

# RECORD

March 1988

999 E Street NW Washington DC 20463

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## REGULATIONS

### ALLOCATION OF SPENDING BETWEEN FEDERAL AND NONFEDERAL ACCOUNTS: NOTICE OF INQUIRY

On February 23, 1988, the Commission published a notice of inquiry in the Federal Register which seeks comments on possible revisions to Parts 102 and 106 of its regulations. These provisions govern the allocation of certain expenditures between the federal and nonfederal accounts of party committees, nonconnected political committees and separate segregated funds.

Written comments on the notice of inquiry must be filed by March 24. They should be addressed to Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, N.W., Washington, D.C. 20463. For copies of the notice, contact the FEC's Public Records Office at 202/376-3140 or toll free 800/424-9530.

#### Allocation Questions

The election law requires that political committees spend only those funds for federal elections which are permissible under the law. 2 U.S.C. §431 et. seq. To ensure that impermissible funds are not used for federal elections, the Commission is considering a revision of its rules to provide more specificity on when expenditures by party committees, nonconnected committees and separate segregated funds must be allocated between the committees' respective federal and nonfederal accounts.

The agency requests comments on allocation methods approved by the Commission in the past, as well as suggestions for alternative allocation methods. In particular, the agency seeks comments on questions raised by the committees' allocation of expenditures for:

- o Administrative expenses (11 CFR 106.1(e));
- o Exempt party activities (11 CFR 100.7(b)(9), (b)(15), (b)(17) and 100.8(b)(10), (b)(16) and (b)(18)); and
- o Other activities, as, for example, general voter registration or get-out-the-vote activities conducted by party committees in federal election years.

Finally, the agency seeks comments on activities related to the allocation of such expenditures. Particularly:

- o Reporting requirements; and
- o Methods used by a committee's federal and nonfederal accounts to pay for each account's share of allocated expenses.

### FEC PUBLISHES HALEY COMMITTEE'S PETITION FOR RULEMAKING

Following established procedures, on January 28, 1988, the Commission published a notice in the Federal Register announcing the availability of a petition for rulemaking filed with the FEC in November 1987 by the Ted Haley Congressional Committee (the Haley Committee). 53 Fed. Reg. 2500.

Comments and statements in support of, or in opposition to, the Haley Committee's petition (summarized below) must be filed by February 29, 1988. These written responses to the petition *continued on p. 2*

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should be addressed to Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, N.W., Washington, D.C. 20463. For copies of the petition, contact the FEC's Public Records Office at 202/376-3140 or toll free 800/424-9530.

#### The Haley Committee's Rulemaking Petition

In the rulemaking petition, the Haley Committee suggested that the FEC add a subsection to 11 CFR 110.1, which governs limits on contributions to federal candidates and committees. Under the Committee's proposal, a new subsection would create a rebuttable presumption that post-election contributions are made for the purpose of influencing a federal election. Under such a proposal, a contributor could demonstrate that a post-election contribution to a candidate was not for the purpose of influencing that election and, thus, should not be subject to the \$1,000 per election limit. By contrast, under the Commission's current regulations and long-standing agency policy, donations made to retire the debts of the previous election are considered contributions and, as such, are subject to the law's limits and prohibitions on contributions. See 11 CFR 110.1.

As the basis for its rulemaking petition, the Haley Committee cited the U.S. District Court's February 1987 decision in FEC v. Ted Haley,\* which is currently being appealed by the FEC.

\*For a summary of the decision by the U.S. District Court for the Western District of Washington, see p.6 of the May 1987 Record.

## INFORMATION

#### 1988 SPENDING LIMITS

Presidential candidates who are eligible for primary matching funds may now calculate the total amount of funds they will be able to spend: 1) nationwide during the entire primary election period and 2) in each state during the primary election season.\* Similarly, national and state party committees may now determine the total amount of coordinated (§441a(d)) expenditures\*\* they may spend on behalf of their respective Presidential and Congressional nominees in the 1988 general elections. (The national and state party committees have separate limits for Congressional nominees. Only the national committee has a spending limit for the Presidential nominee.)

Limits for 1988 and the formulae for calculating the amounts are presented below. Exact figures for the state-by-state spending limits of Presidential primary candidates may be obtained by consulting the FEC's February 5, 1988, press release. Additional information may also be obtained from the brochures entitled "Public Funding of Presidential Elections" and the "Campaign Guide for Party Committees." See also the Federal Election Commission Regulations.

Questions and requests for information may be addressed to: The Information Services Division, FEC, 999 E Street, N.W., Washington, D.C. 20463; 800/424-9530 or locally 376-3120.

#### Figures Used To Calculate Spending Limits

The figures used to calculate the 1988 limits are:

\*Presidential candidates who accept public funds for their primary campaigns are subject to both an overall limit on their campaign spending and a state-by-state limit. 2 U.S.C. Section 441a(b); 11 CFR 9035.1(a).

\*\*Coordinated party expenditures are limited, special expenditures which party committees may make on behalf of their nominees in general elections. 2 U.S.C. Section 441a(d); 11 CFR 110.7.

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)

- o The **Voting Age Population (VAP)** for each state, supplied by the Department of Commerce. The state-by-state VAP figures used for calculating the 1988 spending limits are listed in the chart on Senate limits below.
- o The **1988 Cost of Living Adjustment (COLA)**, based on the annual change in the Consumer Price Index, as certified by the Secretary of Labor, using 1974 as the base year. **The 1987 COLA is 2.305.**

**CHART I**

**Party Limits For Senate General Elections: National and State Committees\***

State	VAP (Thousands)	1988 Party Spending Limits
Alabama	2,966	\$136,732.60
Alaska*	354	46,100.00
Arizona	2,467	113,728.70
Arkansas	1,741	80,260.10
California	20,362	938,688.20
Colorado	2,422	111,654.20
Connecticut	2,454	113,129.40
Delaware*	482	46,100.00
Florida	9,319	429,605.90
Georgia	4,486	206,804.60
Hawaii	797	46,100.00
Idaho	693	46,100.00
Illinois	8,547	394,016.70
Indiana	4,061	187,212.10
Iowa	2,102	96,902.20
Kansas	1,825	84,132.50
Kentucky	2,731	125,899.10
Louisiana	3,145	144,984.50
Maine	884	46,100.00
Maryland	3,410	157,201.00
Massachusetts	4,519	208,325.90
Michigan	6,740	310,714.00
Minnesota	3,135	144,523.50
Mississippi	1,833	84,501.30
Missouri	3,794	174,903.40
Montana	585	46,100.00
Nebraska	1,171	53,983.10
Nevada	755	46,100.00
New Hampshire	791	46,100.00
New Jersey	5,841	269,270.10
New Mexico	1,053	48,543.30
New York	13,464	620,690.40
North Carolina	4,786	220,634.60
North Dakota*	485	46,100.00
Ohio	7,947	366,356.70

\*The Senate limit also applies to nominees for the House, in those states which have a single Representative. An asterisk (\*) indicates those states having only one Representative.

State	VAP (Thousands)	1984 Party Spending Limits
Oklahoma	2,379	109,671.90
Oregon	2,038	93,951.80
Pennsylvania	9,085	418,818.50
Rhode Island	757	46,100.00
South Carolina	2,484	114,512.40
South Dakota*	513	46,100.00
Tennessee	3,604	166,144.40
Texas	11,805	544,210.50
Utah	1,051	48,451.10
Vermont*	408	46,100.00
Virginia	4,444	204,868.40
Washington	3,369	155,310.90
West Virginia	1,407	64,862.70
Wisconsin	3,537	163,055.70
Wyoming*	342	46,100.00

**Delegate/Resident Commissioner Candidates**

American Samoa	20	23,050.00
District of Columbia	486	23,050.00
Guam	77	23,050.00
Puerto Rico	2,027	23,050.00
Virgin Islands	63	23,050.00

*continued*

**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.

**1988 SPENDING LIMITS: SUMMARY CHARTS**

**CHART II  
Limits for Presidential Candidates\***

Limit	Amount	Formula
Primary Election: National Limit**	\$23,050,000	\$10 million x COLA
Primary Election: State Limit**	The greater of \$461,000; or the amount determined by the formula (See 2/5/88 FEC press release)	\$200,000 x COLA; or \$.16 x State VAP x COLA
Primary Election: Fundraising Limit	\$4,610,000	20% x National Limit
General Election: National Limit***	\$46,100,000	\$20 million x COLA
Candidate's Personal Funds	\$50,000 per election	

**CHART III  
Party Limits for Congressional  
General Elections: National and State Committees**

Limit	Amount	Formula
House Nominee	\$23,050	\$10,000 x COLA
House Nominee in State with 1 Representative	The greater of \$46,100; or the amount determined by the formula (See Chart I)	\$20,000 x COLA; or \$.02 x State VAP x COLA
Senate Nominee	The greater of \$46,100; or the amount determined by the formula (See Chart I)	\$20,000 x COLA; or \$.02 x State VAP x COLA
Nominee for Delegate or Resident Commissioner	\$23,050	\$10,000 x COLA

\*These limits apply only to candidates who receive public funding for their campaigns.

\*\*The primary limit applies to the total primary election period, involving a series of primaries in different states. Note that publicly funded primary candidates may exempt up to 20 percent of administrative costs from both their state spending limits and their national spending limit. These costs may be exempted as fundraising and legal and accounting expenses. 11 CFR 106.2(c)(5) and 9035.1(c).

\*\*\*The general election limit applies to nominees of the two major parties.

**CHART IV  
Party Limits for Presidential  
General Elections: National Committee**

Limit	Amount	Formula
Presidential Nominee	\$8,291,454	\$.02 x National VAP x COLA

**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
1988-1	Receipts and disbursements made after Presidential primary to influence delegate selection. (Date made public: January 21, 1988; Length: 2 pages, plus 8-page supplement)
1988-2	FEC reports of industry PACs posted by corporation on its employee bulletin board. (Date made public: January 22, 1988; Length: 4 pages)
1988-3	Solicitation activities (including newsletter) of trade association with three types of member organizations. (Date made public: January 23, 1988; Length: 6 pages, plus 86-page supplement)
1988-4	Affiliated status of two corporate PACs for purposes of contribution limits. (Date made public: January 29, 1988; Length: 4 pages, plus 108-page supplement)
1988-5	Funds lent or contributed by Presidential primary candidate's publicly funded 1988 campaign to his publicly funded 1984 campaign for debt retirement. (Date made public: February 4, 1988; Length: 3 pages)

**AO 1987-31: Eligibility of Security Exchange's Eight Membership Classes for PAC Solicitations**

CBOEPAC, the separate segregated fund of the Chicago Board Options Exchange (CBOE), an incorporated membership organization that acts as a securities exchange for the trading of certain standardized option contracts, may solicit six types of CBOE members because these members are sufficiently related to the organization to qualify for PAC solicitations. CBOEPAC may not, however, solicit two other types of CBOE members that do not qualify as solicitable members under federal election law. (See the summary chart below.)

Commission Regulations define a membership organization's members as "all persons who are currently satisfying the requirements for membership" in the organization. 11 CFR 114.1(e). The Supreme Court concluded that "members" of a membership organization are, in some ways, analogous to shareholders in a business corporation. To qualify as a member, an individual must 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. 197, 202, 103 S. Ct. 552 (1982). See also AOs 1984-22, 1984-33 and 1985-11.

Six types of CBOE members listed in the chart below meet this membership standard and are therefore eligible for CBOEPAC's solicitations. These members pay dues, have certain rights in governing the organization and have certain membership privileges.

Two other types of CBOE members, nominees and permit holders, do not meet the membership

*continued*

standard and thus are ineligible for CBOEPAC solicitations. Nominees do not qualify as CBOE members because they are affiliated with CBOE solely as representatives of CBOE member organizations. Thus, if the nominee's organization did not retain its CBOE membership, the nominee would no longer be associated with CBOE. Permit

holders do not meet the membership standard because they receive less than full trading privileges and have no interests in CBOE assets. Nor can they vote on exchange matters or transfer membership rights. (Date issued: January 28, 1988; Length: 5 pages)

**CBOE MEMBERSHIP CLASSES**

Membership	Trading Privileges	Dues	Governance Rights	Voting Rights	Rights To Transfer Membership	Rights To Liquidate Assets	Solicitable
Exercisers	x	x	x	x		x	yes
Lessee*	x	x	x	x	x	x	yes
Lessor*	x	x	x	x	x	x	yes
Nominees**	x	x	x	x			no
Permit Holders	x	x	x				no
Registered For's***	x	x	x	x	x	x	yes
Regular	x	x	x	x	x	x	yes
Special****	x	x	x	x			yes

\*In cases of leased memberships, solicitable CBOE members include lessors who retain their voting rights, membership privileges and obligation to pay dues; and those lessees who have acquired the rights and obligations of lessors through agreements between the parties.

\*\*Nominees qualify for CBOE membership solely as representatives of their member organizations.

\*\*\*Represent CBOE member organizations or nonmember brokers and dealers in options. Since registered for's qualify as CBOE members, they retain CBOE membership, even if the organizations they represent are no longer CBOE members.

\*\*\*\*Special members exercise one-sixth voting rights. They may no longer be solicited when their memberships expire in 1990.

### AO 1987-32: Campaign Contributions in the Form of Silver Dollars

In support of his views concerning the constitutionality of federal reserve notes as legal tender, Mr. Jack Polster plans to accept only silver dollars for his 1988 campaign for an at-large Alaska House seat. If Mr. Polster accepts no more than 5,000 silver dollars, he will not become a candidate under the election law. Accordingly, he will not be required to authorize a principal campaign committee or to deposit the silver dollars in a campaign account.

Under the election law, an individual only becomes a candidate, subject to the registration and reporting requirements, when he or she accepts campaign contributions or makes campaign expenditures in excess of \$5,000. 2 U.S.C. §431(2)(A). If Mr. Polster's campaign does not increase the value of the silver dollar contributions by, for example, selling them as collector's items or trading them as a commodity, these contributions will be equivalent in value to paper currency (i.e., federal reserve notes). Thus, Mr. Polster will not trigger his registration or reporting requirements under the election law if his campaign accepts or spends no more than 5,000 silver dollars. See also AO 1980-125. (Date issued: January 19, 1988; Length: 2 pages)

### AO 1987-33: Law Firm and Partner Are Not Government Contractors

The law firm of Jenner and Block (the firm) and one of its partners would not be considered government contractors as a result of the partner's appointment to a federal advisory panel, the Secretary of Labor's Council on Employee Welfare and Pension Benefit Plans (the Council). Accordingly, both the partner and the firm could make contributions to a nonconnected political committee sponsored by the firm or otherwise participate in federal election activities permissible under the election law and FEC Regulations.

Under the election law and FEC rules, government contractors are prohibited from making contributions for federal elections. 2 U.S.C. §441c(a)(1); 11 CFR 115.2. The law defines a government contractor as "any person who enters into a personal services contract with the United States or one of its agencies" and who is compensated "from funds appropriated by Congress." Such contracts include a "written...contract, between any person and the United States or any of its departments or agencies, for the furnishing of...personal services." 11 CFR 115.1(c)(2).

Members of the Council are compensated for their services on a per diem basis at a rate prescribed by law. They do not negotiate a contract (written or otherwise) regulating the terms of their employment. Rather, the terms of

their appointment and the amount of their compensation are governed by federal law. Thus, under FEC rules, the law partner appointed to the Council would not be considered a government contractor barred from participation in federal elections. (Date issued: January 21, 1988; Length: 3 pages)

## STAFF

### OFFICE OF GENERAL COUNSEL REORGANIZED

During December, the Commission approved a proposal by the General Counsel to reorganize the Office of General Counsel (OGC) by restructuring the Office's top management and creating new positions to centralize and coordinate operations in the face of an ever increasing workload.

Under the new plan, OGC has been divided into three functional areas: enforcement, litigation and policy, with each area headed by an Associate General Counsel. (See below.) Three new administrative staff positions have also been created to strengthen and centralize the management of the office.

### New Associate General Counsels

In addition to Lois G. Lerner, Associate General Counsel for Enforcement since November 1986, OGC now has a new Associate General Counsel for Policy, N. Bradley Litchfield, and a new Associate General Counsel for Litigation, Richard B. Bader.

Until her appointment as Associate General Counsel for Enforcement in 1986, Ms. Lerner served the agency as Assistant General Counsel for Enforcement. Between 1981 and 1983, she worked as a staff attorney at the Commission. Before joining the Commission, Ms. Lerner served, first, as a trial attorney with the U.S. Justice Department and, later, as a Special Assistant U.S. Attorney.

Ms. Lerner holds a B.S. degree from Northeastern University in Boston, Massachusetts. In 1978 she received a Juris Doctor degree with honors from the Western New England College School of Law in Springfield, Massachusetts.

From 1975 until his recent appointment as Associate General Counsel, N. Bradley Litchfield served the Commission as Assistant General Counsel for Advisory Opinions. Mr. Litchfield is a 1965 graduate of Andrews University in Michigan and earned his law degree in 1970 from Howard University in Washington, D.C.

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Richard B. Bader served the Commission as Assistant General Counsel for Appellate Court Litigation from 1981 until his appointment as Associate General Counsel for Litigation in January. Prior to joining the FEC, Mr. Bader was an Appellate Litigation Supervisor for the National Labor Relations Board from 1979 to 1981 and a litigation attorney for the Board from 1975 to 1979. Mr. Bader is a 1971 graduate of Oberlin College in Ohio and, in 1975, earned his Juris Doctor degree with honors from the University of Southern California Law Center.

**PUBLIC FUNDS**

**FEC APPROVES MATCHING FUNDS FOR PRESIDENTIAL CANDIDATE**

On January 28, 1988, the Commission determined that Lenora B. Fulani, an independent candidate, was eligible to receive primary matching funds for her 1988 Presidential primary campaign and certified her first payment to the U.S. Treasury. This certification raises to \$37,527,822.39 the total amount of payments the agency has certified to the Treasury thus far for eligible candidates.

The summary chart below provides cumulative information on certifications of primary matching funds made to fourteen eligible Presidential candidates between January 1 and January 28, 1988. For each certified candidate, the chart indicates the total amount of funds certified by the Commission.

During 1988, an eligible Presidential candidate may submit requests for primary matching funds on the second and fourth Mondays of each month. The Commission will certify a percentage of the amount requested within one week of receiving a request. Only contributions from individuals which, in the aggregate, do not exceed \$250 are matchable. (See 26 U.S.C. §§9034 and 9036 and 11 CFR 9034 and 9036.1(b) and 2(a).)

**Primary Matching Fund Certification Activity\***

Candidate	Total Amount Certified
Bruce Babbitt (D)	\$ 780,541.25
George Bush (R)	6,374,981.55
Robert J. Dole (R)	5,566,329.52
Michael S. Dukakis (D)	4,365,107.82
Pete du Pont (R)	2,208,522.41
Lenora B. Fulani (Ind.)	205,565.18
Richard Gephardt (D)	1,974,230.01
Albert Gore, Jr. (D)	1,852,052.93
Alexander Haig (R)	439,384.65
Gary Hart (D)	937,325.14
Jesse Jackson (D)	598,021.07
Jack Kemp (R)	3,893,845.74
Pat Robertson (R)	6,455,898.41
Paul Simon (D)	1,876,061.71

\*As of January 28, 1988.

**PUBLICATIONS**

**FEC PRODUCES VIDEOTAPE FOR SENATE AND HOUSE CANDIDATES**

During January, the Commission sent an eight-minute videotape entitled "Why Me?" to all registered Senate and House campaign committees. Targeted to prospective candidates and their campaign staffs, the tape presents an overview of the election law's requirements, including contribution limits and prohibitions, reporting rules and the treasurer's responsibilities.

A VHS cassette was mailed to each Senate and House campaign. In addition, copies of the cassette and copies of a 3/4 inch broadcast quality tape are available on a loan basis to anyone, upon request. Produced by the Federal Election Commission, the tape may be duplicated without restriction.

For more information, call 202/376-3120 or toll-free 800/424-9530. Press inquiries should be directed to the FEC's Press Office by calling 202/376-3155 or toll-free 800/424-9530.

**PHOTO NEGATIVES AVAILABLE FOR DUPLICATING CITIZEN'S GUIDE**

Candidates, PACs, parties and other organizations may now print bulk orders of the FEC's fully illustrated brochure, Supporting Federal Candidates: A Guide for Citizens. Since the Commission has only a limited supply of the brochure, the agency is making negatives of the Guide available on a loan basis. Organizations that borrow the negatives are free to print their own copies. Note, however, that the Commission will continue to fill small orders for the Citizens Guide, free of charge.

For more information or to request the negatives, contact the Information Services Division, FEC, 999 E Street, N.W., Washington, D.C. 20463; or call 202/376-3120 or toll-free 800/424-9530.



## COURT CASES

### RALPH J. GALLIANO v. U.S. POSTAL SERVICE

On January 8, 1988, the U.S. Court of Appeals for the District of Columbia Circuit issued an opinion in Ralph J. Galliano, et al. v. U.S. Postal Service, which reversed a decision by the U.S. District Court for the District of Columbia dismissing plaintiffs' suit. The appeals court found that specific provisions of the Federal Election Campaign Act (FECA) control, in part, the application of 39 U.S.C. §3005 to political solicitations named in the plaintiffs' suit. The appeals court therefore returned the case to the district court with instructions for the court to remand it to the U.S. Postal Service. In light of the appeals court's opinion, the Postal Service must reconsider its decision concerning the political solicitations named in the case.

#### Background

During 1983 and 1984, the Congressional Majority Committee (CMC), a multicandidate political committee, mailed out letters soliciting contributions to CMC's independent expenditure project, "Americans for Phil Gramm in '84" (APG).

In filing a complaint with the FEC against CMC, Representative Gramm alleged that CMC had violated the election law by:

- o Using Representative Gramm's name in the title of its independent expenditure project (2 U.S.C. §432(e)(4)); and
- o Failing to clearly state in its solicitations that CMC had not been authorized by Representative Gramm (2 U.S.C. §441d(a)(3)).

The Commission found probable cause to believe that CMC had violated the election law by failing to include a disclaimer notice in its first solicitation mailings. The Commission was evenly divided, however, on the issue of whether CMC had violated the law by including Representative Gramm's name in the title of its independent expenditure project. In July 1985, the Commission entered into a conciliation agreement with CMC and closed the file in the case.

After filing a complaint with the FEC, Representative Gramm filed a complaint with the U.S. Postal Service.\* In the complaint he filed with the Postal Service, Representative Gramm asserted that CMC's solicitations contained false representations and thus violated 39 U.S.C. §3005,

a provision (outside the purview of the FECA) governing postal fraud.

The Postal Service found, among other things, that the Committee's solicitation mailings implicitly made the false representation that Americans for Phil Gramm in '84 was authorized to collect funds for Gramm's campaign, and that the funds would be spent by Gramm's campaign. The Postal Service further concluded that the disclaimer notice required by the election law (§441d(a)(3)) did not adequately inform the recipients that the solicitation was not authorized by Representative Gramm.

#### District Court Ruling

On August 7, 1985, Galliano, APG and CMC (hereafter referred to collectively as APG) contested the Postal Service's decision in district court. The district court affirmed the Postal Service's decision and dismissed APG's suit.

On November 13, 1986, Mr. Galliano appealed the district court's decision. At the request of the appeals court, the FEC filed a friend of the court brief, which addressed the issue of whether specific provisions of the FECA would displace the application of 39 U.S.C. §3005 to the political solicitations named in the suit. See the January Record, page 7, for a summary of the FEC's position.

#### Appeals Court Ruling

Reversing the district court ruling, the appeals court held "that the FEC is the exclusive administrative arbiter of questions concerning the name identifications and disclaimers of organizations soliciting political contributions. As to representations not specifically regulated by FECA, however...nothing in or about the Act [FECA] limits the 39 U.S.C. §3005 enforcement authority of the Postal Service."

The court held that the FECA's disclaimer requirements for political solicitations maintained a proper balance between protection of First Amendment rights of free speech and the public's right to be protected from fraudulent solicitations. The court said that "a fine balance of interests was deliberately struck by Congress in the name and disclaimer requirements of FECA.... We believe they were meant to provide a safe haven to candidates and political organizations with respect to those organizations' names and sponsorship. If FECA requirements are met, then as we comprehend that legislation, no further constraints on names and disclaimers may be imposed by other governmental authorities."

The court concluded, however, that solicitations for political contributions were not "entirely immune from Postal Service scrutiny under section 3005. Apart from the name of a political organization and the presence or absence of a sponsorship disclaimer, much may appear in a

\*For more detail on this suit, see p. 7 of the January 1988 Record.

continued

solicitation for political contributions that could materially deceive readers and thereby constitute a false representation under section 3005."

#### **ANTOSH v. FEC (Second Suit)**

On January 7, 1988, the U. S. District Court for the District of Columbia ruled that the plaintiff James Edward Antosh lacked standing to seek the court's certification of his constitutional questions to the U.S. Court of Appeals for the District of Columbia. Mr. Antosh's questions were included in a complaint he brought against the FEC in September 1984. (Antosh v. FEC; Civil Action No. 84-2737)

Since Mr. Antosh lacked standing, the district court denied his motion to have his questions certified to the appeals court and granted the FEC's motion to dismiss these counts of his complaint.

#### **Background**

Mr. Antosh, a registered voter in Oklahoma, is president of Shawnee Garment Manufacturing, Inc. In December 1983, he filed an administrative complaint with the FEC alleging that the separate segregated funds of three international unions were affiliated with the AFL-CIO's political action committee (PAC)\* within the meaning of 2 U.S.C. §441a(a)(5). Mr. Antosh claimed that the four political committees had failed to disclose their affiliation in their respective Statements of Organization and, in making contributions to several political committees, had exceeded their single \$5,000 contribution ceiling. See 2 U.S.C. §§433(b)(2) and 441a(a)(2)(A).

After investigating Mr. Antosh's complaint, the Commission found no reason to believe that the labor union PACs had violated the election law and dismissed the complaint.

On September 6, 1984, Mr. Antosh filed suit with the district court to challenge the Commission's dismissal of his complaint. On December 3, 1984, pursuant to 2 U.S.C. §437h(a), he asked the district court to certify two constitutional claims to the appeals court. Specifically, he alleged that several provisions of the election law and FEC Regulations provided preferential treatment to labor organization PACs over trade association PACs. Mr. Antosh claimed that these distinctions violated his First and Fifth Amendment rights.

The FEC filed an opposition to Mr. Antosh's certification motion and a motion to dismiss these claims. The agency argued that Mr. Antosh

lacked standing to raise the constitutional questions and that federal courts had substantially settled the questions he raised.

#### **District Court's Ruling**

In denying Mr. Antosh's certification petition, the court first determined that it had the authority to decide whether Mr. Antosh had standing to seek certification of his Constitutional questions.

The court then went on to find that, although Mr. Antosh had standing to raise his questions under the election law, he lacked standing under Article III of the U.S. Constitution. The court concluded that Mr. Antosh failed to demonstrate the kind of injury required by Article III, that is, "some actual or threatened injury which is traceable to illegal conduct by the defendant" and which "is likely to be redressed by a favorable ruling."

First, the court rejected Mr. Antosh's claim that, as a businessman who might contribute to trade association political action committees, his voice had been diminished in the political process by the law's alleged discrimination against such committees.

The court then rejected Mr. Antosh's claim that he had a personal stake in the law's alleged discrimination against business political action committees by virtue of his position as president of a corporation that was a member of trade associations.

#### **FEC v. CITIZENS FOR THE PRESIDENT '84**

On January 6, 1988, the U.S. District Court for the Eastern District of Virginia, Alexandria Division, issued a consent order in FEC v. Citizens for the President '84, et al. (Civil Action No. 87-619-A). The court decreed that the Citizens for the President '84 (the Committee), a political committee, and the Committee's treasurer, Thomas Allen Bayer, had violated the following reporting requirements of the election law:

- o Defendants had failed to file the Committee's 1984 year-end report on time, in violation of 2 U.S.C. §434(a)(4)(A)(i); and
- o Defendants had failed to adequately disclose certain disbursements made for a federal candidate on the Committee's 1984 FEC reports, in violation of 2 U.S.C. §434(b)(5)(A) and 11 CFR 106.1(a).

Within 60 days of the court's consent order, the defendants were required to pay a \$1,000 civil penalty to the U.S. Treasury.

Finally, the court permanently enjoined defendants from similar violations of the election law in the future.

\*The full title of the AFL-CIO PAC is "American Federation of Labor Congress of Industrial Organizations, Committee on Political Education Political Contributions Committee (AFL-CIO COPE-PCC).

# STATISTICS

## 1987 PAC COUNT

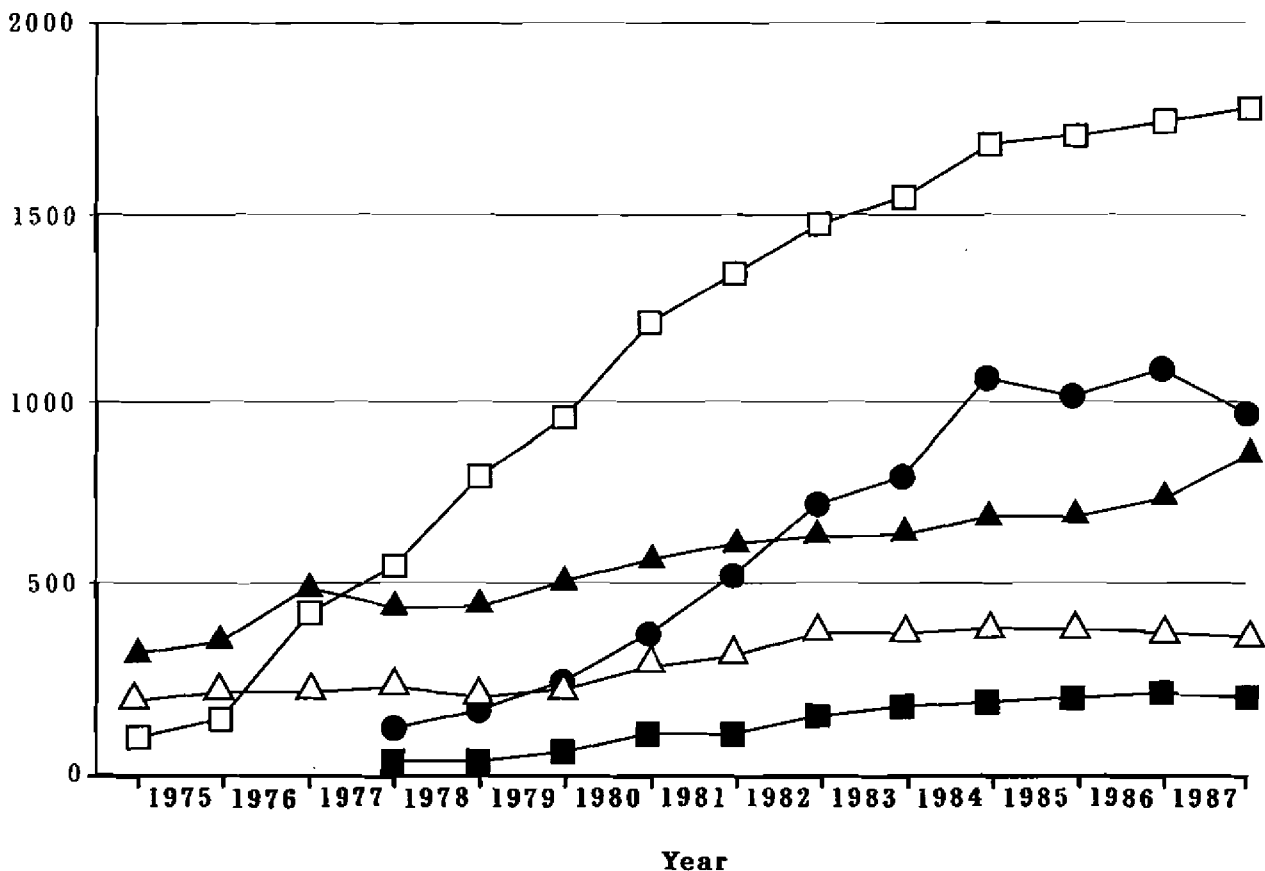
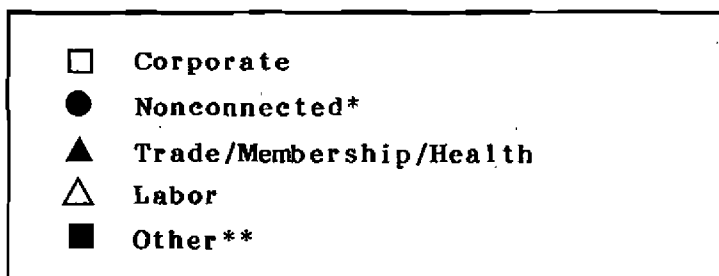
By the end of December 1987, 4,165 PACs were registered with the FEC. (The term PAC or political action committee refers to any political committee not authorized by a federal candidate or established by a political party.)

The graph below plots the total number of PACs in existence from 1973 through 1987. The graph does not reflect the financial activity of PACs. (Information on PAC activity for the 1987-88 Congressional election cycle will be issued in the future.)

More detailed information on PAC growth may be obtained from the FEC's January 18, 1988, press release, which is available from the FEC's Public Records Office. Call: 376-3140 locally or, toll free, 800/424-9530.

## PAC GROWTH

Number of PACs



\*For the years 1974 through 1976, the FEC did not identify subcategories of PACs other than corporate and labor PACs. Therefore, numbers are not available for Trade/Membership/Health PACs and Nonconnected PACs.

\*\*Includes PACs formed by corporations without capital stock and cooperatives. Numbers are not available for these categories of PACs from 1974 through 1976.



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