenditure limit. See 11 CFR 9034.1(b) and (d).

### PRIMARY FUNDS CERTIFIED

The summary chart below provides cumulative information on certifications of matching funds made to Presidential primary candidates actively campaigning in the 1980 primary elections. Under the Presidential Primary Matching Account, Presidential primary candidates may continue receiving primary matching payments after they have become inactive, provided: the candidate's net outstanding campaign obligations remain greater than the sum

Information on the chart is complete as of February 26, 1981. The chart includes data on each primary candidate's total submissions (and resubmissions) of private contributions for primary matching funds, total funds certified by the Commission to each candidate and the total amount of matching funds to which the candidate is still entitled, based (where appropriate) on the candidate's estimate of net outstanding campaign obligations. All dollar figures are rounded off to the nearest dollar.

### PRIMARY MATCHING FUNDS 1980 PRESIDENTIAL ELECTIONS

| Name of Candidate | Submissions | Amount Requested    | Contributors   | Resubmissions | Amount Certified    | Maximum Entitlement Remaining* |
|-------------------|-------------|---------------------|----------------|---------------|---------------------|--------------------------------|
| ANDERSON, John    | 7           | \$2,895,484         | 80,744         | 0             | \$2,680,347         | 0                              |
| BAKER, Howard Jr. | 14          | 2,699,562           | 67,490         | 0             | 2,635,043           | 0                              |
| BROWN, Edmund Jr. | 15          | 996,153             | 16,273         | 3             | 892,249             | 0                              |
| BUSH, George      | 12          | 6,373,497           | 86,612         | 0             | 5,716,247           | 0                              |
| CARTER, Jimmy     | 28          | 5,490,096           | 63,336         | 2             | 5,112,581           | \$594,362                      |
| CRANE, Philip     | 17          | 2,140,551           | 69,695         | 1             | 1,898,838           | 0                              |
| DOLE, Robert      | 5           | 467,117             | 3,752          | 1             | 446,226             | 0                              |
| KENNEDY, Edward   | 29          | 4,447,034           | 80,283         | 1             | 4,107,716           | \$905,560                      |
| LAROUCHE, Lyndon  | 15          | 592,982             | 10,663         | 13            | 526,253             | 0                              |
| REAGAN, Ronald    | 10          | 8,254,771           | 213,747        | 0             | 7,294,462           | 0                              |
| <b>TOTALS</b>     | <b>152</b>  | <b>\$34,357,248</b> | <b>692,595</b> | <b>21</b>     | <b>\$31,309,962</b> |                                |

\* Maximum entitlement remaining is based on a candidate's statement of net outstanding campaign obligations on the date of ineligibility.

FEDERAL ELECTION COMMISSION  
1325 K STREET, NW  
WASHINGTON, DC 20463

OFFICIAL BUSINESS

FIRST CLASS MAIL  
POSTAGE & FEES PAID  
FEC  
WASHINGTON, D.C.  
PERMIT NO. G-31