



# THE FEDERAL ELECTION COMMISSION

# RECORD

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

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## REPORTS

### SPECIAL ELECTION IN MISSISSIPPI

Mississippi will hold a special election in its fourth Congressional district to fill the seat vacated by Congressman Jon Hinson. The special election is scheduled for June 23, 1981. If no candidate receives a majority of the votes in this election, a special runoff election will be held on July 7, 1981, for the top two vote getters in the June 23 election. The principal campaign committees of candidates running in the special election must file the appropriate pre- and post-election reports in addition to their semiannual reports. All other political committees which support candidates in the election (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 the election. All other committees supporting candidates in the Mississippi special election should contact the Commission for more information on required reports. Call 202/523-4068 or toll-free 800/424-9530.

### PUBLIC APPEARANCES

In keeping with its objective of making information available to the public, the Commission accepts invitations to address public gatherings. This column lists upcoming scheduled Commission appearances, the name of the sponsoring organization, the location of the event, the name of the Commission's speaker and the telephone number of the organization. For additional information on any scheduled appearance, please contact the sponsoring organization.

5/21-22    Practicing Law Institute  
              The Corporation in Politics  
              San Francisco, California  
              Charles N. Steele, General Counsel  
              Contact: 212/765-5700, ext. 216

## 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
1981-18	Solicitation and receipt of contributions by separate segregated fund with single account for federal/nonfederal elections.	4/15/81	3

### 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 1980-145: Mail Solicitation to Retire Primary Debts

Mr. Lou Frey could solicit funds to retire debts of his Senate primary campaign by issuing a fundraising letter using Congressman Bill Young's letterhead and signed by Bill Young. Contributions solicited were subject to the Act's prohibitions and limits for the primary.

*continued*

The Act and Commission Regulations require that such solicitations include a sponsorship statement that adequately identifies the person(s) who paid for or authorized the solicitation. Although the statement need not appear on the front face or page of the solicitation, it must appear clearly and conspicuously in the solicitation. 2 U.S.C. §441d(a)(1) and 11 CFR 110.11(a)(1). Mr. Frey complied with this requirement by printing on a contributor card enclosed with the letter a notice stating that the fundraiser was "Paid for by the Frey for Senate Committee." (Date Issued: March 19, 1981; Length: 3 pages)

**AO 1981-3: Advertising Fees for State Party Magazine Considered "Contributions"**

Fees paid for ads placed in the Wyoming Democratic Party's official magazine, *The Spokesman*, constitute "contributions" to the Party to the extent *The Spokesman* is published to influence federal elections or in connection with federal elections. Under the circumstances, advertising fees received from corporations and labor organizations would constitute prohibited contributions to the Party. Fees from lawful sources (e.g., individuals, sole proprietorships and partnerships) would be subject to the Act's contribution limits.

The Party could, however, allocate expenses of publishing *The Spokesman* between those costs related to covering state and local elections and those related to covering federal elections. Costs of federal election communications would have to be paid with funds from the Party's federal campaign committee (i.e., the account containing only funds permissible under the Act). Costs allocable to this account could be determined by the formula spelled out in section 106.1(e) of Commission Regulations or could be based on the proportion of column inches in *The Spokesman* related to all federal elections or candidates, as a group.

The Commission did not comment on whether an advertiser could claim his or her advertising costs as a business expense since that issue is beyond its jurisdiction. Commissioners Thomas E. Harris and Robert O. Tiernan filed a dissenting opinion. (Date Issued: March 24, 1981; Length: 6 pages, including dissenting opinion)

**AO 1981-6: Loan by State PAC to Affiliated Federal PAC**

Sunkist Growers, Inc.'s separate segregated fund for state and local elections (the state PAC) automatically becomes a political committee when it makes a loan to the corporation's separate segregated fund for federal elections (the federal PAC). In this case, the state PAC would have to:

1. Register, file reports and operate as a political committee under the Act; and
2. Dispose of any contributions not permissible under the Act (e.g., corporate contributions). 2 U.S.C. §§433 and 434; 11 CFR 104.12.

Under the Act, a loan is considered a "contribution" to the extent of the outstanding balance. 2 U.S.C. §431(8)(A)(i). The state PAC's loan to the federal PAC would therefore trigger the state PAC's status as a "political committee" because the separate segregated fund of a corporation must register and report as a committee when it makes contributions of any amount in connection with federal elections. 2 U.S.C. §§441b(b) and 431(4)(B).

The Commission noted that any interest income the federal PAC earned on a treasury bill it purchased with the loan would not have to be allocated between the federal and state PACs. (Date Issued: March 16, 1981; Length: 2 pages)

**AO 1981-8: Cosigned Bank Loan Used by Candidate to Retire Campaign Debts**

If a \$20,000 bank loan to retire debts of Kathleen O'Reilly's campaign committee (the committee) is cosigned by a third party, the loan would result in an excessive contribution from the cosigner. Since the cosigner is considered a contributor, he or she is limited to signing on the loan up to \$1,000. Therefore, if cosigners are required for the loan, at least 20 individuals who have not contributed to the committee for this election must cosign the \$20,000 loan to make sure that no single individual makes an excessive contribution to the committee.

As an agent of her committee, Ms. O'Reilly could, however, accept the loan if it were not cosigned by a third party because:

1. The loan would be explicitly exempted from the definition of "contribution" under 11 CFR 100.7(b)(11) since it would be made in the ordinary course of business; and
2. The loan would be considered Ms. O'Reilly's "personal funds," which she could use to make unlimited contributions to and expenditures on behalf of her own campaign. 11 CFR 110.10. (Date Issued: March 16, 1981; Length: 3 pages)

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**AO 1981-13: Funds Raised for Former Senator's  
Legal Defense Fund**

Donations made by corporations and individuals to a legal defense fund (the fund) established for former Senator Frank E. Moss would not be subject to the Act's limits or prohibitions on contributions. Nor would the fund be considered a political committee subject to the Act's registration and reporting requirements.

Donations to the fund would be used to pay legal fees incurred by Mr. Moss as the result of a law suit brought against him after he had been defeated in the Senate race. Since the donations would not be made to influence his election to federal office, donations to the fund or disbursements from it would be outside the Act's purview. (Mr. Moss has not been a candidate for any office since leaving the U.S. Senate in January 1977.)

The Commission expressed no opinion on the application of tax or other federal laws to the fund since they are beyond its jurisdiction. (Date Issued: March 16, 1981; Length: 2 pages)

**AO 1981-15: Disposition of Former Candidate's  
Excess Campaign Funds**

Approximately \$35,000 in excess campaign funds of the Citizens for Spellman Committee, the principal campaign committee of former Congresswoman Gladys Spellman, may be disposed of by:

1. Transferring \$1,000 to Friends of Reuben Spellman,\* the principal campaign committee for Mrs. Spellman's husband; and
2. Distributing the funds to Mrs. Spellman's staff.

Because Mrs. Spellman was a member of Congress on January 8, 1980, her excess funds may be converted to such "personal uses."

A transfer of the funds directly to Mr. Spellman would also constitute a personal use of the funds by the former Congresswoman. Mr. Spellman could use an unlimited amount of such funds for campaign purposes if they were his "personal funds" at the time he became a candidate, i.e., if he had "legal and rightful title" to the funds and "the right of beneficial enjoyment, under applicable state law, and . . . legal right of access to or control over" the funds at the time he became a candidate. 11 CFR 110.10(b)(2). Otherwise, the funds would be considered a contribution from Mrs. Spellman and, as such, would be subject to the per election limits.

The Commission did not decide who had authority to dispose of the excess funds since the Act and Commission Regulations leave to the campaign staff and candidate the responsibility for deciding who has decision-making authority. (Date Issued: March 26, 1981; Length: 4 pages)

\*Mr. Spellman campaigned in Maryland's special primary election for the Congressional seat formerly held by his wife.

**800 LINE**

In recent weeks, the Public Communications Office has received inquiries on how political committees may terminate their registration and, hence, their reporting obligations under the Act. The following article is offered in response to these questions. For further information, call the Commission on its toll-free line: 800/424-9530.

## LIQUIDATING DEBTS

### Debts Forgiven

If a committee fails to pay a campaign debt in a timely fashion consistent with normal business or trade practice, the debt in effect becomes a contribution made by the creditor to the committee, unless the creditor has made a commercially reasonable attempt to collect the debt. 11 CFR 100.7(a)(4). Contributions made under such circumstances may violate the Act. For example, if a committee indebted to a corporation fails to pay the debt, the debt may result in a prohibited contribution from the corporation. Or, as another example, continued nonpayment of a debt owed to a person who may lawfully make contributions may cause the creditor to exceed the Act's \$1,000 per election contributor limit.

*Rules for Corporate Creditors.* A corporate creditor may not forgive debts for less than the amount owed unless the creditor and debtor have treated the debt in a **commercially reasonable manner**. This means that:

1. Credit was extended "in the ordinary course of business" with terms substantially similar to those granted to nonpolitical debtors of similar credit risk;
2. The debtor made all reasonable efforts to retire the debt; and
3. The creditor pursued remedies in a manner similar to those used to seek payment from nonpolitical debtors. 11 CFR 114.10.

If a debt owed to a corporation is settled for less than the amount owed and the debtor wishes to terminate the reporting status, the corporate creditor and/or debtor (committee) must file a Statement of Settlement with the FEC for Commission approval before the committee terminates. This Statement must include:

1. The initial terms of credit;
2. The steps the debtor took to extinguish the debt;
3. The remedies pursued by the creditor; and
4. The terms of settlement. 11 CFR 114.10.

*Rules for Noncorporate Creditors.* A noncorporate creditor may demonstrate to the Commission that it has made a "commercially reasonable attempt" to collect a debt owed to it by a committee, and thereby settle the debt without the settlement being considered a contribution, provided that: the credit was extended in connection with providing goods and/or services to a political committee in the normal

*continued*

course of business or professional enterprise. (A debt involving only the lending of money could not, therefore, be forgiven without a contribution being made.)

The settlement of any debt owed to a noncorporate creditor by a committee is subject to FEC approval if either:

1. The amount of the debt forgiven causes the creditor to exceed contribution limitations (when added to any other contributions made by the creditor to the same candidate); or
2. The creditor wishes to regard the entire amount of the forgiveness as a debt settlement (and so notifies the Commission), rather than as a contribution in kind.

In either case, a Statement of Settlement similar to that required when corporate debts are settled (above) would have to be submitted to the Commission by the creditor and/or debtor. (Directive 3, May 10, 1978.)

**Reporting Debts Forgiven.** Once a debt is forgiven, it must be reported on the appropriate debt schedule (Schedule C and/or D).<sup>\*</sup> 11 CFR 104.11(a). In addition, the forgiven amount must be itemized as an in-kind contribution on Schedules A and B. 11 CFR 104.13.

#### **Contributions Received to Retire Debts**

Subject to the guidelines below, candidates may receive contributions after an election to retire campaign debts. Contributions designated for debt retirement are itemized on Schedule A of Form 3 or 3X. The year and type of election for which the contribution is designated (e.g., 1980 primary election) must also be reported on Schedule A.

Candidates may receive contributions after the general election to retire either primary or general election debts, provided the donor designated the contribution for the specific debt being retired (primary or general). Such contributions count against the contribution limits applicable to the designated election and the year in which the election was held. 11 CFR 110.1(a)(2). Moreover, the contributions may not exceed the net outstanding debt of the election for which they are received.

Undesignated contributions received **after** the general election are presumed to be for a future primary election and count against the limits applicable to the future election. 11 CFR 110.1(a)(2).

#### **Debts Assumed by Current Campaign Committee**

A candidate's current campaign committee may consolidate the debts of his/her former campaign with its own financial activities. If the committee wishes to raise contributions which count against the limit for the previous campaign, the contributions must be designated for that purpose. (All undesignated contributions count toward the

<sup>\*</sup>Outstanding loans are reported on Schedule C. All other debts and obligations are reported on Schedule D.

committee's current limit.) The current campaign committee then uses separate contribution schedules (Schedule A's) to identify respectively contributions received to retire debts of the former campaign committee and contributions to the current campaign committee. In addition, the current campaign committee must file separate debt schedules (Schedules C and/or D) identifying the debts of the former campaign until they are retired. The former campaign committee may terminate once its debts and any cash-on-hand have been consolidated with the current campaign committee's records and reports.

Alternatively, the candidate may maintain two committees and continue to file separate, semiannual reports for his/her former campaign committee until the debts for that election are extinguished. (See AO's 1980-43, 1980-143 and 1977-52; 11 CFR 104.11; and 2 U.S.C. §434(a)(2)(B).)

In either case, debts of a former campaign assumed by the candidate's current campaign committee may be defrayed with the current committee's campaign funds. If the funds consist solely of contributions raised for the candidate's current campaign, they do not count against any donor's contribution limit for the former campaign. (See AO's 1980-32, 1980-143; 2 U.S.C. §439a; 11 CFR 113.2.)

#### **USING EXCESS CAMPAIGN FUNDS**

Contributions received by the candidate or his/her committee which, in the candidate's view, exceed the amount of funds needed to defray campaign expenditures may be used for the following purposes:

1. Future election. 11 CFR 110.3(a)(2)(iii) and (iv).
2. Defrayal of federal officeholder expenses.<sup>\*\*</sup> 11 CFR 113.2(a).
3. Donations to charity. 11 CFR 113.2(b).
4. Unlimited contributions to national, state or local party committees. 11 CFR 113.2(c).
5. Repayment of loans made by the candidate to his/her committee. 11 CFR 113.2(d).
6. Retiring debts of the candidate's former campaign committee.
7. Any other lawful purpose, except personal use.<sup>\*\*\*</sup> 11 CFR 113.2(d).

#### **TERMINATING REPORTING STATUS**

##### **Termination by Political Committees**

A political committee may terminate its registration (and reporting obligations) only when all its debts and obligations have been extinguished and after it no longer intends to receive any contributions or make any disbursements. A principal campaign committee may terminate

<sup>\*\*</sup>Funds used for this purpose may be subject to taxation and to applicable House and Senate Rules.

<sup>\*\*\*</sup>The prohibition on using excess funds for personal use does not apply to candidates who were Members of Congress on January 8, 1980.

only when it has satisfied these requirements and when all the debts of any affiliated authorized committees have been extinguished. 11 CFR 102.3.

Political committees terminate their reporting status by filing a *Termination Report*. It may be filed at any time on FEC Form 3 (or 3X) or by a written statement containing the same information. 11 CFR 102.3(a). The *Termination Report* must disclose:

1. All receipts and disbursements not previously reported, including an accounting of the retirement of all debts; and
2. The disposition of all residual funds.

#### Administrative Termination by FEC

The Commission, upon its own initiative or upon the request of a political committee, may administratively terminate a committee's reporting obligations if the committee's financial activity has been minimal during the previous year. For details on administrative termination, consult 11 CFR 102.4.



#### READER'S DIGEST ASSOC., INC. v. FEC

On March 19, 1981, the U.S. District Court for the Southern District of New York denied a preliminary injunction sought by the Reader's Digest Association, Inc. (RDA) to bar an FEC investigation of RDA. The FEC had initiated the investigation as the result of a complaint brought against plaintiff in August 1980. The complaint alleged that RDA had violated 2 U.S.C. §441b(a) by making an "illegal corporate expenditure to negatively influence" the 1980 Presidential elections. On November 11, 1980, the Commission found "reason to believe" that RDA may have violated §441b(a) by distributing a video tape to major media outlets that provided a computer reenactment of Senator Edward Kennedy's automobile accident at Chappaquiddick. RDA had produced the tape in connection with the publication of an article on the accident, which appeared in *Reader's Digest* in February 1980. The court noted that the FEC's finding did not mention expenditures for researching and publishing the article itself.

The FEC sent the publishing company a letter requesting answers to 15 questions concerning the content of the video tapes, how RDA had obtained the tapes and what use RDA had made of them. The FEC did not order a reply to its questions; nor did it issue a subpoena.

#### RDA's Claims

In its suit asking the court to bar the FEC investigation, RDA contended that responding to the FEC's investigation would have a "chilling effect" on its First Amendment

right to comment freely on newsworthy events. Plaintiff asserted that publishers would be more reluctant to take on controversial political stories if they resulted in costly, time-consuming FEC investigations. Moreover, plaintiff claimed that expenditures for the tapes were news story expenditures explicitly exempted from the definition of "contribution" or "expenditure" by 2 U.S.C. §431(9)(B)(i). As such, the tapes constituted a type of press activity beyond the scope of FEC regulation.

#### FEC's Argument

The FEC, on the other hand, contended that its investigation was still in the preliminary stage, a fact that precluded any detrimental effect on RDA's news operations. Moreover, the FEC pointed out that since the Act's enforcement procedures provided RDA with an opportunity to respond to FEC findings at each stage of the investigation, the issues raised by plaintiff were not ripe for court action. The FEC further contended that the investigation was lawful and should not be barred.

#### District Court Ruling

The district court said that, "There should be no question that the FEC is authorized by statute to pursue its investigation at least for the limited purpose of determining whether the press exemption is applicable." Specifically, the court noted that the FEC's investigation must first determine "... whether the press entity is owned by a political party or candidate and whether the press entity [was] acting as a press entity in making the distribution complained of ... or whether it was acting in a manner unrelated to its publishing function."

The court noted that the FEC had limited the scope of its investigation to distribution of the video tapes, suggesting to the court the FEC's recognition that the research and publication of the article were on their face exempt functions. The court therefore concluded that there was "... no basis to grant the injunction sought by RDA ..." as long as the FEC investigation asked "... the limited question of whether RDA was acting in its magazine publisher capacity in distributing the tape, so as to determine whether the press exemption is applicable, and so long as the investigation does not address itself to issues beyond this proper subject."

Pending a determination of whether RDA's distribution of the tapes is covered by the news story exemption, the court believed that certain types of questions would be beyond the permissible scope of an FEC investigation as, for example, inquiries into the information sources for the tape or what uses others made of the tape. The court did, however, approve the Commission's questions concerning distribution of the tape and its request for a copy of the tape.

The court noted that RDA could reapply for an injunction if the FEC pursued its investigation beyond the permissible scope outlined in its opinion.

*continued*

## BREAD PAC v. FEC

In its December 5, 1980, ruling on *Bread PAC, et al. v. FEC* (Civil Action CA No. 77-C-947), the U.S. Court of Appeals for the Seventh Circuit, sitting *en banc*, upheld the constitutionality of Section 441b(b)(4)(D) of the Act against challenges brought by the National Lumber and Building Dealers Assoc. and the National Restaurant Assoc., both trade associations, and by Bread Political Action Committee, the Restaurateurs Political Action Committee and the Lumber Dealers Political Action Committee, all separate segregated funds of trade associations. Plaintiffs have asked the Supreme Court to review the appeals court's decision. The Commission has filed a motion asking the Court to either dismiss plaintiffs' appeal or to affirm the opinion of the appeals court.

In filing their suit with the U.S. District Court for the Northern District of Illinois on April 5, 1977, plaintiffs had asked the district court to enjoin the FEC from enforcing §441b(b)(4)(D) or, in the alternative, to certify constitutional questions to the appeals court, pursuant to 2 U.S.C. §437h. The district court certified the following constitutional questions:

1. *Whether 2 U.S.C. §441b(b)(4)(D), both facially and as applied, infringes plaintiffs' right of assembly guaranteed by the First Amendment . . . ?*
2. *Whether 2 U.S.C. §441b(b)(4)(D), both facially and as applied, deprives plaintiffs of liberty without due process of law in violation of the Fifth Amendment . . . ?*
3. *Whether the failure of the Federal Election Campaign Act, as amended, 2 U.S.C. §431 et seq., to define the term 'solicitation' infringes plaintiffs' right of assembly guaranteed by the First Amendment . . . or deprives plaintiffs of liberty without due process of law in violation of the Fifth Amendment . . . ?*
4. *Whether the failure of the Federal Election Campaign Act, as amended, 2 U.S.C. §431 et seq., to define the term 'trade association' as used in 2 U.S.C. §441b(b)(4)(D), violates the due process clause of the Fifth Amendment . . . ?*

### District Court Ruling

The district court ruled in September 1977 that plaintiffs lacked standing to bring suit under the Act's expedited review procedures. The court held that only the following types of plaintiffs had standing to bring suit under 2 U.S.C. §437h(a): the national committee of a political party, individuals eligible to vote in Presidential elections and the FEC. On January 12, 1979, the appeals court overturned the district court's decision in response to an interlocutory appeal filed by plaintiffs. The appeals court ruled that plaintiffs did have standing to bring suit under the expedited review procedures. It remanded the case to the district court for further fact finding and certification of the constitutional questions. These constitutional challenges were then certified to the appeals court for its decision (see above).

### Appeals Court Ruling

As to the issue of plaintiffs' standing to bring suit under 2 U.S.C. §437h(a), the court declined to overrule its earlier decision that §437h(a) did **not** limit parties who may utilize the expedited review procedures.

As to constitutional challenges brought by plaintiffs, the court rejected their claim that §441b(b)(4)(D) infringed on their First Amendment rights by requiring that plaintiffs obtain the prior approval of a member corporation to solicit the corporation's stockholders, executive and administrative personnel and their families. The court found that there had been no showing that this restriction on trade association solicitations "... has had or could have any prior restraining effect whatsoever on the free flow of political information and opinion by trade associations or their political action committees." The court noted that plaintiffs were "... free to solicit any individual . . . to join their trade association." Moreover, once he or she became a member of the association, the individual could "... be solicited for contributions without limit under §441b(b)(4)(D)." Thus, the court concluded that the challenged provision was "... a very narrowly drawn aspect of a statutory scheme carefully designed to balance a compelling governmental interest [i.e., the prevention of the appearance or actuality of corruption in federal elections caused by large contributions] and jealously guarded First Amendment freedoms."

The court also rejected plaintiffs' claim that §441b(b)(4)(D) unconstitutionally discriminated against trade associations. The court found the exact opposite to be true and concluded that plaintiffs' argument was "... largely premised . . . on a misreading of the statute." Specifically the court noted that, although trade associations may not solicit contributions from a member corporation's employees without the corporation's prior approval, trade associations are granted more avenues for solicitation than are corporations. "Incorporated trade associations, because they are corporations, have precisely the same solicitation rights under paragraphs (A) and (B) [of 2 U.S.C. §441b(b)(4)] as do other corporations . . . . Moreover, trade associations are also membership organizations or corporations without capital stock and are therefore provided precisely the same solicitation rights as they have under paragraph (C) [i.e., solicitation of their individual members] . . . . Finally, trade associations are provided under paragraph (D) with an additional group of potential solicitees [i.e., the stockholders, executive and administrative employees of corporate members and their families]."

The court also rejected plaintiffs' claims that, in failing to define the terms "solicitation" and "trade association," §441b(b)(4)(D) abridged their First and Fifth Amendment rights. The court found that the term "solicitation" had a widely accepted meaning and that rules and statutes using the term had been uniformly upheld. The court further held that Commission advisory opinions, which had ruled on whether certain communications constituted solicitations under the Act, were not inconsistent. Rather, the opinions (AO's 1979-13 and 1979-66) had ruled on different types of communications by corporate and trade association separate segregated funds. Similarly, the court noted that the FEC had adhered to the "plain and ordinary meaning of trade association" as defined by Commission Regulations at 11 CFR 114.8(a) and (g)(1).

## COMMITTEE FOR JIMMY CARTER v. FEC

On March 2, 1981, the U.S. Court of Appeals for the District of Columbia Circuit dismissed *Committee for Jimmy Carter v. FEC* (Civil Action No. 79-2425). The Court's action came in response to an agreement for dismissal of the appeal, filed by the parties on February 20, 1981. This agreement resulted from the Commission's acceptance of the plaintiff's offer to settle the suit.

Petitioners had originally filed the suit on December 3, 1979, challenging an FEC decision to deny matching funds to the Committee for Jimmy Carter (the Committee), the principal campaign committee of former President Carter's 1976 primary campaign. In its suit, the Committee asserted that the Commission had acted arbitrarily, capriciously and contrary to law in certifying only \$88,293.92 of the \$185,749 in matching funds requested by the Committee in July 1979. The Commission argued that it was bound by its regulations (11 CFR 133.3(d) and (e))\* to certify only those funds the Committee needed to retire the legitimate debts of Mr. Carter's primary campaign. The Commission therefore asserted that, if it had granted the Committee's entire request, it would have acted contrary to law by sanctioning an improper use of primary matching funds. Specifically, the Committee had stated in its request for primary matching funds that it planned to use the amount withheld by the Commission (\$97,456.08) for the following expenditures. In the Commission's view, none of these constituted qualified campaign expenses.

- Approximately \$78,000 would be transferred to former President Carter's 1976 general election committee (the 1976 Democratic Presidential Campaign Committee). The general election committee would, in turn, use the funds to defray legal and compliance costs of the general election campaign, including nearly \$50,000 in repayments of public funds Mr. Carter had accepted for the campaign.\*\* (The repayment represented approximately \$22,000 the Committee had spent on nonqualified campaign expenses and approximately \$27,000 in interest income it had earned on invested public funds.)
- \$19,500 would be used to replace funds that the Committee had previously transferred to Mr. Carter's 1976 general election committee in 1978 and 1979, despite the fact that the Committee itself had continued to incur debts during this period.

The Committee argued that the transfers to the 1976 general election committee were part of an ongoing transfer authorization granted by the Commission in February 1977. This authorization had allowed the Committee to transfer \$500,000 in private contributions to the compliance fund of the general election committee. These contributions were received after Mr. Carter's nomination to the Presidency in July 1976. Moreover, the Committee argued that the Commission's partial denial of the certification violated § 134.3(c)(2) of FEC Regulations, the provi-

\*The FEC prescribed revised regulations in May 1979. Section 133.3(d) is now 9034.1(a) and Section 133.3(e) is now 9034.1(b).

\*\*Under the Presidential Election Campaign Fund Act, major party nominees are eligible for public grants of \$20 million (plus a cost-of-living adjustment) to finance their general election campaigns.

sion in effect during the 1976 elections. The Committee claimed that this provision entitled it to receive matching funds up to the full amount of its outstanding debts on the date Mr. Carter was nominated for the Presidency, regardless of whether it received any private contributions after that date.\*\*\*

The Commission maintained, however, that the transfer authorization had terminated in August 1977 when the Committee repaid \$126,515 in matching funds to the U.S. Treasury. The Commission noted that it had requested the repayment because it had certified the funds on the understanding that the Committee planned to transfer \$500,000 in private contributions to the compliance fund for the general election committee. The Committee had, however, transferred only \$300,000.

In the agreement settling the Committee's claim for matching funds, the Commission agreed to certify \$65,650.01 to the Committee, an amount equivalent to qualified legal expenses the Committee had incurred through February 1981. The Commission expressly conditioned this certification on the Committee's consent to:

- Use the funds solely to pay its own outstanding campaign debts;
- Request no further matching funds and terminate; and
- Execute and file the agreement for dismissal of the suit with the court of appeals.

\*\*\*Under the revised regulation (11 CFR 9034) prescribed in May 1979, Presidential primary candidates are entitled to continue receiving matching funds after their date of ineligibility only if the combined total of their matching funds and private contributions does not cover outstanding debts.

## FELICE GELMAN AND CITIZENS FOR LAROUCHE v. FEC

On March 11, 1981, the U.S. District Court for the District of Columbia denied plaintiffs' motion to find the FEC in contempt of court for failing to obey the Court's October 24, 1980, order in the suit, *Felice Gelman and Citizens for LaRouche v. FEC* (Civil Action No. 80-2471). In that order, the Court ruled that, although the Commission had undertaken an investigation pursuant to 26 U.S.C. § 9039(b), the FEC had to notify the Citizens for LaRouche Committee of any investigations conducted of contributors to Mr. LaRouche's 1980 primary campaign, pursuant to 2 U.S.C. § 437g(a)(2). (For a summary of the suit, see pages 7-8 of the December 1980 *Record*.) Pursuant to the Court's order, the FEC undertook no further investigations into the Committee's affairs.

In denying plaintiffs' motion, the court noted that the investigation cited by the LaRouche Committee in its contempt of court motion referred to a separate investigation the Commission had undertaken in March 1981, pursuant to 2 U.S.C. § 437g(a)(2). That investigation resulted from the Audit Division's identifying a matching fund contribution that the LaRouche Committee may have submitted with false documentation. The Court observed that the FEC had afforded plaintiffs the required notice before proceeding with this investigation.

## GEORGE C. FINN v. FEC

On March 15, 1981, the U.S. District Court for the District of Columbia dismissed with prejudice *George C. Finn, et al. v. FEC* (Civil Action No. 80-2675). The FEC had asked for dismissal on January 22, 1981.

Plaintiffs' suit resulted from activities of their independent political organization, the Flying Finn Twin Corporation, which plaintiffs had incorporated under Nevada law in September 1980. Through the corporation, plaintiffs had planned to sell T-shirts and other campaign paraphernalia to raise funds for contributions to various Republican candidates campaigning in the 1980 general elections. In seeking publicity for their venture, plaintiffs had unsuccessfully attempted to win the support of the campaign staff of Republican party nominee Ronald Reagan. President Reagan's staff had not cooperated with plaintiffs because of the Act's prohibition against coordination of campaign expenditures by independent groups and a candidate's campaign staff. 2 U.S.C. §431(17).

Plaintiffs then filed suit on October 20, 1980, seeking a declaratory judgment from a three-judge court that the following sections of the election law were unconstitutional:

- 26 U.S.C. §9042, which, in part, imposes criminal penalties on "any officer or member of any political committee who knowingly consents to any expenditure" in violation of the spending limits established for publicly funded Presidential nominees; and
- 2 U.S.C. §441a, which places dollar limits on contributions and certain expenditures made on behalf of federal candidates.

In its motion to dismiss the suit, the FEC asked the court to rule that plaintiffs had failed to present a case or controversy ripe for adjudication by the court or, alternatively, had failed to state a claim on which relief could be granted.

### District Court's Ruling

The court confirmed the FEC's claim that plaintiffs' suit did not present a case or controversy ripe for the court's decision. Citing *Martin Tractor Co. v. FEC*, the court said the FEC was "... not presently involved in any enforcement proceeding concerning the plaintiffs, nor has the Commission ever made a determination that plaintiffs' proposed activities are unlawful. The Finns never asked the Commission whether their venture would subject them to possible liability. Accordingly, the plaintiffs' fear of punishment represents nothing more than a 'mere possibility,' certainly not the amount of future injury needed to present a justiciable case or controversy." The court also found that the plaintiffs had failed to state a claim on which relief could be granted.



## 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 1195: Bank Loan to Presidential Primary Candidate

On June 4, 1980, the Commission determined that there was no reason to believe that a Presidential primary campaign committee had violated the Act by taking out bank loans secured by future matching payments and artwork donated by an artist.

*Complaint:* On March 24, 1980, the principal campaign committee of a Presidential primary candidate filed a complaint that made the following two allegations:



1. A bank loan of \$800,000 to the principal campaign committee of another Presidential primary candidate (the Committee) was a prohibited corporate contribution (in violation of 2 U.S.C. §441b(a)) because the loan was not made in the "ordinary course of business" since:
  - the bank normally did not make loans to political committees;
  - the interest on the loan was not sufficiently high; and
  - the agreement to secure the loan by matching fund payments was concluded at a time when the Committee had not yet been certified to receive such funds.
2. Prints donated to the Committee by an artist and to be used as collateral for an additional bank loan of \$100,000 were excessive contributions (in violation of 2 U.S.C. §441a(a)) because the prints were valued at \$300,000. Alternatively, if the Commission considered the value of the artwork to be less than \$1,000, then the collateral was insufficient for the loan, again indicating that the loan was not made in the "ordinary course of business."

*General Counsel Reports:* The General Counsel explained that the complainant had concluded that the bank normally did not make loans to political committees because it had unsuccessfully tried to secure a loan from the same bank. The General Counsel stated, however, that neither the Act nor Commission Regulations require lending institutions to grant every political committee's request for a loan simply because the institution has granted a loan to another political campaign. Moreover, even if the Commission could impose a "fairness doctrine" on lending institutions, problems would arise in applying this doctrine retroactively to the loan application made by the respondent.

Concerning the charge that the interest rate was not high enough, the General Counsel found that there was no basis to believe the rate was lower than the "usual or customary" rate for similar loans, since the interest rate on the loan had been .5 percent higher than the prime rate in effect for commercial loans of 90-day maturities. Moreover, a review of loan agreements entered into by other banks and Presidential campaign committees revealed that several had been negotiated at the prime rate, or below.

With regard to the allegation that future matching payments did not ensure repayment, the General Counsel noted that lending institutions customarily secure loans on the expectation of future earnings, thereby indicating such a practice was within the "ordinary course of business." Moreover, other Presidential primary candidates had secured loans based on the expectation of receiving matching funds prior to the Commission's certification of their eligibility. The Counsel also noted that, as an additional precaution, the Committee had designated the bank as the beneficiary of a \$150,000 life and accident insurance policy on the candidate.

As to the artwork donated by an artist, the General Counsel pointed out that the prints, valued at \$300,000, were sufficient collateral for an additional \$100,000 loan. At the same time, he noted that, pursuant to prior Commission determinations, the donation of artwork did not represent an excessive contribution by the artist to the Committee. The Commission had previously stated that, although

the supplies used to create a donated artwork were contributions, the artistic service itself (and the resulting artwork) were not. (See Advisory Opinion 1979-35, issued August 17, 1979, and Commission Regulations at 11 CFR 100.7(b)(3).) In this instance, the complaint did not allege that the artist's supplies had exceeded the \$1,000 contribution limit or that the Committee had not reimbursed the artist for the supplies.

The General Counsel recommended that there was no reason to believe the Act had been violated.

*Commission Determination:* On June 4, 1980, the Commission found no reason to believe that:

1. The bank or the Committee had violated 2 U.S.C. §441b(a);
2. The artist had violated 2 U.S.C. §441a(a)(1)(A); or
3. The Committee had violated 2 U.S.C. §441a(f).

Commissioner Frank P. Reiche dissented from the majority decision.

#### **MUR 1298: Corporate Payment of Transportation Used by Presidential Candidate**

On October 30, 1980, the Commission determined that there was no reason to believe that a Presidential candidate had violated the Act when, in 1975, he used an airplane paid for by a corporation to conduct a speaking tour that was intended to build party support.

*Complaint:* An individual claimed that, while on a campaign fundraising tour in September 1975, a Presidential primary candidate and his campaign committee (the Committee) had knowingly accepted an in-kind corporate contribution when they used an airplane rented by a corporation to make a speaking tour through four states. The complaint states that the contribution was excessive (in violation of 2 U.S.C. §441a), that it was a prohibited corporate contribution (in violation of 2 U.S.C. §441b) and that it was never reported by the Committee (in violation of 2 U.S.C. §434(b)(2)).

*General Counsel Reports:* As a corporation did in fact pay for the airplane rental and a luncheon, the investigation focused on whether the corporate expenditures were made "in connection with" the candidate's 1976 Presidential campaign. The Committee claimed that the tour was made for party fundraising and that the Committee received no contributions or fundraiser proceeds as a result of the trip. This statement was consistent with Committee records.

In addressing the issue of whether the candidate's speeches on the tour "influenced" his election, the Committee referred to MUR 21, AO 1975-13 and AO 1975-72, which state that an address by a Presidential candidate before a large number of people is a campaign speech unless it:

1. Is given before January 1 of the election year;
2. Is delivered for party-building purposes; and
3. Is not intended to influence the candidate's election.

The General Counsel concluded that the Evansville luncheon, one of several events included on the tour, was only attended by people traveling with the candidate. Therefore,

*continued*

since the candidate's speech was not attended by enough people to influence his candidacy, the corporation could not have made an in-kind contribution to his campaign. Similarly, the Counsel concluded that two Dayton speeches were not given in connection with his election. A Dayton fundraiser was clearly meant for party-building purposes and, in a second Dayton appearance, the candidate repeatedly denied his candidacy. With regard to a speech in Chicago, the General Counsel had no specific information on the content of the speech or the size of the audience. Even if the Chicago address had been a campaign speech, however, the General Counsel concluded that the corporate payments for the airplane were not campaign contributions because they had not been made in connection with the Chicago speech. Rather, the payments were made as part of an agreement to provide the candidate with transportation to and from Dayton, Ohio. The trip to Chicago, which involved no additional expense, was merely the final return portion of the Dayton fundraising tour.

The General Counsel recommended that the Commission find no reason to believe that a violation had occurred.

**Commission Determination:** On October 30, 1980, the Commission voted to find no reason to believe that:

1. The corporation had violated 2 U.S.C. §441b; and
2. The Presidential primary candidate or his campaign committee had violated 2 U.S.C. §§434(b), 441a or 441b.

## INFORMATION

### FCC REPORTS ON POLITICAL BROADCASTING DURING 1980 ELECTIONS

The Federal Communications Commission (FCC) recently released a report on its administration of political broadcasting laws during the 1979-1980 election cycle. The report discussed several issues that relate to legal provisions within the jurisdiction of the Federal Election Commission. They are detailed below.

#### Candidate Debates

The FCC regulates broadcast time provided for the debates. Under the Fairness Doctrine, an FCC licensee that provides broadcast time for a candidate must provide the candidate's opponent with equal broadcast opportunities. The FCC noted that the news story provision exempting coverage of candidate debates from the Fairness Doctrine raised "some inherent difficulties" when applied on a case-by-case basis. In particular, the FCC noted that it was difficult to determine whether a broadcaster "... chooses to cover a debate because of his reasonable good faith judgment that it is newsworthy [the standard for the news story exemption], and not for the purpose of giving a political advantage to any candidate."

#### Impact of Independent Expenditure Committees on Political Broadcasting Laws

The FCC noted that "... for the first time the Commission [FCC] was faced with the implications of large broadcast purchases by entities outside the control and authorization of any candidate." The report focused on the following issues raised by independent expenditure groups:

1. **Free Equal Access for Candidate When Independent Group Purchases Time for Opponent.** In September 1980, the Carter/Mondale Reelection Committee sought a declaratory ruling from the FCC that it was entitled to a free broadcast opportunity equal to that purchased for Ronald Reagan by an independent expenditure committee. The Carter/Mondale Committee contended that, since the Reagan campaign did not have to pay for the advertising on its behalf, the Carter/Mondale Committee should not have to use limited public funds to pay for its advertising. The FCC ruled, however, that the Committee was not eligible for a free equal broadcast opportunity. (FCC ruling at 80 FCC 2d 409(1980).) The FCC concluded that the broadcaster's determination of whether free equal opportunities must be made available to a candidate's opponent should be based on the broadcaster's role in presenting the advertising. "... Where the licensee himself presents a program featuring a candidate and merely sells spots around the program, free equal opportunities must be afforded. On the other hand ... where a spot or larger block of time is sold to the candidate, an authorized agent or any third person ... free time need not be afforded." The Carter/Mondale Committee subsequently filed an appeal with the U.S. Court of Appeals for the D.C. Circuit, opposing the FCC's ruling, but withdrew the appeal after the FCC filed its brief.
2. **Equal Access for Independent Expenditure Groups.** The FCC determined that an independent expenditure committee supporting a candidate may request an equal opportunity to respond to political advertising purchased by an independent committee supporting the candidate's opponent. Basing its determination on a previous ruling, the FCC found that a broadcaster must make available for purchase equal opportunities to supporters or spokespersons of a candidate if it has sold broadcast time to the supporters or spokespersons of the candidate's opponent. See the FCC's ruling on *Nicholas Zapple* (23 FCC 2d 707(1970)).
3. **Charges for Political Advertising by Independent Expenditure Groups.** The FCC has not formally ruled on whether political advertising purchased by committees not authorized by candidates should be made available at the same low rate as advertising sold to authorized candidate committees. The report stated, however, that the availability of this low rate should be limited to a candidate's authorized agents or committees.
4. **Advertising Not Authorized or Controlled by the Candidate Represented.** The FCC noted that, under its current provisions, the candidate's control or authorization of a political advertisement was not a factor in determining whether equal access should be provided to his/her opponent. Rather, the FCC allotted equal access to the opponent when the ad clearly identified the candidate's image and/or voice to the audience. The FCC noted that this standard raised problems when applied to advertising sponsored by independent expenditure

groups. For example, if an independent expenditure committee supporting candidate A purchased broadcast time for an ad that clearly included A's image or voice, but did not accurately represent his views on issues, would A's opponents be eligible for equal broadcast exposure? Similarly, if candidate A's image or voice were presented in a derogatory manner to discredit A, would A's opponent (or the opponent's supporters) be eligible to purchase equal broadcast exposure?

**Sponsorship Identification**

Section 73.1212(e) of FCC rules and Sections 102.16 and 110.11 of FEC Regulations require clear identification of persons or groups sponsoring political advertising. The

report noted that the FCC had received numerous inquiries and complaints concerning such authorization notices. "The major concerns have been the length of time that the identification appears on a television screen, whether the size of typeface is sufficiently large enough for the average viewer to read, and whether the Commission [FCC] should require audio as well as visual identification for television viewers." The report pointed out that the problem of clearly identifying sponsors had been augmented by numerous independent expenditure groups that had purchased political advertising during the 1980 election period. "In these cases the risk of the audience not knowing by whom it is being persuaded becomes increasingly more critical."



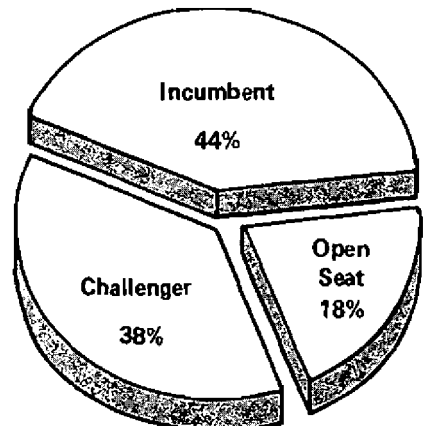
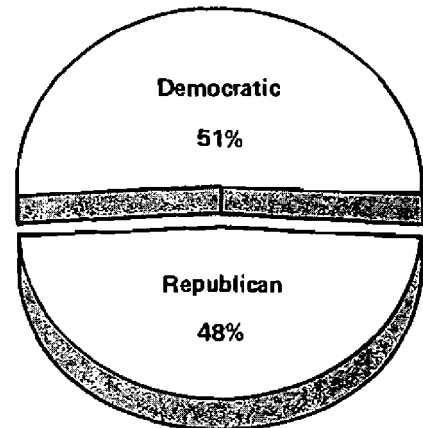
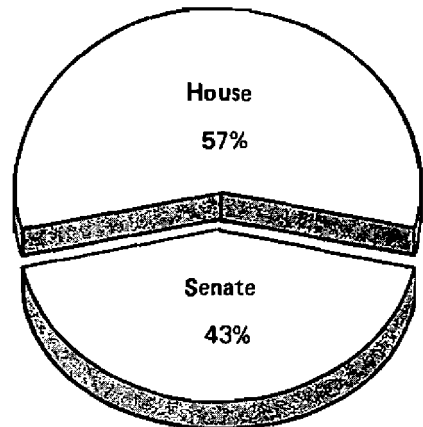
**CAMPAIGN FINANCES OF 1979-80 CONGRESSIONAL CAMPAIGNS**

Almost \$250 million was raised and spent by U.S. House and Senate candidates seeking election during 1980, according to a statistical study released by the Commission on March 29, 1981. The study, which is based on year-end reports filed with the Commission, provides an overview of total receipts and expenditures for all House and Senate campaigns during the entire 1979-80 election cycle.

The chart below provides information on the total financial activity of Congressional campaigns during the 1979-80 election cycle. The figures, given in millions of dollars, include financial activity in primary, special, runoff and general elections. These totals are not adjusted for transfers between committees within a campaign. Therefore, they tend to be inflated. Adjusted receipts and expenditures for the 1979-80 election cycle will be provided when all information has been computerized.

Candidates	Raised	Spent
<b>By Office</b>		
House	\$145.1	\$137.3
Senate	107.4	105.2
<b>By Party Affiliation</b>		
Democrat	129.3	124.5
Republican	122.0	116.8
<b>By Candidate Status</b>		
Incumbent	113.9	106.2
Challenger	93.5	91.9
Open Seat	45.1	44.4
<b>TOTAL</b>	<b>\$252.5</b>	<b>\$242.5</b>

**HOUSE AND SENATE CANDIDATE SPENDING, 1979-80**





**AUDITS RELEASED TO THE PUBLIC**

The Federal Election Campaign Act, as amended (the Act) gives the Commission authority to audit campaigns of all Presidential candidates who receive public funds, and the campaigns of other political committees. Final audit reports are available to the press through the Press Office and to the general public through the Office of Public Records. The following is a chronological listing of audits released between February 9 and April 15, 1981.

Audit	Date Made Public
1. 1978 Eisenhower Silver Jubilee Dinner	2/9/81
2. John Hemenway for Congress Committee	2/20/81
3. The 1980 Republican Presidential Unity Committee	2/26/81
4. Democratic National Committee	3/9/81
5. DNC Services Corporation	3/9/81
6. National Education Association Political Action Committee	3/9/81
7. Young Republican National Federation	3/10/81

Audit	Date Made Public
8. Republican National Committee Expenditures	3/10/81
9. The Dole for President Committee, Inc. (Addendum to Final Audit Report)	3/10/81
10. Association of State Democratic Chairpersons	3/19/81
11. The Baker-Connally Committee	3/24/81
12. Citizens for LaRouche (Post-Primary Audit Report)	4/15/81

**FINAL 1975-1980 AUDIT REPORTS AVAILABLE**

During March 1981, the Commission announced that a microfilm cartridge of all FEC audit reports issued between 1975 and 1980 is now available for review and purchase in the FEC's Public Records Office. A comprehensive index with cross references to candidates and states named in the reports prefaces the microfilm cartridge.

A complete set of the audit reports may be obtained on one microfilm cartridge for a cost of \$10.00. Paper copies of individual audit reports may be obtained at 10 cents per page. Checks should be made payable to the Federal Election Commission and sent to the Public Records Office, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. For further information, call 523-4181 or toll free 800/424-9530.



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