



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 25, 1992

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-35

George Cochran  
The University of Mississippi Law Center  
University, MS 38677

Dear Mr. Cochran:

This responds to your letter dated September 6, 1992, on behalf of Jon Khachaturian concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the proposed acceptance of excessive contributions.

You represent Jon Khachaturian, an independent candidate for the United States Senate in Louisiana in the October 3, 1992, open primary. You state that, on August 20, 1992, Mr. Khachaturian "qualified" in Louisiana as a candidate for the Senate by paying a filing fee of \$600. The candidate's name appears on the primary ballot. In addition, Mr. Khachaturian submitted a Statement of Candidacy and his principal campaign committee submitted a Statement of Organization, which were received by the Secretary of the Senate on September 10, 1992.

In an affidavit enclosed with your letter, Mr. Khachaturian states that he needs to raise \$250-300,000 to mount an effective campaign against the Democratic incumbent. Mr. Khachaturian states that he can make a personal contribution of \$50,000 and that he has 15 contributors willing to donate contributions aggregating \$200,000, if permitted by law.<sup>1/</sup> Mr. Khachaturian states that the \$1,000 limit [at 2 U.S.C. 441a(a)(1)(A)] "eliminates [him] as a serious candidate" and renders the incumbent unbeatable. He also states that, although "party candidates" are subject to the same limit, they "have greater access to political action committees (PACs) which can contribute up to \$5,000" and are eligible for substantial party coordinated expenditures.

You describe Mr. Khachaturian as "an independent candidate who clearly demonstrates that the [section 441a] restriction precludes the mounting of an effective campaign against party

candidates," and ask whether those limits should be applicable to him. You enclose a memorandum of law challenging the statutory limit as applied to the candidate; you argue that there is an unequal impact, with advantages extending to major party candidates, and that the First Amendment rights of Mr. Khachaturian may be impaired.

Section 441a(a)(1)(A) of Title 2 was enacted in 1974 as an amendment to the Act, which the Commission is required to administer and enforce. 2 U.S.C. 437c(b). The wording of section 441a(a)(1)(A) applies to all candidates and makes no exceptions. Generally, Federal administrative agencies are without power or expertise to pass upon the constitutionality of legislative action. Spiegel, Inc. v. Federal Trade Commission, 540 F.2d 287, 294 (7th Cir. 1976). See Johnson v. Robison, 415 U.S. 361, 368 (1974). Therefore, even if the Commission were persuaded as to the merits of your position, it could not accede to Mr. Khachaturian's request and conclude that the limit is inapplicable.

Moreover, the Commission notes that the constitutionality of 2 U.S.C. 441a(a)(1)(A) has been upheld in Buckley v. Valeo, 424 U.S. 1 (1976). The Court concluded that the \$1,000 limitation was constitutionally justified because of the need "to limit the actuality and appearance of corruption resulting from large individual financial contributions." 424 U.S. at 26. The Court determined not to question the amount of the limit established by Congress and concluded that a possible lack of "fine tuning" by Congress as to the amount did not constitute an infringement, as overbreadth, of First Amendment rights. 424 U.S. at 30. The Court admitted that the charge of discrimination against minor party and independent candidates is more troubling than a similar charge with respect to major party challengers. Nevertheless, the Court, in viewing the situation of minor party and independent candidates in general, referred to such countervailing factors as the resultant inability of major party candidates to receive large contributions (i.e., contributions they were more likely to receive), and the fact that minor party and independent candidates may have a substantial impact on the outcome of elections. 424 U.S. at 33-35. See Goland v. United States, 903 F.2d 1247, 1258 (9th Cir. 1990).

Based on the foregoing analysis, the Commission concludes that the limits of 2 U.S.C. 441a(a)(1)(A) are applicable to Mr. Khachaturian. His campaign may not accept contributions in excess of \$1,000 from any individual with respect to the October 3 open primary.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Scott E. Thomas  
Vice-Chairman for the Federal Election Commission

ENDNOTES

1/ You have enclosed copies of fifteen letters from contributors stating their willingness to contribute \$5,000 or \$10,000 (and, in one case, \$75-100,000) if it becomes legally permissible or if the candidate can obtain a ruling or a change in the law permitting it. You have also enclosed a campaign plan drawn up by a consultant illustrating the need for substantial funding.