

RECORD

May 1988

999 E Street NW Washington DC 20463

Volume 14, Number 5



FEC TERMINATES MATCHING FUND ELIGIBILITY FOR EIGHT CANDIDATES

During recent months, the Commission determined that four Republican candidates and four Democratic candidates were no longer eligible for primary matching funds under the Presidential Primary Matching Payment Account. The candidates became ineligible for primary matching funds when each candidate announced publicly that he would no longer actively campaign for his party's Presidential nomination. 11 CFR 9033.5-(a)(1). The chart below lists each candidate and his date of ineligibility.

The Presidential primary candidates listed below became ineligible for public funds on the date each candidate ceased to be an active candidate for the Presidency. Under FEC rules, a candidate may also become ineligible for public funds 30 days after the candidate receives less than 10 percent of the votes in two consecutive primaries (the "10 percent rule"). 11 CFR 9033.5. A candidate's actual ineligibility date is based on which of the two dates occurs first.

Subject to certain requirements, ineligible candidates may, however, continue to receive primary matching funds to retire outstanding campaign debts incurred before the last day of eligibility and to pay for costs of winding down their campaigns. See 11 CFR 9034.5.

Candidates Ineligible for Primary Matching Funds

Candidate	Ineligibility Date
Babbitt, Bruce (D)	February 18, 1988
Dole, Robert (R)	March 29, 1988
DuPont, Pete (R)	February 18, 1988
Gephardt, Richard (D)	March 28, 1988
Haig, Alexander (R)	February 12, 1988
Hart, Gary (D)	March 11, 1988
Kemp, Jack (R)	March 10, 1988
Simon, Paul (D)	April 7, 1988

FEC APPROVES MATCHING FUNDS FOR PRESIDENTIAL CANDIDATE

Lyndon H. LaRouche, a Democratic candidate, was declared eligible to receive primary matching funds for his 1988 Presidential primary campaign. After finding LaRouche eligible, the Commission certified his first payment to the U.S. Treasury on March 24, 1988. This certification, supplemented by certifications to eight other eligible candidates on March 30, raised to \$48,101,890.40 the total amount of payments the agency had certified to the Treasury by the end of March.

The summary chart below provides cumulative information on certifications of primary matching funds made to fifteen eligible Presidential candidates between January 1 and March 30, 1988. The chart also indicates the most recent certifications made to eligible candidates.

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. The federal government will match up to \$250 of an individual's total contribu-

continued on p. 2

TABLE OF CONTENTS

PUBLIC FUNDING

- 1 Termination of Matching Fund Eligibility
- 1 Matching Fund Certifications

SPECIAL ELECTIONS

- 2 New Jersey

3 ADVISORY OPINIONS

COURT CASES

- 6 Creditors' Claims Against '84 Hart Campaign
Vacated
- 7 Common Cause v. FEC (Third Suit)
- 8 FEC v. Dominelli

PUBLIC FUNDING

continued from p. 1

tions to an eligible candidate. Contributions from political committees are not 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	Amount Certified March 30	Total Amount Certified
Babbitt (D)		\$ 870,134
Bush (R)	\$557,185	7,416,634
Dole (R)	469,055	7,073,409
Dukakis (D)	254,387	5,938,501
DuPont (R)		2,300,502
Fulani (Ind.)		307,225
Gephardt (D)	286,176	2,626,873
Gore (D)	117,312	2,657,854
Haig (R)		484,622
Hart (D)		1,122,282
Jackson (D)	450,547	1,498,085
Kemp (R)		4,506,455
LaRouche (D)		100,000
Robertson (R)	307,767	8,446,100
Simon (D)	115,347	2,753,214

*As of March 30, 1988.

SPECIAL ELECTIONS

NEW JERSEY SPECIAL ELECTIONS

On June 7, 1988, New Jersey will hold a special primary election in its third Congressional District to fill the seat vacated by the death of Representative James J. Howard. A special general election will be held on November 8, 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 elections should continue to file on their monthly schedule. (See the monthly filer chart on p. 3 of the January 1988 Record.)

Candidates Running Only in Primary Election

Report	Period Covered	Registered/Certified Mail Date*	Filing Date
Pre-primary	4/1-5/18	5/23	5/26
July quarterly	5/19-6/30	7/15	7/15

Candidates Running in Primary and General Elections

Report	Period Covered	Registered/Certified Mail Date*	Filing Date
Pre-primary	4/1-5/18	5/23	5/26
July quarterly	5/19-6/30	7/15	7/15
October quarterly	7/1-9/30	10/15	10/15
Pre-general	10/1-10/19	10/24	10/27
Post-general	10/20-11/28	12/8	12/8

*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.

ADVISORY 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
1988-13	Campaign funds used to pay portion of apartment rent in building owned by candidate. (Date made public: March 11, 1988 ; Length: 2 pages)
1988-14	Joint PAC established by two corporations; affiliation of corporations. (Date made public: March 11, 1988; Length: 2 pages, plus 6-page supplement)
1988-15	Corporate sponsorship of voter education program for children, e.g., voter guide, broadcast of Presidential candidate interviews. (Date made public: March 17, 1988; Length: 2 pages)
1988-16	Membership organization PAC's program to support candidates through independent expenditures and partisan communications to members. (Date made public: March 28, 1988; Length: 12 pages)
1988-17	Corporation's marketing and sale of medallions depicting candidates and national nominating conventions. (Date made public: March 31, 1988; Length: 10 pages)
1988-18	Liability of union for federal election contributions made from its donations to local party organization and non-federal candidates. (Date made public: April 8, 1988; Length: 2 pages)

AO 1988-1: Activity to Influence Delegate Selection After Presidential Primary

After FLorida's Presidential primary on March 8, Congressional district caucuses were scheduled for March 26 to select delegates pledged to Democratic primary candidates at the Democratic National Convention. (The number of delegates pledged to each Democratic candidate was based on the candidate's share of primary votes in each Congressional district.) Since the caucuses directly select delegates to the Democratic National Convention, the activities of individuals who seek selection as delegates and of delegate committees are subject to the FEC's delegate selection regulations. See 11 CFR 110.14.

Mr. Rand Hoch, an unpaid coordinator for Governor Dukakis' primary campaign in two Florida Congressional districts, sought nomination as a Dukakis delegate in one of these districts. Mr. Hoch also directed the campaign activities of delegate committees formed by individuals who sought selection as Dukakis delegates from the two districts. A number of his proposed activities would result in contributions to Dukakis, as described below.

Delegate Committees as Political Committees

Under the delegate selection regulations, a delegate committee formed by individuals who sought selection as Presidential delegates in the Florida caucuses would become a political committee if the committee received contributions or made expenditures in excess of \$1,000. Once it became a political committee, a delegate committee would be subject to the election law's registration and reporting requirements and its limits on contributions. 11 CFR 110.14(g).

Delegate Committee Communications

When a communication employs public political advertising to expressly advocate the election or defeat of a clearly identified candidate, the communication must include a disclaimer notice indicating the sponsor and whether the candidate authorized the communication. 2 U.S.C. §441d; 11 CFR 110.11. Although the three types of communications planned by the Dukakis delegate committees would refer to his Presidential campaign, two types—palm cards and phone banks—would not have to include a disclaimer notice because they would not involve general public political advertising. However, a third type—a direct mail piece—was an example of

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)

public political advertising. Consequently, the piece would have to include a disclaimer notice if it expressly advocated Governor Dukakis' Presidential candidacy.

Campaign Materials Supplied to Delegates/Delegate Committees

Individuals who sought selection as Dukakis delegates, as well as Dukakis delegate committees, could use campaign literature supplied by the Dukakis campaign to advocate the delegates' selection. However, any costs incurred for disseminating or republishing these materials would be in-kind contributions to the Dukakis campaign. Such contributions would count against:

- o The contribution limits of the donors (i.e., the individuals seeking delegate selection or the delegate committees); and
- o Governor Dukakis' spending limit in Florida, if the expenditures for the materials were coordinated with the Dukakis campaign. 11 CFR 110.14(f)(3) and (i)(3)

Affiliation of Delegate Committees

Under the delegate selection regulations, the Commission may consider a variety of factors in determining whether a delegate committee is affiliated with a Presidential candidate's authorized committee. 11 CFR 110.14(j). These factors include:

- o Whether a person associated with the Presidential candidate's authorized committee plays a significant role in the formation of the delegate committee;
- o Whether any person associated with the Presidential campaign directs or organizes the specific campaign activities of the delegate committee;
- o Whether one committee provides a mailing list to the other committee;
- o Whether the Presidential campaign arranges for contributions to be made to the delegate committee; and
- o Whether the Presidential campaign provides ongoing administrative support to the delegate committee.

Based on these factors, the Commission concluded that the proposed delegate committees would be affiliated with the Dukakis campaign. For example, as noted above, Mr. Hoch is associated with the Dukakis campaign and planned to organize and direct several Dukakis delegate committees. Other proposed activities would also represent links between the delegate committees and the Dukakis campaign: exchanges of lists between the campaign and the delegate committees for phone bank and direct mail activities; contributions to the delegate committees arranged by the Dukakis campaign; assistance provided to the committees by paid Dukakis campaign staff; ongoing administrative support supplied to the committees by the Dukakis campaign

and the filing of statements and reports for the delegate committees by Mr. Hoch or another Dukakis campaign aide.

Moreover, because Mr. Hoch planned to establish and direct activities of delegate committees in two Congressional districts, the two delegate committees would be affiliated with each other.

Membership Lists Supplied to Delegate Committees

Since the regulations make clear that neither individuals seeking selection as delegates nor delegate committees may accept contributions from prohibited sources, Mr. Hoch could not accept membership lists from his labor or corporate clients. See 11 CFR 110.14(g).

However, Mr. Hoch could accept the lists from clients who qualified as lawful sources, such as federal political committees. The donation of a membership list would constitute an in-kind contribution. If the list were given to a delegate committee, the donation would be subject to contribution limits. The monetary value of the list could not exceed the donor's per election contribution limit for that delegate committee. Commissioner Scott E. Thomas filed a concurring opinion. (Date issued: March 7, 1988; Length: 8 pages, including concurring opinion)

AO 1988-4: Affiliation of PACs Resulting From Corporate Merger

Although the Borg-Warner Corporation (BW) is not a direct subsidiary of Merrill Lynch Corporation (ML), the two corporations nevertheless have an affiliated relationship by virtue of the control ML exercises over BW. Thus, MLPAC and BWPAC, the separate segregated funds of the two corporations, are considered affiliated political committees, subject to a single monetary limit on contributions they both receive and make. 2 U.S.C. §441a(a)(5).

Background

ML acquired the entire equity interest in BW through the Borg-Warner Holdings Corporation (the Holdings Corporation), a corporation established by ML Capital Partners, Inc. (MLCP). (ML established MLCP to initiate leveraged buyouts of publicly owned companies and to manage investments of acquired companies.)

An ML subsidiary managed by MLCP, ML Entities, supplied the capital for the buyout of BW. A wholly owned subsidiary of the Holdings Corporation, AV Acquiring Corporation, actually signed the merger agreement with BW.

Affiliation Between MLPAC and BWPAC

Since BW did not become a direct subsidiary of ML as a result of their merger, the corporations' separate segregated funds are not automati-

cally affiliated. 2 U.S.C. §441a(a)(5); 11 CFR 110.3(a)(1)(ii)(A). Under the election law, however, two PACs are considered affiliated if their corporate sponsors are affiliated, that is, if one corporation exercises direction or control over the other's operations. To help determine such affiliation, FEC regulations provide the following indicia:

- o Ownership of a controlling interest in voting shares or securities;
- o Provisions (of by-laws or constitutions) which give one entity the authority, power or ability to direct another entity; and
- o The authority, power or ability to hire, appoint, discipline, discharge, demote, remove or otherwise influence the decision of the officers of an entity. 11 CFR 110.3(a)(1)(iii)(A), (B) and (C).

In this case, the post-merger relationship between ML and BW satisfies the indicia of affiliation. Although ML's acquisitions corporation, MLCP, owns no controlling interest in BW,* MLCP: 1) manages Holdings Corporation's equity interest in BW and 2) has a direct relationship with six directors initially appointed by Holdings to BW's Board. These six directors hold executive positions in MLCP or Merrill Lynch, Pierce, Fenner and Smith, Inc., ML's principal subsidiary. Consequently, MLPAC and BWPAC, the respective PACs of ML and BW, are considered to be affiliated political committees.

Commissioner Elliott filed a concurring opinion. (Date issued: March 17, 1988; Length: 5 pages, plus concurring opinion)

AO 1988-5: Presidential Matching Payments in '88 Used to Pay '84 Debts

Hart '88 (the '88 campaign), Gary Hart's principal campaign committee for his 1988 Presidential primary campaign, may not use 1988 primary matching funds to retire debts remaining from Senator Hart's publicly funded '84 campaign (the '84 campaign). Payments by the '88 campaign to liquidate the '84 campaign's debts would be considered nonqualified campaign expenses. Consequently, if the '88 campaign used its matching funds to retire the debts of Hart '84, the '88 campaign would be required to repay the funds to the U.S. Treasury. 26 U.S.C. §9038(b)(2). Depending on the circumstances, the '88 campaign could also be subject to a civil or criminal penalty for violation of the public funding statutes governing unlawful use of public funds. 2 U.S.C. §437g and 26 U.S.C. §9042(b).

Further, any claim by the '88 campaign for matching funds to liquidate its own debts or to

pay for winding down costs could be affected by the inclusion of any nonqualified campaign expenses on its statement of net outstanding campaign obligations. 11 CFR 9034.1(b). (Since Gary Hart has withdrawn from the 1988 Presidential race, he may now receive primary matching payments only for the purpose of liquidating qualified campaign expenses of his '88 campaign and for winding down his campaign.*)

The '88 campaign may, however, treat its cash balance as "excess campaign funds" to be used for the '84 campaign's debt retirement, but only after the '88 campaign has been audited by the FEC and has:

- o Made any required repayments of public funds; and
- o Paid any possible penalties required by the statute.

The Commission noted that the provision governing excess campaign funds (2 U.S.C. §439a) does not supersede the public funding statutes governing the use of a cash balance by a publicly funded campaign.

1984 Debt Retirement Not Qualified Campaign Expenses

Under the Matching Payment Account, campaigns may use primary matching funds only to pay for qualified campaign expenses. 26 U.S.C. §9042(b); 11 CFR 9034.4(a)(1). The election law defines qualified expenses to include "any purchase, payment, loan, advance or gift of money, or anything of value, incurred by a Presidential primary campaign in connection with the candidate's nomination effort. 26 U.S.C. §9032(9)(A). FEC regulations specify that, to qualify for this definition, a campaign expense (i.e., a purchase, payment or loan) must be incurred between the date an individual becomes a Presidential primary candidate and the last day of the candidate's eligibility for public funds. 26 U.S.C. §§9032(6) and (9); 11 CFR 9032.9(a)(1) and (2). Furthermore, FEC determinations regarding a primary candidate's eligibility and entitlement to public funds, as well as the candidate's obligation to repay funds, are based on one candidacy within a single Presidential cycle. 26 U.S.C. §§9033(b) and (c), 9034(a), 9036(a), 9037(b) and 9038(b).

Consequently, payments by the '88 campaign to retire debts of the '84 campaign would not be qualified campaign expenses of the '88 campaign. The Commission concluded that, if the '88 campaign used '88 matching funds for nonqualified purposes, in contravention of this opinion, it

continued

*MLCP owns the right to vote a controlling interest in BW shares through ML Entities. However, this right is constrained by fiduciary obligations to vote shares on behalf of others.

*Note that, subject to certain requirements, ineligible candidates may continue to receive primary matching funds to retire outstanding campaign debts incurred before the last day of eligibility and to pay for costs of winding down their campaigns. See 11 CFR 9034.5.

would risk a knowing and willful violation of the election law. 2 U.S.C. §437g(a)(5)(C). (Date issued: March 28, 1988; Length: 4 pages)

AO 1988-7: Candidate's Use of Cash Gifts for Campaign Expenditures

Mr. Peter M. Bakal is an undeclared 1988 candidate for a House seat from New York. Annual cash gifts of \$20,000, which Mr. Bakal received from his parents between 1985 and 1987, and which he anticipates receiving again in 1988, are considered his personal funds. Accordingly, if Mr. Bakal donates these cash gifts to his House campaign, the gifts will not be subject to the election law's dollar limits on contributions, even if his parents give the 1988 cash gift to him after he declares his candidacy.

The election law places monetary limits on contributions to candidates. 2 U.S.C. §441a(a)(1)-(A). However, FEC regulations permit a candidate to use unlimited personal funds for campaign expenditures. 11 CFR 110.10(a). The regulations define personal funds to include personal gifts which a candidate customarily received before becoming a candidate. 11 CFR 110.10(a)(2). Based on Mr. Bakal's statements and the fact that he was not a federal candidate in 1984 and 1986, the Commission concluded that the gifts received between 1985 and 1987 were of a personal nature, unrelated to any campaign for federal office. Therefore, if Mr. Bakal receives another such cash gift in 1988 under similar circumstances, he may consider the funds a customary gift and donate them to his campaign as personal funds. Commissioners Lee Ann Elliott and Joan D. Aikens filed a joint concurring opinion (Date issued: March 29, 1988; Length: 4 pages, including concurring opinion)

AO 1988-8: PAC Contributions by Estate Trust

The National Office Machine Dealers Association Political Action Committee (NOMDA), a multicandidate committee registered with the FEC, may accept proceeds from an estate trust in annual increments of up to \$5,000. The trust was established to receive the assets of Mr. Wilson's estate and insurance proceeds payable on his death. Since Mr. Nelson's estate trust is considered his alter ego for purposes of making contributions to NOMDA, the trust is subject to the same contribution limits and prohibitions that Mr. Nelson would have been. This means that Mr. Nelson's estate trust may directly contribute no more than \$5,000 of the proceeds to NOMDA each year. 2 U.S.C. §§431(11) and 441a(a)(1)(C).

Alternatively, NOMDA may handle the trust proceeds according to procedures approved by the Commission in advisory opinions 1983-13 and

1986-24.* Under these procedures, NOMDA may establish a special escrow account to receive the entire bequest from the trust and may distribute the bequest to its general account in annual increments of no more than \$5,000, until the escrow account balance is reduced to zero. Commissioners Scott E. Thomas and Thomas J. Josefiak filed dissenting opinions. (Date issued: March 30, 1988; Length: 6 pages, including dissenting opinions)

COURT CASES

COURT VACATES CREDITORS' CLAIMS AGAINST 1984 HART CAMPAIGN

On March 10, 1988, the U.S. District Court for the District of Columbia granted the FEC's motion to vacate two writs of attachment filed by creditors of Americans for Hart, Inc., Gary Hart's 1984 publicly funded Presidential campaign. The court also dismissed the FEC as a party to the cases and remanded the cases to the Superior Court for the District of Columbia. (Xerox Corp. v. Americans with Hart, Inc. and Harry Kroll v. Americans with Hart, Inc.; Civil Action Nos. 88-0086 and 88-211, respectively) The court has not yet acted on the FEC's motion to dismiss a third writ of attachment filed by Semper-Moses Associates, Inc., another creditor of the 1984 Hart campaign.

Background: Creditors' Efforts to Attach Matching Funds

The Commission declared Gary Hart eligible to receive matching funds on December 28, 1987, 13 days after his decision to reenter the 1988 campaign for the Presidency.

On December 28, 1987, and again on January 12, 1988, the Commission was served with writs of attachment for assets belonging to the 1984 Hart campaign. The General Counsel filed motions with the district court which sought to have the writs vacated. Because the creditors who served the writs were in litigation with the 1984 Hart campaign, the Commission also authorized the General Counsel to send letters advising the creditors that no federal statute authorized diversion of matching funds by the government to any other party. Moreover, the letters said that any attempt to execute a

*AOs 1983-13 and 1986-24 are summarized in the November 1983 and October 1986 issues of the Record respectively.

creditor's judgment against funds of the United States government would be barred by sovereign immunity.

In addition, the letters noted that the Commission did not possess any assets which belonged to the 1984 Hart campaign. The Commission had certified that Hart was eligible to receive matching funds for his 1988 Presidential nomination campaign. The 1988 campaign was called Friends of Gary Hart-1988, Inc., a separate corporate entity from Americans with Hart.

In conclusion, the letters explained that the Commission did not hold any matching payments that the candidate might be entitled to; nor did it make the actual payment of primary matching funds. Under the Primary Matching Payment Act, the Commission determines the eligibility of candidates to receive matching funds and certifies the amount the candidate is to receive to the Secretary of the Treasury. The Secretary--not the Commission--is responsible for making the payment.

COMMON CAUSE v. FEC (Third Suit)

On March 15, 1988, the U.S. Court of Appeals for the District of Columbia Circuit reversed a decision by the district court in a suit filed by Common Cause, which had challenged the FEC's dismissal of the organization's administrative complaint. (Common Cause v. FEC; Civil Action No. 87-5036) The appeals court found "entirely permissible" the interpretation of 2 U.S.C. §432(e)(4) that the FEC had applied to allegations contained in Common Cause's complaint. The appeals court also vacated the district court's order remanding the case to the Commission for a statement of reasons concerning the FEC's tie-vote dismissal of an allegation in the complaint and instructed the district court to enter an order dismissing the suit.

District Court's Ruling

Common Cause had challenged the FEC's dismissal of allegations in its administrative complaint based on the agency's interpretation of 2 U.S.C. §432(e)(4), a provision that bars a political committee that is not an authorized candidate committee from using a candidate's name in the name of the committee. Common Cause maintained that, during the 1980 Presidential elections, five political committees not authorized by Ronald Reagan had violated this provision by using the candidate's name in the names of fundraising and expenditure projects the committees had sponsored.

In its ruling on the case, the district court adopted Common Cause's interpretation of the provision, that is, that any "name" used by a political committee for public identification constituted a "name" within the meaning of the

election law. Accordingly, the court found that the FEC's dismissal of allegations in the complaint pertaining to violations of §432(e)(4) were contrary to law. The court ordered the FEC to conform with its ruling within 30 days.

The district court also ruled that the FEC's deadlock-vote dismissal of another allegation in Common Cause's complaint concerning coordinated expenditures by two of the political committees was contrary to law and ordered the FEC to provide a statement of reasons for this action, also within 30 days of the court's ruling.* (For a detailed summary of the district court's opinion, see page 7 of the February 1987 Record.) Upon the FEC's request, the district court stayed the effect of its decision pending appeal by the agency.

Appeals Court Ruling

Committee Names. In reversing the district court's ruling, a three-judge panel of the appeals court affirmed the FEC's consistent interpretation of §432(e)(4), that is, that a political committee's "name" refers only to the official or formal name under which the committee must register. The court held that the "sparse legislative history of §432(e)(4) shows nothing definitive to undercut the Commission's consistent interpretation of this provision as applying only to the official name of a political committee." The court therefore concluded that, while Common Cause's interpretation of the provision was "not totally implausible," it did not "preclude the Commission's quite plausible alternative. There is, in short, a genuine ambiguity in §432(e)(4)'s text."

Further, considering the structure of the statute, the appeals court agreed with the FEC's argument that "name" should be similarly defined in §§432(e)(4) and 433(b)(1). (Section 433(b)(1) requires unauthorized committees to register one official name with the FEC.) The court held that these two provisions, along with the Act's disclaimer provision (§441d(a)), allowed the Commission "to establish a coherent means by which readers and potential contributors can find out the identity and status of those who are soliciting them."

In dissenting from the majority decision on the "name" issue, Judge Ruth B. Ginsburg argued that "Congress enacted §432(e)(4) to avoid public confusion and to increase public awareness of the sources of campaign messages....Sensibly and purposefully construed, the §432(e)(4) prohibition covers not only the formal, registered name of a

continued

**The district court dismissed a third claim concerning coordination of the unauthorized committees' expenditures with the official Reagan campaign. See p. 7 of the February 1987 Record for more details.*

political committee, but also the name the committee actually uses to identify itself in communications with the public purporting to solicit contributions for, or on behalf of, a candidate."

Deadlock Vote. Finally, the appeals court reversed the district court's ruling that the FEC's deadlock vote dismissal of other allegations against two political committees must be remanded for a statement of reasons. The appeals court concluded that its recent ruling in Democratic Congressional Campaign Committee (DCCC) v. FEC (831 F.2d 1131)* was applicable to the circumstances of Common Cause's case. In DCCC v. FEC, the court found that the FEC's dismissal of an administrative complaint as the result of a deadlock vote was subject to judicial review. Consequently, the court could require the FEC to supply a statement of reasons for such dismissals.

Nevertheless, the court declined to "apply the precedent retroactively to this case, which arose before our DCCC decision....To do so, in this case at least, would be an exercise in futility and a waste of the Commission's resources." The court added, however, that it would "enforce the DCCC rule with respect to all Commission orders of dismissal based on deadlock votes that are contrary to General Counsel recommendations issued subsequent to our decision in that case."

FEC V. DOMINELLI

On March 16, 1988, the U.S. District Court for the Southern District of California granted the FEC's motion for a default judgment against J. David Dominelli. The FEC had filed its suit against Mr. Dominelli with the district court in March 1983. (FEC v. J. David Dominelli; Civil Action No. 83-0595-GT(M)) After the district court granted Mr. Dominelli's motion* to dismiss the case in November 1984, the FEC appealed the court's decision to the U.S. Court of Appeals for the Ninth Circuit. (Civil Action No. 85-5525) In January 1987, the appeals court reversed the district court's decision and remanded the case to the district court.

Since Mr. Dominelli never responded to the FEC's complaint on remand, the agency asked the district court to issue a default judgment against Mr. Dominelli. In response to the FEC's request, the district court issued a judgment in which it decreed that:

- o Mr. Dominelli violated section 434(c) of the election law by failing to report \$8,471 in independent expenditures he incurred for an ad placed in a November 1980 issue of The Chicago Tribune. The ad had expressly advocated the defeat of former President Jimmy Carter in his 1980 reelection bid.
- o Mr. Dominelli report these expenditures within 30 days of the entry of the court's order and default judgment.
- o Mr. Dominelli pay an \$8,471 civil penalty for the violation.

**The district court's decision in the case is summarized on p. 6 of the January 1985 Record and the appeals court's decision, on p. 5 of the March 1987 Record. Note that, since FEC v. Furgatch presented facts nearly identical to those addressed in the Dominelli case, the cases were reviewed together in both the district and appeals courts.*

**For a summary of the appeals court's decision in the suit, see p. 5 of the November 1987 Record.*

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, D.C. 20463

Official Business

Bulk Rate Mail
Postage and Fees Paid
Federal Election Commission
Permit Number G-31

