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LEGISLATION

FEC RECOMMENDS CHANGES IN ELECTION LAWS

On April 6, 1988, the Commission transmitted to Congress and the President 26 recommendations for legislative changes in federal election laws. The recommendations would enhance the agency's ability to administer election laws. The Commission is statutorily mandated to submit recommendations each year "for any legislative or other action the Commission considers appropriate...." 2 U.S.C. §438(a)(9).

Among the 26 proposals submitted this year were two new proposals, which recommended that Congress:

- o Clarify state filing provisions for Presidential candidate committees making expenditures in the states; and
- o Consider raising the threshold amount of matchable contributions required to qualify for Presidential primary matching funds.

A third proposal, offered for the first time in 1987, was modified to exclude committees authorized by candidates (candidate committees). Under this proposal, other types of committees (PACs and party committees) would no longer have to file reports with state election offices. Nor would the state offices have to maintain file copies of these reports. Instead, state offices would facilitate direct access to the FEC's computerized disclosure data base.

Other Commission recommendations pertained to: definitions, registration and reporting requirements, enforcement, public financing, expenditure limits, contributions, fraudulent misrepresentations (i.e., fraudulent projects operated by noncandidate committees and fraudulent solicitation of funds), honoraria and Commission information services.

The full text of the recommendations will be published in the Commission's 1987 Annual Report. Copies of the recommendations are also available from the FEC's Public Records Office, 999 E Street, N.W., Washington, D.C. 20463.

COMPLIANCE

FEC PUBLISHES NONFILERS

On April 29, the Commission published the names of two House campaigns that had failed to file disclosure reports required by the election law. See chart below.

The election law requires the agency to publish the names of nonfiling candidates. Compliance actions against nonfilers are decided on a case-by-case basis. The law gives the Commission broad authority to initiate enforcement actions resulting from infractions of the law, including civil court enforcement and imposition of civil penalties.

Nonfilers

Candidate	Office Sought	State	Report Not Filed
Fernandez, B.	President		Monthly
Martin-Trigona, A.	President		Monthly
Hayes, R. H.	House	SC	Quarterly
Pease, D.	House	OH	Pre-Prim.
Wilken, D. A.	House	NE	Pre-Prim.

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JULY REPORTING SCHEDULE

The following chart and paragraphs explain the reporting schedule for the various categories of filers. Questions and requests for additional forms should be addressed to Information Services, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463; or call 202/376-3120 or toll free 800/424-9530.

Type of Filer	Report		
	Quarterly July 15	Pre-Primary	Monthly July 20
1988 Congressional Committees ¹	x	x	
1988 Presidential Committees/ \$100,000+ ²			x
1988 Presidential Committees/ Under \$100,000	x	x	
1984 Presidential Committees ³	x		
Parties and PACs/Monthly ⁴			x
Parties and PACs/Quarterly ⁴	x	x ⁵	
National Party Convention Committees ⁶	x ⁶		
Connected Organizations/ Communications ⁷	x		

¹Congressional committees active in other years have only two reports covering 1988 activity: the semiannual report, due on July 31, 1988, and the 1988 year-end report, due on January 31, 1989.

²Presidential committees which have received contributions or made expenditures aggregating \$100,000 or more toward the 1988 Presidential cycle (or which anticipate this level of activity) must file monthly reports during 1988, even if their candidate is no longer active in the 1988 campaign.

³Presidential committees that are not active in 1988 elections may file on either a monthly or quarterly reporting schedule. See 11 CFR 104.5(b)(2).

⁴All party committees and PACs (i.e., nonconnected committees and separate segregated funds) are required to file on either a monthly or quarterly basis in 1988.

⁵Required only if the unauthorized committee makes contributions or expenditures on behalf of candidates in the primary, which have not been previously disclosed.

⁶The Republican national convention committee must file a quarterly report by July 10, 1988. The Democratic national convention committee's quarterly report is suspended. Instead, it must file a post-convention report due no later than October 19, 1988. See 11 CFR 9008.12(b)(2)(i) and (ii).

⁷Report required if aggregate costs for partisan, internal communications for all 1988 primaries have exceeded \$2,000.

Quarterly Filers

Due by July 15, the report should cover all activity from April 1 (or from the closing date of the last report filed in 1988 or from the date of registration,* whichever is later) through June 30.

Pre-Primary Filers

The report is due 12 days before the primary election and must be complete as of the 20th day before the election. If sent by registered or certified mail, the report must be postmarked no later than the 15th day before the election.

Monthly Filers

The monthly report must be filed by July 20. It should cover all activity from June 1 (or from the closing date of the last report filed in 1988 or from the date of registration,* whichever is later) through June 30.

CHANGE IN FILING FREQUENCY

PACs and party committees which plan to change their reporting schedule in 1988 (e.g., from quarterly to monthly) must notify the Commission by submitting a letter with the July report. A committee may not change its filing frequency more than once a year. 11 CFR 104.5(c). The FEC requests that Presidential committees also inform the Commission in writing if they change to a monthly reporting schedule because their respective campaigns receive or spend more than \$100,000 during 1988.

WHERE REPORTS ARE FILED

Committees must file all reports and statements simultaneously with the appropriate federal and state officials. 11 CFR 108.5.

Filing with the Federal Government

1. The principal campaign committees of House candidates and committees supporting or op-

posing only House candidates file with the Clerk of the House, Office of Records and Registration, 1036 Longworth House Office Building, Washington, D.C. 20515. 11 CFR 104.4(c)(3) and 105.1.

2. The principal campaign committees of Senate candidates and committees supporting or opposing only Senate candidates file with the Secretary of the Senate, Senate Public Records, Hart Senate Office Building, Room 232, Washington, D.C. 20510. 11 CFR 104.4-(c)(2) and 105.2.
3. All other committees, including the principal campaign committees of Presidential candidates, file with the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. 11 CFR 105.3 and 105.4.

Filing with State Governments

1. The principal campaign committees of Congressional candidates must file a copy of every report and statement with the Secretary of State or the appropriate elections official of the state in which the candidate seeks federal office. 11 CFR 108.3.
2. The principal campaign committees of Presidential candidates must file copies of reports and statements with the Secretary of State or the appropriate elections official of the state in which the committee makes campaign expenditures. These reports must contain all financial transactions which apply to that state during the reporting period covered. 11 CFR 108.2.
3. PACs and party committees making contributions or expenditures in connection with House and Senate races file in the state in which the candidate seeks election. The law requires a copy only of that portion of the report applicable to the candidate(s) being supported. Committees supporting residential candidates must file in the state(s) in which the Presidential committee and donor committee have their respective headquarters.

**In the case of an authorized candidate committee, from the date candidate status is established. The Committee must report all campaign finance activity incurred by the candidate before he/she authorized the committee. 11 CFR 101.3-(a) and 104.3(a) and (b). However, activity which occurred before 1988 must be reported separately.*

The Record is published by the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. Commissioners are: Thomas J. Josefiak, Chairman; Danny L. McDonald, Vice Chairman; Joan Aikens; Lee Ann Elliott; John Warren McGarry; Scott E. Thomas; Walter J. Stewart, Secretary of the Senate, Ex Officio; Donald K. Anderson, Clerk of the House of Representatives, Ex Officio. For more information, call 202/376-3120 or toll-free 800/424-9530. (TDD For Hearing Impaired 202/376-3136)

ILLINOIS SPECIAL ELECTIONS

On July 12, 1988, Illinois will hold a special primary election in its 21st Congressional District to nominate candidates to fill the seat vacated by the death of Representative Melvin Price. A special general election will be held on August 9, 1988.

Political committees authorized by candidates (candidate committees) who are participating in these special elections must file the appropriate pre- and post-election reports. The reporting schedule will depend on whether the candidate participates in one or both elections. (See below.)

All other political committees which support candidates in the special election(s) must also follow the reporting schedule for the special election(s). Note that monthly filers supporting candidates in the special general election must also file a post-general election report, if they have not previously reported this general election activity.

**CHART I
Candidates Running Only in Primary Election**

Report	Period Covered	Registered/Certified Mail Date*	Filing Date
Pre-primary	4/1-6/22	6/27	6/30
July quarterly	6/23-6/30	7/15	7/15

**CHART II
Candidates Running in Primary and General Elections**

Report	Period Covered	Registered/Certified Mail Date*	Filing Date
Pre-primary	4/1-6/22	6/27	6/30
July quarterly	6/23-6/30	7/15	7/15
Pre-general	7/1-7/20	7/25	7/28
Post-general	7/21-8/29	9/8	9/8
October quarterly	8/30-9/30	10/15	10/15

*Reports sent by registered or certified mail must be postmarked by the mailing date. Reports mailed first class or hand delivered must be received by the filing date.

**ALTERNATE DISPOSITION
OF ADVISORY OPINION REQUESTS**

AOR 1987-35: Agreements Between Corporation and Political Committees to Transmit Committees' Political Message on "900" Telephone Lines

On April 29, 1988, the Commission notified the requester by letter that his request would not be given further consideration because it failed "to provide a complete factual description of the activity in question...." 11 CFR 112.1(b) and (c).

AOR 1987-36: Candidate's Use of Aircraft Leased By Bank

The requester withdrew the request on April 15, 1988.

AOR 1988-9: Nonconnected PAC's Allocation of Expenditures for Political/Nonpolitical Trips

On April 27, 1988, the Commission sent the requester a letter notifying him that his request did not qualify for an advisory opinion because it: 1) presented a hypothetical situation and 2) did not include a complete description of his organization's activities and personnel. 11 CFR 112.1(b) and (c).

AOR 1988-15: Corporate Sponsorship of Voter Education Program for Children

The requester withdrew the request on May 5, 1988.

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
1988-19	Solicitability of individuals participating in company's employee stock ownership plan. (Date made public: April 13, 1988; Length: 2 pages, plus 102-page supplement)
1988-20	Eligibility of corporation's field representatives for PAC solicitations. (Date made public: April 25, 1988; Length: 8 pages, plus 12-page supplement)

AOR	Subject
1988-21	Act's preemption of California ordinance limiting contributions from lobbyists. (Date made public: April 26, 1988; Length: 2 pages, plus 10-page supplement)

ADVISORY OPINIONS: SUMMARIES

AO 1987-34: Solicitation of Restricted Class of Joint Venture Partnership by its Subsidiary

The Telenet Communications Corporation (Telenet) is solely owned by US Sprint Communications Company (Sprint JV), a noncorporate joint venture partnership between the GTE Corporation (GTE) and United Telecommunications, Inc. (United). (GTE and United each own a 50 percent interest in Sprint JV and jointly manage the partnership.) Since Sprint JV is affiliated with Telenet by virtue of its sole ownership (and thus control) of Telenet, a separate segregated fund established by Telenet, Telenet PAC, may solicit the solicitable personnel of Sprint JV. 2 U.S.C. §441b(b)(3); 11 CFR 102.5(a) and 114.5(g)(1). Moreover, either Telenet or Sprint JV may sponsor a voluntary payroll deduction plan to facilitate Telenet PAC contributions by both organizations' solicitable personnel, provided the plan complies with FEC rules. 11 CFR 114.5(a)(1)-(5).

Since Telenet is also affiliated with United and GTE by virtue of the corporations' joint ownership of Sprint JV, Telenet PAC shares a single contribution limit with the PACs of GTE and United, respectively. 2 U.S.C. §441a(a)(5); 11 CFR 100.5(g)(2) and 110.3(a)(1). The PACs of GTE and United do not, however, share a single limit because their joint venture, by itself, does not make GTE and United affiliated with each other. Under these circumstances, Telenet PAC must apportion its contributions to the separate limits it shares with the GTE and Union PACs. See AO 1979-56 and the procedures described below.

Procedures for Apportioning Shared Contribution Limits

When making contributions for federal elections, Telenet PAC must apportion half of a contribution to the limit it shares with GTE's PAC and half to the separate limit it shares with United's PAC.

Telenet PAC's contributions may be made only to the extent that the amount apportioned to each affiliated PAC does not, when aggregated with the affiliate's contributions to the same candidate, exceed the affiliate's limits. If agreed to by United PAC and GTE PAC, Telenet PAC could, however, reapportion a given contribution

between the limits it shares with each PAC to avoid making an excessive contribution.

To help recipient candidates and committees monitor the PACs' shared limits, Telenet PAC should provide written instructions on the limits to recipient committees. Telenet should also keep the instructions for three years as part of its contribution records. 2 U.S.C. §441a(f); 11 CFR 110.9(a).

Finally, GTE PAC and United PAC will have to identify Telenet PAC as an affiliated PAC on their respective statements of organization. Similarly, Telenet PAC will have to identify its affiliation with its two parent corporation PACs. 2 U.S.C. §433(b)(2). The three PACs will, however, remain separate entities for reporting purposes. 2 U.S.C. §434(a)(4); 11 CFR 104.1(a). Commissioners Joan D. Aikens and Lee Ann Elliott filed a joint dissent. Commissioner Scott E. Thomas filed a concurring opinion. (Date issued: April 18, 1988; Length: 13 pages, including concurring and dissenting opinions)

AO 1988-10: Individual and Group Activities Related to Post-Primary Delegate Selection

The election of precinct committee persons in the May 17 Oregon Presidential primary would not constitute an "election" or a level of the Presidential delegate selection process subject to the Act and FEC regulations. The Presidential primary, however, would be an "election" subject to regulation because it would be held to express a Presidential nomination preference. 2 U.S.C. §431(1)(D). Consequently, while activities Mr. William E. Taylor and his associates plan to undertake solely to influence their election as precinct committee persons would not be subject to the Act or FEC rules, certain activities they may engage in to influence the outcome of the Presidential primary would be subject to regulation. Finally, post-primary activities undertaken by Mr. Taylor and his associates to influence the selection of delegates to the Democratic National Convention would be considered part of the delegate selection process. Thus, they would also be subject to the Act and FEC regulations—particularly the FEC's delegate selection rules.

I. Selection of Precinct Committee Persons

At the time it holds its Democratic Presidential primary, Oregon also elects Democratic precinct committee persons to two-year terms. Among their duties is the selection of delegates to the Democratic National Convention and to a state convention which, in turn, selects some delegates to the Convention. Under these circumstances, activities undertaken by individuals solely for the purpose of promoting their election as precinct committee persons would not be con-

continued

sidered part of the delegate selection process subject to the Act and FEC rules because: 1) the number of delegates apportioned to each Presidential candidate is determined by voters in the Oregon Presidential preference primary—not by precinct committee persons; and 2) although candidates for precinct committee person in the May primary could declare a Presidential preference on their respective filing papers, these preferences would not appear on the primary ballot.

2. Group Activities Supporting Presidential Candidates

Regardless of whether Mr. Taylor and his associates campaign for precinct committee persons, if they receive contributions or make expenditures in excess of \$1,000 to influence the Presidential primary, they will become a political committee under the Act.

Activities Subject to Contribution Limits. In addition to counting against the registration threshold, payments to influence the election of a Presidential candidate will also count against: 1) the \$1,000 contribution limit for the Presidential candidate and 2) the candidate's public funding spending limits.* (Moreover, if these payments are made in coordination with the candidate's campaign, the campaign should report them as both in-kind contributions and expenditures. 11 CFR 109.1(c) and (d)(1) and 110.8(g).) Election-influencing payments would include:

- o Payments for disseminating, through public political advertising,** campaign materials that advocate the election of the precinct committee person candidates and also refer to their Presidential candidate; and
- o Payments made to disseminate a Presidential candidate's campaign materials, in conjunction with either the campaign for precinct committee person or volunteer activity on behalf of the Presidential candidate. 2 U.S.C. §441a(a)-(7)(B).

Activities Exempt from the Contribution Limits. Mr. Taylor and his associates may also engage in certain activities that are exempt from the contribution limits and which would not count

against their registration threshold as a political committee. These would include:

- o Uncompensated volunteer services (along with living expenses associated with those services);
- o Disbursements for any unreimbursed travel expenses (under \$1,000 per traveler, per election) made by Mr. Taylor or his associates; and
- o Disbursements for campaign materials that advocate their election and also refer to their Presidential candidate but which are distributed by volunteers. 2 U.S.C. §431(8)(B)(xi).

Allocation of Expenditures. Any expenditures made for the campaigns of both the precinct committee person(s) and the Presidential candidate would have to be allocated on the basis of the benefit the candidates reasonably expected to derive. The portion of expenditures allocated to the Presidential candidate's campaign would have to be: 1) made from funds permissible under the Act and 2) reported by Mr. Taylor's group, once it achieved political committee status. 2 U.S.C. §431(8)(B)(xi); 11 CFR 106.(a).

Affiliation of Committees. Commission regulations provide for the affiliation of committees if the committees are established, financed, maintained or controlled by the same person. The regulations set out various factors considered in determining affiliation. The Commission noted that it did not have sufficient facts to decide whether affiliation would exist between Mr. Taylor's proposed group and a Presidential candidate's campaign. 11 CFR 110.3(a)(1)(ii) and (iii).

3. Activities Subject to the Delegate Selection Regulations

Since Oregon's post-primary conventions select individuals to fill apportioned delegate slots, activities undertaken by Mr. Taylor and his associates to influence the selection of individuals as delegates to the Democratic National Convention would be subject to the Act and FEC regulations, particularly the delegate selection regulations. See generally 11 CFR 110.14.* Accordingly, if Mr. Taylor and his associates receive or spend more than \$1,000 during 1988 to influence the delegate selection process, they would become a political committee subject to the Act's registration and reporting requirements.

The rules governing activities to influence delegate selection provide that:

- o Payments for campaign materials distributed by volunteers are exempt from contribution and expenditure limits;

*Publicly funded Presidential primary candidates are subject to both an overall spending limit and state-by-state spending limits.

**Public political advertising, in this situation, includes broadcasting, newspapers, magazines, billboards and direct mail.

*For a summary of the delegate selection regulations, see the November 1987 Record, pp. 1-4.

- o Payments to distribute a Presidential candidate's own materials are considered contributions to the Presidential candidate (and, in some cases, expenditures by the Presidential campaign as well); and
- o Allocation rules must be observed, where an activity benefits both the Presidential and committee person candidates.

The delegate selection rules also provide for the affiliation of a delegate committee with a Presidential candidate's committee and list factors that may be considered in determining such affiliation. 11 CFR 110.14(j). The Commission noted that, although in this case it had insufficient information to address the affiliation issue, it had focused on the issue in an advisory opinion posing somewhat similar circumstances. See AO 1988-1. (Date issued: April 15, 1988; Length: 7 pages)

AO 1988-11: Solicitation of Teachers by Trade Association of Schools

NATTS PAC, the separate segregated fund of the National Association of Trade and Technical Schools (NATTS), a trade association representing incorporated private schools engaged in vocational and technical training, may solicit teachers employed by NATTS member schools, provided the teachers:

- o Are salaried employees of the school; and
- o Are not represented by a labor union.

Under the Act and FEC regulations, a trade association or its separate segregated fund (PAC) may solicit the stockholders and the executive and administrative personnel of the association's corporate members, provided each corporate member: 1) approves the solicitation in advance and 2) has not approved a solicitation by another trade association for the same calendar year. 2 U.S.C. §441b(b)(4)(D); 11 CFR 114.8(c).

For purposes of PAC solicitations, the Act and FEC regulations define executive and administrative personnel as those individuals who: 1) are employed by a corporation, 2) are paid on a salaried, rather than an hourly, basis and 3) have policy making, managerial, professional or supervisory responsibilities. 2 U.S.C. §441b(b)(7); 11 CFR 114.1(c)(2)(i).

To determine whether an employee qualifies as an executive or administrative employee, FEC regulations state that the Fair Labor Standards Act (FLSA) and its regulations may serve as a guideline. 11 CFR 114.1(c)(4). Under FLSA regulations, an "employee employed in a bonafide professional capacity" includes:

- o Any individual whose primary duty consists of the performance of "teaching, tutoring, instructing, or lecturing";
- o Any individual whose work requires the "consistent exercise of discretion and judgment (i.e., an individual whose work is "predominantly in-

tellectual in character"); and

- o Any individual who is compensated more than \$170 per week. 29 CFR 541.3(1987).

The teachers employed by NATTS members qualify as professionals under FLSA rules because all perform "teaching" duties and earn in excess of \$170 per week.

Since FEC rules exclude professional employees who are represented by a labor organization from the term "executive and administrative" personnel, NATTS PAC may not solicit those teachers who are so represented. 11 CFR 114.1(c)(2)(i). (Date issued: April 15, 1988; Length: 3 pages)

AO 1988-14: Joint PAC Sponsored by Affiliated Corporations

Two affiliated corporations, Atlantic Marine, Inc. (AMI) and Atlantic Dry Dock Corporation (ADD), may jointly sponsor a separate segregated fund (i.e., a PAC) to accept contributions from the solicitable personnel of both corporations and to make contributions to federal elections. 2 U.S.C. §441b(b)(4)(A)(1); 11 CFR 114.5(g). Under FEC regulations, however, an individual who is a stockholder of AMI or ADD may not serve as a custodian for the joint PAC's twice yearly solicitations of employees who are not executive or administrative personnel or stockholders of either corporation. 11 CFR 114.6(d)(5); AO 1977-49.

The official name of the joint PAC must include the full name of both corporations. 2 U.S.C. §432(e)(5); 11 CFR 102.14(c). For example, an acceptable name would be "Atlantic Marine, Inc. and Atlantic Dry Dock Corp. Separate Segregated Fund." The joint PAC's full official name must appear on its Statement of Organization, on all FEC reports and on all its disclosure notices. 11 CFR 109.3 and 110.11.

Affiliation of AMI and ADD

Under the election law, a PAC's corporate sponsors are considered affiliated if one corporation exercises direction or control over the other's operations. 11 CFR 100.5(g)(2) and 110.3(a)(1). (Although the election law specifically addresses contribution solicitations by the separate PACs of affiliated corporations, the law does not preclude the case of solicitations by the affiliated corporations' joint PAC.)

The relationship between AMI and ADD satisfies the indicia of affiliation. The same shareholders own approximately 60 percent of the stock in both corporations. The two corporations have overlapping governing bodies; for example, they share many of the same officers and directors. Finally, the same corporate officer handles personnel matters for both corporations. (Date issued: April 22, 1988; Length: 4 pages)

ANTOSH v. FEC (Second Suit*)

On March 24, 1988, the U.S. District Court for the District of Columbia issued an order granting the FEC's motion for summary judgment in James Edward Antosh v. FEC (Civil Action No. 84-2737). The court's order dismissed the remaining two counts in Mr. Antosh's complaint, which alleged that:

- o The FEC's dismissal of his administrative complaint was contrary to law (Count I); and
- o Both the FEC and former FEC Commissioner Thomas E. Harris** had violated plaintiff's due process rights in refusing to disqualify Commissioner Harris from the agency's consideration of Mr. Antosh's administrative complaint (Count II).

Background

In an administrative complaint that Mr. Antosh filed with the FEC in December 1983, he alleged that three political committees (the separate segregated funds of international unions that are AFL-CIO members) were affiliated with the AFL-CIO's separate segregated fund, AFL-CIO COPE-PCC. As affiliated committees, Mr. Antosh alleged, the labor PACs had violated the election law by:

- o Failing to report their affiliation on their respective Statements of Organization (2 U.S.C. §433(b)(2)); and
- o Making contributions to federal candidates which exceeded their combined \$5,000 per election, contribution ceiling for each candidate (2 U.S.C. §441a(a)(2)(A)).

After filing his administrative complaint with the FEC, Mr. Antosh requested that Commissioner Harris disqualify himself from the agency's consideration of the complaint because he had acted as counsel for the AFL-CIO prior to his appointment to the Commission in 1975. In March 1984, Commissioner Harris decided not to disqualify himself, a decision unanimously backed by the full Commission.

In July 1984, the FEC adopted a recommendation by the General Counsel that there was no reason to believe the union PACs had violated the election law. The Commission then dismissed the complaint.

*Mr. Antosh filed four other suits with the FEC, which have been concluded.

**Mr. Harris' third term on the Commission expired in April 1985. However, he continued to serve on the Commission until Fall 1986, when he was replaced as FEC Commissioner by Scott E. Thomas.

On September 6, 1984, Mr. Antosh filed suit with the district court to challenge the FEC's dismissal of his administrative complaint. On January 7, 1988, the court dismissed counts III and IV of his complaint* on grounds that Mr. Antosh lacked standing to raise the issues contained in the counts. (For a summary of the court's decision, see p. 10 of the March 1988 Record.)

In its March 1988 opinion, summarized below, the court ruled on the remaining allegations contained in Mr. Antosh's complaint (Counts I and II).

Court's Second Ruling

FEC's Dismissal Not Contrary to Law. With regard to Mr. Antosh's allegation that the FEC's dismissal of his administrative complaint was contrary to law (Count I), the court held that the FEC had "reasonably interpreted" the provision of the election law governing possible affiliation between the political committees named in the complaint. Consequently, the agency's dismissal of the complaint was not contrary to law.

The FEC argued that the legislative history of section 441a(a)(5) demonstrated that Congress had not intended to impose a single contribution limit on the AFL-CIO's PAC and the PACs of international unions affiliated with the AFL-CIO. The agency noted that it had consistently interpreted the provision this way.

The district court supported the FEC's view, noting comments made, in 1976, by Representative Wayne Hays, then Chairman of the House Ways and Means Committee and a sponsor of the bill:

[I]t is clear in the language that international unions may be members of the AFL-CIO, but that does not say that international unions and the AFL-CIO are to be treated as one. Just as corporations may have a PAC and also be a member of the Chamber of Commerce, or its subsidiaries, any international union in the states is also treated as a [separate, unaffiliated] corporation with its subsidiaries**

Commissioner Harris Need Not Have Been Disqualified from the Proceedings. Prior to his appointment as Commissioner in 1975, Thomas E. Harris had served as counsel for the AFL-CIO. Mr. Antosh claimed that Mr. Harris had signed a

*In these two constitutional claims, Mr. Antosh alleged that several provisions of the election law and FEC regulations provided preferential treatment to labor organization PACs, in violation of his 1st and 5th amendment rights. See p. 10 of the March 1988 Record.

**See 122 Cong. Rec. 8573 (March 30, 1976) (remarks by Rep. Hays)

factual stipulation on behalf of the AFL-CIO in a 1973 case that was germane to Mr. Antosh's case.

With regard to Mr. Antosh's claim that Commissioner Harris should reclude himself from the case, the court concluded that "the intervention of significant numbers of years [nine] certainly is sufficient to remove any taint." The court added that it "refuse[d] to find that an attorney, at the very least nine years later, cannot consider cases involving a former client, especially after the Commission has made a determination that he or she is capable of impartially addressing the individual facts of a case."

FEC v. BEATTY FOR CONGRESS COMMITTEE

On March 21, 1988, the U.S. Court of Appeals for the Second Circuit dismissed the appeal of Edward Myers in FEC v. Beatty for Congress Committee and Edward Myers (Civil Action No. 88-6011). The FEC and Mr. Myers had filed a Stipulated Dismissal and Settlement Agreement with the court.

By the terms of the agreement, Mr. Myers will withdraw his appeal of the district court's October 1987 decision in the case. The court's decision denied Mr. Myers' motion to set aside the default judgment the court had entered against him in January 1987. That decision had imposed a \$5,000 civil penalty on defendants for each of 17 independent violations of the election law. (For a summary of the court's 1987 decision, see page 6 of the March 1987 Record.)

In addition, the parties agreed that:

- o Mr. Myers will pay a \$15,000 civil penalty in increments spelled out in the payment schedule contained in the agreement. If he fails to meet the payment schedule within the time frame specified by the agreement, the FEC may reinstate the penalty originally imposed by the district court, plus interest from the entry date of the default judgment.
- o After Mr. Myers makes the final penalty payment, the FEC will file a satisfaction of judgment notice with the court.
- o By July 1, 1988, Mr. Myers will file certain original or amended reports for each year between 1983 and 1988. If Mr. Myers fails to file the reports by July 1, 1988, or if the reports are not adequately filled out, the FEC may increase his civil penalty by \$1,000 per month until the reports are filed in compliance with FEC disclosure requirements.

Upon the acceptable filing of all the Beatty committee's required reports, Mr. Myers will follow FEC procedures for requesting termination of the committee.

NEW LITIGATION

FEC v. Dietl for Congress

The FEC asks the district court to declare that Dietl for Congress, Richard B. Dietl's principal campaign committee for his 1986 House campaign, and Alan J. Dietl, the committee's treasurer, violated the election law's disclosure requirements by failing to file on time an October quarterly report and by failing to file a pre-election report for the 1986 election year.

The FEC asks the court to:

- o Declare that the defendants violated the election law;
- o Assess an appropriate civil penalty against them; and
- o Enjoin defendants from future violations of the election law.

U.S. District Court for the Eastern District of New York, Civil Action No. 88-1143, April 14, 1988.



MUR 2153: Impermissible Deposit of Funds In Party's Federal Account

This MUR, resolved through conciliation, involved a state party's deposit of a fundraiser's nonfederal proceeds into its federal account.

Complaint

The Commission initiated this matter based on a referral from the Audit Division concerning a state party's deposit of funds, collected in connection with state activities, into its federal account.

General Counsel's Report

Pursuant to 11 CFR 102.5(a)(2), a political committee may deposit in its (federal) account only those contributions that: a) are designated for the federal account, b) result from a solicitation stating that the contributions will be used in connection with a federal election and c) are given by contributors who have been informed that all contributions are subject to the prohibitions of the Act. The General Counsel concluded that, since these conditions were not met, the party violated 11 CFR 102.5(a)(2).

In connection with a joint fundraiser between a local candidate and the state party committee, a total of \$12,000 was deposited on two separate occasions into the party's federal account. The party contended that the money was erroneously deposited and "the event and subsequent monies had nothing to do with federal activities." For

continued

this reason, the General Counsel concluded that the transaction was the result of a mistake rather than any intent to evade the law. The General Counsel recommended that the Commission enter into conciliation with the respondents prior to finding "probable cause to believe" that they had violated the Federal Election Campaign Act (the Act).

Commission Determination

Prior to finding "probable cause to believe" the Act had been violated, the Commission entered into a conciliation agreement with the respondents. The respondents agreed to pay a \$1,000 civil penalty. Moreover, before signing the agreement, the state party had transferred the \$12,000 in question back to its nonfederal account.

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CHANGE OF ADDRESS

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.

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.

STATISTICS

STUDY ON 1985-86 INDEPENDENT SPENDING SHOWS CHANGING PATTERNS

Independent spending which advocated the defeat of federal candidates accounted for only 14 percent of the \$10.2 million spent independently during the 1985-86 election cycle--a sharp drop in negative spending from previous election cycles. (See Charts I and II below.) The study released by the FEC on March 31 also reported that PACs sponsored by trade, membership and health associations spent more money on independent expenditures during the 1985-86 cycle than in previous election cycles. By contrast, nonconnected committees totally dominated the independent expenditures field in previous cycles.

Under the election law, an "independent expenditure" is money spent to finance a communication that advocates the election or defeat of a clearly identified federal candidate. Such an

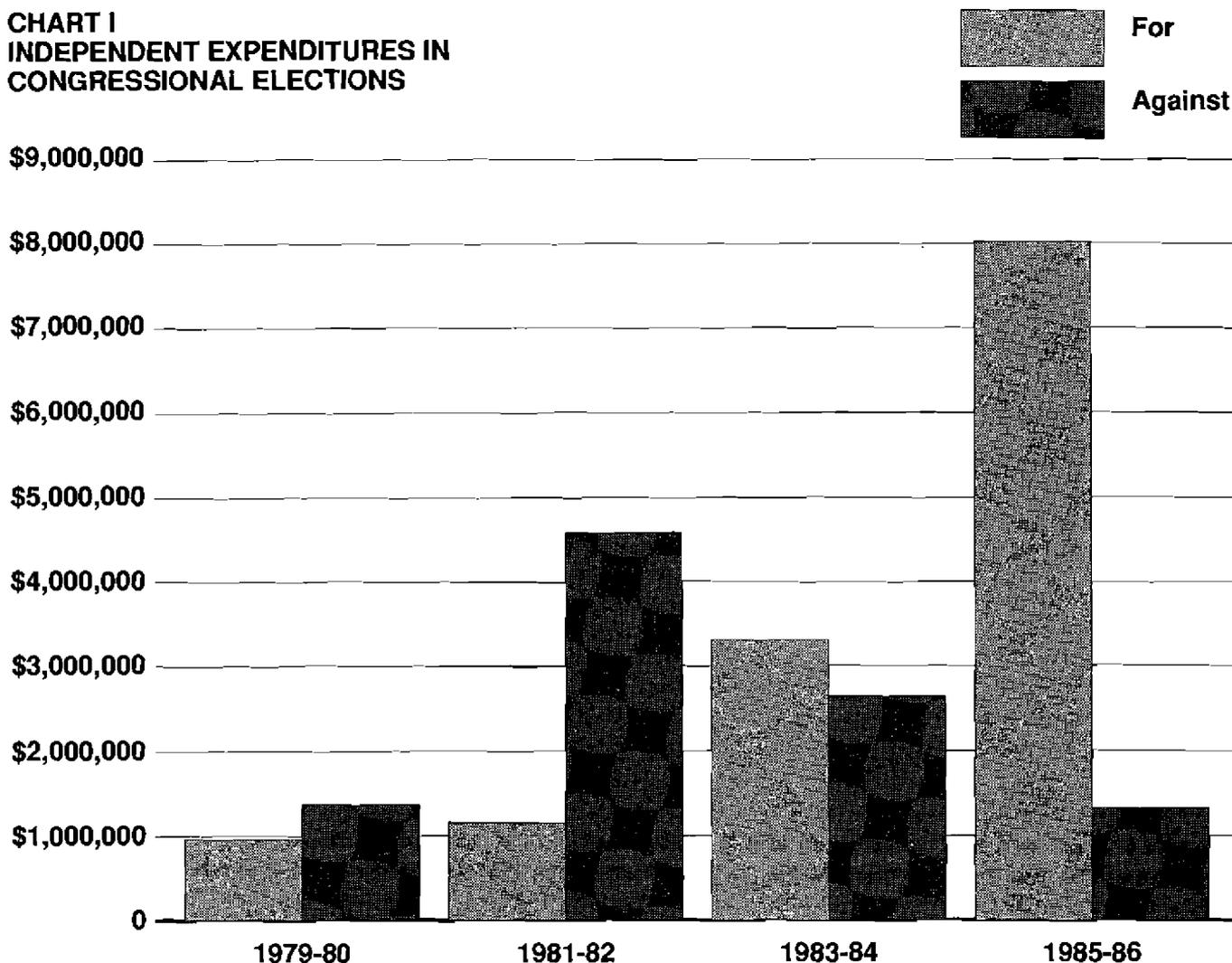
expenditure must be made without cooperation or consultation with the candidate or his/her campaign. Independent expenditures are not limited as are contributions made directly to candidates' campaigns.

The FEC study also showed that independent spending on Congressional candidates by individuals and political committees rose from \$2.3 million in the 1979-80 election cycle to \$9.4 million in the 1985-86 cycle. Generally, independent spending was higher in Presidential election years, with most of that spending targeted to Presidential races. See Chart II below for a comparison of independent spending over four election cycles.

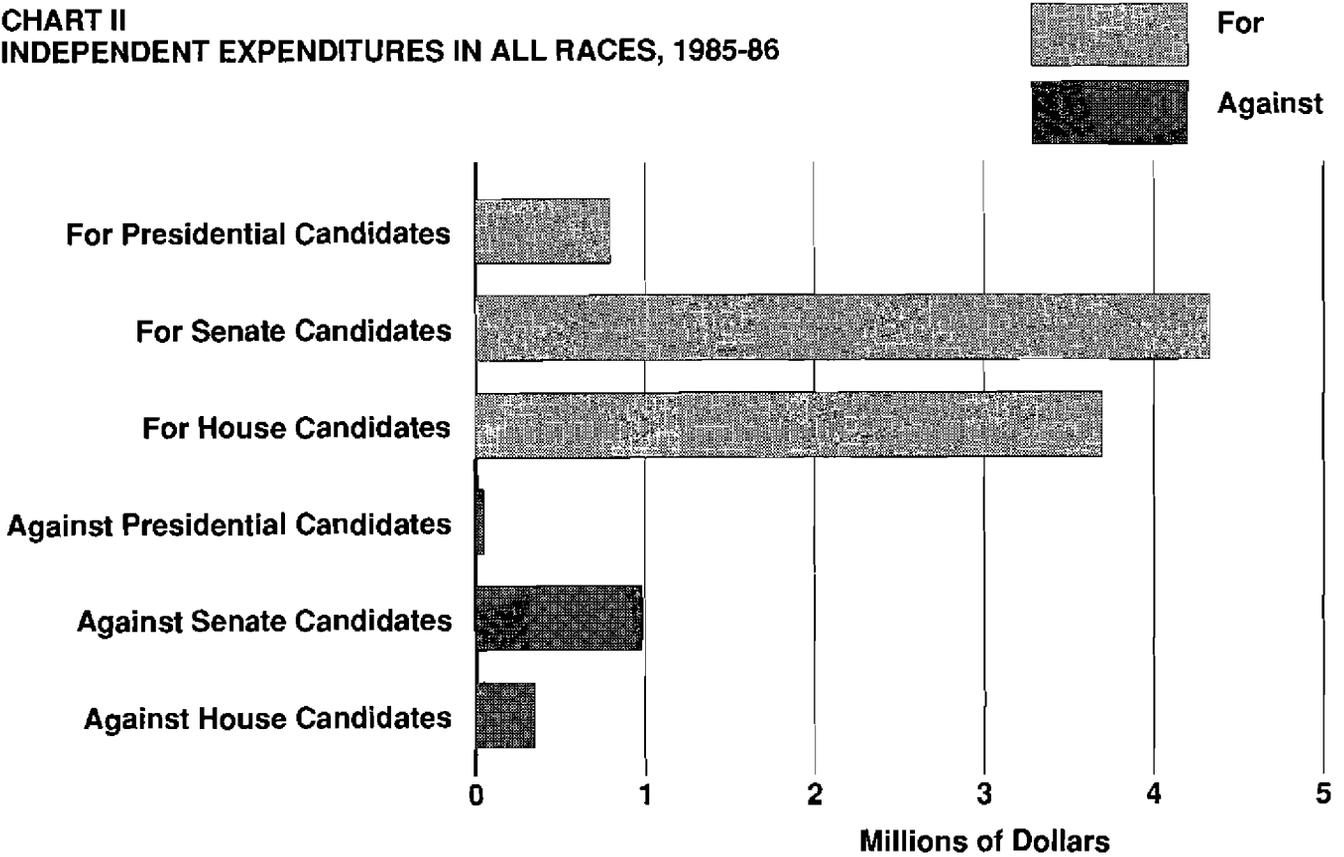
More detailed information on independent spending in the 1985-86 election cycle is contained in the FEC's March 31, 1988, press release and in the independent expenditures volume entitled FEC Index of Independent Expenditures, 1985-86. The volume is available at \$10 per copy. To obtain a copy of the press release or the independent expenditures volume, call the Public Records Office: 202/376-3140 or, toll free, 800/424-9530.

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**CHART I
INDEPENDENT EXPENDITURES IN
CONGRESSIONAL ELECTIONS**



**CHART II
INDEPENDENT EXPENDITURES IN ALL RACES, 1985-86**



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