



THE FEDERAL ELECTION COMMISSION

RECORD

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RESTRICTIONS ON THE USE OF CAMPAIGN FINANCE REPORTS

On December 21, 1978, the Federal Election Commission approved an addition to an information sheet on the availability of FEC public records. The new language concerns the legal restrictions on the use of information in the campaign finance reports disclosed by the Commission. Under 2 U.S.C. §438(a)(4), information copied from campaign finance reports and statements may not be sold or utilized for the purpose of soliciting contributions or for any commercial purpose. This includes use of information copied from FEC reports to compile a mailing list for sale or rental. The information sheet explains that this prohibition is not limited to solicitations of contributions to Federal candidates but extends also to solicitations of any contribution, whether political, charitable or other. It is unlawful, for example, to use information in disclosure reports to solicit contributions to a State or local candidate or to a charitable organization.

The prohibition on making commercial use of information taken from campaign finance reports applies to a mailing list compiled to solicit sales, whether or not for profit. The FEC regulations exempt from the definition of commercial purpose, however, the use of information in news media and books. Thus, a person may publish information taken from reports, provided the principal purpose of the publication is not reprinting disclosure reports.

Violations of this provision of the Act are punishable by payment of a civil penalty. Inquiries concerning the use of disclosure documents should be addressed to the Public Records Office.

SPECIAL ELECTIONS IN WISCONSIN AND CALIFORNIA

Wisconsin has scheduled special elections for February 20, 1979 (primary) and April 3, 1979 (general) to fill the seat of the late Representative William A. Steiger (6th Congressional District). The special elections in California to fill the seat of the late Representative Leo Ryan (11th Congressional District) have been scheduled for March 6, 1979 (primary) and April 3, 1979 (general).

Candidates in these special elections and all political committees supporting such candidates, either by making contributions to them or making expenditures on their behalf, must file pre- and post-election reports. Pre-election reports must be filed ten days before the election; post-election reports are due 30 days after the election. Committees making monthly reports are exempt from filing pre- and post-election reports.

For more details, consult the FEC Campaign Guide for Congressional Candidates or the Campaign Guide for Political Committees. Information on the specific filing dates for each special election may be obtained by calling the toll-free line of the Federal Election Commission (800/424-9530).

IRS REGULATIONS

Political organizations under the jurisdiction of the Federal Election Commission are reminded that they may have certain obligations to file Federal income tax returns with the Internal Revenue Service. As a courtesy to our readers, and at the request of the Internal Revenue Service, the following information is reprinted from the Internal Revenue Code:

Section 527 of the Internal Revenue Code of 1954 provides that political organizations are exempt organizations for income tax purposes. However, amounts received in the ordinary course of any trade or business and any investment income received by a political organization such as interest, dividends, rents and royalties, plus the excess (if any) of gains from the sale or exchange of assets over the losses from the sale or exchange of assets are includable in income for federal income tax purposes.

Taxable income of a political organization is the excess (if any) of the political organization's gross income for the taxable year (not including such exempt items as contributions, membership dues or proceeds from certain fund-raising events) over the direct expenses

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incurred in earning that income. A specific deduction of \$100 is allowed against taxable income.

Thus, a political organization is subject to federal income tax, and is required to file a return, if its taxable income exceeds \$100.

Newsletter funds described in section 527(g) of the Code are not entitled to the specific deduction of \$100 noted above.

Political organizations that are subject to federal income tax under section 527 of the Code are required to file a Form 1120-POL on or before the 15th day of March following the close of the calendar year; returns made on the basis of a fiscal year must be filed on or before the 15th day of the third month following the close of the fiscal year.

Form 1120-POL, as well as assistance in completing the form, is available at local offices of the Internal Revenue Service.

For further information, contact the Internal Revenue Service.



ADVISORY OPINION REQUESTS

The following chart lists Advisory Opinion Requests (AOR's), with a brief description of the subject matter, the date the requests were made public and the number of pages of each request. The full text of each AOR is available to the public in the Commission's Office of Public Records.

| AOR | Subject | Date Made Public | Number of Pages |
|----------|--|------------------|-----------------|
| 1978-100 | Use of surplus campaign funds. | 12/13/78 | 2 |
| 1978-101 | Use of money held in an account to cover an uncashed check. | 12/19/78 | 1 |
| 1978-102 | Payment for non-partisan radio and television announcements. | 12/20/78 | 2 |
| 1978-103 | Method of reporting certain campaign contributions. | 12/22/78 | 2 |

ADVISORY OPINIONS: SUMMARIES

Designated as AO's, Advisory Opinions discuss the application of the Act or Commission regulations to specific factual situations. Any qualified person requesting an Advisory Opinion who in good faith acts in accordance with the opinion will not be subject to any sanctions under the Act. The opinion may also be relied on by any other person involved in a specific transaction which is indistinguishable in all material aspects from the activity discussed in the Advisory Opinion. Those seeking guidance for their own activity should consult the full text of an Advisory Opinion and not rely only on the summary given here.

AO 1978-83: Use of Authorization Form to Secure Corporate Approval of Solicitations by Trade Association

The Construction Equipment Political Action Committee (CEPAC), a separate segregated fund of a trade association, may set up a booth at the annual convention of that trade association to attempt to secure corporate approval for CEPAC solicitations. Specifically, CEPAC may use the booth to obtain from representatives of the member corporations of the trade association their signatures on an authorization form giving approval for the solicitation of their stockholders and their executive and administrative personnel. 11 CFR 114.8. CEPAC's use of special authorization forms to obtain corporate approval to solicit authorized personnel is permissible as long as:

- The authorization form states its purpose and any limitations that CEPAC wishes to place on the class of persons to be solicited; and
- The authorization form indicates that corporate approval is required and that such solicitations must be limited to one trade association per year.

A booth may be used to secure corporate approval for solicitations provided:

- The solicitation approval request is in writing; and
- The request form is signed by a person authorized to grant such approval.

Once corporate approval has been granted, CEPAC may solicit and accept contributions from the personnel authorized to be solicited by the corporation. Chairman Joan Aikens filed a dissenting opinion. (Length, including dissenting opinion: 8 pages)

AO 1978-93: Use of Excess Campaign Funds

Senator Lloyd Bentsen may transfer unexpended campaign funds from his 1970 campaign to his reelection committee for use in the 1982 election. Commission regulations provide that a candidate may transfer funds from a previous campaign committee to a currently registered principal

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campaign committee, as long as none of the transfers consist of funds which would be in violation of the Act. (Length: 2 pages)

With regard to this opinion and the following two opinions, the Commission has no jurisdiction over the application of tax laws and House or Senate Rules to the situation described.

AO 1978-94: Use of Excess Campaign Funds

Excess campaign funds remaining from the principal campaign committee and three other authorized committees of the late Congressman Ralph H. Metcalfe may be used for several purposes consistent with State and Federal laws. The funds may be transferred to Federal, State or local election campaign committees of the Congressman's son, to a political ward organization, to the surviving members of the Congressman's immediate family, to employees of his congressional and campaign committee staffs and to qualified charitable organizations.

For contribution purposes, the four campaign committees are considered a single committee. Thus, any transfers to political committees or candidates involved in Federal elections would be subject to one overall contribution limit. A contribution to Ralph Metcalfe, Jr., as a candidate for Federal office, for example, would be limited to \$1,000 per election. Transfers to a State campaign of Ralph Metcalfe, Jr. would not be limited, however, since contributions made to State and local elections are not subject to the monetary limits of the Act. (Length: 3 pages)

AO 1978-95: Use of Excess Campaign Funds

Congressman James J. Florio may use excess campaign funds to retire a debt remaining from his 1977 gubernatorial campaign provided there are no State or Federal laws prohibiting the transaction. The Act provides that candidates for Federal office may use excess campaign funds to support their activities as Federal officeholders, to contribute to a qualified charitable organization or to defray expenses for "any other lawful purpose." 2 U.S.C. §439a. The committee should report the transfer of funds on the report covering the period when the transfer is made. (Length: 2 pages)

AO 1978-96: Honoraria

When Congressman Clarence J. Brown accepts a speaking engagement, he may request that the sponsoring organization donate his honorarium to any of five charitable organizations he suggests in a letter. Under 2 U.S.C. §441i(b), if a sponsoring organization chooses to make a donation to any of the five or more charitable organizations suggested by Mr. Brown (instead of paying an honorarium to Mr. Brown), the payment will not count against Mr. Brown's honorarium limit. (Length: 2 pages)

ALTERNATE DISPOSITION OF ADVISORY OPINION REQUESTS

The Commission has responded to the following Advisory Opinion Requests in a manner other than the issuance of an Advisory Opinion:

- AOR 1978-70 was withdrawn by its requester.
- AOR 1978-81 was answered by a letter from the Commission's General Counsel stating that the Commission had considered a response proposed by the Office of General Counsel, but was unable to agree upon an opinion by the requisite affirmative vote of four members.



COURT DISMISSES TWO SUITS CHALLENGING CONSTITUTIONALITY OF THE ACT

Two suits filed against the Federal Election Commission in 1978 challenged the constitutionality of §441b of the Act, which limits solicitations by corporations (and their separate segregated funds (PACs)) of voluntary contributions to their PACs. The United States District Court for the District of Columbia dismissed both suits.

PLAINTIFFS' ARGUMENTS

In *Martin Tractor Company, et al. v. Federal Election Commission, et al.*, filed on July 7, 1978, three corporations and their affiliated PACs, three executives and one hourly employee of one of the corporations were the plaintiffs. They sought injunctive relief and a declaratory judgment that §441b of Title 2 is an unconstitutional violation of plaintiffs' rights under the First and Fifth Amendments of the United States Constitution. Specifically, plaintiffs alleged that:

1. The limitations on the corporate solicitation of hourly employees for contributions to the corporate PAC unconstitutionally impinge upon plaintiffs' rights to free speech, assembly and association and the right to hear, under the First Amendment. (Under §441b, corporations and their PACs may use corporate funds to solicit employees twice a year; the solicitations must be made in writing and delivered to the employee's residence.)
2. The limitations on the solicitation of hourly employees violate plaintiff employee's right to associate with the other plaintiffs.
3. These same limitations, by arbitrarily dividing employees into two classes and restricting free flow of information between such classes, discriminate against plaintiff employee in violation of his Fifth Amendment right to due process of law.
4. The term "solicitation" as used in §441b is impermissibly vague, causing plaintiffs to be uncertain as to the extent and application of the prohibitions of 2 U.S.C. §441b. When combined with the threat of criminal sanctions, plaintiffs asserted, this vagueness restrains their activity, in violation of the First and Fifth Amendments.

On July 20, 1978, the National Chamber Alliance for Politics, et al. filed suit against the Federal Election Commission, similarly challenging the constitutionality of the PAC solicitation provisions and asking for injunctive

In addition, three major national party committees and 13 affiliates of the national party committees plus nine national party congressional campaign committees will be audited.

AUDITS RELEASED TO THE PUBLIC

The Federal Election Campaign Act requires the Commission "... to make from time to time audits and field investigations with respect to reports and statements filed under the Act." The Commission is also required to conduct audits of all campaigns of Presidential candidates who receive public funds. Once an audit is completed and an audit report is approved by the Commission, the report is made public and is available in the Office of Public Records and the Press Office. The following is a chronological listing of audits released as of January 2, 1979.

| Audits | Date Made Public |
|--|------------------|
| 1. Vermont State Democratic Committee | 12/5 |
| 2. Congressional Victory Fund | 12/5 |
| 3. Delaney Committee for Congress (NY/09) | 12/5 |
| 4. Roybal Campaign Committee (CA/25) | 12/12 |
| 5. Minnesota Dollars for Democrats | 12/12 |
| 6. Texas Democratic Party-Federal | 12/21 |
| 7. Washington State Republican Federal Campaign | 12/21 |
| 8. State Democratic Party of Pennsylvania/Voter Registration Drive Committee | 1/2 |

made public. The following is a list of recent Commission nonfiler actions:

| Publication Date | Post-Primary Report Not Filed | Number of Nonfilers |
|------------------|-------------------------------|---------------------|
| 12/14/78 | Arizona | 2 |
| 12/14/78 | Colorado | 1 |
| 12/14/78 | Connecticut | 1 |
| 12/14/78 | Florida | 3 |
| 12/14/78 | Maryland | 3 |
| 12/14/78 | Minnesota | 11 |
| 12/14/78 | New York | 6 |
| 12/14/78 | Rhode Island | 1 |
| 12/14/78 | Vermont | 2 |
| 12/14/78 | Wisconsin | 2 |
| 12/14/78 | Wyoming | 3 |
| 12/18/78 | Louisiana | 4 |

FEC PUBLISHES NAMES OF NONFILERS

The Commission is required by the Federal Election Campaign Act to publish the names of candidates and political committees who fail to file required reports of receipts and expenditures. Before publishing the name of a candidate or committee who has failed to file, the Commission sends them at least two notices. If, following receipt of these notices, a candidate or committee continues not to file the required report, the name of that "nonfiler" is

NEW APPOINTMENTS

In recent months, the Commission has made several new appointments in the Information Division. Effective January 1979, Dr. Gary Greenhalgh, Director of the National Clearinghouse, began to serve simultaneously as Assistant Staff Director for the Information Division. He succeeds David Fiske who previously served as both Assistant Staff Director for Information and Press Officer. Fred Eiland was appointed Press Officer for the Commission on January 2, 1979. In October 1978, Judith Corley became Chief of Public Communications. Louise Wides continues to serve as Chief of Publications.

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relief. Plaintiffs included the Chamber of Commerce (a nonprofit corporation), its separate segregated fund, three executives of the two organizations and one board member of the Chamber of Commerce. In this suit, plaintiffs argued that, by enumerating those whom the corporation or PAC may solicit, §441b of the Act:

1. Limits plaintiffs' First Amendment right to communicate to a more broadly based audience for the purpose of "soliciting" their financial assistance;
2. Limits plaintiffs' ability to associate with those not enumerated in the Act as potential solicitees;
3. Violates the First Amendment right of the potential solicitees (not enumerated in the Act) to associate with the plaintiffs;
4. Discriminates against plaintiffs, in violation of their Fifth Amendment rights, by permitting candidates and their committees to solicit funds from any PAC but denying this same right to corporations and their PACs.

Plaintiffs in both suits argued that the harm brought about by §441b was actual, not hypothetical, because plaintiffs have limited their solicitation activities, fearing the imposition of the civil and criminal sanctions contained in the Act.

COMMISSION'S ARGUMENTS

The Federal Election Commission petitioned the Court to dismiss both suits, arguing, first, that the Court lacked jurisdiction because:

1. Special statutory judicial review mechanisms, such as §437h of the Act, are the exclusive avenues for judicial review.
2. Under §437h of the Act, the Commission, the national committee of any political party, or any individual eligible to vote may bring appropriate actions to challenge the constitutionality of the Act. The Commission argued that none of the plaintiffs were eligible to bring such an action under §437h.
3. Challenges brought by any other person or entity must be raised during the ordinary course of enforcement procedures provided in §437g of the Act.

The Commission also argued that the complaint did not present a "case or controversy" because plaintiffs can make no showing of present, direct injury resulting from §441b.

In the *Martin Tractor* suit the Commission made the additional argument that plaintiffs failed to state a complaint upon which relief could be granted. In response to the plaintiffs' contention that the term "solicitation" is impermissibly vague, the FEC argued that the term has been employed in a wide variety of Federal statutes without further definition and with no apparent need to "guess at its meaning."

In its motion to dismiss the suit filed by the National Chamber of Commerce Alliance, the Federal Election Commission further argued that plaintiffs failed to state a claim upon which relief could be granted because §441b did not violate the plaintiffs First or Fifth Amendment rights. The Commission's arguments are summarized below:

1. Plaintiffs failed to see that §441b grew out of (and was, in fact, an exception to) a long series of Congressional

efforts, dating back to 1907, to prevent actual corruption or the appearance of corruption arising from the influence of corporate general treasury funds on Federal elections. The Commission explained that subsequently Congress also recognized that the individuals who comprise a corporation may have an interest in combining their funds for direct use in candidates' campaigns. Thus, with the passage of the Federal Election Campaign Act of 1971, Congress wrote a special exception to the general ban on corporate election spending. It permitted the use of corporate funds to establish, administer and solicit contributions to a separate segregated fund.

2. The challenged subsection puts restrictions only on the solicitation of contributions. Plaintiffs are free to engage in discussion of general political issues; the Act does not restrict such activity.
3. Section 441b does not restrict plaintiffs' ability to associate with potential solicitees not enumerated in the Act. Such persons, including other PAC's, can freely contribute to a corporate PAC and associate with it.
4. Section 441b does not invidiously discriminate against corporations. The Commission said, "the notion of equal protection does not prevent Congress from classifying for different treatment those persons in distinguishable circumstances." Since corporations, through their PACs, are in a unique position to exert influence on many candidates throughout the entire nation, they are treated differently. In this case, the Commission added, plaintiff Chamber of Commerce had chosen to establish its PAC under §441b to take advantage of the provision permitting corporations to use their treasury funds to administer a PAC and solicit contributions to it. The

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FEC PUBLIC APPEARANCES

In keeping with its objective of making information available to the public, the Federal Election Commission regularly accepts invitations for its representatives to address public gatherings on the subject of campaign finance laws and the Commission itself. This regular column lists scheduled Commission appearances, detailing the name of the sponsoring organization, the location of the event and the Commission's representative.

- | | |
|---------|---|
| 2/6 | Federal Bar Association Washington, D.C. Chairman Joan Aikens |
| 2/13 | Chamber of Commerce Independence, Kansas Chairman Joan Aikens |
| 2/22-23 | Practicing Law Institute Washington, D.C. Chairman Joan Aikens Jan Baran, Executive Assistant to the Chairman William Oldaker, General Counsel |

Commission added that individual plaintiffs could establish their own PAC; under those circumstances, the law would permit plaintiffs to solicit anyone, including other corporate PACs.

On November 18, the U.S. District Court for the District of Columbia granted the Commission's motion to dismiss the *Martin Tractor* suit. On November 22, the Court dismissed the *National Chamber Alliance for Politics* suit as well. In both orders, the Court said that the special provision of 2 U.S.C. §437h(a), expediting judicial review of constitutional issues, is inapplicable to the plaintiffs. The individual plaintiffs sue "not in their individual capacities but rather to vindicate the rights of the corporate entities. That derivative right was not the constitutional right of an 'individual eligible to vote' which Congress considered 'appropriate' for vindication in a declaratory judgment action under this section (437h)." Moreover, the Court held that the plaintiffs presented no case or controversy sufficiently ripe for decision by a Federal court. Plaintiffs in both suits filed appeals.

REPUBLICAN NATIONAL COMMITTEE et al. v. FEC

On June 16, 1978, the Republican National Committee (RNC) filed a suit against the Commission. The suit challenged the constitutionality of certain provisions of the Presidential Election Campaign Fund which affect Presidential candidates who accept public funds for the general election. (The RNC also requested injunctive relief and the convocation of a three-judge district court to hear the case, in accordance with 26 U.S.C. §9011(6).) The provisions which the RNC challenged stipulate that, in order to receive any Federal funds, Presidential candidates of a major party must agree not to make qualified campaign expenses in excess of the amount of public funds they receive. Candidates must also certify that neither they nor any of their authorized committees will accept private contributions to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in public funds. The RNC challenged these provisions on the following grounds:

1. The statutory scheme (described above) violates the First Amendment because it restricts the ability of candidates, their political parties, supporters and contributors to communicate their ideas.
2. The RNC claimed that, because of legal and practical considerations, the Republican candidate must accept public financing and thereby agree to comply with unconstitutional requirements.
3. The statutory scheme, according to the RNC, unconstitutionally discriminates against challenging candidates because incumbent Presidents have the advantage of free publicity and significant resources attached to the executive branch (e.g., speechwriters, jet planes, etc.).
4. According to the RNC, the statutory scheme discriminates against candidates not politically allied with labor organizations, in violation of the First and Fifth Amendments. Under 2 U.S.C. §441b, labor organizations may spend unlimited funds to communicate with their members on political matters. Candidates without such labor support are disadvantaged, alleged the RNC,

because no other group is in a position to expend such large sums for communication with voters and any expenditures which candidates make to communicate directly with voters count against their expenditure limits.

5. The RNC argued that the statutory scheme is overbroad.
6. The RNC asserted that the statutory scheme violates the people's retained rights under the Ninth Amendment of the Constitution.

The Federal Election Commission filed a motion to dismiss the suit, arguing that plaintiffs' constitutional objections had been rejected by the Supreme Court in *Buckley v. Valeo*. Secondly, the Commission argued, plaintiffs' description of how the statutory scheme of the Act would impact on the 1980 Presidential campaign is speculative and does not present a "ripe" controversy necessary to the exercise of judicial power. Further, the suit presents political questions not subject to judicial resolution.

The Court denied without prejudice the Commission's motion to dismiss on November 30, 1978, and granted the RNC's motion to convene a three-judge district court to hear the case. It also denied the motion of Common Cause et al. to intervene, but permitted them to file briefs *amicus curiae*.

FEC AUDIT POLICY

On December 14, 1978, the Commission reaffirmed the Audit Division's current audit policy, adopted in November 1976 and amended in April 1978. This policy covered audit activity to be conducted during the remainder of Fiscal Year 1979.

The approved policy calls for audits of all categories of committees registered under the Act, including referral audits approved by the Commission. Referral audits would include candidates and committees, referred by the Reports Analysis Division or the Office of General Counsel, whose reports and statements indicate a need for assistance in improving reporting or recordkeeping systems.

First priority will be given to the completion of the 1976 Presidential audits. Next, the Audit Division will complete its audits of approximately 60 State party committees.

As a third priority, the Commission will audit nonparty committees as follows:

- All committees which received or expended \$500,000 or more in calendar year 1976 and 1977;
- Fifty percent of the committees which received or expended between \$250,000 and \$499,999 in calendar year 1976 and 1977;
- Twenty committees which received or expended less than \$250,000 in calendar year 1976 and 1977;
- Approximately 25 committees consisting of: 1) committees, not including the above, which received or expended in excess of \$250,000 during 1978, and 2) any committees in any of the above categories which request an audit.

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