

# RECORD

March 1985

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## REPORTS

### LOUISIANA SPECIAL ELECTIONS

On March 30, 1985, Louisiana will hold a special primary election in its 8th Congressional District to fill the seat vacated by the death of Representative Gillis Long. If no candidate obtains a majority of the votes, a special general election will be held on May 4, 1985.

If only the special primary election is held, the principal campaign committees of candidates participating in the election must file pre- and post-primary reports and a semiannual report.

If both a special primary election and a special general election are held:

- o Committees of candidates participating in the special general election are not required to file a post-primary election report. Instead, in addition to a pre-primary report, they must file pre- and post-general election reports and a semiannual report.
- o Committees of candidates not participating in the special general election do not have to file pre- and post-general election reports. Instead they must file a semiannual report covering activity since the pre-primary report.

Note that all other political committees which participate in the special elections (and which do not report on a monthly basis) must also follow these reporting schedules, as appropriate. Filing deadlines are detailed in the chart below.

Report	Closing Date of Books	Mailing Date	Filing Date
Pre-Primary	3/10/85	3/15/85	3/18/85
Post-Primary	4/19/85	4/29/85	4/29/85
Pre-General	4/14/85	4/19/85	4/22/85
Post-General	5/24/85	6/3/85	6/3/85
Semiannual	6/30/85	7/31/85	7/31/85

The FEC will send notices on reporting requirements and filing dates to individuals known to be actively pursuing election to this House

seat. All other committees supporting candidates in the special elections should contact the Commission for more information on required reports. Call 202/523-4068 or toll free 800/424-9530.

## ADVISORY OPINIONS

### AO 1984-60: Campaign Debts Liquidated Through Sale of Individual and Partnership Assets

Mr. Patrick Mulloy, II, a defeated candidate in Kentucky's Fourth Congressional District, plans to liquidate campaign debts by selling individually owned real estate holdings and his share of assets in a family partnership consisting of real estate interests. Proceeds from the sales would not be considered contributions by the purchaser (i.e., a family member or an outside party) provided Mr. Mulloy sells the assets at their fair market value, 11 CFR 100.7(a)(1)(iii). Kentucky law requires Mr. Mulloy to obtain written consent from members of the family partnership to sell his share of the

*continued*

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partnership. Such consent would not result in a contribution to his campaign.

Mr. Mulloy's campaign committee should keep supporting records of the proposed sales, including records of the method used to establish the fair market value of any property sold. 11 CFR 102.9 and 104.14. (In this case, the fair market value would be equivalent to the usual and normal price a parcel of real estate would bring in the market at the time Mr. Mulloy sold it.)

The Commission expressed no opinion on relevant tax issues because they are not within its jurisdiction. (Date issued: January 11, 1985; Length: 4 pages)

**AO 1984-61: Trade Association's Use of Single Form for Multiple Year Solicitation Approvals**

The Society of American Florists (the Society), a trade association, may use a single form to obtain approvals from member corporations to solicit contributions, over a period of several years, from members' stockholders and executive and administrative personnel. Under the Act and FEC rules, to solicit contributions for its separate segregated fund, a trade association must obtain a member corporation's written approval prior to the date of solicitation. Once approval is given, the member corporation may not authorize solicitations by any other trade association for that year. 11 CFR 114.8(d)(1) and (d)(4).

In the case of the Society and its separate segregated fund, SAF-PAC, member corporations may grant multiyear approval by signing a form that includes a separate and specific authorization statement, to be signed by a representative of the corporation, for each year approved by the member. For example, the form would include three separate statements, each accompanied by a separate signature line, to cover approvals for three years. The authorization statement must indicate that the Society will limit its solicitations to the member corporation's solicitable personnel (i.e., its stockholders, executive and administrative personnel and their respective families). The form must also make clear that the person signing the authorization form is doing so as a representative of the corporation.

Once the Society has obtained the solicitation authorizations from member corporations, it must conduct the solicitations in compliance with other requirements of FEC regulations. See 11

CFR 102.5(a)(2) and 114.5(a). (Date issued: January 24, 1985; Length: 4 pages)

**AO 1984-63: Savings and Loan Association's Solicitation of Borrowers and Savings and Demand Account Holders**

The Amerifirst Good Government Committee (the Committee), the separate segregated fund of the Amerifirst Federal Savings and Loan Association (the Association), a membership organization that is a nonstock corporation, may solicit contributions from those Association members who are borrowers or holders of savings and demand accounts provided these members are not otherwise prohibited from making contributions under the election law. See 2 U.S.C. §§441b, 441c and 441e. Moreover, the Committee may solicit a select group of eligible Association members, rather than the entire membership, because Commission Regulations do not specify that solicitations be conducted on an "all-or-none" basis.

Commission Regulations define a membership organization's members as "all persons who are currently satisfying the requirements for membership" in the organization. 11 CFR 114.1(e). The Supreme Court has determined that "members" of a membership organization are analogous to shareholders in a business corporation; that is, the organization's members must include individuals who have "some relatively enduring and independently significant financial organizational attachment" to the membership organization. (See FEC v. National Right to Work Committee, 459 U.S. 197, 202, 103 S.Ct. 552 (1982)). In determining if a class of members is sufficiently related to the organization to qualify as "members," the Commission has "required that members have specific obligations to and rights in the organization," including the right to govern the organization.

The Association's demand and savings account holders and its borrowers meet these membership requirements and are therefore eligible for the Committee's solicitations. Specifically, financial obligations exist between Amerifirst and its savings and demand account holders and between Amerifirst and its borrowers. Furthermore, the participation of the account holders and borrowers in governing the Association is evidenced by their rights to: make proposals and vote at membership meetings, help nominate directors, elect directors and receive a pro rata share of assets on dissolution of the Association. Commis-

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sioners Thomas E. Harris and Danny L. McDonald filed a joint dissent. (Date issued: February 5, 1985; Length: 7 pages, including dissent)

**COURT CASES**

**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
1985-6	Affiliation between PACs connected to union local and international labor organization. (Date made public: January 22, 1985; Length: 2 pages)
1985-7	Solicitation of personnel of wholesalers exclusively affiliated with subsidiary of PAC's parent corporation. (Date made public: January 28, 1985; Length: 7 pages, plus 23-page supplement)
1985-8	Time frame for committee's return of illegal contributions. (Date made public: February 1, 1985; Length: 12 pages)

**ALTERNATE DISPOSITION OF ADVISORY OPINION REQUEST**

**AOR 1984-44: Contributions by two PACs prior to merger of their corporate sponsors**

In a letter of January 17, 1985, the General Counsel acknowledged the withdrawal of the advisory opinion request. In a letter of December 10, 1984, to the Commission, the requesters had claimed that, subsequent to their merger, the two corporations had taken steps to "prevent exceeding (contribution) limits...."

**PUBLIC APPEARANCES**

3/18/85	The Southland Corporation Washington, D.C. Commissioner Lee Ann Elliott
3/26/85	American Society of Association Executives Washington, D.C. Commissioner Joan D. Aikens
4/18/85	American Bar Association San Antonio, Texas Commissioner John Warren McGarry

**FEC v. LIBERAL PARTY FEDERAL CAMPAIGN COMMITTEE**

On November 13, 1984, the U.S. District Court for the Southern District of New York entered a default judgment against the defendants in FEC v. Liberal Party Federal Campaign Committee (Civil Action 84-CIV 5552). Under the court order, within 30 days of the court's final judgment, the Liberal Party Federal Campaign Committee had to:

- o Amend its reports to reflect in-kind contributions of \$14,149 to the National Unity Campaign for John B. Anderson, Mr. Anderson's principal campaign committee for his 1980 Presidential general election campaign; and
- o Pay a \$5,000 civil penalty to the U.S. Treasury.

For a summary of the FEC's complaint, see page 8 of the October 1984 Record.

**NATIONAL CONGRESSIONAL CLUB AND JEFFERSON MARKETING, INC. v. FEC**

On February 14, 1985, the National Congressional Club (NCC), a multicandidate political committee, and Jefferson Marketing, Inc. (JMI), a North Carolina corporation that provides media services to political committees, voluntarily dismissed a suit they had filed against the FEC. Plaintiffs had filed their suit with the U.S. District Court for the District of Columbia on January 29, 1985. (Civil Action No. 85-0299)

In their suit, NCC and JMI sought action against the FEC with regard to the agency's processing of two compliance actions (i.e., matters under review or MURs). The compliance actions were filed against NCC and JMI by Congressman Charles E. Rose (MUR 1503) and the Democratic Party of North Carolina (MUR 1792). In his complaint, filed in October 1982, Congressman Rose alleged that, among other things, JMI had provided media services to his 1982 primary election opponents at less than fair market value, resulting in a prohibited corporate contribution from JMI to the candidates. In the ensuing investigation, the General Counsel's office also found that a special relationship may have existed between NCC and JMI. In MUR 1792, the Democratic Party of North Carolina included, among its claims, an allegation concerning the NCC/JMI relationship.

NCC and JMI asked the court to find that the FEC's actions with regard to MURs 1503 and 1792 violated the election law, as well as the First and Fifth Amendments, and were contrary to law. Plaintiffs based these claims on the following allegations:

*continued*

- o The FEC refused to consolidate MURs 1503 and 1792, as requested by plaintiffs NCC and JMI.
- o The FEC failed to give NCC and JMI adequate notice of the factual and legal bases for the agency's "reason to believe" determinations in MUR 1503.
- o Before finding "reason to believe" that NCC and JMI were related, the FEC found "probable cause to believe" that, based on their relationship, the two organizations had violated the election law's ban on corporate contributions.
- o The FEC refused to give NCC and JMI an opportunity to respond to the General Counsel's position on the FEC's authority to find "probable cause to believe" NCC and JMI were related before finding "reason to believe" they were related.
- o The FEC took final action on MUR 1503 despite NCC's and JMI's allegations that the agency had violated the election law in processing the complaint.

NCC and JMI also sought an injunction requiring the Commission to comply with provisions of the election law and the Constitution.

#### NEW LITIGATION

##### **Spannaus and the LaRouche Campaign v. FEC**

The LaRouche Campaign, the principal campaign committee for Lyndon H. LaRouche, Jr., a 1984 publicly funded Presidential primary candidate, and the campaign's treasurer, Edward W. Spannaus, ask the court to declare that:

- o FEC investigations of the LaRouche Campaign's 1984 campaign activities are "motivated solely by bad faith" and are "an abuse of process," in violation of state laws and the U.S. Constitution;
- o The FEC is "selectively and discriminatorily enforcing the federal election laws resulting in violation of the plaintiffs' rights of equal protection"; and
- o The FEC has violated the confidentiality provisions of the federal election laws.

Plaintiffs also ask the court to:

- o Enjoin the FEC from opening any further enforcement matters, pending resolution of current enforcement matters concerning the LaRouche campaign;
- o Enjoin the FE from seeking information from third parties without first notifying the LaRouche Campaign of its intention and providing the campaign with the particulars of the information sought; and
- o Direct the agency to refrain from any further investigation until the FEC: a) furnishes the LaRouche Campaign with full disclosure of the supporting facts and b) demonstrates to the court that it is "proceeding with a lawful investigation within the scope of its jurisdiction."

U.S. District Court for the Southern District of New York, Civil Action No. 85 CIV. 0404, January 16, 1985.

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

Simeon Golar, a House candidate who campaigned unsuccessfully in the 1982 New York Democratic primary, seeks action against the FEC for dismissing the second administrative complaint that he filed with the agency concerning campaign support provided to his primary opponent, Representative Joseph P. Addabbo.

Mr. Golar filed his first administrative complaint concerning the Addabbo campaign in January 1984. In the complaint, he alleged that fundraising services provided to Congressman Addabbo by the personnel of two corporations constituted illegal contributions by the individuals and their respective corporations. After the Commission dismissed his first complaint, Mr. Golar filed his first suit seeking court review of the FEC's decision. In its answer, the FEC argued that Mr. Golar had failed to exhaust the administrative remedies available to him with respect to counts II, III and IV of the complaint and that these counts should be dismissed. Accordingly, on August 31, 1984, Mr. Golar filed a second administrative complaint with the FEC concerning the Addabbo campaign, which incorporated new allegations made in his suit. In November 1984, the Commission dismissed his second complaint.

On January 14, 1985, after being informed of the FEC's dismissal of Mr. Golar's second administrative complaint and his intention to file a second suit, the court dismissed his first suit without prejudice and stated that Mr. Golar could incorporate the claims of his first suit in his second suit.

U.S. District Court for the District of Columbia, Civil Action No. 85-0225, January 22, 1985.

## COMPLIANCE

##### **MUR 1695: Loans Between Political Committees**

On October 1, 1984, the Commission entered into conciliation agreements with a candidate committee and a political committee which had, respectively, made and accepted an excessive contribution in the form of a loan.

##### **Complaint**

The Commission initiated this matter based on information obtained in the normal course of its supervisory responsibilities. In August of 1983

a political committee sponsored a debate among four presidential candidates. The political committee charged a \$10 admission fee. The committee also secured a loan of \$16,000 from the authorized committee of a congressional candidate (the candidate committee). The revenue generated by the admission fee and the proceeds of the loan were used to pay the expenses incurred in sponsoring the debate.

On May 8, 1984, the Commission opened a MUR concerning these activities and found reason to believe that:

- The political committee had accepted an excessive contribution in the form of a loan, in violation of 2 U.S.C. §441a(a)(1)(C); and
- The candidate committee had made an excessive contribution in the form of a loan, in violation of 2 U.S.C. §441a(f).

### General Counsel's Report

**Excessive Loan.** Under the Act, a loan is considered a contribution, subject to the same limits imposed on any other type of contribution. 2 U.S.C. §431(8)(A)(i). Therefore, the General Counsel found, when the candidate committee loaned \$16,000 to the political committee, it exceeded contribution limits by \$11,000, in violation of 2 U.S.C. §441a(a)(1)(C). Similarly, the political committee violated the law by accepting this excessive contribution, in violation of 2 U.S.C. §441a(f).

Respondents claimed that they were unaware that a loan was considered a contribution, subject to the \$5,000 limit. Upon learning this, the political committee promptly returned \$11,000 to the candidate committee, bringing the amount of the loan within the legal limit. Respondents further maintained that a tax-exempt organization which does not "endorse, support or oppose political candidates or political parties may stage nonpartisan debates," and that funds provided to pay for nonpartisan debates sponsored by such nonpartisan, tax-exempt organizations do not count as contributions, under 11 CFR §§100.7(b)(21) and 110.13. The political committee contended that it qualified as a non-partisan, tax-exempt organization because the debate was its sole activity, the debate was a nonpartisan event, and the committee did not make contributions to or expenditures on behalf of any candidate for federal office.

The General Counsel held that the political committee did not qualify as a nonpartisan, tax-exempt organization, as defined under 11 CFR §110.13. In fact, the organization was registered with the Commission as a political committee.

### Excessive In-Kind Contributions to Candidates

The General Counsel also stated that the political committee had failed to report the expenditures involved in staging the debate as in-kind contributions to the authorized committees

of the four Presidential primary contenders who participated in the event, in violation of 2 U.S.C. § 434(a)(1). These contributions, in the amount of \$2,330.97 to each candidate's committee, exceeded the legal limit of \$1,000. 2 U.S.C. §441a(1)(A).

By accepting excessive contributions from the political committee, and by failing to report them, the four Presidential primary candidate committees had also violated the law. 2 U.S.C. §§441a(f) and 434(a)(1). The General Counsel recommended that the Commission find reason to believe that the Presidential committees had violated the law.

### Commission Determination

On July 31, 1984, the Commission found reason to believe that the authorized committees of the four Presidential primary candidates who participated in the debate had violated the Act. The file was closed with respect to these violations.

On October 1, 1984, the Commission entered into conciliation agreements with the political committee and the candidate committee. The political committee agreed to pay a civil penalty of \$450 and to amend its reports to reflect the contributions to the four Presidential candidate committees. The candidate committee agreed to pay a civil penalty of \$250. Both committees agreed that they would not undertake any future activity which is in violation of the Act.

### CHANGE OF ADDRESS

Registered political committees are automatically sent the Record. Any change of address by a registered committee must, by law, be made in writing as an amendment to FEC Form 1 (Statement of Organization) and filed with the Clerk of the House, the Secretary of the Senate, or the FEC, as appropriate.

Record subscribers (who are not political committees), when calling or mailing in a change of address, are asked to provide the following information:

1. Name of person to whom the Record is sent.
2. Old address.
3. New address.
4. Subscription number. The subscription number is located in the upper left hand corner of the mailing label. It consists of three letters and five numbers. Without this number, there is no guarantee that your subscription can be located on the computer.

# STATISTICS

## TEN YEARS OF PAC GROWTH

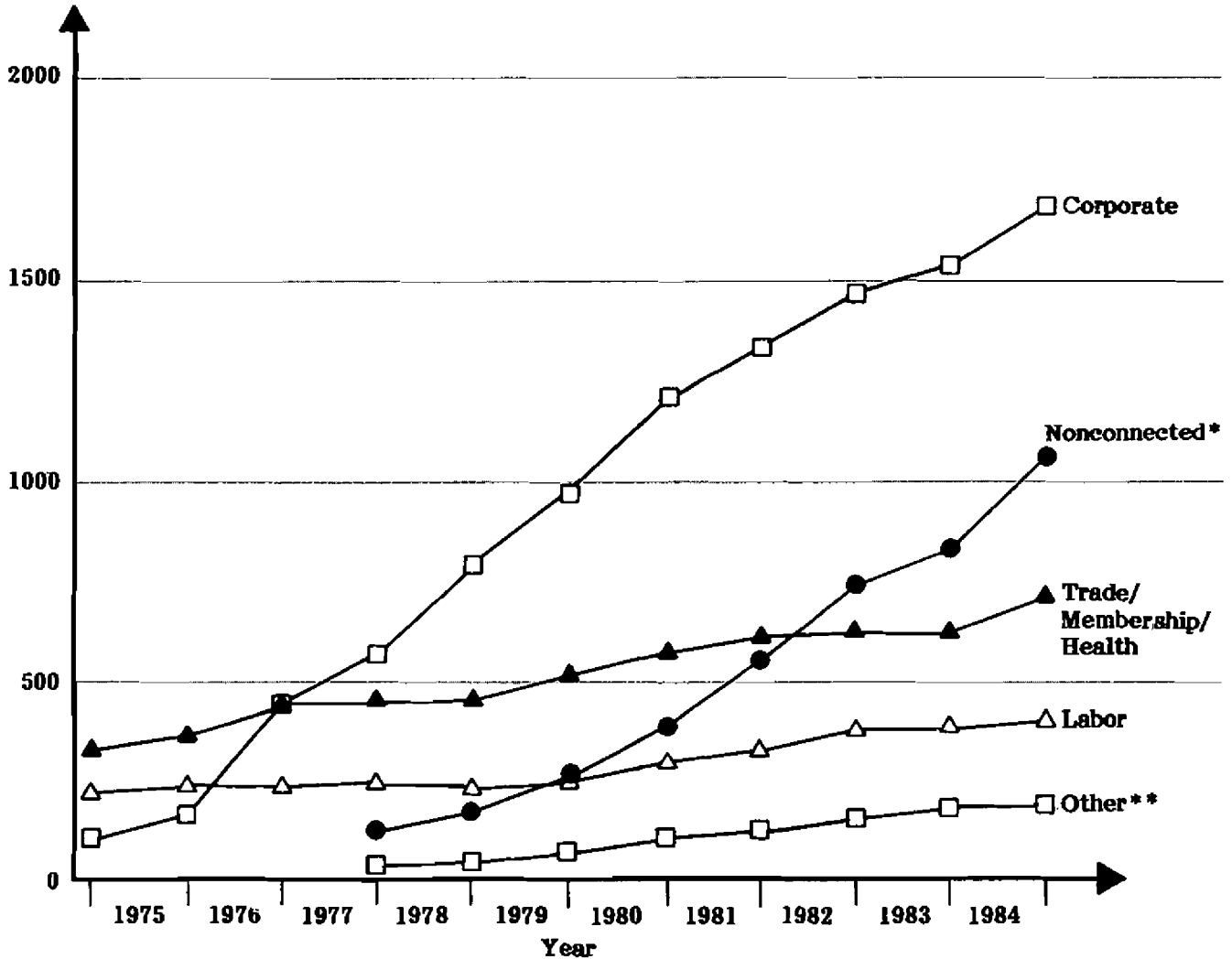
By the end of 1984 there were 4,009 PACs registered with the FEC, an increase of 13 percent over the 3,525 PACs registered at the end of

1983. (The term PAC or political action committee refers to any political committee not authorized by a federal candidate or established by a political party.)

The graph below plots the growth of PACs from 1975 through 1984. Figures show that 608 PACs existed at the beginning of 1975. By the end of 1976, that number had risen to 1,146 and by January 1985 had reached 4,009. The graph does not reflect the financial activity of PACs.

### PAC GROWTH

Number of PACs



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

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

**AUDITS****AUDITS RELEASED  
TO THE PUBLIC**

The following is a chronological listing of audits released by the Commission between June 12, 1984, and November 19, 1984. The audit reports are available to the general public in the Public Records Office.

1. Georgia Federal Elections Committee (final audit report released June 12, 1984)
2. Western Intermountain Network Political Action Committee (final audit report released July 3, 1984)
3. DNC Services Corporation/Democratic National Committee (final audit report released July 3, 1984)
4. Liberal Party Federal Campaign Committee (final audit report released July 18, 1984)
5. Askew for President Committee (final audit report for the 1984 primary campaign released August 2, 1984)
6. The National Unity Campaign for John Anderson (addendum to the final audit report for the 1980 general election campaign released August 24, 1984)
7. Hollings for President, Inc. (final audit report for the 1984 primary campaign released September 10, 1984)
8. Long Island Aerospace Political Committee (final audit report released September 18, 1984)
9. Democratic State Committee, Special Account--Delaware (final audit report released November 8, 1984)
10. International Chiropractors Political Action Committee (final audit report released November 19, 1984)

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