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REGULATIONS

HEARINGS HELD ON REVISIONS TO RULE ON SOLICITATION OF MEMBERS BY FEDERATED COOPERATIVES

On June 27, 1984, the Commission held a public hearing on possible revisions to section 114.1(e) of FEC Regulations, a provision that defines a membership organization's (including a cooperative's) solicitable "members." The Commission held the hearing in response to a petition for rulemaking filed by the National Council of Farmer Cooperatives (NCFC) in January 1983. (See 48 Fed. Reg. 13265.) In the petition, NCFC sought an amendment to the rule that would permit a federated regional or national cooperative to solicit PAC contributions from the individual members of state or local cooperatives affiliated with the federation. (Under the current rule, federated regional or national cooperatives may only solicit their direct members.) After receiving comments on NCFC's petition, the Commission decided to obtain more information on the petition's merits by publishing an advance notice of proposed rulemaking and holding the public hearing. (See 49 Fed. Reg. 20831.)

During the public hearing, presided over by FEC Chairman Lee Ann Elliott, the Commissioners heard testimony from five witnesses representing the following organizations: the Cooperative League of the USA, the U.S. Department of Agriculture, the National Council of Farmer Cooperatives, the Indiana Farm Bureau Cooperative Association and Land O' Lakes Corporation. The witnesses' comments provided further background information for the FEC in its consideration of the rulemaking petition.

In addition to hearing oral testimony on possible revisions to 11 CFR 114.1(e), the Commission received five sets of written comments on the advance notice of proposed rulemaking. After reviewing the comments and testimony, the Commission will decide whether to proceed with a rulemaking notice based on the petition.

Copies of the written comments may be obtained by contacting the FEC's Public Records Office at 202/523-4181 or toll free 800/424-9530.

REPAYMENTS BY PUBLICLY FUNDED PRESIDENTIAL CANDIDATES: NOTICE OF PROPOSED RULEMAKING

In June, the Commission published a notice of proposed rulemaking concerning amendments to FEC Regulations governing repayment of public funds used by publicly funded Presidential candidates for nonqualified campaign expenditures. See 11 CFR Parts 9038 and 9007. In proposing the amendments, the Commission seeks to make these rules consistent with recent decisions by the U.S. District Court for the District of Columbia Circuit in Kennedy for President v. FEC (Civil Action No. 83-1521) and Reagan for President v. FEC (Civil Action No. 83-1666). In the suits, the principal campaign committees for the 1980 Presidential primary campaigns of Senator Edward M. Kennedy (D.-Mass.) and President Ronald Reagan challenged the Commission's statutory authority to require full repayments of nonqualified campaign expenses. (The public funding statutes re-

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quire Presidential candidates to repay the U.S. Treasury for nonqualified campaign expenses. 26 U.S.C. §§9007(b)(4) and 9038(b)(2).) The court held that the FEC's statutory authority limited its repayment determinations to a reasonable estimate of the amount of **federal funds** used for nonqualified expenses. The court did not, however, dictate the repayment formula to be used by the FEC; nor did the court require that the formula be mathematically precise. (For a summary of the court's opinion see pp. 6-7 of the July 1984 Record.)

The FEC notice, which appeared in the June 28, 1984, issue of the Federal Register (49 Fed. Reg. 26596), sought comments on three topics affected by the court's rulings.

Repayment Formula for Nonqualified Campaign Expenses

Although the court limited its decision to the repayment formula used for nonqualified expenses incurred by primary matching fund recipients, the FEC seeks comments on a repayment formula to be used for: 1) publicly funded Presidential primary candidates; 2) major party nominees who accept private contributions for their general election campaigns because of a deficiency in the Presidential Election Campaign Fund; and 3) minor and new party candidates who receive partial public funding for their general election campaigns. Under the proposed rules, the repayment formula would be based on the ratio of federal funds to total funds received by the candidate (both private and federal funds). In the case of Presidential primary campaigns, the proportional repayment formula would be applied to the candidate's financial status as of the date of ineligibility for public funds, and, in the case of general election candidates, as of December 31 of the election year.

The Commission welcomed comments on:

- Alternative formulas that would not impose undue administrative burdens on the FEC; and
- The FEC's statutory authority to adopt the pro-rata repayment formula. (The election law currently provides a pro-rata formula for repayment of surplus campaign funds by public funding recipients but does not provide a similar formula for repayment of nonqualified expenses.)

Affect of Court's Rulings

on FEC Repayment and Enforcement Procedures

The Commission sought comments on what effect the court's decisions may have on the relationship between repayment and enforcement actions initiated by the Commission with regard to a publicly funded campaign that has made nonqualified campaign expenditures. For example:

- Should repayment and enforcement proceedings be conducted concurrently or sequentially?
- Under either alternative, how should the Commission balance the confidentiality requirements* of the election law with the need to conclude the audit and repayment processes as quickly as possible and place the information on the public record?

Affect of Court's Rulings

on Other Areas of the Public Funding Process

The Commission sought comments on whether the court's decisions have any impact on other aspects of the Presidential public funding program as, for example, the certification of additional public funds to ineligible candidates with net outstanding campaign obligations.

Copies of the FEC's notice of proposed rulemaking are available from the Public Communications Office, 1325 K Street, N.W., Washington, D.C. 20463 or by calling: 202/523-4068 or toll free 800/424-9530. Comments on the rulemaking notice were due by July 30, 1984.

HANDICAPPED PERSONS' ACCESS TO FEC PROGRAMS: NOTICE OF PROPOSED RULEMAKING

In June, the Commission published a notice of proposed rulemaking in the Federal Register concerning the implementation and enforcement of Section 504 of the Rehabilitation Act of 1973, as amended. 11 CFR Part 6. Under the proposed rules, the FEC would take reasonable steps to ensure that the agency's programs and facilities did not discriminate against handicapped persons.

**Under the election law, compliance cases (Matters Under Review or MURs) may not be made public until they are concluded and placed on the public record. 11 CFR 111.21.*

The Record is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Lee Ann Elliott, Chairman; Thomas E. Harris, Vice Chairman; Joan D. Aikens; Danny Lee McDonald; John Warren McGarry; Frank P. Reiche; William F. Hildenbrand, Secretary of the Senate, Ex Officio; Benjamin J. Guthrie, Clerk of the House of Representatives, Ex Officio. For more information, call 202/523-4068 or toll-free 800/424-9530.

The FEC's proposed rules have been adapted from prototypes developed and distributed by the Department of Justice. The FEC rulemaking notice, which appeared in the June 27, 1984, issue of the Federal Register (49 Fed. Reg. 26244), sought comments on six areas affecting handicapped persons:

Evaluation

The agency would conduct an evaluation of its compliance with Section 504 within one year of the effective date of the proposed rules. 11 CFR 6.110.

Notice

The agency would release information to the public on the auxiliary aids it made available to handicapped persons (i.e., services and devices that enabled handicapped persons to participate in, or enjoy the benefits of, FEC programs). 11 CFR 6.111.

Employment

To ensure that both handicapped job applicants and handicapped FEC employees were not discriminated against, the FEC would use the existing Equal Employment Opportunity Commission (EEOC) procedures to resolve discrimination grievances. 11 CFR 6.140.

Accessibility of FEC Facilities

The FEC's new headquarters (relocation expected in 1985) would comply with the provisions of the Architectural Barriers Act of 1968, as adopted in the Rehabilitation Act of 1973. However, the agency's existing office space would not have to meet these standards. 11 CFR 6.150 and 6.151.

Communications

The FEC would implement communications programs (including auxiliary aids) that ensured handicapped persons' equal access to the agency's programs and activities. For example, to make the FEC's toll-free information lines accessible to hearing-impaired persons, the agency might install telecommunications devices (TDD's). 11 CFR 6.160.

Compliance Procedures

The proposed rules would establish compliance procedures for processing discrimination grievances brought by handicapped persons and provide for an officer to coordinate these procedures. 11 CFR 6.170.

Copies of the FEC's notice of proposed rulemaking are available from the Public Communications Office, 1325 K Street, N.W., Washington, D.C. 20463 or by calling: 202/523-4068 or toll free 800/424-9530. (Comments on the notice were due by July 27, 1984.) After final rules are prescribed, the Commission has 60 days to implement them.

OPINIONS

ADVISORY OPINION REQUESTS

The following chart lists recent requests for advisory opinions (AORs). The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR Subject

1984-30 Affiliated political committees' independent expenditures on behalf of general election candidates for whom they made in-kind contributions in primaries. (Date made public: June 21, 1984 Length: 2 pages, plus 5-page supplement)

1984-31 Donations transferred from corporation's state PAC to its federal PAC. (Date made public: June 28, 1984; Length: 1 page, plus 4-page supplement)

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 1984-17: Voting Records and Voter Guides Prepared and Distributed by Nonprofit Corporations

The National Right to Life Committee, Inc. (NRLC) and Right to Life of Greater Cincinnati, Inc., two nonprofit, tax-exempt corporations that engage in educational and lobbying activities, may prepare and distribute nonpartisan voting records and voter guides to the general public. Although the election law prohibits incorporated groups from making contributions and expenditures in connection with federal elections, under revised FEC Regulations prescribed in March 1984, the organizations may prepare and distribute these nonpartisan materials, provided the materials do not serve an election-influencing purpose. See 11 CFR 114.4(b)(4); 114.4(b)(5)(i) and (ii).

continued

Voting Records

Under the Commission's revised regulations, a "corporation . . . may prepare and distribute to the general public the voting records of Members of Congress as long as the preparation and distribution is not for the purpose of influencing a Federal election." 11 CFR 114.4(b)(4).

NRLC plans to compile Congressional voting records on abortion-related legislation and distribute the records to the general public by: a) including the records as an insert in the National Right to Life News, a bi-weekly newsletter that NRLC distributes to 100,000 subscribers, and b) making copies of the records available for purchase and distribution by other right-to-life groups. NRLC's proposed voting records set forth its position on abortion-related issues and record how each Member of Congress voted on a particular issue. In some cases, the vote is characterized as either "pro-life" or "pro-abortion" or as a vote for or against a measure.

No Member of Congress is referred to as a candidate; nor do the records provide information on elections. They do not urge readers to vote in an election or to consult the voting records in choosing a candidate. Nor do they urge readers to support a Senator or Representative based on his/her vote on any issue supported by NRLC. Moreover, they do not suggest that an officeholder is "easier to convince" on an issue as a candidate than as a safely elected official. Since they do not serve an election-influencing purpose, NRLC's voting records meet the nonpartisan requirements of the FEC regulation.

Voter Guides

Under the revised rules, a corporation may "prepare and distribute to the general public nonpartisan voter guides consisting of questions posed to candidates concerning their positions on campaign issues and the candidates' responses to those questions." 11 CFR 114.4(b)(5)(i). Voter guides prepared by nonprofit, tax-exempt corporations (26 U.S.C. §501(c)(4)) do not have to comply with the nonpartisan criteria specified for guides prepared by profit corporations, as long as the guides do not favor one candidate or political party over another. See 11 CFR 114.4(b)(5)(ii).

The Cincinnati group, a nonprofit, tax-exempt corporation, proposed publishing its own voter guide in its newsletter, which is distributed to members and the general public. The proposed guide would contain issue-related questions that the group posed to state and federal candidates and would record their responses, including any comments. The Cincinnati group could distribute the guide to the general public, provided the newsletter in which the guide was to be published did not include other material which favored one

candidate or political party over another (e.g., the newsletter did not report candidates favored by an affiliated organization).

Were the Cincinnati group to establish a separate segregated fund, it would become an advocacy group by virtue of its control over the fund's contributions. The group's voter guide would then be subject to the same nonpartisan criteria as those imposed on profit corporations and nonprofit, partisan organizations. See 11 CFR 114.4(b)(5)(i)(A)-(F), 114.5(d) and Pipefitters v. U.S., 407 U.S. 385, 426 (1972).

The Commission expressed no opinion on whether or not NRLC's and the Cincinnati group's proposed nonpartisan communications would affect the tax-exempt status of either organization because this issue is not within the Commission's jurisdiction. (Date issued: June 29, 1984; Length: 6 pages)

AO 1984-22: Nonprofit Corporation's Solicitation of Four Membership Classes

The American Stock Exchange, Inc. (the Exchange), a nonprofit corporation, proposed soliciting contributions to its separate segregated fund, the American Stock Exchange Federal Political Action Committee (AMEX FEC PAC), from the Exchange's four membership classes. Of the four classes, the Exchange's regular members and options principal members would be eligible for AMEX FEC PAC solicitations because these member classes are sufficiently related to the organization. (Any solicitations must, however, comply with the Act and FEC Regulations. See 11 CFR 114.5 and 114.7.) On the other hand, the Exchange's allied members would not qualify as solicitable members because they are insufficiently related to the organization. By a tie vote, the Commission was unable to agree on whether a fourth membership class, the Exchange's associate members, would qualify as solicitable members.

The election law restricts solicitations by incorporated membership organizations and their separate segregated funds to the organization's individual members. 2 U.S.C. §441b(b)(4)(C). Commission Regulations define solicitable members as "all persons who are currently satisfying the requirements for membership" in the organization. See 11 CFR 114.1(e). The Supreme Court has determined that these members include individuals who have "some relatively enduring and independently significant financial or organizational attachment" to the membership organization. (See FEC v. National Right to Work Committee,* 459 U.S. _____, 103 S.Ct. 552 (1982).)

*For a summary of this suit, see p. 6 of the November 1983 Record.

In determining if a class of members is sufficiently related to the organization to qualify for PAC solicitations, the Commission has considered whether the members have: 1) some right to govern the membership organization, for example, by exercising voting rights, and 2) an obligation to help sustain the organization through regular dues payments. See AOs 1977-17, 1977-67, 1979-69 and 1982-2.

The Exchange's regular, options principal and allied members all share the right to govern the organization as evidenced by the fact that members of each class may be:

- Elected to serve on the Exchange's Board of Governors or its nominating committee (although only regular members may vote for Exchange representatives elected to these positions); and
- Appointed to the Exchange's standing committees and its disciplinary panels.

On the other hand, only regular members have a right to vote in Exchange elections. Only regular and options principal members have trading privileges and a right to share in any assets on the Exchange's dissolution. Moreover, while regular and options principal members pay annual dues, allied members pay no dues or initiation fees.

The Commission noted that its conclusions were based on the unique facts and circumstances presented in the advisory opinion request. (Date issued: June 18, 1984; Length: 6 pages)

AO 1984-23: Trade Association's Endorsement of Presidential Candidate Announced in Press Releases and House Periodicals

The Associated Builders and Contractors (ABC), a trade association, may publicly endorse a Presidential candidate and announce the endorsement through press releases issued to its customary list of press contacts. On the other hand, since the election law and FEC Regulations prohibit trade associations from making expenditures for partisan communications that are directed to the general public, ABC must keep costs for distributing the press releases minimal and must not use the endorsement as a pretext for general electioneering. 11 CFR 114.3(a).

ABC may also publish its Presidential endorsement in the August issue of its bi-weekly newsletter, Merit Shop Scoop. Under FEC Regulations, while a trade association may not make partisan communications to the general public, it may make partisan communications to its restricted class (i.e., its executive and administrative em-

ployees, its members and their respective families). 2 U.S.C. §441b(b)(2)(A); 11 CFR 114.3 and 114.8(h). Although ABC sends Scoop to both ABC's members and nonmembers (i.e., persons outside ABC's restricted class), nonmembers constitute only an incidental -- or minimal -- portion of the newsletter's total circulation (i.e., 125 out of 17,000 or less than one percent). ABC may not, however, publish the endorsement in its monthly magazine, Builder and Contractor, because nonmembers constitute a percentage of the magazine's total circulation that is more than minimal (i.e., 2,698 out of 17,000 or 13.7 percent). See AOs 1978-18, 1978-97, 1979-50 and 1980-139.

Reporting Requirements

If the issue of Scoop containing the announcement of ABC's endorsement is not primarily devoted to candidate advocacy issues, no reporting is required -- even if the costs of publishing the endorsement exceed \$2,000 for the election. 11 CFR 114.3(b).

The Commission did not address the issue of whether those persons ABC claimed as members would be considered "members" under the election law and FEC Regulations. (Date issued: June 23, 1984; Length: 4 pages)

AO 1984-26: Contributions to Senate Candidate from Individuals Associated with His State Office Duties

The Honorable David M. Bartley for U.S. Senate Committee (the Committee), Mr. Bartley's principal campaign committee for his 1984 Senate campaign, may accept contributions from individuals associated with his duties as a state official, provided the contributions are permissible under the federal election law (i.e., they do not consist of excessive contributions or contributions from corporations, labor organizations, foreign nationals or federal contractors). See 2 U.S.C. §§441a, b, c and d. (Mr. Bartley is a board member of the Massachusetts Housing and Finance Administration, an agency which gives financial assistance to developers. The contributors are associated with developers seeking assistance from the agency). The Commission noted, but did not comment on, the possible relevance of other federal statutes. (Date issued: June 29, 1984; Length: 2 pages)

PUBLIC APPEARANCES

- 8/16-19 South Carolina Assoc. of
Registration and Election
Officials
Hilton Head, South Carolina
Gwenn Hofmann, Assistant to
Director, National
Clearinghouse on Election
Administration
- 8/29 American Political Science
Convention
Washington, D.C.
Chairman Lee Ann Elliott
Larry Boyle, Public Affairs
Specialist
- 9/6 Pennsylvania Election Officials
Conference
Harrisburg, Pennsylvania
Gwenn Hofmann, Assistant to
Director, National
Clearinghouse on Election
Administration
- 9/10 The Washington Journalism
Center
Conference for Journalists on
Politics, 1984
Washington, D.C.
Chairman Lee Ann Elliott
- 9/10 New Jersey Election Law
Enforcement Commission
Princeton, New Jersey
Commissioner Frank P. Reiche
Lawrence Noble, Deputy General
Counsel
Roberta Werfel, Chief, Public
Communications
Todd Johnson, Public Affairs
Specialist
- 9/19 Bar Assoc. of the District of
Columbia
Washington, D.C.
Charles N. Steele, General
Counsel

PRESIDENTIAL ELECTIONS**PRIMARY MATCHING
FUND PAYMENTS**

On July 19, 1984, the Federal Election Commission certified primary matching fund payments for five Presidential candidates, bringing total payments certified to 10 Presidential candidates to \$31,338,353.52.

The summary chart below provides cumulative information on certifications of primary matching funds made between January 1 and July 19, 1984.

**Primary Matching Fund
Certification Activity**

Name of Candidate	Number of Requests*	Total Amount of Funds Certified
Askew, Reubin	8	\$ 915,904.71
Cranston, Alan	14	1,812,099.88
Glenn, John	12	3,026,493.50
Hart, Gary	16	4,474,808.38
Hollings, Ernest F.	9	821,599.85
Jackson, Jesse L.	11	2,095,113.84
LaRouche, Lyndon H.	5	467,028.31
McGovern, George	7	553,377.70
Mondale, Walter F.	19	7,567,893.66
Reagan, Ronald	7	10,100,000.00

**1984 COMPLIANCE MANUAL FOR
PUBLICLY FUNDED PRESIDENTIAL
GENERAL ELECTION CANDIDATES**

In July 1984, the Commission approved a revised edition of its Financial Control and Compliance Manual for General Election Candidates Receiving Public Financing. The manual is now available for use by those Presidential candidates who may receive public funding for their general election campaigns. In addition, a limited number of copies are available for purchase by other parties, at \$7.50 per copy, from the FEC's Public Records Office. (For more information, call 202-523-4181 or toll free 800/424-9530.)

The manual is designed to help publicly funded general election candidates comply with the Act and Commission Regulations. The manual does not prescribe a standard financial control system.

* Includes requests made after the candidate's initial request for matching fund eligibility.

Instead, it offers a flexible system, which may be modified to suit each campaign's need for: receipt and disbursement controls; recordkeeping and reporting procedures; budget planning and internal financial management.

The financial control system outlined in the manual parallels the system provided in the revised compliance manual for Presidential primary campaigns which receive public funds. The general election manual can therefore help publicly funded primary campaigns minimize the expense and delay involved in converting their financial systems to the general election campaign.

COURT CASES

FEC v. MASSACHUSETTS CITIZENS FOR LIFE, INC.

On June 29, 1984, the U.S. District Court for the District of Massachusetts granted defendant's motion for summary judgment in *FEC v. Massachusetts Citizens for Life, Inc.* (MCFL) (Civil Action No. 82-609-G). The court found that, in publishing voting records in special editions of its newsletter in 1978, MCFL had not made prohibited corporate expenditures in connection with the Massachusetts primary campaigns of federal candidates. (MCFL is an incorporated, nonprofit organization that advocates right-to-life issues.)

Background

During 1978, MCFL spent \$9,812 to prepare a special edition (and a partial, corrected edition) of its newsletter, which listed the voting records of incumbents on three legislative proposals pertaining to abortions. The special editions also reported the responses to questionnaires received from nonincumbent candidates on these issues. They urged readers to "vote pro-life" and included photographs of only those candidates approved by MCFL. The special newsletter was distributed to both MCFL members and the general public (approximately 58,000 persons).

In its suit, the FEC had claimed that MCFL's expenditures for the special editions constituted corporate expenditures in connection with federal elections, prohibited by section 441b of the election law. The court found, however, that MCFL's expenditures were more properly characterized as independent expenditures and expenditures for news and editorial comments. As such, the court held that the expenditures were explicitly exempted from section 441b's prohibition on corporate spending.

District Court Decision

In characterizing MCFL's expenditures for the special newsletter as independent expenditures, the court held that the "publication was uninvited by any candidate and uncoordinated with any campaign."*

With regard to its characterization of MCFL's publication of the voting records as exempt spending for a news story and news editorial,** the court stated: "In our opinion, the compilation of voting records and questionnaire responses was news, probably not available elsewhere; and the call to vote pro-life in conjunction, incidentally, with a quotation from Thomas Jefferson, was editorial." The court further stated that the special newsletter editions satisfied the statutory requirement that exempt stories may be published in a "periodical publication." The court noted that the special editions were similar in size, format and content to regular issues of MCFL's newsletter. Finally, the court maintained that "the legislative history of the newspaper exemption shows that Congress intended that it be a broad exemption, coextensive with the First Amendment."

Alternatively, the court held that, even if it had misconstrued MCFL's spending as exempt independent and news story/editorial expenditures, the statutory prohibition on corporate expenditures was unconstitutional as applied to MCFL's spending. The court found that applying the prohibition to MCFL's spending abridged the organization's free speech, press and association rights because the expenditures were: "(a) independent of any candidate or party, (b) by a nonprofit-making corporation formed to advance an ideological cause and (c) for the purpose of publishing direct political speech." Under these circumstances, the court concluded, the compelling governmental interest served by banning the voting

continued

*The election law and FEC Regulations define an independent expenditure as an expenditure for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made with the cooperation or prior consent of, or in consultation with, or at the request or suggestion of, any candidate or his/her authorized committee or agents. 2 U.S.C. section 431 (17); 11 CFR 110.16 and 109.1(a).

**Under the election law and FEC regulations, a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication is not considered an expenditure, provided the station or publication is not owned or controlled by a political party, committee or candidate. 2 U.S.C. section 431(9)(B)(i); 11 CFR 100.8(b)(2).

records as prohibited corporate contributions (i.e., the prevention of real or apparent corruption in federal elections) was not justified. Specifically, since the court maintained that MCFL's publication of the voting records was not coordinated with any candidates, the court followed the Supreme Court's determination in Buckley v. Valeo that their independence "alleviate[d] the danger that expenditures will be given as quid pro quo for improper commitments from the candidate." See Buckley v. Valeo at 47. At any rate, in finding that the expenditures were independent, the court noted that they were too small (i.e., \$80 per federal candidate) to have a corrupting influence on federal elections.

With regard to MCFL's role as a nonprofit ideological group, the court held that, "by sharing its views on an important public issue" with its members and the public, MCFL's expenditures for the voting records advanced, rather than deterred, governmental interests by "promoting citizen responsibility."

Similarly, the court held that, if viewed as direct political speech, MCFL's financing of the special newsletter editions "would seem to promote rather than undermine the honest functioning of representative government." Specifically, the court found that the voting records published in the special editions "sought to influence incumbents and candidates solely by means of informed voter reaction to the candidates' positions on an important public issue." Furthermore, the court found that "the corporate identity of the speaker does not deprive speech of what otherwise would be its clear entitlement to protection under the First Amendment. First National Bank of Boston v. Bellotti, supra at 778-786."

NEW LITIGATION

National Rifle Association v. FEC

The National Rifle Association (NRA), a nonprofit organization, seeks action against the FEC with regard to an administrative complaint that NRA filed with the Commission on December 1, 1983. In its administrative complaint, NRA had alleged that Handgun Control, Inc. (HCI), a nonprofit corporation without members, and its separate segregated fund, Handgun Control, Inc. Political Action Committee (HCI-PAC), had unlawfully solicited contributions from individuals beyond HCI's solicitable class (i.e., its executive and administrative employees and their families). See 2 U.S.C. §441b(b)(4)(A).

Pursuant to 2 U.S.C. §437g(a)(8)(A), NRA asks the district court to declare that the FEC's failure to act on the complaint within 120 days was arbitrary, capricious, an abuse of discretion and con-

trary to law. NRA further requests that the court direct the FEC to act on the complaint.

U.S. District Court for the District of Columbia, Civil Action No. 84-1878, June 19, 1984.

COMPLIANCE

SUMMARY OF MURs

The Act gives the FEC exclusive jurisdiction for its civil enforcement. Potential violations are assigned case numbers by the Office of General Counsel and become "Matters Under Review" (MURs). All MUR investigations are kept confidential by the Commission, as required by the Act. (For a summary of compliance procedures, see 2 U.S.C. §§437g and 437(d)(a) and 11 CFR Part 111.)

This article does not summarize every stage in the compliance process. Rather, the summaries provide only enough background to make clear the Commission's final determination. Note that the Commission's actions are not necessarily based on, or in agreement with, the General Counsel's analysis. The full text of these MURs is available for review and purchase in the Commission's Public Records Office.

MUR 1536: Excessive Contributions Received by Affiliated PACs

On April 3, 1984, the Commission entered into a conciliation agreement concerning the acceptance of excessive contributions by two affiliated political action committees (PACs).

Complaint

In reviewing reports for the first quarter of 1982 filed by two affiliated corporate PACs, the Commission's Reports Analysis Division noted that the committees had received \$90,440 and \$120,150, respectively, in contributions from individuals but had not identified the contributors on supporting schedules. In September 1982, the Division requested further information on the contributions.

In October, the PACs' treasurer submitted reports and amendments to previously filed reports. The reports disclosed that the PACs had accepted contributions which exceeded the law's limits in late 1981 and early 1982, and had refunded the excessive amounts on September 30, 1982.

General Counsel's Report

Under the Federal Election Campaign Act, contributions made by affiliated committees are considered as having been made by a single committee. These contributions are subject to one limit. 2 U.S.C. §441a(a)(5). The Commission has consistently interpreted this provision to mean that affiliated committees also share one limit on the contributions they receive. See AOs 1976-104, 1978-39, 1979-56, 1979-77, 1980-40 and 1982-18. In this case, the respondent PACs reported receiving \$10,000 contributions from several corporate executives who had individually contributed \$5,000 to each PAC. This amounted to an excess of \$5,000 per contributor.

The committees received \$35,000 in excessive contributions on December 23, 1981, and \$20,000 on January 15, 1982. The PACs did not refund the excessive amount, \$55,000, until the end of September 1982. The General Counsel therefore recommended the Commission find probable cause to believe that the PACs had violated the Act's contribution limits.

Commission Determination

The Commission accepted the General Counsel's recommendation. On April 3, 1984, the PACs entered into a conciliation agreement which included a civil penalty.

FEDERAL REGISTER**FEDERAL REGISTER NOTICES**

The items below identify FEC documents that appeared in the Federal Register during May and June. Copies of these notices are available in the Public Records Office.

Notice Title

- | | |
|---------|--|
| 1984-8 | 11 CFR Parts 4 and 5: Public Records and the Freedom of Information Act; Access to Public Disclosure Division Documents: Amendment of Fee Provisions (49 <u>Fed. Reg.</u> 22335, May 29, 1984) |
| 1984-9 | 11 CFR Part 6: Enforcement of Nondiscrimination on the Basis of Handicap in FEC Programs; Notice of Proposed Rule-making (49 <u>Fed. Reg.</u> 26244, June 27, 1984) |
| 1984-10 | 11 CFR Parts 9007 and 9038: Repayments by Publicly Financed Presidential Candidates: Notice of Proposed Rule-making (49 <u>Fed. Reg.</u> 26596, June 28, 1984) |

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.

FEC CO-HOSTS WORKSHOP IN NEW JERSEY

On September 10, 1984, the Federal Election Commission, in cooperation with the New Jersey Election Law Enforcement Commission, will conduct an all-day workshop on federal election campaign finance laws and New Jersey's state campaign finance law. The workshop will include six sessions on: major provisions of the federal and New Jersey campaign laws; sources of campaign support available to federal candidates; corporate and labor participation in federal elections; state and local party activity; FEC enforcement and campaign finance disclosure procedures; and New Jersey reporting requirements.

To be held at the Ramada Inn in Princeton, New Jersey, the workshop will be of particular interest to those involved with PACs, party activities and political campaigns, at both the state and federal levels.

A registration fee of \$50 must be received by September 4, 1984. For more information on the workshop and registration, contact Juana Schultz, Director of Compliance and Review, New Jersey Election Law Enforcement Commission, 609/292-8700.

FEDERAL ELECTION COMMISSION
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