

FEDERAL ELECTION COMMISSION



Press Office
999 E Street, N.W., Washington, D.C. 20463
Phone: Local 202-219-4155 Toll Free 800-424-9530

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CONTACT: FRED EILAND
SHARON SNYDER
SCOTT MOXLEY

IN COMPLIANCE WITH COURT, FEC TO ACT AS SIX MEMBER BODY --No Decision Made Concerning Appeal Options--

WASHINGTON -- In executive session today, the Federal Election Commission did not decide on a final course of action but, in the interim, voted to conform with a recent federal appeals court decision that declared the agency's eight member composition unconstitutional.

The FEC, which has exclusive civil jurisdiction over enforcement of federal campaign finance laws, will continue to perform all its normal functions under the direction of the six Commissioners who are nominated by the President and confirmed by the Senate, according to Commission Chairman Scott E. Thomas.

Future action in this case will be decided by the Commissioners after legal analysis has been completed, said Chairman Thomas.

Based on the Commission's vote, Ex Officio members, who are the Secretary of the Senate and Clerk of the House, and their Special Deputies will not be treated as members of the Commission.

Today's action was in response to an October 22 ruling by the U.S. Court of Appeals in *FEC v. NRA* that, in part, said the presence of two, non-voting Ex Officio members who represent Congress was an unconstitutional extension of legislative power into an executive agency.

The court of appeals decision reverses a judgment by the district court which agreed with the FEC and found that the NRA Political Victory Fund had violated the Federal Election Campaign Act of 1971, as amended, by using \$415,000 in prohibited corporate funds in connection with a federal election. By its ruling, the court of appeals did not address the legality of NRA's action.

Without the presence of the Ex Officio members or their Special Deputies, the Commission unanimously approved the following motion:

"Subject to any further judicial action, the Commission shall conform to the D.C. Circuit opinion in *FEC v. NRA* holding unconstitutional that portion of FECA which provides for Ex Officio members of the Commission. This means that, subject to any further judicial action, the Ex Officio officers, and their designees, will not be considered members of the Commission, and the Commission will function as a six-member agency."

Following approval of that motion, the Commission further directed that:

-- The Ex Officios, their Special Deputies, and representatives of those Special Deputies, will not be accorded access to non-public Commission meetings, documents, matters, or proceedings;

-- The Secretaries to the Special Deputies, who serve as Commission employees, shall be offered temporary assignment to other positions within the Commission; and

-- Any confidential Commission documents in the possession of persons outside the Commission shall be placed under the control of the Commission pursuant to the applicable confidentiality provisions.

Prior to *Buckley v. Valeo* in 1976, the President, the Senate and the House each had two appointments to the FEC. In *Buckley*, the Supreme Court ruled the Commission's composition, at that time, was unconstitutional and said that the President must nominate and the Senate confirm each of the six Commissioners.

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