



# THE FEDERAL ELECTION COMMISSION

# RECORD

1325 K Street N.W., Washington, D.C. 20463

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## REPORTS

### REPORTS DUE

During December and January, several reports are required under the Federal Election Campaign Act. The following paragraphs give an overview of the reporting requirements. For detailed information, committees should consult the notices sent to them directly or contact the Office of Public Communications (see below).

#### Post-General Election Reports (December)

All political committees (except those authorized by candidates who did not run in the general election) are required to file a post-general election report by December 4, 1980, regardless of their level of financial activity. The report should cover all financial activity since the last report (or the date of registration, whichever is later) through November 24, 1980.

#### Filing Alternatives for Some Authorized Presidential Committees (December)

Authorized committees of Presidential candidates who did not seek election in the general election, and whose committees have filed on a monthly basis during 1980, must file either:

1. A *post-general election report* by December 4, if the committee already filed a pre-general election report; or
2. A *monthly report* by December 20, if the committee did not file a pre-general election report (but instead filed a monthly report in November). The December monthly report should cover all financial activity between November 1 and November 30, 1980.

#### Year-End Reports (January)

All political committees currently registered with the Commission must file a year-end report by January 31, 1981, regardless of the level of financial activity or whether they supported candidates in the 1980 federal elections. (The requirement applies, for example, to committees authorized by Senate candidates seeking election in 1982 or committees authorized by candidates who ran in elections prior to 1980.) The year-end report must include all reportable transactions occurring since the last full report filed, or (if the committee is new) from the date of registration,

through December 31, 1980. Complete reports must also include appropriate schedules (e.g., Schedule A for itemized receipts and Schedule B for itemized disbursements).

Committees that do not intend to receive contributions or make expenditures, and that have no outstanding debts, may be eligible to terminate. For details on termination, see the *800 Line* article, p. 3.

Forms and additional information will be sent to all registered committees. Questions and requests for forms should be addressed to the Office of Public Communications, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463; or call 202/523-4068 or toll free 800/424-9530.

## PUBLIC FINANCING

### FEC CERTIFIES PAYMENTS TO NEW PARTY CANDIDATE

#### Payments

On November 13, 1980, the Commission certified a grant of \$4,164,906.24 to John B. Anderson and his running mate Patrick J. Lucey. This certification, the first made to a new party candidate in the history of the public financing of Presidential elections, was based on procedures established by the Commission on November 3, 1980 (see below). The grant, which is one percent less than Mr. Anderson's full entitlement of \$4,206,976, is based on the Commission's unofficial vote count of the Presidential election. The unofficial vote returns indicated that Mr. Anderson had received 5,581,379 votes (or approximately 6.5 percent of the total popular votes cast in the election). Mr. Anderson's final entitlement will be adjusted to reflect the official vote returns. Further, the Anderson campaign may be required to repay any federal funds that are not needed to defray outstanding campaign debts.

#### New Certification Procedures

On November 3, 1980, the Commission approved procedures for certifying public funds to new party Presi-

*continued*

dential candidates. These procedures describe the certifications and agreements the candidates must sign before the general election as well as the post-election procedures for certifying funds.

To qualify for post-election public funding, the Presidential and Vice Presidential candidates of a new party must submit certain written agreements and certifications to the Commission within 14 days after they qualify to appear on the general election ballot in 10 or more states.\* In the letter of agreements, both candidates must agree to furnish records of campaign expenses, permit the conduct of an audit, identify the person authorized to receive payments on their behalf and designate a campaign depository. In the written certifications, the candidates must certify that they will comply with the overall spending limits, the limits on the use of contributions and the personal spending limits. 11 CFR 9003.1 and 9003.2.

Under the new procedures, the Commission certifies public funds to a new party candidate who receives at least five percent of the total votes cast in the Presidential election, provided the candidate submitted the required agreements and certifications before the election. The Commission bases its initial determination of a new party candidate's share of the total popular votes on the unofficial election results reported by the News Election Service and state election officials. In the event of a disparity, the Commission relies on results obtained from state officials.

If the candidate receives five percent or more of the total popular vote by this informal calculation, the Commission certifies an initial payment from the U.S. Treasury within 10 days of determining the candidate's eligibility. This payment is proportional to the grant provided the major party candidates, less one percent. (The formula for calculating the proportional payment is spelled out in Section 9004(a)(3) of the Presidential Election Campaign Fund Act.) The candidate may challenge the Commission's initial determination in writing within 15 days.

No later than 10 days after receiving the official election results, the Commission makes a final determination of the candidate's appropriate payment. At that time, the Commission may adjust its initial payment, if necessary. 26 U.S.C. §9004(a)(3). Further, candidates receiving post-election funds must comply with the audit and examination procedures provided by 26 U.S.C. §9007 and 11 CFR 9007.

\*The deadline may be extended with the approval of the Commission. However, the absolute deadline for submitting the agreements and certifications is the day before the general election.



## PRESIDENTIAL CANDIDATES ON 1980 BALLOTS

Twenty-one Presidential candidates, running under various independent and party listings, appeared on the November 4, 1980, general election ballots of the 50 states and the District of Columbia, according to a survey by the Federal Election Commission. In the 1976 Presidential elections, a total of 15 candidates were listed on the 50 state and District of Columbia ballots. Only four of the 1980 Presidential candidates appeared on the ballots in all of the 51 jurisdictions surveyed: John Anderson, Jimmy Carter, Edward Clark and Ronald Reagan.

Information on the survey was provided to the Federal Election Commission by individual Secretaries of State and state election officials. It is current through October 22, 1980. The following alphabetical listing indicates each candidate in the 1980 Presidential general election and his or her party affiliation(s):

Presidential Candidate	Party Affiliations
1. Anderson, John	National Unity, Independent, Anderson Coalition, Liberal, Anderson Party, Independent (Republican), The Anderson Alternative
2. Bubar, Benjamin	Statesman, Independent
3. Carter, Jimmy	Democratic
4. Clark, Edward	Libertarian
5. Commoner, Barry	Citizens
6. Congress, Richard	Independent
7. DeBerry, Clifton	Socialist Workers
8. Gahres, Bill	American, Independent
9. Greaves, Percy	American Party
10. Griswold, Deidre	Workers World, Independent
11. Hall, Gus	Communist
12. Lynen, Kurt	Middle Class Candidate

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Presidential Candidate	Party Affiliations
13. McCormack, Ellen	Respect For Life
14. McLain, Harley	National Peoples League
15. McReynolds, David	Socialist Party
16. Pulley, Andrew	Socialist Workers Party
17. Rarick, John	Independent, American
18. Reagan, Ronald	Republican
19. Shelton, Frank	American
20. Smith, Margaret	Peace and Freedom
21. Wendelken, Martin	Independent

## 800 LINE

In recent weeks, the Public Communications Office has received inquiries on how political committees may terminate their registration and, hence, their reporting obligations under the Act. The following article, reprinted (with a few minor changes) from the June 1980 issue of the *Record*, is offered in response to these questions. For further information, call the Commission on its toll-free line: (800)424-9530.

### TERMINATING REPORTING OBLIGATIONS

Following the 1980 general elections, many candidate committees may wish to terminate their reporting obligations under the Act. The explanation given below outlines procedures for winding down campaign activity, i.e., liquidating campaign debts, using excess campaign funds and terminating committee registration (and thus reporting obligations). All legal citations refer to FEC Regulations.

### FORGIVING DEBTS

#### General Rule

If a committee fails to pay a campaign debt in a timely fashion consistent with normal business or trade practice, the debt in effect becomes a contribution made by the creditor to the committee, unless the creditor has made a commercially reasonable attempt to collect the debt. 11 CFR 100.7(a)(4). Contributions made under such circumstances may violate the Act. For example, if a committee indebted to a corporation fails to pay the debt, the debt may result in a prohibited contribution from the corporation. Or, as another example, continued nonpayment of a debt owed to a person who may lawfully make contributions may cause the creditor to exceed the Act's \$1,000 per election contributor limit.

### Rules for Corporate Creditors

*Debt Treated in Commercially Reasonable Manner.* A corporate creditor may not forgive debts for less than the amount owed unless the creditor and debtor have treated the debt in a **commercially reasonable manner**. This means that:

1. Credit was extended "in the ordinary course of business" with terms substantially similar to those granted to nonpolitical debtors of similar credit risk;
2. The debtor made all reasonable efforts to retire the debt; and
3. The creditor pursued remedies in a manner similar to those used to seek payment from nonpolitical debtors. 11 CFR 114.10.

*Statement of Settlement.* If a debt owed to a corporation is settled for less than the amount owed and the debtor wishes to terminate the reporting status, the corporate creditor and/or debtor (committee) must file a Statement of Settlement with the FEC for Commission approval before the committee terminates. This Statement must include:

1. The initial terms of credit;
2. The steps the debtor took to extinguish the debt;
3. The remedies pursued by the creditor; and
4. The terms of settlement. 11 CFR 114.10.

### Rules for Noncorporate Creditors

*Debt Treated in Commercially Reasonable Manner.* A noncorporate creditor may demonstrate to the Commission that it has made a "commercially reasonable attempt" to collect a debt owed to it by a committee, and thereby settle the debt without the settlement being considered a contribution, provided that: the credit was extended in connection with providing goods and/or services to a political committee in the normal course of a business or professional enterprise. (A debt involving only the lending of money could not, therefore, be forgiven without a contribution being made.)

*FEC Review of Debt Settlement.* The settlement of any debt owed to a noncorporate creditor by a committee is subject to FEC approval if either:

1. The amount of the debt forgiven causes the creditor to exceed contribution limitations (when added to any other contributions made by the creditor to the same candidate); or
2. The creditor wishes the entire amount of the forgiveness to be regarded as a debt settlement (and so notifies the Commission), rather than as a contribution in-kind.

In either case, a Statement of Settlement similar to that required when corporate debts are settled (above) would have to be submitted to the Commission by the creditor and/or debtor. (Directive 3, May 10, 1978.)

### EXCESS CAMPAIGN FUNDS

Contributions received by the candidate or his/her committee which, in the candidate's view, exceed the amount of funds needed to defray campaign expenditures may be used for the following purposes:

1. Future election. 11 CFR 110.3(a)(2)(iii) and (iv).
2. Defrayal of federal officeholder expenses. 11 CFR 113.2(a).

*continued*

3. Donations to charity. 11 CFR 113.2(b).
4. Unlimited contributions to national, state or local party committees. 11 CFR 113.2(c).
5. Repayment of loans made by the candidate to his/her committee. 11 CFR 113.2(d).
6. Any other lawful purpose, except personal use.\* 11 CFR 113.2(d).

### TERMINATING REPORTING STATUS

#### Termination by Political Committees

A political committee may terminate its registration (and reporting obligations) only when all its debts and obligations have been extinguished and after it no longer intends to receive any contributions or make any disbursements. A principal campaign committee may terminate only when it has satisfied these requirements and when all the debts of its affiliated authorized committees have been extinguished. 11 CFR 102.3.

Political committees terminate their reporting status by filing a **Termination Report**. It may be filed at anytime on FEC Form 3 (3X or 3P) or by a written statement containing the same information. 11 CFR 102.3(a). The **Termination Report** must disclose:

1. All receipts and disbursements not previously reported, including an accounting of the retirement of all debts; and
2. The disposition of all residual funds.

#### Administrative Termination by FEC

The Commission, upon its own initiative or upon the request of a political committee, may administratively terminate a committee's reporting obligations if the committee's financial activity has been minimal during the previous year. For details on administrative termination, consult 11 CFR 102.4.

\*The prohibition on using excess funds for personal use does not apply to candidates who were Members of Congress on January 8, 1980.

## CLEARINGHOUSE

### SUBSCRIPTIONS

- *Election Law Updates* is a quarterly series which summarizes all new state and federal election legislation. \$11.00 per year.
- *Election Case Law* is a quarterly series which summarizes recent state and federal litigation relating to election matters. \$10.00 per year.

You may order these subscriptions by mail from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Identify report title. Enclose a check or money order for subscription price(s) payable to Superintendent of Documents.

## OPINIONS

### ADVISORY OPINION REQUESTS

Advisory Opinion Requests (AOR's) pose questions on the application of the Act or Commission Regulations to specific factual situations described in the AOR. The following chart lists recent 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	No. of Pages
1980-122	Use of contributions earmarked for general election to retire debts of primary election.	10/17/80	1
1980-123	Excess primary campaign funds used for thank you notes to campaign staff.	10/20/80	1
1980-124	Use of trust funds (of unknown source) for federal elections.	10/20/80	8
1980-125	Receipt, use and reportable value of \$100-contribution made in silver dollars.	10/21/80	5
1980-126	Political committee status for individual engaging in get-out-the-vote activity.	10/21/80	4
1980-127	Federal/nonfederal accounts established by state party committee; allocation of debts.	10/24/80	9
1980-128	Corporation's distribution of position paper on national issues to federal candidates and the general public.	10/27/80	26
1980-129	Corporate status of corporation organized pursuant to Alaska Native Claims Settlement Act.	10/27/80	1
1980-130	Funds used by state committee to repay loan from federal committee.	10/30/80	1
1980-131	Application of national party committee contribution and expenditure limits to two committees that support independent Presidential candidate.	11/4/80	4
1980-132	Contribution from partnership that has one corporate partner.	11/7/80	1
1980-133	Solicitation to labor PAC through \$1-checkoff from membership dues.	11/10/80	2
1980-134	Application of limits to contributions to primary and general election campaigns of independent Senate candidate.	11/13/80	2

AOR	Subject	Date Made Public	No. of Pages
1980-135	Payments made by corporation to indemnify staff of its separate segregated fund against legal liability.	11/14/80	2
1980-136	Artwork given to creditors as debt settlement by Presidential primary committee.	11/14/80	1
1980-137	Senate candidate's use of his corporation's personnel and equipment to produce computerized FEC reports.	11/18/80	1
1980-138	Senator-elect's status as federal officeholder; use of excess campaign funds for winding down campaign, transition activities and living expenses.	11/19/80	2

candidates. This decision is made by a committee comprised of the State Party chairman, Party treasurer and the eligible candidates. The State Party would therefore exercise control over allocating the funds, rather than simply acting as a distribution agent or conduit. (Date Issued: October 10, 1980; Length: 3 pages)

**AO 1980-110: Local Party Organization's Status as a Political Committee**

The local Greenburgh Democratic Campaign Committee (the local committee) may use \$2,250 in contributions, which it had received from two candidates for state office, a Congressional candidate and two local political committees, to rent a campaign headquarters and provide phone services, volunteer activities and mailings for the three candidates. The local committee would not become a political committee subject to the Act's registration and reporting requirements provided:

1. Total costs incurred by the local committee for activities exempted from the Act's definition of "contribution" and "expenditure" did not exceed \$5,000;
2. The cost of the phone services benefitting the Congressional candidate did not exceed \$1,000; and
3. The local committee made no other "expenditures" or "contributions" on behalf of the Congressional candidate.

Although the Act specifically exempts from the definition of "contribution" and "expenditure" payments for slate cards and campaign materials used in connection with volunteer activities (e.g., campaign pins, bumper stickers and handbills), the local committee would have to register and report as a political committee if such costs exceeded \$5,000. The costs of phone services provided on behalf of the Congressional and local candidates would, however, be considered in-kind contributions to each candidate in proportion to the benefit each candidate reasonably expected to derive from the services. 11 CFR 106.1. Therefore, if the amount attributable to the Congressional candidate exceeded \$1,000, the local committee would be required to register and report as a political committee. (Date Issued: October 10, 1980; Length: 4 pages)

**AO 1980-111: Separate Segregated Fund Established by Trade Association With Dues-Paying Foreign Members**

The Portland Cement Association (the Association), a trade association whose members include dues-paying foreign corporations, may pay the costs of establishing, administering and soliciting contributions to a separate segregated fund (the fund). Moreover, contributions made by the fund will not violate the Act's prohibition on contributions by foreign nationals. 2 U.S.C. §441e.

The Association's payments for establishing and administering the fund would be permissible because:

1. The Association itself is not a "foreign national" or a "foreign principal" but a discrete corporation organized under United States laws with its principal place of business in the United States; and

*continued*

**ALTERNATE DISPOSITION OF ADVISORY OPINION REQUEST**

In response to AOR 1980-112 (post-election public funding used by new party candidate for loan repayments) the General Counsel informed the requester in a letter issued on November 18, 1980, that the request: 1) did not qualify as an AOR because it posed a hypothetical situation (11 CFR 112.1(b)) and 2) was rendered moot by the vote results of the 1980 Presidential general election.

**ADVISORY OPINIONS: SUMMARIES**

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR's. Any qualified person who has requested an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

**AO 1980-103: State Party's Distribution of Tax Checkoff Funds to Federal Candidates**

Since the North Carolina State Democratic Executive Committee (the State Party), a multicandidate committee, exercises control over funds which are accumulated through a state tax checkoff and distributed to Democratic Congressional candidates, the funds would constitute contributions from the State Party. They are subject to the \$5,000 per candidate, per election, contribution limit.

The source of the funds is the North Carolina Election Campaign Fund, provided for by state law and funded by individuals who check off a dollar from their taxes on their state income tax forms. The state law does not, however, specify a formula for distributing the funds to eligible

2. The Association will not allow foreign nationals to exercise decision-making authority over the fund's activities. Contributions made by the fund would be lawful because the Association does not plan to solicit or accept contributions from foreign nationals.

The Commission noted that it had authority to audit the fund's activities, including its decision-making processes. 2 U.S.C. §§ 437d and 438. Commissioner Thomas E. Harris filed a dissenting opinion. (Date Issued: October 16, 1980; Length: 3 pages, including dissenting opinion)

#### AO 1980-113: Disposition of Excess Campaign Funds

The Zell Miller for U.S. Senate Committee (the Committee) may use its excess campaign funds to:

1. Establish campaign funds for any of Mr. Miller's future campaigns for federal, state or local office;
2. Reimburse Mr. Miller's state campaign for funds it transferred to the Committee; and
3. Establish a fund for official state duties Mr. Miller will carry out as lieutenant governor.

If excess funds may be used for these purposes under Georgia law, they may be similarly used under the Act and Commission Regulations provided:

1. Excess funds transferred to future campaigns for federal office are lawful under the Act (11 CFR 110.3(a)(2) (iv)); and
2. Excess funds transferred to either Mr. Miller's state campaign or to any future campaigns are used for campaign purposes. 11 CFR 113.2.

The Committee may not, however, use the excess funds to establish a travel fund to be used by Mr. Miller's wife when she accompanies him on official duties because no specific information suggests her trips would serve an official purpose. The travel fund would therefore constitute a "personal use" of the excess funds, which is prohibited by 2 U.S.C. § 439a and 11 CFR 113.2. (Note: As amended in 1979, the Act provides that excess campaign funds may not be converted to personal use, unless the candidate was a member of Congress on January 8, 1980. Mr. Miller was not.)

The Commission expressed no opinion on the application of federal tax laws to the use of excess campaign funds since those laws are not within its jurisdiction. (Date Issued: November 7, 1980; Length: 3 pages)

#### AO 1980-114: Disposition of Refunds Made to Terminated Campaign Committee

Telephone refunds received by the terminated Calabrese for Congress Committee (the Committee) may be transferred to Mr. Calabrese as partial repayment for loans he had previously made to the Committee. The refunds are not considered "excess campaign funds" — and, therefore, not a prohibited transfer of excess campaign funds for personal use — because Mr. Calabrese originally made a loan to the Committee rather than a gift. The loan was consistently reported as a loan until the Committee decided to termi-

nate. Under these circumstances, the telephone refund does not constitute "excess campaign funds" — i.e., funds "in excess of any amount necessary to defray . . . expenditures."

The Committee must report receipt of the refunds from the Ohio Bell Telephone Company, and their payment to Mr. Calabrese, in an amended termination report pursuant to 2 U.S.C. § 434 and 11 CFR 104. (See also AO 1979-5.) (Date Issued: November 7, 1980; Length: 2 pages)

#### AO 1980-115: Law Firm's Compensation to Partner Campaigning for Congress

To avoid making a contribution to Mr. Pierce O'Donnell's Congressional campaign, his law firm must either:

1. Reduce Mr. O'Donnell's share of partnership profits to reflect actual hours billed to his clients; or
2. Indicate that Mr. O'Donnell's value to the firm throughout the year increased, offsetting the reduction in Mr. O'Donnell's "client billable hours."

In the absence of any indication that Mr. O'Donnell's value to the firm had increased, any compensation to Mr. O'Donnell in excess of the actual hours he worked for the firm would be considered a contribution to his campaign because compensation to partners is based, in part, on the number of hours they bill to clients. The Commission distinguished this situation from that presented in Advisory Opinion 1979-58, where full compensation to a senior partner was not considered to be an in-kind contribution from his firm because, in that firm, compensation was based solely on the partner's proprietary interest in the firm and not on the amount of time spent on firm matters. Commissioner Frank P. Reiche filed a concurring opinion. (Date Issued: October 14, 1980; Length: 7 pages, including concurring opinion)

Pierce O'Donnell  
for Congress Committee

#### AO 1980-117: Conversion of State Committee to Principal Campaign Committee of Federal Candidate

The Concerned Citizens for Kleczka (the Committee), Mr. Gerald Kleczka's state campaign committee, may register and report as his principal campaign committee for federal office, even though the treasury of the state committee contains some contributions that are not permissible under the Act. The newly registered federal committee must, however, handle its cash-on-hand (i.e., funds left over from the state committee) in the following way:

1. The Committee must exclude from cash-on-hand any contributions not permissible under the Act. This means the Committee may not keep or use funds donated by a separate segregated fund that received contributions through a reverse checkoff system. 11 CFR 104.12.
2. On its first report, the Committee must disclose the source of all cash-on-hand on the basis of last in, first "on hand." Mr. Kleczka's cash-on-hand may only include those permissible contributions most recently received by the state committee prior to its registration as a federal committee. 11 CFR 104.12. (Date Issued: November 7, 1980; Length: 3 pages)

**AO 1980-119: Allocation of Coordinated Party Expenditures for Television Ads**

The National Republican Senatorial Committee (the Committee), which was designated as an agent by the Republican National Committee to make coordinated party expenditures for several Senatorial candidates, must attribute the full amount of such expenditures to the spending limits stipulated by 2 U.S.C. §441a(d)(3).

In making the coordinated party expenditures, the Committee planned to purchase television time in certain markets that would result in broadcasting a political ad in several states. The ad would advocate the election of a single Senatorial candidate in one state; none of the content would be directed to a race in another state reached by the broadcast.

In calculating the amount of coordinated party expenditures, the Committee must count the total costs for the advertising, rather than only that portion of the costs corresponding to the proportion of the total viewing audience that lives in the candidate's state. Calculating coordinated party expenditures on the basis of "political effectiveness" is not permissible because:

1. The Act and Regulations do not provide for such a calculation; and
2. Section 106.2(c) of the Commission's regulations does not apply to this case. This regulation applies only to expenditures by Presidential primary candidates. (Date Issued: October 24, 1980; Length: 4 pages)

**FEDERAL REGISTER NOTICES**

The list below identifies all FEC documents that appeared in the *Federal Register* between October 9, 1980, and October 24, 1980. Copies of these notices are not available from the FEC.

Notice	Title	Federal Register Publication Date	Citation
1980-29	Public Records; Indexes to Statements and Reports (Notice of availability)	October 9, 1980	45 FR 67146
1980-30	11 CFR Part 112; Advisory Opinion Requests, Barring of Withdrawals (Notice of proposed rulemaking)	October 24, 1980	45 FR 70474
1980-31	Negative Campaigns; Denial of Rulemaking Petition	October 24, 1980	45 FR 70568

**THE LAW IN THE COURTS**

**DURKIN FOR U.S. SENATE COMMITTEE v. FEC et al.**

Plaintiff initially sought a declaratory judgment from the Court that certain individuals associated with a "Defeat Durkin" effort constituted a "political committee" under the Act, which had failed to register and report with the FEC, and that one of the individuals had made excessive contributions to the "Defeat Durkin" effort. Plaintiff also sought a preliminary injunction to enjoin the "Defeat Durkin" effort from: 1) spending any additional funds until it registers with the FEC or 2) spending any funds which consist of contributions in excess of the limits. Finally, plaintiff asked the Court to order the FEC to expedite review of a complaint plaintiff had filed three days earlier, on October 24, against the same individuals and the "Defeat Durkin" effort.

On October 31, 1980, the District Court denied plaintiff's request for declaratory and injunctive relief and dismissed the suit. The Court maintained that it had no jurisdiction over the suit because the Act stipulates the time frame in which the Commission must resolve complaints. The Court said, "The FECA explicitly requires... that the party accused of a violation be given 15 days to 'demonstrate, in writing... that no action should be taken against such person on the basis of the complaint.'... By the terms of the statute, the Commission cannot act until they [the accused parties] have responded or until 15 days have passed."

(U.S. District Court for the District of New Hampshire, Docket No. C80-503D, October 27, 1980)

**FELICE M. GELMAN AND CITIZENS FOR LaROUCHE, INC. v. FEC**

On October 27, 1980, the U.S. District Court for the District of Columbia enjoined the FEC from continuing its investigations of volunteers and contributors to Citizens for LaRouche, Inc., the principal campaign committee of Presidential primary candidate Lyndon H. LaRouche, without first notifying the plaintiffs of the factual and legal basis for the investigation, pursuant to 2 U.S.C. §437g(a) and 11 CFR 111.8(b).

In their suit, brought October 1, 1980, plaintiffs claimed that FEC investigations of individual contributors to the LaRouche committee had violated the Act's procedures, which require the Commission to notify a respondent when it has determined the respondent has, or is about to, violate the Act. This notice must provide the factual and legal basis for the Commission's determination. Plaintiffs also contended that the investigations had harmed the LaRouche committee's fundraising efforts by deterring potential contributors who feared their contributions might also be investigated.

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The investigations had resulted from the FEC's determination that certain contributions submitted by the LaRouche committee for primary matching funds required verification. On August 8, 1980, the FEC had ordered that depositions be taken of 25 contributors to the LaRouche committee and, in a letter of August 28, 1980, had notified the LaRouche committee of its action. The FEC maintained that, since the LaRouche committee had not itself been a party to the FEC's investigation, the Commission did not have to provide the committee with specific information on the investigation. The FEC also argued that such notice was not required by 26 U.S.C. §9030(b), which authorizes the FEC to conduct investigations it deems are necessary to carry out its responsibilities under the Presidential Primary Matching Payment Account Act.

The Court said that the FEC's decision to investigate contributors to the LaRouche committee was predicated on the Commission's belief that the election law had been violated. The Court therefore held that the Commission must afford the LaRouche committee notice, pursuant to 2 U.S.C. §437g(a)(2).

## NEW LITIGATION

### George C. Finn et al. v. FEC

Pursuant to 26 U.S.C. §9011(b), plaintiffs sought a declaratory judgment from a three-judge court that Section 9042 of the Presidential Election Campaign Fund Act and Section 441a of the Federal Election Campaign Act are unconstitutional. Plaintiffs further asked the Court for an order protecting their issuance of campaign items promoting the election of Republican candidates in the general election. On October 30, the Court denied plaintiffs' motion for an *ex parte* protective order. The Court stated that it could not enjoin a governmental agency from enforcing a law without a definitive showing that those portions of the law being challenged were unconstitutional. The same day, plaintiffs asked the Supreme Court to issue a protective order.

(U.S. District Court for the District of Columbia, Docket No. 80-2675, October 20, 1980)

## FEC PUBLISHES NAMES OF NONFILERS

On October 31, 1980, the Federal Election Commission published three separate listings of nonfilers who had failed to file campaign finance reports required by the Federal Election Campaign Act (the Act). The Commission published the names of 90 committees authorized by 1980 Senate and House candidates which had failed to file their third quarter reports on time. The reports, due October 15, should have covered financial activity from the last report (or from the date of registration, whichever is later), through September 30, 1980. The second list included the names of 25 House and five Senate campaigns that had failed to meet the October 23 deadline for filing their pre-general election reports. This report, due 12 days before the general election, should have included financial activity occurring from October 1 through October 15, 1980. The Commission also published the name of one Presidential campaign which had failed to file its monthly report. The report, due October 20, should have covered financial activity from September 1 through September 30, 1980.

The Act specifies that the Commission publish only the names of committees authorized by candidates (i.e., individuals who have received or expended in excess of \$5,000 in seeking nomination or election to federal office).

## CHANGE OF ADDRESS

### Political Committees

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.

### Other Subscribers

*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.



# AUDITS

## AUDITS RELEASED TO THE PUBLIC

The Federal Election Campaign Act, as amended (the Act) requires candidates and political committees to file financial disclosure reports with the Commission. The Act also gives the Commission authority to audit campaigns of all Presidential candidates who receive public funds, and the reports of other political committees. Final audit reports are available to the press through the Press Office and to the general public through the Office of Public Records. The following is a chronological listing of audits released between October 3, 1980, and November 14, 1980.

Audit	Date Made Public
1. Edward M. Kennedy, Kennedy for President Committee (Threshold Audit Report of Primary Campaign)	10/3/80
2. George Bush, George Bush for President Committee (Threshold Audit Report of Primary Campaign)	10/6/80
3. State Democratic Party of Connecticut/ Voter Registration Committee	10/6/80
4. Ronald Reagan, Reagan for President (Threshold Audit Report of Primary Campaign)	10/16/80
5. Anthony R. Martin-Trigona, D-IL Illinois Democratic Campaign Committee	11/5/80
6. Democratic Party of New Mexico	11/13/80
7. Michigan Republican State Finance Committee	11/13/80
8. Association for Better Citizenship	11/13/80
9. Philip M. Crane, Crane for President Committee (Post-Primary Audit Report)	11/14/80

# REGULATIONS

## STATUS OF FEC REGULATIONS

Regulations*	Date Sent to Congress	Federal Register Publication	Date Prescribed** by the Commission
11 CFR 9033.9 Suspension of Primary Matching Fund Payments	4/10/80	4/15/80 (45 FR 25378)	7/3/80
11 CFR Part 4 Public Records and the Freedom of Information Act	Not applicable	5/13/80 (45 FR 31291)	6/12/80 -
11 CFR Part 5 Access to Public Disclosure Division Documents	Not applicable	5/13/80 (45 FR 31292)	6/12/80 -
11 CFR, Parts 100 and 110 Contributions to and Expenditures by Delegates to National Nominating Conventions	5/14/80	5/23/80 (45 FR 34865)	8/7/80
11 CFR, Parts 100, 106, 110, 140-146 and 9001-9007 Public Financing of Presidential General Election Campaigns	6/13/80	6/27/80 (45 FR 43371)	9/5/80

\*The chart is cumulative, listing all amendments to the FEC Regulations proposed after the April 1980 edition of 11 CFR was published, including any technical amendments.

\*\*The Commission may prescribe its regulations 30 legislative days after it has transmitted them to Congress, provided neither the House nor the Senate disapproves them during this period.

## STAFF

### ALICE K. HELM APPOINTED DEPUTY GENERAL COUNSEL

Alice K. Helm has been appointed FEC Deputy General Counsel, a new position created within the Commission's Office of General Counsel. Mrs. Helm, who began serving in the position on October 27, was formerly Legal Advisor to the Office of Civil Rights, U.S. Department of Commerce, from 1978 to 1980. She was the Deputy Assistant General Counsel for Administration and Management at that Department between 1970 and 1978. Mrs. Helm was a Supervisory Attorney in the Office of General Counsel at the U.S. Department of H.E.W. from 1968 to 1970 and a trial attorney in the Civil Division of the U.S. Department of Justice from 1954 to 1966. Mrs. Helm received a B.B.A. from City College of New York in 1947 and an LL.B. from Columbia University in 1950. She also attended the Graduate School of Education, American University, Washington, D.C.

## EMPLOYMENT OPPORTUNITY

The Commission has an immediate opening for a GS-11 Statistician (Social Science) to assist in development/implementation of system to monitor validity/reliability of information entered into a computer data-base. Candidate must have demonstrated statistical skills, substantive knowledge of American elections/campaign finance and facility in oral communication. Experience with measurement theory, sampling, and techniques of statistical analysis and inference appropriate for complex data universes is required. No travel funds are available for interviews. Send resume, letters of recommendation and description of methodological skills/experience (and Standard Form 171, if available) to: Personnel Office, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. 202/523-4114. Applications will be accepted through January 2, 1981. The Commission is an Equal Opportunity Employer.

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