

Federal Election Commission

Annual Report 1989



**Federal Election Commission
Washington, D.C. 20463**

Commissioners

Lee Ann Elliott, Chairman
John Warren McGarry, Vice Chairman
Joan D. Aikens, Commissioner
Thomas J. Josefiak, Commissioner
Danny L. McDonald, Commissioner
Scott E. Thomas, Commissioner

Ex Officio Commissioners

Walter J. Stewart, Secretary of the Senate
Donnald K. Anderson, Clerk of the House

Statutory Officers

John C. Surina, Staff Director
Lawrence M. Noble, General Counsel



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 1, 1990

The President of the United States
The United States Senate
The United States House of Representatives

Dear Sirs:

We are pleased to submit for your information the 15th annual report of the Federal Election Commission, as required by the Federal Election Campaign Act of 1971, as amended. The Annual Report 1989 describes the activities performed by the Commission in carrying out its duties under the Act. The report also outlines the legislative recommendations the Commission adopted and transmitted to the Congress for consideration in March 1990. We are hopeful that you will find this annual report a useful summary of the Commission's efforts to implement the Federal Election Campaign Act.

Respectfully,

A handwritten signature in cursive script that reads "Lee Ann Elliott".

LEE ANN ELLIOTT
Chairman

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Introduction

A number of events highlighted 1989, the Federal Election Commission's fourteenth year of operation:

On November 30, President Bush signed the Ethics Reform Act of 1989, which phases out the Federal Election Campaign Act provision that allows Members of Congress holding office in January 1980 to use their excess campaign funds for personal use. The new law also assigns a new duty to the FEC, that of overseeing the personal finance reports filed by nonincumbent candidates under the Ethics in Government Act.

Responding to the growing international interest in democratic forms of government, the Commission briefed numerous foreign delegations on the federal election process. The most in-depth exchange of views took place between the Commission and its Soviet counterpart, the Central Electoral Commission of the USSR. In June, the FEC visited the Soviet Commission in Moscow, which returned the visit in November. The Soviet delegation observed the Virginia gubernatorial election in Richmond and then traveled to New York City, which had just concluded its mayoral election.

In April and November 1989, the Commission alerted Congress to a probable shortfall in the Presidential Election Campaign Fund by 1996. Using new data available in January 1990, the Commission projected that the Fund could run out of money even earlier, during the 1992 Presidential elections. A shortfall would materially alter the public funding system in place since the 1976 Presidential elections.

The Commission replaced its outdated word processing equipment with a computer system that permits agency-wide communication and access to the FEC database. Through a series of cost-saving measures, the agency expanded the system to more users than originally planned without exceeding the \$1 million Congress allocated for the project.

As one of the agencies covered by the Inspector General Act amendments of 1988, the Commission created an Inspector General's Office and appointed an Acting Inspector General.

The FEC's Clearinghouse on Election Administra-

tion, responding to concerns about the reliability and accuracy of the computer-based voting systems, requested final comments on a draft of voluntary voting system standards and three documents on their implementation.

The Commission continued its efforts to clarify the law by prescribing a comprehensive set of new regulations on affiliation, transfers and earmarked contributions.

Finally, the Commission oversaw eight special elections during 1989, more than in any other year.

These and other Commission activities are summarized in this Report, which also contains the agency's 1990 recommendations for legislative change.

Chapter 1

The Commission

Commissioners

On October 5, 1989, the Senate confirmed the Presidential reappointments of Joan D. Aikens and John Warren McGarry to new six-year terms as FEC Commissioners. Mrs. Aikens, one of the original members of the Commission, has served as Commissioner since April 1975 and has been reappointed four times. This was Mr. McGarry's second reappointment; he began serving as Commissioner in 1978.

Commission officers during 1989 were Chairman Danny L. McDonald and Vice Chairman Lee Ann Elliott. In December 1989, the Commission elected the 1990 officers: Chairman Lee Ann Elliott and Vice Chairman John Warren McGarry.

Biographies of the Commissioners, the Staff Director and the General Counsel appear in Appendix 1.

International Delegations

The global movement toward more democratic elections made history in 1989. The Commission was fortunate in being able to play a role by responding to a clear demand from the international community to learn more about United States elections. Visitors from a broad scope of nations asked the Commission to explain the mechanics of the American electoral process. The Commission hosted delegations from Italy and Singapore, while the Clearinghouse briefed visitors from 88 countries. Most noteworthy among the FEC's international contacts were the exchange visits between the Soviet Union's Central Electoral Commission and the FEC.

FEC Visit to USSR

At the invitation of the Central Electoral Commission of the USSR, a 12-person delegation of Commissioners and FEC staff visited the Soviet Union from June 5 through June 14, 1989. The trip was funded by the Soviet government and the International Foundation for Electoral Systems, a private American organization whose executive director

accompanied the FEC delegation.

Headed by 1989 Chairman Danny L. McDonald, the delegation exchanged information and ideas on the electoral process with Vice President Anatoliy Lukyanov; Soviet election officials at the central, republic and municipal levels; several deputies to the new Soviet Congress of People's Deputies, including Boris Yeltsin; and professors of law and political science. The delegation met with Soviet officials in Moscow, Leningrad and Kiev. Meetings focused on the new Soviet election law, adopted in December 1988, which established the Congress of People's Deputies. The first elections to the Congress were held in March 1989. Among the topics discussed were:

- The nomination process;
- Ballot access and vote counting;
- Campaign funding and other campaign issues;
- The composition and role of the Congress of People's Deputies;
- The structure and functions of the Central Electoral Commission and local electoral commissions; and
- Election reforms under consideration in the Soviet Union.

At a press conference held on September 13 to announce the release of a report on the visit (see below), the Commissioners said they were impressed by the progress the Soviets have made toward introducing democratic elections. Chairman McDonald commented, "They are truly feeling their way through this process," and noted their "eagerness to learn about the American system."

Report on the FEC Visit

In September 1989, the Commission released a report on the Soviet/American discussions that took place in the Soviet Union.¹ Listed below are some of the report's findings:

- Soviet officials appeared to be proud of the

¹ Copies of the report are available from the Public Records Office.

steps taken toward democratic elections: grassroots participation in the selection of nominees; multicandidate contests; and secret voting.

- Nevertheless, Soviet officials acknowledged that the March 1989 elections were only a beginning. They noted, for example, the need to: equalize campaign resources; further promote multicandidate slates and grassroots participation in the nomination process; provide adequate forums for candidates; re-examine the representation of public organizations in the Congress; strengthen the enforcement powers of the Central Electoral Commission; and clarify the election law.
- In carrying out further reforms, officials stated they wanted to draw on the constitutional laws of other countries and the experience of Western nations in conducting democratic elections. They sought information on nomination procedures, campaign funding, vote counting and election law enforcement.

Soviet election officials were able to learn more about American elections when they made a return visit to the United States in November 1989.

Soviet Visit to U.S.

On November 2, a delegation of members of the Central Electoral Commission of the USSR, headed by Chairman Vladimir P. Orlov, arrived in Washington, D.C., where they met with FEC Commissioners and were briefed by staff and attorneys. The Soviet delegation, accompanied by Chairman McDonald, met with Vice President Quayle, Attorney General Thornburgh and the Chairmen of the two Congressional committees that oversee election law: Representative Al Swift, Chairman of the House Administration Committee's Subcommittee on Elections, and Senator Wendell H. Ford, Chairman of the Senate Rules Committee.

The Soviet commissioners were able to observe U.S. elections firsthand when they visited Richmond on the day of the Virginia elections. They went to polling places, to the gubernatorial candidates'

headquarters, to City Hall to see the votes collected and to a television station to see how the news media reported elections. They also had meetings with Governor Gerald L. Baliles and state election officials. Traveling to New York City the day after the election for mayor, they talked with New York City election officials and the city council.

Report on the Soviet Visit

The Commission released a December 1989 report on the topics raised by the Soviet delegation during its election study tour.² The report summarized the three broad areas of discussion outlined below.

- The Administration of Elections: election responsibilities of officials at the municipal, state (republic) and national levels; and resolution of disputed elections in the courts.
- Campaign Finance and Politics: the formation and legitimacy of political committees; multi-party politics; campaign funding of candidates in the USSR; and allocation of Congressional seats (USSR) to all-union social organizations.
- Federalism and the Role of Representational Bodies: the election of chief executives of the Soviet Republics, either by popular vote or by representative bodies; the formation of factions and caucuses in the Soviet Congress; and the operations of the U.S. Congress.

Office Automation

During 1989, the Commission replaced its 1970s-vintage word processing equipment with an up-to-date office automation system. The old equipment was failing with increasing frequency. Because the manufacturer stopped producing the machines, replacement parts were scarce and maintenance costs high. Recognizing this, Congress earmarked \$1 million in fiscal year 1989 for new computer equipment.

² Copies of the report are available from the Public Records Office.

The agency received the funds in late 1988 and, in less than one year, negotiated a contract, installed the equipment and trained employees to use it. The system was fully operational by October 1989, without budget overruns. Taking advantage of price cuts and other opportunities for savings, the Commission installed almost 150 desk-top workstations and purchased a temperature alarm for the mainframe computers to prevent equipment damage.

The agency chose the VAX system, developed by Digital Equipment Corporation, because it integrated into one system new word processing capabilities and existing database functions. The system also provided maximum security of individual files and the FEC database and the capacity for upgrading the equipment as system improvements become available.

Personnel and Labor Relations

Labor-Management Relations

The Commission and the National Treasury Employees Union entered into a new labor-management agreement on November 6, 1989. The new contract sets forth personnel policies and practices for the bargaining unit represented by NTEU Chapter 204.

Training

The Commission completed the first phase of training to implement the FEC's Drug-Free Workplace Program. In November 1989, senior managers and supervisors were briefed on the basic elements of the program: education, prevention and constructive treatment. Staff training will follow.

Another training program provided FEC attorneys with intensive instruction on depositions and negotiations, two facets of legal practice used extensively in FEC enforcement cases. Designed by the National Institute of Trial Advocacy, the September 1989 courses were taught by Institute attorneys along with the FEC's General Counsel and Associate General Counsels.

EEO Program

A new Equal Employment Opportunity officer was appointed in February 1989. The officer manages the EEO program and special emphasis programs, such as the Federal Women's and Hispanic programs. A 1989 program organized by the EEO officer focused on career development. Employees heard from outside consultants, FEC managers and a panel of federal personnel managers on topics such as resume writing, interviewing, training opportunities and career outlooks for the 1990s.

Recruitment

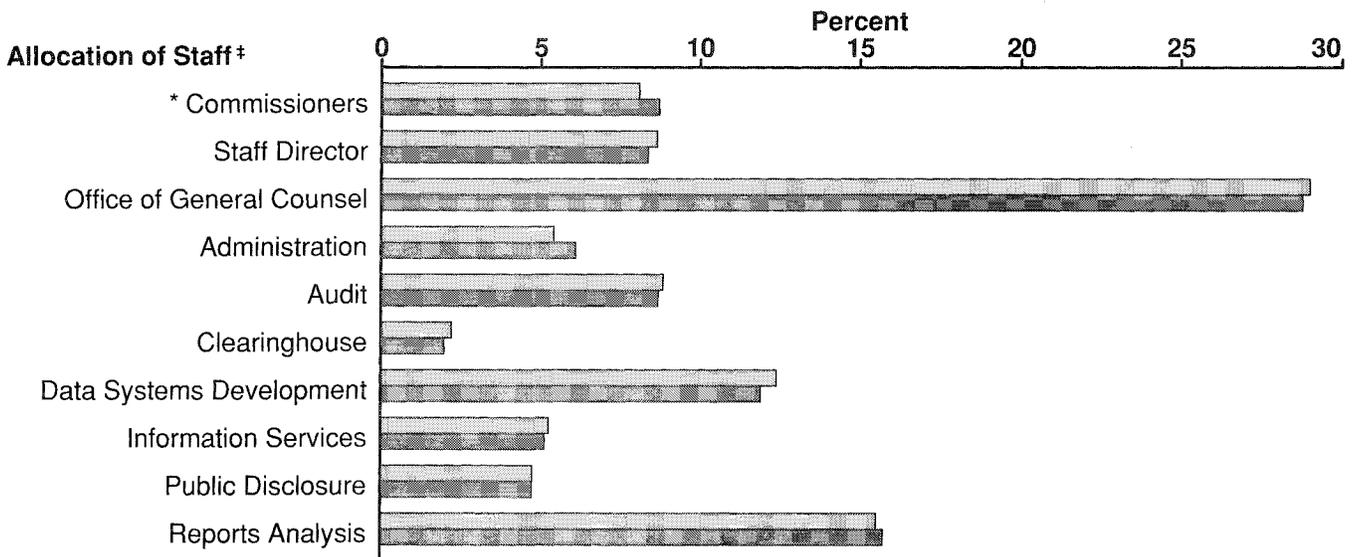
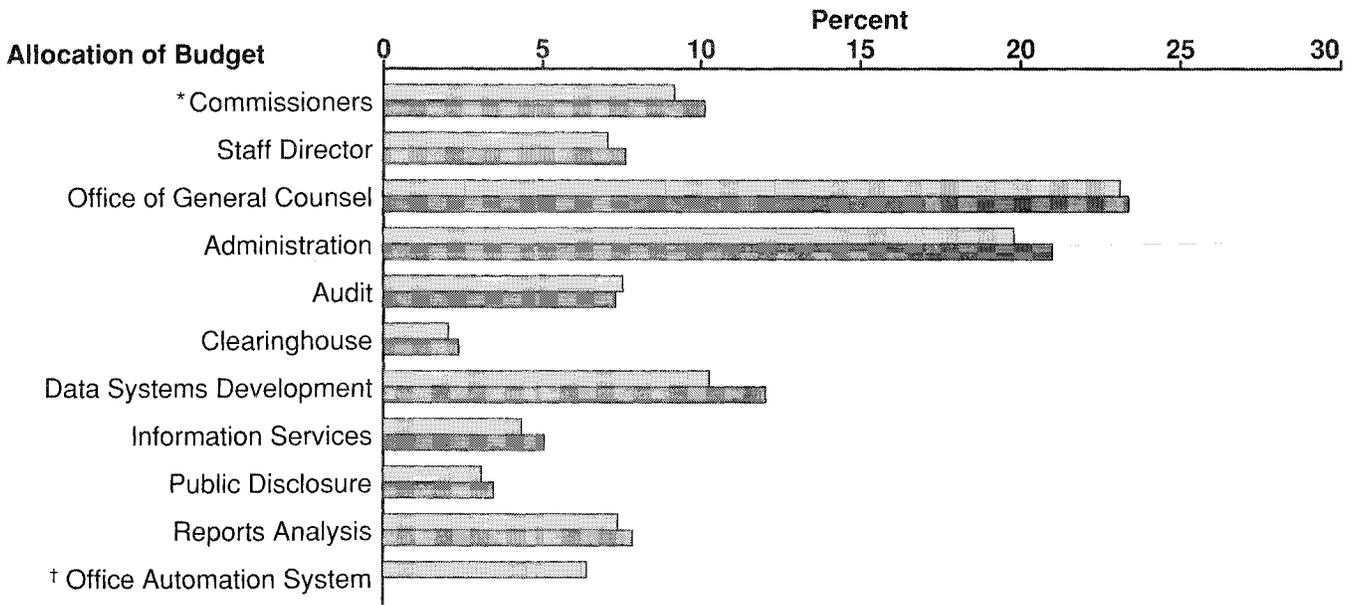
Like other federal agencies, the Commission has had difficulty recruiting secretaries, auditors and attorneys. The federal government payscale and the high cost of living in the Washington, D.C., area discourage many qualified candidates from applying for and accepting these positions. To supplement in-house recruitment of auditors, the FEC reached an informal agreement with the General Accounting Office (GAO) that allows the Commission to take advantage of GAO's extensive recruitment program. In addition, the Office of General Counsel continued efforts to attract qualified attorneys by conducting on-campus interviews at various law schools and consortia around the country.

Inspector General

In April 1989, the Commission appointed an Acting Inspector General. The 1988 amendments to the Inspector General Act of 1978 called for the appointment of an Inspector General (IG) in 33 federal agencies, one of which was the FEC. The IG conducts audits and investigations to detect fraud, waste and abuse within the agency and recommends policies and procedures designed to improve the economy and effectiveness of operations. Every six months, the IG must notify Congress of any serious problems or deficiencies in agency operations and any corrective measures taken by management. The IG files these reports with the Commissioners, who forward the reports, along with their comments, to Congress.

Divisional Allocations

Fiscal Year 1989
 Fiscal Year 1990



* Includes Inspector General's Office.

† This category represents the one-time purchase, installation and training costs.

‡ The Commission averaged 251.3 full-time equivalent positions (FTE) in FY 1989 and projected 248 FTE for FY 1990.

In compliance with the Inspector General Act, the Commission notified Congress and the Office of Management and Budget on steps taken to implement the Act: appointing an Acting IG until a permanent replacement was made and providing administrative and budgetary support for the IG's office. The Acting IG developed formal working guidelines with the General Counsel and the Staff Director and initiated a Commission-wide survey to establish an audit plan for fiscal year 1990.

The FEC's Budget

Fiscal Year 1989

The Commission's initial FY 1989 appropriation was \$15.433 million. (This funding included the \$1 million earmarked for the office automation pro-

Functional Allocation of Budget

	FY 1989	FY 1990
Personnel	10,527,200	10,962,500
Travel	208,800	144,000
Motor Pool	8,700	6,000
Commercial Space	19,300	20,000
GSA Space	1,640,000	1,671,500
Equipment Rental	260,400	387,000
Equipment Purchase *	1,040,900	60,000
Printing	224,000	315,000
Support Contracts	616,300	699,500
Administrative Expenses	117,300	113,500
Supplies and Materials	228,100	222,000
Publications	120,700	126,500
Telephone/Telegraph	313,500	323,500
Postage	110,000	140,000
Training	83,200	44,000
GSA Services, Other	150,700	95,000
Total	\$15,669,100	\$15,330,000

*In fiscal year 1989, this total included \$1 million specially appropriated for an office automation system.

gram.) The Commission recognized that it could not afford the 264 full-time equivalent positions (FTE) authorized in the appropriation. The budget was strained because the agency had to absorb costs for the 4.1 percent 1989 pay raise, the 31.5 percent increase in health benefits and the establishment of an Inspector General's Office. The agency requested a \$368,000 supplemental appropriation but had little assurance that it would be forthcoming. Consequently, the Commission tried to cut costs by reducing staff through attrition and by keeping a tight rein on nonpersonnel expenses.

Even with these controls in place, the agency had to adopt emergency austerity measures in April. The Commission cut temporary data-entry staff and imposed a hiring freeze in all offices except the Audit Division and the General Counsel's Office, where the agency had to maintain staffing to complete the post-election workload. Further cuts were made in nonpersonnel programs, for example, in Clearinghouse contract money.

In July 1989, however, the agency received a \$250,000 supplemental appropriation and was able to allocate funds to several nonpersonnel programs that had been cut. The supplemental appropriation came through too late, however, for the agency to hire the additional staff that was needed. While the level of staffing for FY 1989 averaged 251.3 FTE, on-board strength declined to 243 FTE by the end of the fiscal year.

The Commission's total funding for FY 1989, including the supplemental appropriation, was \$15.683 million, of which \$13,910 remained unspent and was returned to the U.S. Treasury.

Fiscal Year 1990

The Commission operated on a fiscal year funding level of \$14.257 million through October 25, 1989. The final appropriation for FY 1990 was \$15.330 million. However, to cover the cost of the 3.6 percent payraise (\$274,000) in January 1990, the agency had to cut nonpersonnel costs and reduce the FY 1990 staffing level from the 253 FTE positions authorized by the budget to 248 FTE.

However, because an anticipated sequester of

\$66,000 did not occur, the agency was able to reallocate the funds for increased professional and managerial training and continued data entry of contributions of \$200 and above from individuals for the 1990 election cycle. (In previous election cycles, the threshold for data entry had been \$500.)

The FY 1990 management plan called for a gradual return to an Audit Division staffing level comparable to that of the 1980 Presidential cycle (42 FTE positions). After 1980, budget constraints and legislative limits on non-Presidential audits led the Commission to reduce Audit staff to a core of 24 FTE, supplemented in Presidential years by temporary staff and GAO staff (detailed on a nonreimbursable basis) to help with the public funding program. However, during the 1988 Presidential cycle, the Commission experienced problems created by a shortage of experienced Audit staff. With the planned increase in Audit staff, supplemented by GAO employees, the agency will have sufficient trained staff in place for the 1992 elections.

A comparison of the allocation of budget resources for FYs 1989 and 1990 appears in the table and graphs above.

Chapter 2

Presidential Public Funding

During 1989, the Commission continued to audit the 1988 Presidential campaigns and convention committees that received public funds. Looking ahead to future Presidential elections, the agency expressed its concern that the Presidential public financing system, in place since 1976, may be out of funds by 1992.

Shortfall in Presidential Fund

In April 1989, and again in November, the Commission alerted Congress to the crisis of a declining balance in the Presidential Election Campaign Fund. Financed with dollars voluntarily checked off by individual taxpayers on their annual 1040 tax returns, the Fund is the sole source of federal money for the three phases of the Presidential election process: the primaries, the party conventions and the general election.

Although the previous (1989) projections had shown a Fund deficit for the 1996 elections, revised projections calculated in January 1990 showed that a shortfall in the Fund might occur even earlier, in 1992.

The inflation rate was the dominant factor in the Commission's revised projections, since payments from the Fund to convention committees and general election candidates are automatically adjusted for inflation. The inflation rate was also used to estimate future matching fund payments to primary candidates. The 1989 projections had been based on the 1988 inflation rate of 4 percent. The 1989 rate, however, was higher. In January 1990, the Department of Labor released the figure of 4.8 percent. Using the new inflation figure, the Commission increased projected payouts from the Fund.

Another factor the Commission considered in projecting the Fund balance was the estimated yearly deposit of taxpayer checkoff dollars. While payouts from the Fund are adjusted for inflation, the checkoff amount of one dollar is not indexed to the inflation rate. As a result, even with a constant level of taxpayer participation, deposits will eventually be overtaken by disbursements. Exacerbating this situation, taxpayer participation in the checkoff

program has declined (see the accompanying graph).

Using a yearly inflation rate of 4.5 percent and taking into account the declining deposits to the Fund, the agency projected that the Fund might run short for the 1992 Presidential elections by about \$202,000. For the 1996 elections, however, the agency projected a shortfall of over \$131 million.

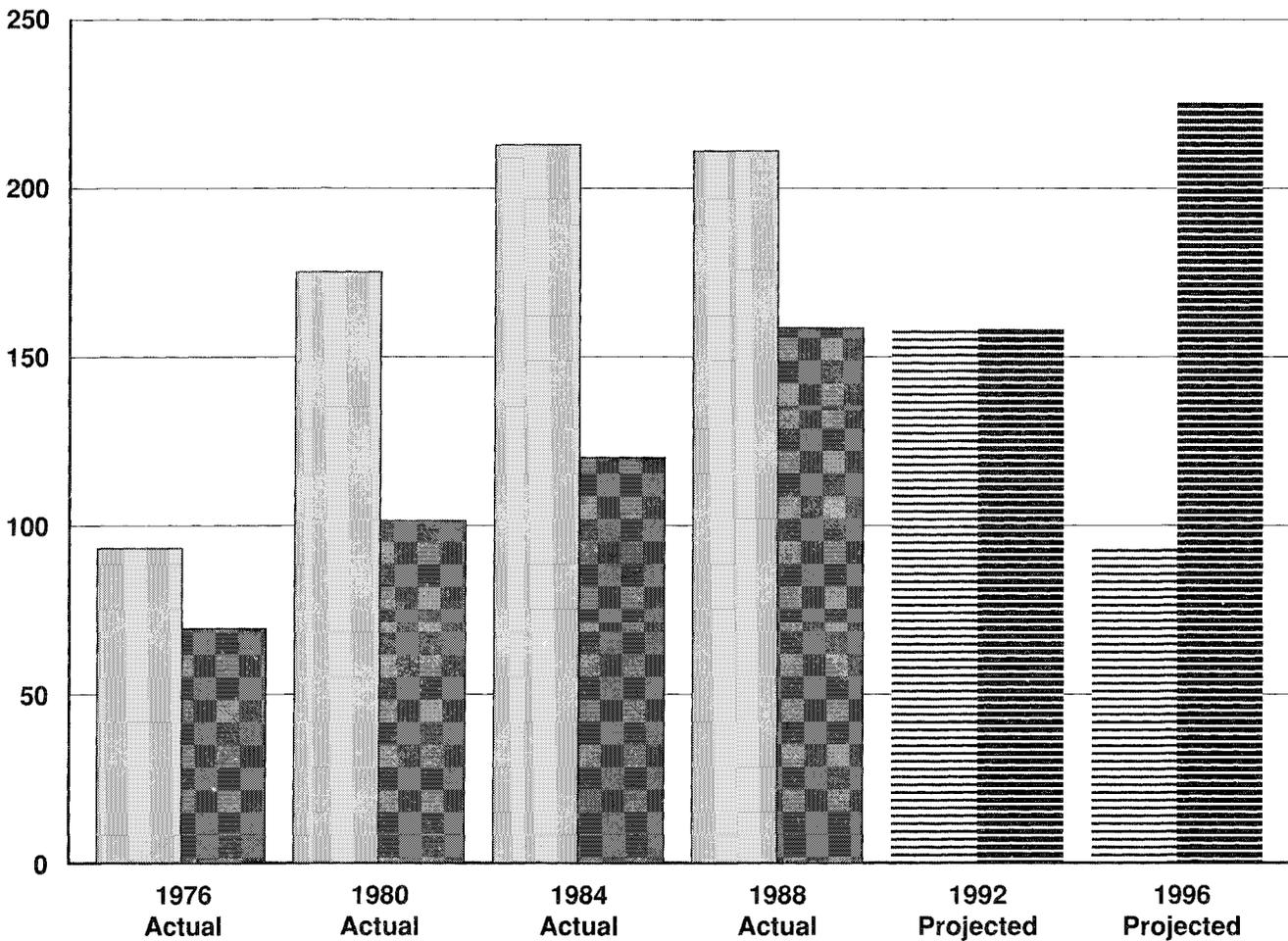
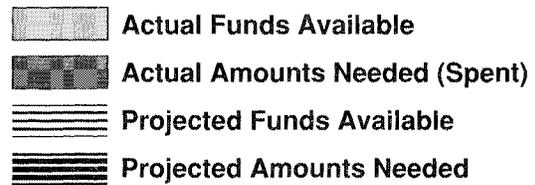
Should the Fund run out of money, the law stipulates that priority be given to funding for party conventions and general election nominees, with primary candidates receiving a smaller portion of federal matching funds. Should the Fund balance be insufficient to fully pay for the conventions and general election campaigns, as projected for the 1996 elections, private contributions would have to make up the difference.

"Such a result," said the Commission in a 1989 legislative recommendation, "would clearly alter the Presidential public funding program, which has been in effect in the general elections since 1976." Reiterating this concern in his November letter to Congress, 1989 FEC Chairman Danny L. McDonald said that "serious distortions to the Presidential election process will occur unless the balance in the Presidential Fund can be fully restored or the election finance system is fundamentally changed."

In an effort to increase public participation in the dollar checkoff, the Commission requested, but did not receive, an additional \$250,000 in fiscal year 1990 to produce a nationwide education program in conjunction with the National Advertising Council. The agency amended this proposal in its fiscal year 1991 budget request, asking for \$116,000 to fund a smaller program. Under this plan, the agency would first survey taxpayers' awareness and knowledge of the checkoff program. The survey results would then help the agency prepare effective videos and brochures explaining the 1040 checkoff and the public funding system.

**Presidential Campaign Fund:
Funds Available and Needed ***

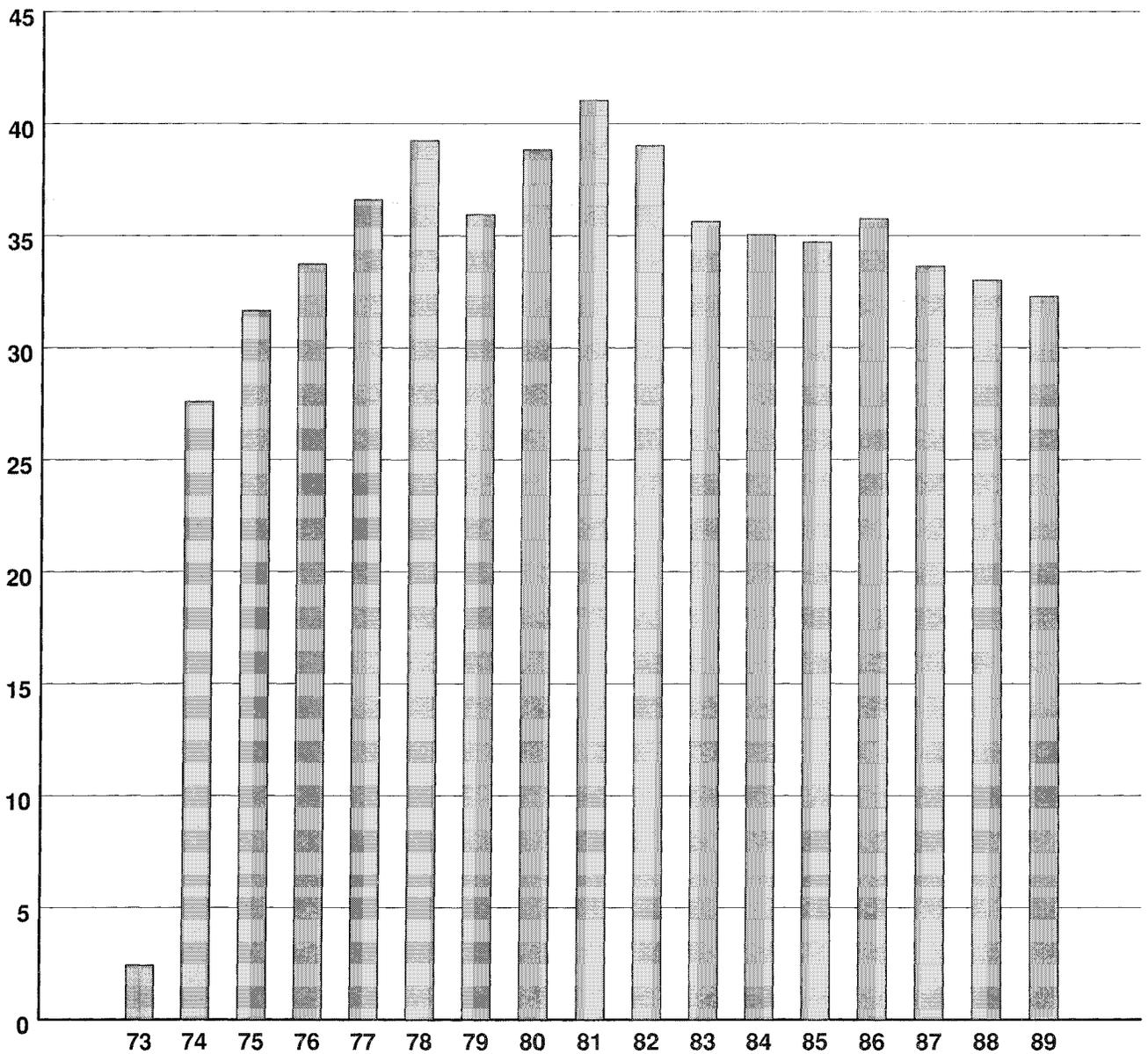
Millions of Dollars



* The Commission used the following assumptions and estimates in making its projections: (1) a 4.5 percent inflation rate for calendar years 1990-1996; (2) a \$450,000 decline per year in checkoff receipts beginning in 1990; (3) estimated 1992 election cycle payouts to primary candidates based on 1984 figures adjusted for inflation; (4) in 1992, incumbent will not face serious challenge from within party; (5) estimated 1996 election cycle payouts to primary candidates based on 1988 figures adjusted for inflation; (6) in 1996, no incumbent candidate (wide-open field); (7) in 1992 and 1996, no payouts to independent or third party candidates or conventions; (8) repayment estimates based on historical ratio of repayments to payouts (1976-1984 cycles).

**Presidential Campaign Fund:
Income Tax Checkoff Amounts by Year ***

Millions of Dollars



* Data provided by U.S. Department of Treasury. Figures for 1973 through 1976 are not verified.

Public Funding Grants

Primary Matching Funds

The Commission's total certifications for 1988 matching funds reached \$65.7 million by December 1988. Additional funds were certified in 1989 as candidates continued to submit matching fund requests to retire debts and wind down campaign activities. The \$1.8 million certified in 1989 brought total matching fund certifications for 1988 primary candidates to \$67.5 million.

The maximum amount a primary candidate may receive is half of the statutory spending limit (\$10 million, adjusted for inflation). The 1987 cost-of-living adjustment (COLA) brought the 1988 spending limit to \$23.050 million. A 1988 candidate could receive half that amount in matching funds, or \$11.525 million. No candidate, however, reached that limit.

Convention Funding

The Democratic and Republican parties each received a \$9.220 million federal grant to finance their 1988 Presidential conventions. This amount represented the statutory entitlement of \$4 million increased by the 1987 COLA.

General Election Grants

The statutory entitlement for major party nominees, \$20 million, equaled \$46.1 million when adjusted by the 1987 COLA. The major party nominees each received that amount in 1988.

Matching Fund Payments: Robertson Protest

Americans for Robertson wrote a letter of protest to the Commission concerning a resubmission for matching funds. The committee contended that it was entitled to a larger matching fund payment than the FEC Audit staff had calculated. The Commission considered this matter in October 1989.

Background. Since 1980, the Commission has used a statistical sampling technique to evaluate matching fund submissions.¹ Audit staff review a sample group of contributions, selected by a computer program, to see if they meet the requirements for matchable contributions. The error rate of the sample (expressed as a percentage) is then used to determine the amount of the matching fund payment. This process is applied to each submission.

FEC rules and the *Guideline for Presentation in Good Order* provide committees with two alternatives for making matching fund resubmissions in order to obtain funds that were initially withheld. Under the first option, Audit staff explain the type of errors found in the sample review but do not identify the contributions. The committee resubmits the entire submission, taking care to make corrections so that it contains only matchable contributions. Audit staff then reexamine the original sample items and recalculate the error rate. If it is lower than the rate applied to the original submission, the committee receives additional matching funds.

Alternatively, the committee may request the identification of the specific contributions that were rejected in the sample review and resubmit those contributions only, with the required corrections. In this case, the additional payment equals only the matchable amount of the face value of the contributions that were resubmitted (if they meet review standards).

Robertson Resubmission. The Robertson committee chose the second option, correcting only the sample contributions. The committee contended, however, that it was entitled to an amount based on a recalculated error rate (\$688,818) rather than

¹ A full matching fund submission contains a list of matchable contributions and includes the amount of each contribution, the donor's name and address, a photocopy of the check (or other written instrument) and supporting bank documentation. The submission must comply with other requirements of the FEC's *Guideline for Presentation in Good Order*, an instruction manual.

the matchable value of the corrected sample contributions (\$14,873). In its meeting of October 5, 1989, the Commission concurred with the Audit staff's conclusion and certified payment of the lower amount.

Audits and Repayments

The Audit Process

Under the public funding statutes, the Commission must audit all candidate and convention committees receiving federal funds to ensure that the funds were not misused. The audit process outlined in FEC rules involves several steps and can be lengthy, depending on such variables as the condition of the committee's records, the level of financial activity and committee requests for extensions of time to respond to preliminary audit findings. Audit staff first conduct a fieldwork audit—an on-site examination of the committee's financial records. At the conclusion, auditors hold an exit conference to discuss preliminary findings that will be incorporated into an interim audit report. (Follow-up fieldwork may be necessary depending on factors spelled out in FEC rules.) The committee may dispute findings contained in the interim audit report within 30 days.

The final audit report, which is released to the public after legal review and Commission approval, may include adjustments to the interim report prompted by the committee's response. Moreover, the Commission may add information based on subpoenaed documents and responses from third parties. The final report may also include an initial determination by the Commission that the committee repay public funds. (Repayment determinations are discussed in the section below.)

The Commission issues addenda to final audit reports based on follow-up fieldwork. Addenda may contain additional repayment determinations.

Repayments

Candidate and convention committees must repay federal funds to the U.S. Treasury for a number of reasons. For example, repayments are required when the audit determines that the committee:

- Received public funds in excess of the amount to which the committee was entitled (e.g., received matching funds for contributions that were later determined to be nonmatchable);
- Had surplus funds remaining on the date of ineligibility;²
- Earned interest on invested funds;
- Had stale-dated checks (committee checks that were never cashed by the payees); or
- Incurred nonqualified campaign expenses by spending in excess of the limits,³ by using public funds for expenses not related to the campaign or by insufficiently documenting the expenditure of public funds.

In the case of primary campaigns, which receive contributions as well as public funds, a campaign must repay only the portion of nonqualified cam-

² A primary candidate becomes ineligible to receive matching funds (except to retire debts incurred before ineligibility and to cover winding down costs) on the earliest of the following dates: (1) 30 days after the candidate fails to receive at least 10 percent of the votes in two consecutive primary elections; (2) the date the candidate publicly withdraws from the race; (3) the date on which the candidate notifies the Commission, or the Commission determines, that the candidate has ceased to campaign actively in more than one state; or (4) for all other candidates, the date on which the party nominates its candidate at the national convention.

³ Major party convention committees and general election candidates must limit spending to the amount of their federal grants (\$9.220 million and \$46.100 million, respectively, in 1988). Primary candidates must comply with two types of spending limits: a national limit (\$10 million multiplied by the COLA, which amounted to \$23.050 million in 1988); and a limit in each state (the greater of \$200,000 or 16 cents multiplied by the state's voting age population, both amounts adjusted for inflation). Under a special exemption, primary candidates may also spend up to 20 percent of the national limit on fundraising costs (\$2.305 million in 1988). These fundraising disbursements do not count against the national or state limits, with certain exceptions.

campaign expenses that were defrayed with matching funds. A ratio formula is used to determine this amount.

If a committee does not dispute the Commission's initial repayment determination (contained in the final audit report) within 30 days, the determination becomes final, and the committee must make the repayment to the U.S. Treasury within 90 days of the initial determination. The repayment date is suspended if the committee disputes the initial determination, but the committee must submit written arguments to support its view within 30 days. The committee may also be granted a hearing by the Commission to present its case against the initial repayment determination. The du Pont committee requested such a hearing in 1989 (see below).

In making a final repayment determination, the Commission may take into account the committee's written response and its presentation at a hearing. The final determination includes a statement of reasons supporting the agency's conclusions. A committee that disputes the initial repayment determination must repay the amount specified in the final determination within 30 days (10 days for a convention committee). Candidate committees may, within 20 days of the final determination, file a petition for a rehearing by the Commission for the purpose of introducing new questions or issues that could not be raised earlier. The deadline for repayment is suspended until the Commission makes a decision on the petition. Finally, a committee may petition the U.S. Court of Appeals for the District of Columbia to review a final repayment determination. The committee must nevertheless make the repayment to the Treasury within the deadline unless the committee obtains a stay from the Commission pending the appeal.

1988 Presidential Audits

Audit fieldwork was well under way before the 1988 primary season ended. FEC auditors started with the Presidential campaigns of candidates who announced their withdrawal from the race. The paragraphs below summarize the final audit reports released in 1989 and include the Commission's

repayment determinations made through December 1989 with respect to the audited committees. Not included in the summaries are findings concerning committee reporting errors that were corrected through amended reports.

- **Pete du Pont for President.** Using the repayment ratio explained above, the Commission made an initial determination that the committee repay to the U.S. Treasury \$23,255, which represented the portion of public funds spent in excess of the Iowa spending limit. The final audit report concluded that the du Pont committee should have allocated to the Iowa limit an additional \$257,943 in expenditures related to a telemarketing and mail program. The reallocation caused the committee to exceed the Iowa limit by \$99,721. The committee contested the initial repayment determination in a Commission hearing held June 28, 1989. The committee argued that costs for the telemarketing program were exempt from the spending limits under exceptions in the statute and FEC rules for fundraising costs and campaign headquarters overhead. In a December 14 final repayment determination, the Commission concluded that neither exemption applied. Moreover, subpoenaed records showed that the committee further exceeded the Iowa limit by failing to allocate \$8,395 in postage costs to Iowa. Consequently, the final determination increased the repayment amount to \$25,775.
- **Babbitt for President.** In the final audit report, the Commission made an initial repayment determination that the committee repay \$1,005 to the U.S. Treasury. This amount represented the portion of public funds used to defray expenses that did not meet the standard for qualified campaign expenses because they lacked sufficient documentation. The committee concurred with the initial determination, which became final in July 1989. The committee made the repayment on September 14, 1989.
- **Haig for President.** The Haig committee also made insufficiently documented disbursements.

In the final audit report, the Commission made an initial determination that the committee repay to the Treasury \$5,979, the portion of public funds used to defray the nonqualified campaign expenses. The Haig audit also revealed that the committee had received matching funds for contributions that were not matchable because they exceeded the legal limit or because they were not made payable to the committee. Based on these findings, the Commission initially determined that the committee repay the full amount of the nonmatchable contributions (\$2,855). The committee concurred with the initial repayment determination (\$8,834), which became final in August 1989. The Commission granted the committee's request for a 90-day extension to make the repayment.

- **Albert Gore, Jr. for President.** In the final audit report, the Commission made an initial determination that the Gore committee repay \$4,035, the portion of matching funds used to defray \$13,330 in expenses that were nonqualified because they were incurred after Senator Gore's date of ineligibility and were for purposes other than to defray winding down costs or to retire qualified debts. Despite its disagreement with this finding, the Gore committee made the repayment. The committee also disagreed with another finding, but nevertheless complied with the report's recommendation that it return an impermissible transfer of \$24,000 it had received from the candidate's 1990 Senate committee. Finally, in response to a recommendation in the interim audit report, the committee listed its efforts to have stale-dated checks cashed and repaid \$292 to the Treasury, the amount the committee believed would remain uncashed. The Commission's initial repayment determination became final on August 29, 1989.
- **Lenora B. Fulani's Committee for Fair Elections.** The Commission initially determined that the committee repay \$15,065 in matching funds

that exceeded the candidate's entitlement because the committee received them after the candidate's date of ineligibility and after the committee had sufficient funds to retire all debts. The Commission also initially determined that the Fulani committee repay \$1,434, the portion of matching funds that defrayed nonqualified expenses that were unrelated to the campaign. Another initial repayment determination of \$193 represented the amount of stale-dated checks that remained outstanding. The committee made all repayments prior to the Commission's initial determinations.⁴

- **The Arrangements Committee of the Republican National Committee for the 1988 Republican Nominating Convention.** The Commission made an initial determination that the committee repay \$25,066 in interest earned on invested public funds. This amount represented total interest earned less income tax paid. The final report noted that the committee had already made this repayment. The Commission also initially determined that the committee repay \$93,056 to the Treasury, the amount by which the committee exceeded the \$9.220 million convention spending limit. The committee contested this determination in a written response, which the Commission will consider when making a final repayment determination.
- **1988 Democratic National Convention Committee.** Far from exceeding the convention spending limit, the committee had \$64,390 left over after all expenses had been paid. In the final audit report, the Commission initially determined that the committee repay the amount of unspent funds to the Treasury. As of January 1990, the committee had not repaid any funds, and the Commission had not made a final determination.

⁴ The Commission's initial repayment determination became final on January 11, 1990.

Enforcing Contribution and Spending Limits

In addition to requiring committees to repay federal funds when spending limits are exceeded, the Commission may impose civil penalties. In an enforcement case resolved in 1989, MUR 2073,⁵ the agency imposed a \$50,000 penalty on a 1984 Presidential primary campaign for, among other offenses, failing to allocate over \$200,000 in expenses to the Iowa spending limit and consequently exceeding the Iowa limit by over \$100,000. The candidate also exceeded, by \$67,000, the \$50,000 limit on campaign spending from personal funds that applies to candidates who receive public funds. Excessive expenditures from personal funds included direct contributions, credit card charges, loans and payment of telephone bills.

The committee also accepted \$37,920 in excessive contributions. Although the committee claimed that the excessive portions had been either reattributed to other donors or refunded, the written reattributions were undated, making it impossible to determine how much time had elapsed before the excessive amounts had been remedied. The refunds took an average of 263 days, well beyond a reasonable time. Excessive contributions in the form of letters of credit from individuals amounted to \$104,600. Further excessive contributions resulted from alleged returns on an investment that never took place, since the investor never deposited the committee's check. Again, the committee took an unreasonable time to reimburse the investor: 140 days for a \$15,000 check and 245 days for a \$30,000 check.

⁵ MURs, or Matters Under Review, are discussed under Enforcing the Law, Chapter 3.

Chapter 3

Administration of the Law

As the agency responsible for administering the Federal Election Campaign Act, the Commission oversaw eight special elections during 1989, more than any other year. The Commission also gained additional responsibilities under the Ethics Reform Act of 1989, as explained below.

New Legislation

The Ethics Reform Act of 1989 (P.L. 101-194), which was signed into law by President Bush on November 30, 1989, included changes that affected the Commission and the federal campaign law.

Repeal of Grandfather Clause

The Ethics Reform Act of 1989 phased out the "grandfather clause" contained in Section 439a of the Federal Election Campaign Act. That section prohibits candidates from converting excess campaign funds to personal use. Under the "grandfather clause," however, the prohibition on personal use did not apply to Members of Congress holding office on January 8, 1980.

Under the 1989 amendments, all Members of Congress will eventually be prohibited from converting excess campaign funds to personal use. The amendment will affect Members in two stages:

- Members of the 102nd Congress (which begins January 1991) or earlier Congresses who were previously covered by the grandfather clause are not prohibited, once they retire, from converting excess funds to personal use, but only up to a limit. They may not convert "excess amounts totaling more than the amount equal to the unobligated balance on hand" on November 30, 1989.
- The personal use exemption will be completely eliminated when the 103rd Congress convenes in January 1993.

Prohibition on Honoraria

Under the Ethics Reform Act of 1989, Members of the House of Representatives and officers and employees of the federal government are prohibited from receiving honoraria (payments received for a

speech, appearance or article), effective January 1, 1991. If such a payment is directed to charity, it is not considered "received" as long as the payment does not exceed \$2,000 and the Member, officer or employee, or his or her "family" or dependent relatives, do not derive any financial benefit from the selected charity. ("Family" means parents, brothers, sisters, spouse and children.)

To conform with this new prohibition, the Federal Election Campaign Act's provision on honoraria (2 U.S.C. §441i) was amended to apply only to Senators and officers and employees of the U.S. Senate.

Personal Financial Disclosure by Candidates

The Ethics Reform Act of 1989 also amended the Ethics in Government Act of 1978, which requires candidates for federal office to file reports on their personal finances. Under the 1989 amendments, **nonincumbent** House and Senate candidates will file their personal financial reports with the FEC, instead of with the House or Senate. Incumbent House and Senate candidates will continue to file personal financial reports with the House Committee on Standards of Official Conduct and the Senate Select Committee on Ethics, as appropriate. (The FEC has recommended technical amendments to the law.)

Public Disclosure

Data Processing

The Commission has kept pace with the growing public interest in political finance, this year releasing statistics on the entire 1988 election cycle earlier than any previous cycle. In February 1989, the Press Office released statistical studies covering the entire cycle of the 1988 Congressional campaigns; party committee studies appeared in March, and PAC information was released in April. Statistics based on pre-election reports on the 1989 special elections were out before the elections had taken place.

Early release of data was possible because of faster computer entry of itemized information from

political committees' financial reports. FEC Data staff entered more transactions more quickly: data entry for 95 percent of the 1988 year-end reports was completed in 18 days.

In connection with the 1989-1990 election cycle, the Commission began to capture detailed information on contributions of \$200 and above from individuals. The previous threshold had been \$500. The agency decided to augment contributor data to assist the FEC in monitoring contribution limits and to help researchers interested in patterns of contributions.

Public Records

A strong disclosure program—one providing as much information and research assistance as possible—prompts candidates and committees to comply with the law. They know that reporters, interest groups and opposing candidates scrutinize their reports and the computer printouts on their activities, looking for possible errors and violations of the law. The center for this type of research is the Public Records Office. There, the FEC offers a selection of indexes generated from its data base and personalized research assistance.

Public Records staff help the public locate the documents and research tools they need. Using the office's research space and copying equipment, visitors have access to numerous materials, including: reports and statements filed by the regulated community, made available within 48 hours of the Commission's receipt; standard computer indexes, updated daily; *FEC Reports on Financial Activity*, the final statistical studies of an election cycle; advisory opinions; enforcement files (closed MURs); audit reports; and Commission meeting agenda documents. Requests for materials are also handled over the phone. Callers ordering documents on a regular basis set up running accounts, a convenient way to pay the reasonable fees for copying and computer services.

As an additional service, the Public Records Office stocks FEC publications, including *Court Case Abstracts*, a summary of litigation related to the Federal Election Campaign Act. The office also

keeps on hand several reference tools. New in 1989 was *Federal Elections 1988*,¹ the fourth in a series of official vote counts that provide an accurate, historical record of federal election results.

Press Office

During 1989, the Press Office continued to promote disclosure by issuing releases and answering questions from the media on campaign activity. The office also handles requests made under the Freedom of Information Act. An established resource for the Washington-based media, the Press Office has gradually reached out to media located outside the D.C. area. By 1989, reporters from outside the D.C. area accounted for 50 percent of telephone inquiries. This local activity boosted demand for Press Office assistance. The office received more calls in 1989 than in any other nonelection year.

Also in 1989, the office used improved technology to target local media in districts holding special elections. Using the fax machine, the office transmitted releases on the finances of competing candidates—before election day. (Faster computer entry also made this possible, as explained above.) Local media used this up-to-date material in broadcasts and newspaper articles. Nevertheless, the staff time needed to fax information (e.g., four hours to fax special election data to all the media outlets in the Dallas/Fort Worth area) limits the use of this innovation.

Another technological advance—the office automation system mentioned in the first chapter—accelerated Press Office response to callers seeking campaign finance data. Staff used their new desktop terminals to locate data in minutes.

As the official spokespersons for the FEC, Press Office staff release information on all agency activities, including newly closed enforcement cases (MURs). During 1989, the office revised the standard MUR press release to make it a more usable

¹ Available for purchase through the National Technical Information Service.

tool for the media. With additional information on specific alleged violations, the final outcome and the amount of any penalties imposed, reporters could better evaluate which MURs were newsworthy and should be explored.

The Press Office also publicizes and coordinates subscriptions to the FEC's Direct Access Program, which is covered below.

Outside Access to FEC Data

Subscribers to the Direct Access Program (DAP) nearly doubled during 1989. Over 200 subscribers now have access to FEC campaign finance data on their personal computers.

The FEC's state access program also provided on-line access to campaign finance data. The general public could request printouts of FEC indexes in 21 state offices around the country.

The Commission also continued its program of disseminating campaign finance information to the academic community. The agency expanded its holdings in the national data archive at the Inter-University Consortium for Political and Social Research in Ann Arbor, Michigan. Through the Consortium, member universities and research institutes may obtain free copies of FEC data files covering the election cycles 1978 through 1988. To date, more than 60 institutions have obtained FEC information in this way.

Assistance and Outreach

Telephone Assistance

The Commission has developed a strong outreach program to help those who must comply with the campaign finance law. The heart of the program is the toll-free information line (800-424-9530). Anyone needing information or guidance on the law simply has to call the FEC. Information Services staff answer thousands of questions on the toll-free and local lines each year. Their answers are grounded in the statute, regulations and advisory opinions.

Reporting Assistance

Callers needing help with reporting may use the toll-free line to speak directly with the reports analyst responsible for reviewing the caller's report. Analysts conduct detailed reviews of all reports filed and are specialists in questions regarding reporting and related compliance matters. (See also Review of Reports, below.)

In keeping with its emphasis on disclosure, the agency sends committee treasurers reminders of upcoming deadlines three weeks before the due date of a report. The FEC newsletter, the *Record*, also alerts readers to reporting requirements and briefs them on new advisory opinions, regulations and litigation. All treasurers automatically receive the *Record*, but anyone may order a free subscription.

Publications

The agency also produces and distributes free publications and video tapes that explain the law. In 1989, the Commission revised its *Campaign Guide for State and Local Party Committees* and introduced two new brochures. *Ten Questions from Candidates* answers questions commonly asked by new candidates, and *Sale and Use of Campaign Information* explains the restricted use of contributor information taken from reports. Another new publication, *Explanation and Justifications for FEC Regulations: 1975-Present*, provides a reference tool for attorneys and others who work with the law in depth. The indexed volume brings together the official texts explaining the Commission's regulations, which accompany all rules when they are submitted to Congress.

Conferences and Visits

Candidates, committee staff and others involved with the campaign finance law can discuss their problems with Commissioners and staff at FEC conferences, which include basic as well as more advanced workshops on the law. At the 1989 conferences, held in Philadelphia and San Francisco, Internal Revenue Service staff were available to answer questions on tax-related issues. The San

Francisco conference, cosponsored by the California Secretary of State, also included a workshop explaining California's newly enacted campaign finance law. Attendance was high at both conferences, with 300 people participating.

For the first time, the Commission used a third party to collect conference fees, pay expenses and take care of other administrative details that would otherwise fall on the cosponsoring state office. This arrangement not only proved cost effective but also offered the Commission more flexibility in choosing conference sites. Because of federal accounting practices, the Commission needs an outside agency to handle conference finances. Using a third party meant that the Commission could conduct a conference, such as the Philadelphia one, without the help of a state cosponsor.

In a new outreach venture, public affairs specialists traveled to three cities to meet with staff members of political committees. Specialists spent two days in each city—Denver, Atlanta and Dallas—answering questions and reviewing areas of the law specific to the needs of the participants.

Review of Reports

The review of campaign finance reports assists the FEC in its promotion of disclosure and also encourages compliance with the law. Reports analysts check each report for accuracy and compliance with the law. When necessary, they notify committees of

apparent problems. These letters (called requests for additional information or RFAIs) offer committees the opportunity to correct their reports voluntarily or to provide further information related to compliance problems discovered during review. A committee's cooperation often resolves a problem that might otherwise result in an enforcement action by the Commission.

The accompanying table summarizes the review process from 1985 through 1989.

Advisory Opinions

Anyone involved in an activity governed by the campaign finance law may formally request the Commission's advice through the advisory opinion process. Advisory opinions clarify the law for the person who requests the opinion as well as for those in the same situation as the requester. In addition, advisory opinions sometimes bring to light areas of the law that need further clarification. The Commission frequently incorporates the guidance given in advisory opinions into revised regulations.

Selected advisory opinions issued in 1989 are summarized in Chapter 4, Legal Issues.

Regulations

FEC regulations explain the statute's requirements in detail. The Commission revises its rules to give increased guidance to committees, focusing espe-

Reports Review Activity

	1985	1986	1987	1988	1989
Committees Reviewed	6,454	5,062	6,158	5,865	7,581
Reports Reviewed	46,905	34,055	39,312	35,471	39,793
Reports Receiving RFAIs	7,414	6,554	4,314	5,328	5,436

cially on areas that have proved troublesome. In 1989, the agency prescribed a comprehensive set of revised regulations on affiliation, transfers and earmarked contributions. The Commission also continued to work on revisions in other areas.

A new Regulations Committee, formed by 1989 Chairman Danny L. McDonald, contributed to the revision process. Commissioners Thomas J. Josefiak and Scott E. Thomas comprised the committee, which oversaw the agency's goals in the redrafting of regulations.

Contribution Limits and Prohibitions

November 24, 1989, was the effective date for a number of changes to the rules on contributions. Amendments to 11 CFR 110.3 through 110.6 clarified the following areas:

- The shared contribution limits that apply to affiliated committees and organizations, the factors indicating affiliation, and transfers of funds between affiliated committees;
- The contribution limits that apply to political party committees and transfers of funds between party committees;²
- Transfers of funds between the previous and current federal campaign committees of the same candidate, between the campaign committees of a candidate seeking more than one federal office and between the federal and nonfederal campaign committees of the same candidate;
- Contributions made in the name of another;
- The annual limit on contributions from individuals;
- The definition of a conduit of earmarked contributions and the reporting of earmarked contributions.

The Explanation and Justification to the amendments, published in the August 17 *Federal Register* along with the final rules themselves, explained the

significance of the changes and discussed some aspects of the rules that the Commission decided not to change. (See 54 *Fed. Reg.* 34098.) Summaries of the changes appeared in the October and November 1989 issues of the *Record*.

Trade Association Solicitations

Effective June 28, 1989, a revised rule clarified one aspect of trade association solicitations for contributions to their separate segregated funds. Under the new rule a trade association may not solicit the restricted class of a nonmember parent corporation even if a subsidiary of the parent is an association member. (The restricted class of a corporation comprises the executive and administrative personnel, the stockholders and the families of both groups.) By the same token, a trade association may not solicit the restricted class of a nonmember subsidiary even if the parent is a member. The amended rule at 11 CFR 114.8(f) appeared in the March 15 *Federal Register* (54 *Fed. Reg.* 10622).

Foreign Nationals

The statute prohibits foreign nationals from making contributions in connection with local, state and federal elections to public office. In 1989, the Commission approved final revisions to the foreign national rules to make clear that the prohibition extends to expenditures by foreign nationals as well as to contributions. The revisions, which were transmitted to Congress on November 24, also clarified that foreign nationals may not, even indirectly, participate in election-related decisions made by corporations, labor organizations, political committees and other persons, including decisions concerning contributions and expenditures. This prohibition stems from several advisory opinions concerning domestic corporations owned by foreign nationals. (See the Legal Issues section of this chapter.)

The final rules at 11 CFR 110.4 and their Explanation and Justification were published in the *Federal Register* on November 24 (54 *Fed. Reg.* 48580). They will become effective once they have been before Congress for 30 legislative days.

² See also the section on party committee contribution limits in Chapter 4.

Allocation of Federal and Nonfederal Expenses

Activity that influences federal elections must be financed with funds subject to the limits, prohibitions and reporting requirements of federal law. When activities influence both federal and nonfederal elections, committees may finance a portion of the expenses from a nonfederal account, which may contain funds not permissible under federal law. The Commission has been working on regulations to provide clearer guidelines on how committees should allocate mixed federal/nonfederal expenses.

During 1988, the agency received numerous public comments on possible approaches the Commission could take in drafting allocation rules.³ In 1989, the Commission decided to find out how mixed federal/nonfederal expenses were actually being allocated by party committees, the group most affected by allocation rules. A questionnaire, which was sent in February to the state chairmen of the major parties, asked what amounts and percentages of total funds they allocated to the federal side. The questionnaire also sought other information that would help the Commission develop realistic allocation regulations. With regard to the national committees of the major parties, the Commission sent letters to their fundraising representatives seeking information on the role of the national parties in fundraising for nonfederal accounts.

On December 14, 1989, the Commission discussed three proposals for final allocation regulations. Each proposal stipulated how committees would allocate expenses for different types of activities: (1) administrative expenses and generic voter drives; (2) fundraising programs through which

both federal and nonfederal funds are collected; and (3) exempt party activities.⁴ Included in these proposals were:

- Different allocation formulas for each type of activity;
- Different fixed or minimum percentages, used to determine the federal portion of an expense in election and nonelection years;
- Methods of paying mixed expenses;
- Disclosure of additional information on allocated activity and transfers involving nonfederal accounts; and
- Solicitation notice requirements for nonfederal fundraising.

The Commission will continue its work on proposed allocation rules in 1990.

Debt Settlement

Proposed debt settlement rules were outlined in a Notice of Proposed Rulemaking published on December 6, 1988. (See 53 *Fed. Reg.* 49193.) The proposed rules, to be contained in a new Part 116, would ensure that neither initial extensions of credit nor debt settlements result in prohibited contributions by corporate creditors or in excessive contributions by noncorporate creditors.

During a two-day hearing in February 1989, several witnesses commented on the proposed rules. Party committee representatives raised the issue of possible conflicts between the Commission's jurisdiction over debt settlement and the federal bankruptcy code. (This is also one of the issues addressed in Chapter 4.) The Commission plans to further consider the proposed debt settlement rules in 1990.

³ For a summary of the Commission's previous activity in developing allocation rules, see the *Annual Report 1988*, pp. 17-18.

⁴ Exempt activities are those that state and local party committees may finance without making contributions or expenditures on behalf of the federal candidates benefiting from the activity. The three types of exempt activities are: slate cards, campaign materials and Presidential voter drives.

Bank Loans

The Commission sought comments on proposed rules affecting bank loans made to candidates and political committees in a 1989 Notice of Proposed Rulemaking. (See 54 *Fed. Reg.* 31286, published July 27.) Under the statute, a loan from a bank is not a contribution if it satisfies certain criteria, among which is the requirement that the loan "be made on a basis which assures repayment..." 2 U.S.C. §431(8)(B)(vii)(II). This phrase became a critical point in the Commission's consideration of bank loans in enforcement cases and advisory opinions. The agency decided to provide additional guidance by clarifying its regulations.

The Notice suggested three possible methods of assuring that a bank loan would be repaid. A candidate or committee could secure a loan using traditional types of collateral. Alternatively, a committee could use nontraditional collateral, such as the future receipt of public funds or contributions. Finally, in the absence of any collateral, the candidate or committee would have to demonstrate that the unsecured loan was made on some other basis that assured repayment.

The Notice also included draft reporting forms to help the Commission monitor committee loans and to improve public disclosure. The proposed forms would require committees to provide details on

collateral and require lenders to confirm that the loan complied with certain standards.

Enforcement

The Enforcement Process

Possible violations of the law are brought to the Commission's attention through its own monitoring procedures or through formal complaints originating outside the agency. Potential violations become Matters Under Review (MURs) and are assigned case numbers.

All phases of the enforcement process must remain confidential until a case is closed and put on the public record. Respondents are given a reasonable opportunity to demonstrate that no action should be taken against them. If the Commission decides there is "reason to believe" a violation of the law has occurred, it investigates the matter. In gathering evidence, the Commission may issue orders and subpoenas that require individuals to answer questions or produce documents. When necessary, the agency may ask a federal district court to enforce FEC orders and subpoenas. If the Commission believes there is sufficient evidence to show "probable cause to believe" the respondent violated the law, the agency must try to resolve the matter through a conciliation agreement. If concili-

Caseload of MURS

	1985	1986	1987	1988	1989
Pending at Beginning of Year	172	137	143	171	220
Opened During Year	257	191	261	236	218
Closed During Year	292	185	233	187	237
Pending at End of Year	137	143	171	220	201

ation fails, the agency may file suit against the respondent in a federal district court.

The accompanying table shows the Commission's caseload of MURs from 1985 through 1989. Two MURs that were closed in 1989 are summarized in Chapter 4 (Party Committee Contributions and Expenditures). Another 1989 MUR, this one involving a Presidential campaign, is summarized in the last section of Chapter 2 (Enforcing Contribution and Expenditure Limits).

Penalties and Injunctions

The U.S. Court of Appeals for the Ninth Circuit upheld a \$25,000 penalty imposed on Harvey Furgatch for failing to report independent expenditures for two newspaper advertisements and for failing to include the required disclaimer on the ads. The March 8, 1989, decision, however, vacated a district court order permanently enjoining Mr. Furgatch from future similar violations of the law. (An injunction is an enforcement remedy that permits the agency to obtain prompt judicial relief against the person enjoined from violating the law if the person again commits the same violations.)

In affirming the civil penalty and rejecting Mr. Furgatch's claim that it was too high, the appeals court pointed out that the statute permits the courts to impose an amount equal to the expenditures involved in the violation—in this case \$25,000, since the ads cost \$25,008. (See 2 U.S.C. §437g(a)(6)(B).) The appeals court said that a district court could issue an injunction "only if there is a likelihood of future violations." While the appeals court found "ample support in the record...that Furgatch is likely to commit future violations of the Act," it held that the record did not justify a permanent injunction. Accordingly, the appeals court directed the district court to limit the injunction "to a reasonable duration."

The Commission petitioned for a rehearing on the remand issue, claiming that a permanent injunction was consistent with the appeals court's own observation that Mr. Furgatch was likely to commit future violations of the law. The FEC further argued that §437g(a)(6)(B) authorizes a "permanent" injunction

"upon a proper showing that the person involved has committed" a violation. The court of appeals, however, denied the Commission's petition.

On November 20, 1989, the U.S. District Court for the Southern District of California limited the injunction to eight years and specified that it applied only to the provisions Mr. Furgatch had violated.

Clearinghouse on Election Administration

The Commission's National Clearinghouse on Election Administration serves as a central exchange for research and information on the administration of federal elections. This section covers 1989 Clearinghouse activities.

Voting System Standards

The Clearinghouse approached completion of a long-term project on computer-based voting systems with the release of draft voluntary standards for these systems. A notice requesting public comments on the draft standards appeared in the *Federal Register* on August 8, 1989 (54 *Fed. Reg.* 32479).

In 1984, Congress approved funding for the Commission to develop voluntary voting system standards in response to calls for assistance from states confronted by voting system failures and increasingly complex voting system technology. The standards and related test specifications were drafted to help election authorities ensure the accuracy and reliability of computerized voting systems. The standards may also assist manufacturers in developing or modifying voting systems. The voluntary standards cover the three types of computerized systems now in use: punchcard, in which a computer reads spaces punched out of a ballot card by the voter; marksense, in which the computer reads marks made by the voter on a ballot card; and direct recording electronic, in which the computer tabulates votes recorded by a voter on an electronic ballot through touch or by pushing buttons.

The *Federal Register* notice also sought comments on: (1) a plan for election authorities to implement the voluntary standards; (2) an escrow plan developed as a way to protect vendors' software and other proprietary information while allowing voting officials to have controlled access, when necessary; and (3) a plan for the independent test authorities to evaluate voting systems against the standards.

The Commission will issue the final voluntary standards and the companion documents concerning their implementation after the Clearinghouse has reviewed comments on the draft and made appropriate revisions.⁵ The Clearinghouse will then work on related management guidelines covering the acquisition and use of computer-based voting systems. The office will also develop advisory ballot logic test scenarios that may be used by independent test authorities and, in consultation with the National Institute of Standards and Technology, will draft criteria to assist in the selection of competent test authorities.

Voting Accessibility

An April 1989 Clearinghouse report to Congress showed improved access to polling places for elderly and handicapped voters. Of the nearly 152,000 polling places throughout the country, 79 percent complied with accessibility standards, an increase of 6 percent (some 6,000 sites) since 1986, despite more stringent criteria. Among the reasons why 28,527 sites did not meet the standards were: inadequate parking; stairs with no ramps; and obstructed passageways and other barriers.

The 1989 report was the second one issued since the enactment of the Voting Accessibility for the Elderly and Handicapped Act of 1984. The Act stipulates that voter registration and polling places for federal elections be accessible to the physically

disabled and requires the Commission to report to Congress on progress made toward this goal. Each state files a survey form with the Clearinghouse, which, in turn, analyzes the responses. The first report was released in April 1987; the law requires the Commission to issue reports every two years through 1995.

Advisory Panel Meeting

The draft of voluntary voting system standards was among the topics addressed at the annual meeting of the Clearinghouse Advisory Panel held in Washington, D.C., on August 23-25. Composed of election officials from around the country, the Panel also discussed the detection and prosecution of election crimes, 1988 voter participation, the U.S. Postal Service's change of address program, pending federal legislation on elections and future election administration projects.

Publications

Ballot Access. This four-volume 1989 publication is a comprehensive, state-by-state guide to ballot access requirements for primary and general elections, both Presidential and Congressional. It covers requirements for major, minor, independent and write-in candidates.

Election Directory 89/90. This updated Directory lists the addresses and phone numbers of state and federal officials involved in running elections. The Directory also includes, as a help to voter registration officials, the local election offices which process notices canceling prior registrations.

FEC Journal of Election Administration. The Summer 1989 Journal provided a comprehensive examination of the the role of the federal government in elections. A series of articles described the federal agencies responsible for different aspects of the election process, including: the principal election committees in Congress; two offices within the Department of Justice; two offices within the Bureau of the Census; an office in the Department of Defense; and both the FEC and the Clearinghouse.

⁵ The Commission approved final voluntary standards on January 25, 1990.

The issue also published voting results for the 1988 Presidential election and an article on voter participation.

The Journal, which provides a convenient order form for Clearinghouse studies, is available free upon request.

Chapter 4

Legal Issues

This chapter summarizes a number of campaign finance issues addressed in the year's litigation, advisory opinions and enforcement cases (MURs). (The Chapter 3 Enforcement section discusses litigation on enforcement-related issues, and Chapter 2 summarizes a MUR involving a Presidential campaign.)

Expenditures by Nonprofit Corporations

The Commission and the courts have continued to explore the application of the Supreme Court's 1986 decision in *FEC v. Massachusetts Citizens for Life (MCFL)*.¹ In that suit, the Court ruled on the constitutionality of 2 U.S.C. §441b, the provision in the Federal Election Campaign Act that prohibits corporate contributions and expenditures. In a five-to-four vote decision, the Court concluded that "§441b's restriction of independent spending is unconstitutional as applied to MCFL,"² a small, informally organized, incorporated group. The Court, however, limited the reach of its decision, describing as essential to its ruling several characteristics of MCFL: (1) it was a nonprofit ideological corporation that did not engage in business activities; (2) it was not established by a business corporation; and (3) it had a policy of not accepting contributions from businesses or labor unions.

Michigan Chamber of Commerce

The MCFL ruling was implicated in *Austin v. Michigan State Chamber of Commerce*,³ which the Supreme Court heard in 1989. The Commission filed an *amicus curiae* brief asking the Court to

overturn a September 1988 appeals court decision.⁴ The U.S. Court of Appeals for the Sixth Circuit found that a Michigan law was unconstitutional as applied to the Michigan State Chamber of Commerce. The law prohibits corporations from making independent expenditures with general treasury funds. Relying on MCFL's constitutional limitation on applying §441b, the appeals court found that the Michigan law could not constitutionally be applied to the State Chamber's independent expenditures even though it received at least 75 percent of its funds from business corporations and served business interests. The Commission's brief argued that the appeals court decision undermined the §441b limits that Congress placed on the use of corporate wealth to influence the outcome of federal elections. The Supreme Court heard oral argument on October 31, 1989, but had not issued an opinion by the end of the year. [*Ed. Note:* On March 27, 1990, the Supreme Court upheld the constitutionality of the Michigan law, reversing the appeals court decision by a 6-3 vote.]

National Organization for Women

In another MCFL-related case, *FEC v. National Organization for Women (NOW)*, the U.S. Court of Appeals for the District of Columbia Circuit agreed to the FEC's motion to hold proceedings in abeyance until the Supreme Court ruled on the *Michigan Chamber* suit. In its appeal, the Commission asked the court to reverse a May 11, 1989, district court decision.⁵ The U.S. District Court for the District of Columbia had ruled that NOW, a nonprofit corporation, did not violate §441b by using its treasury funds to pay for direct mailings. The letters, which were sent to the general public, mentioned several Senate candidates running for reelection in 1984. The FEC argued that the mailings contained electioneering messages and therefore could not be financed from the corporation's treasury. The district court, however, cited MCFL in concluding that a

¹ 479 U.S. 238 (1986).

² An independent expenditure is an expenditure for a communication which expressly advocates the election or defeat of a clearly identified candidate but which is not made in cooperation or consultation with, or at the request or suggestion of, or with the prior consent of any candidate or his or her authorized committees or campaign agents. 2 U.S.C. §431(7).

³ U.S. No. 88-1569 (argued October 31, 1989).

⁴ 856 F.2d 783 (6th Cir. 1988).

⁵ 713 F.Supp. 428 (D.D.C. 1989).

communication must expressly advocate the election or defeat of a candidate in order to be subject to the §441b prohibition on corporate spending. In the court's view, NOW's mailings did not contain express advocacy because they "fail[ed] to expressly tell the reader to go to the polls and vote against particular candidates" and were "suggestive of several plausible meanings." Although the district court did not reach the issue, NOW also relied upon *MCFL* to claim that §441b could not constitutionally be applied to its independent expenditures.

Corporate Support of PAC

Under the Federal Election Campaign Act, a corporation is permitted to pay for "the establishment, administration, and solicitation of contributions to a separate segregated fund (PAC) to be utilized for political purposes." 2 U.S.C. 441b(b)(2)(C). The corporation's costs are not considered contributions or expenditures. This exemption was the subject of 1989 litigation and advisory opinions.

Stern v. FEC

Philip Stern asked the U.S. District Court for the District of Columbia to review the Commission's dismissal of an administrative complaint he had filed with the agency. Mr. Stern claimed that the separate segregated fund of General Electric (GE/PAC) made contributions to candidates that were unlawful because they were made for "lobbying rather than for political purposes." He contended that the exemption in the Act permitting corporations to set up separate segregated funds "for political purposes" precluded using such funds for other purposes. Consequently, GE's payment of its PAC's administrative expenses resulted in prohibited corporate expenditures. He argued that GE/PAC's pattern of supporting incumbent candidates in safe seats was evidence that its contributions and expenditures were made to influence legislation, not to influence elections, since the Congressmen were assured of re-election. In dismissing the complaint, the Commission followed the advice of the General Counsel, who noted that nothing in the

law prohibits the use of PAC funds for any lawful purpose.

On August 31, 1989, the court found that the Commission did not act contrary to law in dismissing the complaint, ruling that GE/PAC's contributions to the campaign committees of federal candidates clearly satisfied the "political purposes" requirement. Finding it unnecessary to decide whether PAC funds could be used for "any lawful purpose," as the Commission had contended, the court nevertheless described the Commission's position as a reasonable interpretation of the law.

PAC Contributions Matched with Charitable Donations

In Advisory Opinions 1989-7 and 1989-9, the Commission permitted corporations to use general treasury funds to match employees' contributions to their PACs with donations to charity. The matching payments to charities qualified as exempt solicitation expenses, payable with corporate treasury funds. The Commission concluded that this process would not result in a prohibited exchange of treasury funds for contributions under 11 CFR 114.5(b) because contributing employees would not receive any financial or tangible benefits, such as a tax break.

Although the 1989 opinions closely resembled advisory opinions issued in previous years (AOs 1986-44, 1987-18 and 1988-48), they evoked dissents from two Commissioners. Chairman Danny L. McDonald and Commissioner Scott E. Thomas believed that the matching plans would indirectly compensate employees who contributed to the PAC. Commissioner Thomas said that, at a minimum, the corporations should be subject to the one-third rule at 11 CFR 114.5(b)(2), which would limit a matching donation to one-third the amount of the PAC contribution. Chairman McDonald viewed the plans as a prohibited exchange of corporate funds for contributions and therefore concluded that a corporation could not spend any treasury funds to match PAC contributions.

Corporations Owned by Foreign Nationals

Section 441e of the Federal Election Campaign Act prohibits foreign nationals from making direct or indirect contributions in connection with elections to any public office: state and local as well as federal. The definition of foreign national includes a corporation organized under the laws of a foreign country or having its principal place of business in a foreign country. (See 22 U.S.C. §611(b).) In two 1989 advisory opinions, the Commission considered whether domestic corporations wholly owned by foreign corporations could make nonfederal contributions to state and local candidates. (See also the summary of changes to FEC rules on foreign nationals in the Regulations section of Chapter 3.)

Foreign-Financed Corporation

In AO 1989-20, the Commission prohibited Kuilima Development Company, Inc., a Hawaiian corporation, from making contributions in state and local elections because it was predominantly funded by a Japanese parent corporation. The Commission concluded that such contributions would, in effect, be contributions from the foreign national parent through its subsidiary, Kuilima. Moreover, even if the source of Kuilima's funds were not foreign, the company would still be prohibited from making contributions because of its foreign directors and officers. In previous advisory opinions, the Commission permitted a domestic corporation owned by a foreign corporation to make political contributions only if no foreign national director or officer participated in the corporation's decisions to make contributions. Because all of Kuilima's directors and officers were Japanese, it appeared that Kuilima could not satisfy that condition.

Domestically Financed Corporation

The situation was different in AO 1989-29. GEM of Hawaii, Inc., was also owned by a Japanese parent, but it generated income through domestic sales. Because the source of its funds was not foreign, GEM was permitted to make nonfederal

contributions to state and local candidates through its PAC, on the condition that no foreign nationals, including two of the three directors of the company, participated in decisions concerning contributions. However, because the PAC contained corporate funds, it could not make any federal contributions. GEM would have to set up a federally regulated separate segregated fund for that purpose.

Commissioners McDonald and Thomas dissented and expressed their opinion that GEM and its foreign national parent should be treated as one entity in view of the statute's affiliation rules and the foreign national control of GEM's board of directors. They concluded that GEM could not make nonfederal contributions to state and local candidates through a political committee.

Jurisdiction Over Debt Settlements

Under FEC regulations, a committee may settle a debt to a corporate creditor for less than the amount owed only if certain conditions are met. Otherwise, the debt results in a prohibited corporate contribution to the debtor committee. To ensure compliance with FEC rules, the corporation or committee must file a debt settlement statement for Commission review. (See 11 CFR 114.10 and FEC Directive No. 3.) The FEC's jurisdiction over a committee's debts was at issue in a court case and an advisory opinion.

Bankruptcy Court

The Commission filed an *amicus curiae* brief asking a bankruptcy court to dismiss a Chapter 11 petition filed by a political committee, Fund for a Conservative Majority (FCM). Both the FEC and the U.S. Trustee argued that granting relief to political committees under Chapter 11 could result in several abuses, including corporate contributions from vendors. The FEC also argued that Chapter 11 was inapplicable because of the FEC's statutory jurisdiction over debt settlements by political committees.

On May 8, 1989, the U.S. Bankruptcy Court for the Eastern District of Virginia (Alexandria Division) denied the motion to dismiss the case. The court acknowledged the deference the courts have shown the FEC's exclusive jurisdiction over the federal campaign finance law but stated that bankruptcy petitions remained within the jurisdiction of the bankruptcy court. Observing that the Commission's regulations on debt settlement "appear to facilitate 'monitoring' by the FEC rather than form a mandatory debt resolution mechanism," the court acknowledged that the result might be different if the FEC adopted different rules.⁶ The court noted nevertheless "the need for the FEC to participate in the case" and invited the agency to review and comment on FCM's Chapter 11 debt settlement plan.

State Court

In Advisory Opinion 1989-2, the Commission said that the committee of a Congressional candidate could pay a corporate creditor an amount determined by a state court as long as the committee complied with the FEC debt settlement rules and filed a debt settlement statement with the FEC. The committee was concerned that, if the court required it to pay most or all of its remaining funds to the creditor that had filed suit, the settlement would unlawfully discriminate against the committee's other creditors. The opinion stated the FEC's long-held view that state law governs whether an alleged debt exists, the amount of a debt and those responsible for paying. (See AO 1975-102.) The state court, therefore, would be the proper forum for determining these questions.

In her concurring opinion, Commissioner Lee Ann Elliott said that, while she found the opinion's conclusion consistent with FEC rules, she did not believe that the current rules and debt settlement procedures "provide proper protection for creditors, or present an orderly method for reviewing all of a committee's outstanding debts."

⁶ The agency did take action with regard to proposed rules on debt settlements. See the section on Regulations in Chapter 3.

Preemption of State Law

Potential conflicts between the Federal Election Campaign Act (the Act) and state campaign finance laws were considered in three 1989 advisory opinions. The Act and FEC rules "supersede and preempt provisions of State law with respect to election to Federal office." 2 U.S.C. §453. The advisory opinions cited legislative history as evidence that Congress intended the Act to be the sole source of regulation of federal campaign financing. In all three opinions, the Commission decided that federal law preempted state provisions to the extent that they inhibited federal campaign activity.

New Hampshire Limits on Party Spending

A newly enacted New Hampshire law waives certain ballot access requirements (fees and petition signatures) if candidates agree to comply with campaign spending limits. Under the state law, coordinated party expenditures, which are expressly authorized under §441a(d) of the Act, would count against a federal candidate's spending limit. In AO 1989-25, the Commission concluded that the Act preempted the state law to the extent it would limit §441a(d) party expenditures. The opinion further stated that payments for party support that are exempt from the Act's definition of "expenditure" were also not subject to the New Hampshire limits.

Indiana Prohibitions on Contributions

Another newly enacted state law prohibits vendors under contract to the Indiana State Lottery Commission from making contributions to candidates for statewide elected office for three years following the awarding or renewal of the contract. The law also prohibits the Lottery Commission from contracting with persons who have made contributions to candidates for statewide office three years before the contract is awarded.

In AO 1989-12, the Commission responded to a request by a sole proprietor whose contributions to a U.S. Senate candidate could be affected by the Indiana law. The opinion first concluded that,

because no Indiana statute excluded U.S. Senate candidates from the definition of “a candidate for statewide elected office,” the new law would apply to contributions to them. The opinion went on to conclude that both prohibitions were preempted by federal law with respect to contributions to federal candidates. The first Indiana prohibition would bar contributions from persons not otherwise prohibited from making contributions under the Act. The second prohibition would also restrict federal campaign finance activity by imposing a commercial penalty on Lottery Commission vendors who wished to make contributions to a Senate candidate.

Massachusetts Prohibition on Contributions

In AO 1989-27, the Commission considered whether the Act would preempt a Massachusetts law regulating the solicitation and receipt of contributions by state and local government employees. The opinion was requested by a candidate for the U.S. House of Representatives who was a professor at a Massachusetts State college. The opinion concluded that the Act did not preempt that portion of the state law that prohibits a candidate/employee (including a federal candidate) from personally soliciting or receiving contributions since Congress did not intend the federal preemption to extend to state laws regulating the political conduct of state employees.

However, the Act did preempt application of the Massachusetts law prohibiting the political committee of an employee/federal candidate from soliciting or accepting contributions from certain groups (persons known by the employee to have an interest in matters related to the employee’s job). Here, the state law intruded into an area Congress intended the Act to cover: the source of federal campaign funds. The Act also superseded application of the Massachusetts law prohibiting the solicitation and receipt of contributions conducted by the political committee but under the direction of the employee/federal candidate. Such an application of state law improperly encroached upon the conduct of a federal election campaign by persons other than the employee himself.

Commissioner Scott E. Thomas dissented from AO 1989-27. He believed that the distinction drawn between the candidate’s own political activity and that of the candidate’s committee was not supported by legislative history and was based on reasoning which “appears to be internally inconsistent.” In his view, the federal statute would not preempt the “narrow restrictions” the state’s “little Hatch Act” placed on the committee’s receipt of contributions.

Party Committee Contributions and Expenditures

The Commission has pursued a number of enforcement cases (MURs) involving alleged violations by party committees. Two enforcement cases that originated from the FEC’s review of party committee reports are summarized below.

Contribution Limits

MUR 2924 concerned allegedly excessive contributions made by a major party’s Senate campaign committee to candidates running for the House of Representatives and by the party’s House campaign committee to Senatorial candidates. The Senate campaign committee had contributed to House candidates over and above the contributions made by the House campaign committee and the national party committee. Similarly, the House campaign committee had made contributions to Senate candidates over and above those made by the national and Senate campaign committees.

Under the law, a party’s national committee and House campaign committee each have separate, rather than shared, limits on contributions to House candidates (\$5,000 per candidate, per election). The national committee and the Senate campaign committee, however, share a special limit on contributions to Senate candidates (\$17,500 per candidate for the entire election cycle). At the time this MUR was considered, the statute and FEC regulations were silent concerning:

- Whether the House campaign committee had its own \$5,000 limit for contributions to Senate candidates, or whether it had to aggregate its contributions with those made by the national committee and the Senate campaign committee; and
- Whether the Senate campaign committee had a separate limit for House candidates, or whether it had to aggregate its contributions with those made by either the national committee or the House campaign committee.

In the absence of any applicable statutory or regulatory provisions, the Commission found no reason to believe that the party committees had exceeded the limits.

(New regulations, effective November 1989, now clarify that the House campaign committee and the national committee have separate per election limits on contributions to House, Senate and Presidential candidates. The revised rules also make clear that the national committee and the Senate campaign committee have separate per election limits on contributions to House and Presidential candidates, even though they share the \$17,500 limit on contributions to a Senate candidate made during the six-year Senate election cycle.)

Expenditures Paid by Nonfederal Account

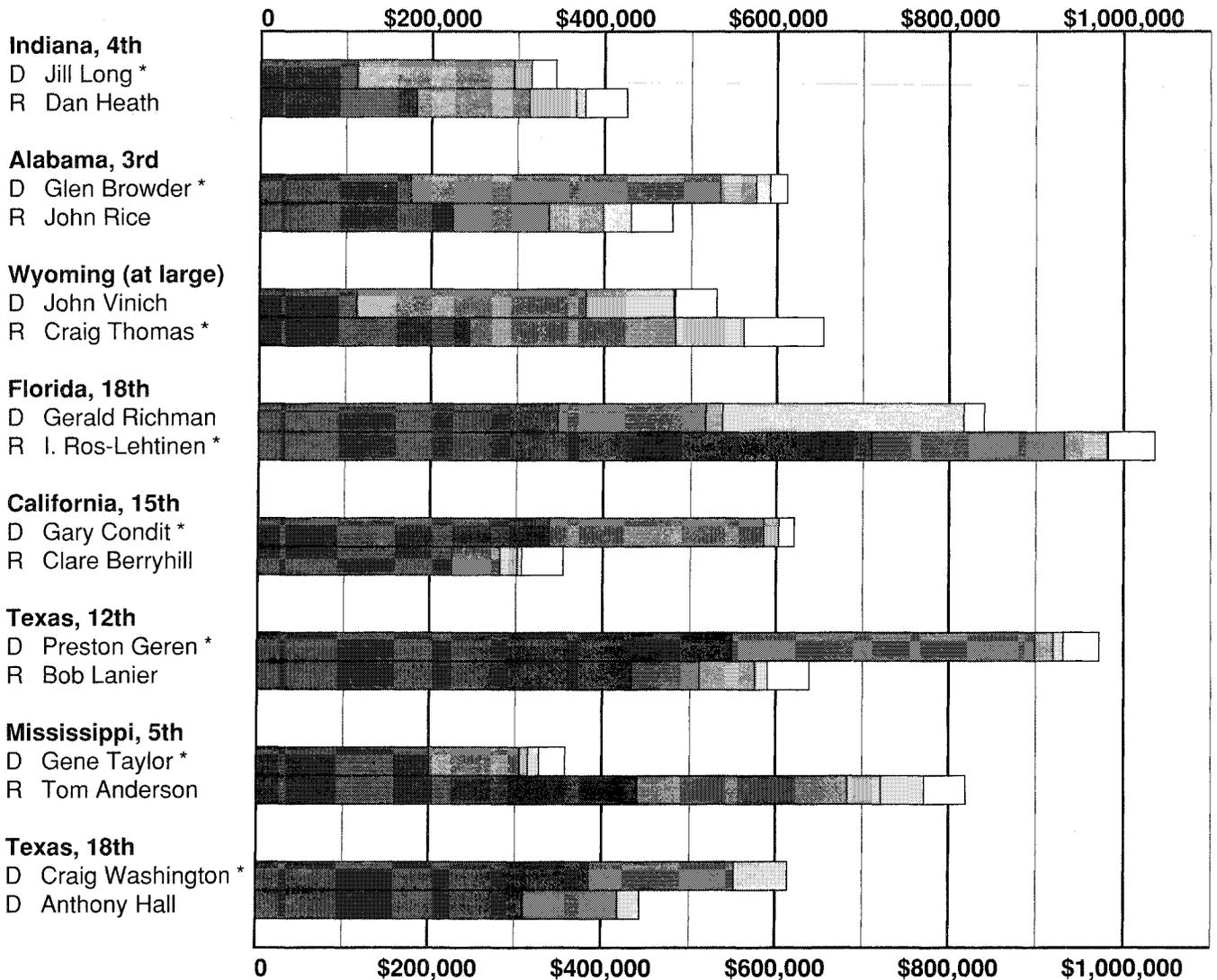
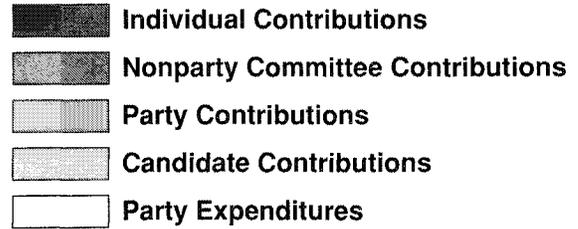
Under FEC rules, a party committee active in both federal and nonfederal elections may set up two accounts. The federal account alone is registered as a political committee and must comply with federal requirements. The nonfederal account is subject to relevant state law, but is prohibited from funding any federal activity.

In MUR 2588, the Commission imposed a \$9,500 civil penalty on a state party committee for violating this rule (11 CFR 102.5(a)(1)(i)). The committee's report showed a \$62,823 debt owed to the nonfederal account for its partial payment of a coordinated party expenditure. (Section §441a(d) of the Act permits party committees to make limited expenditures on behalf of candidates in addition to making contributions.) The party committee contended that the funds in the nonfederal account were permis-

sible under the Act since state law also banned corporate and labor contributions. The General Counsel's Report, however, disagreed, noting that the state law did not limit contributions, in contrast to federal law. The party committee also argued that the violation was mitigated by the committee's voluntary disclosure, but the General Counsel's Report pointed out that the committee had experienced similar compliance problems in the previous election cycle—problems that had resulted in an FEC audit and enforcement action. The Commission found probable cause to believe the committee had violated the law by spending nonfederal funds to support federal candidates. The conciliation agreement included the civil penalty mentioned above.

Chapter 5 Campaign Finance Statistics

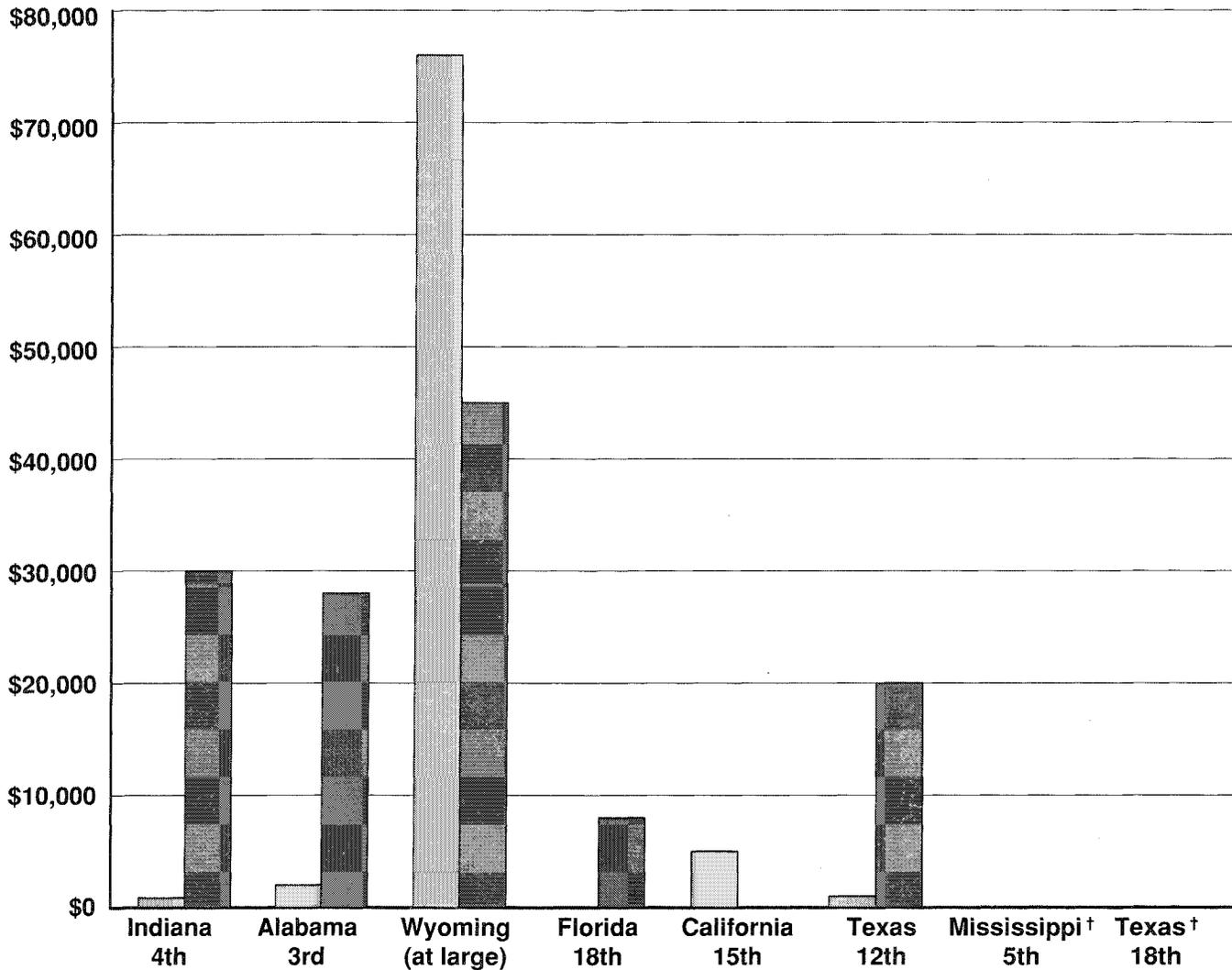
Contributions and Party Expenditures for 1989 Special Elections



* Winner.

**Contributions to 1989 Special Election
Candidates from State Parties
Outside the Home State ***

Democrats
 Republicans



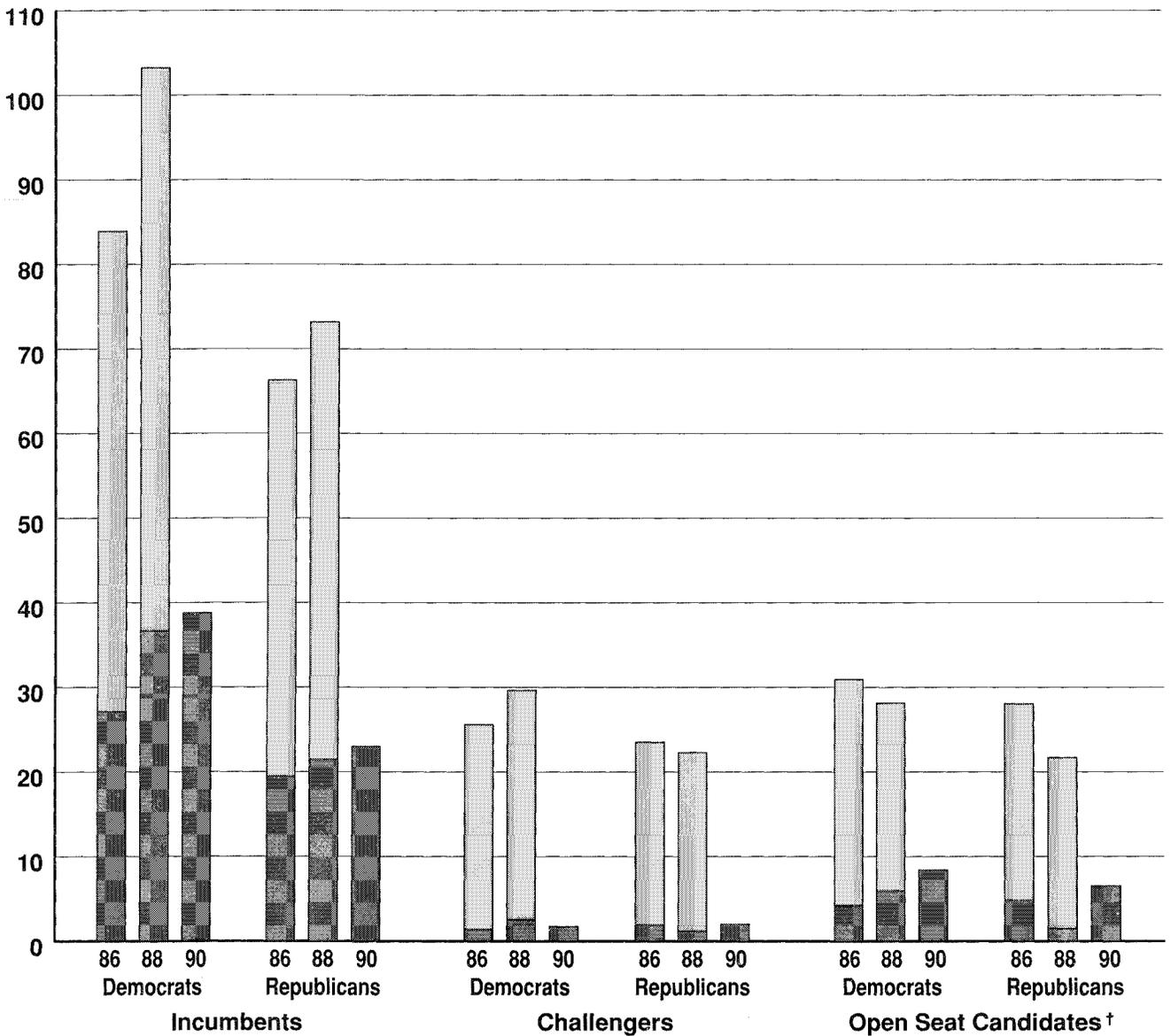
* The bars represent contributions from state party committees from the following states: Arkansas, California, Colorado, Florida, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Virginia, Washington and Wisconsin.

† No out-of-state party contributions were reported.

Receipts of House Candidates for Each Year of Election Cycle *

Election Year
 Nonelection Year

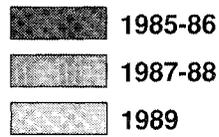
Millions of Dollars



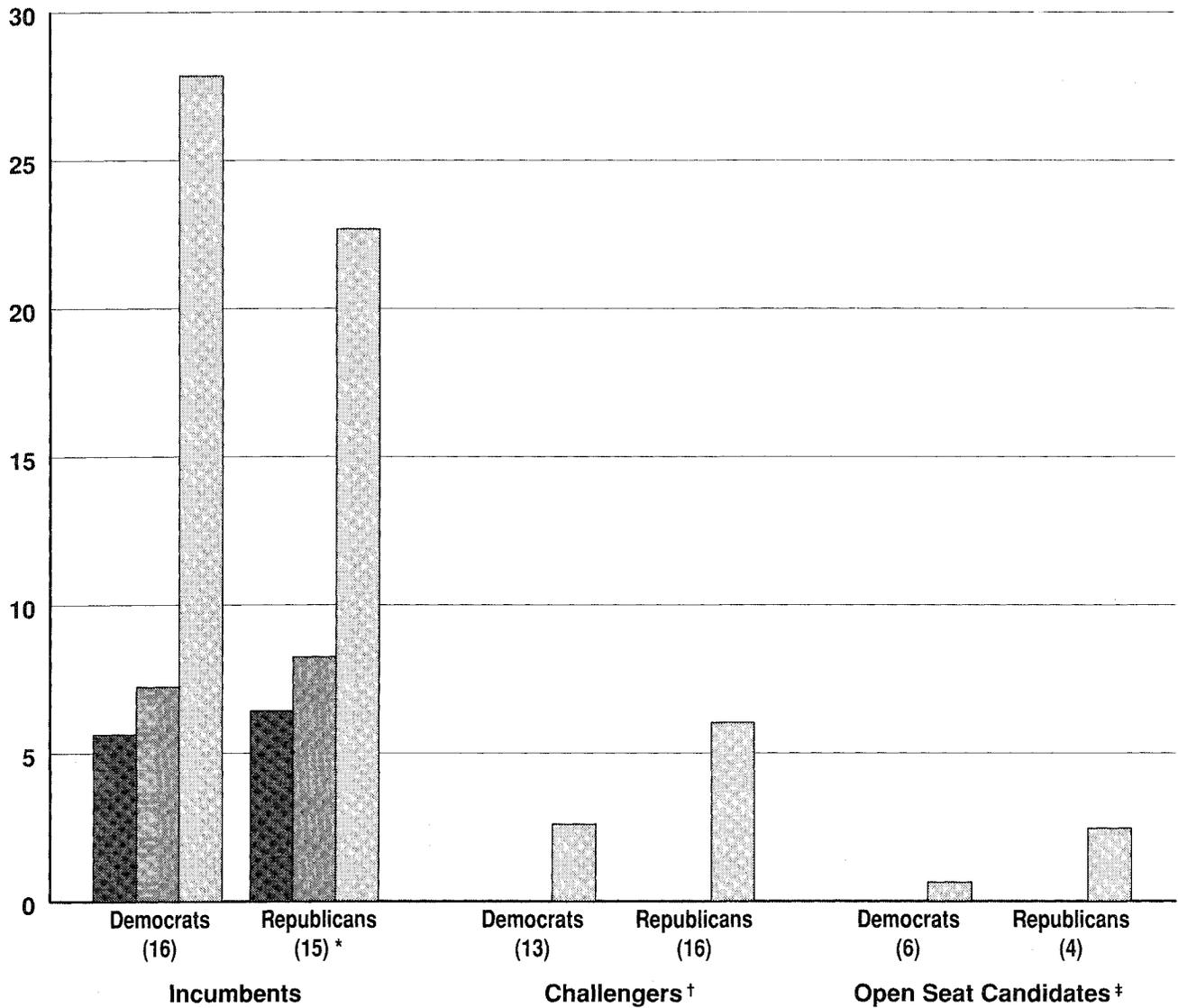
* An election cycle consists of the year before a regularly scheduled election (nonelection year) and the year of the election (election year). Only 1989 data are shown for the 1990 cycle.

† Includes candidates running in special elections to fill vacant seats.

Receipts of 1990 Senate Candidates



Millions of Dollars

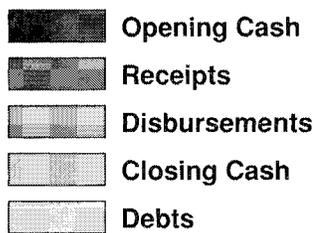


* Doug Coates (IN-R) was appointed in 1989 and therefore had no earlier activity.

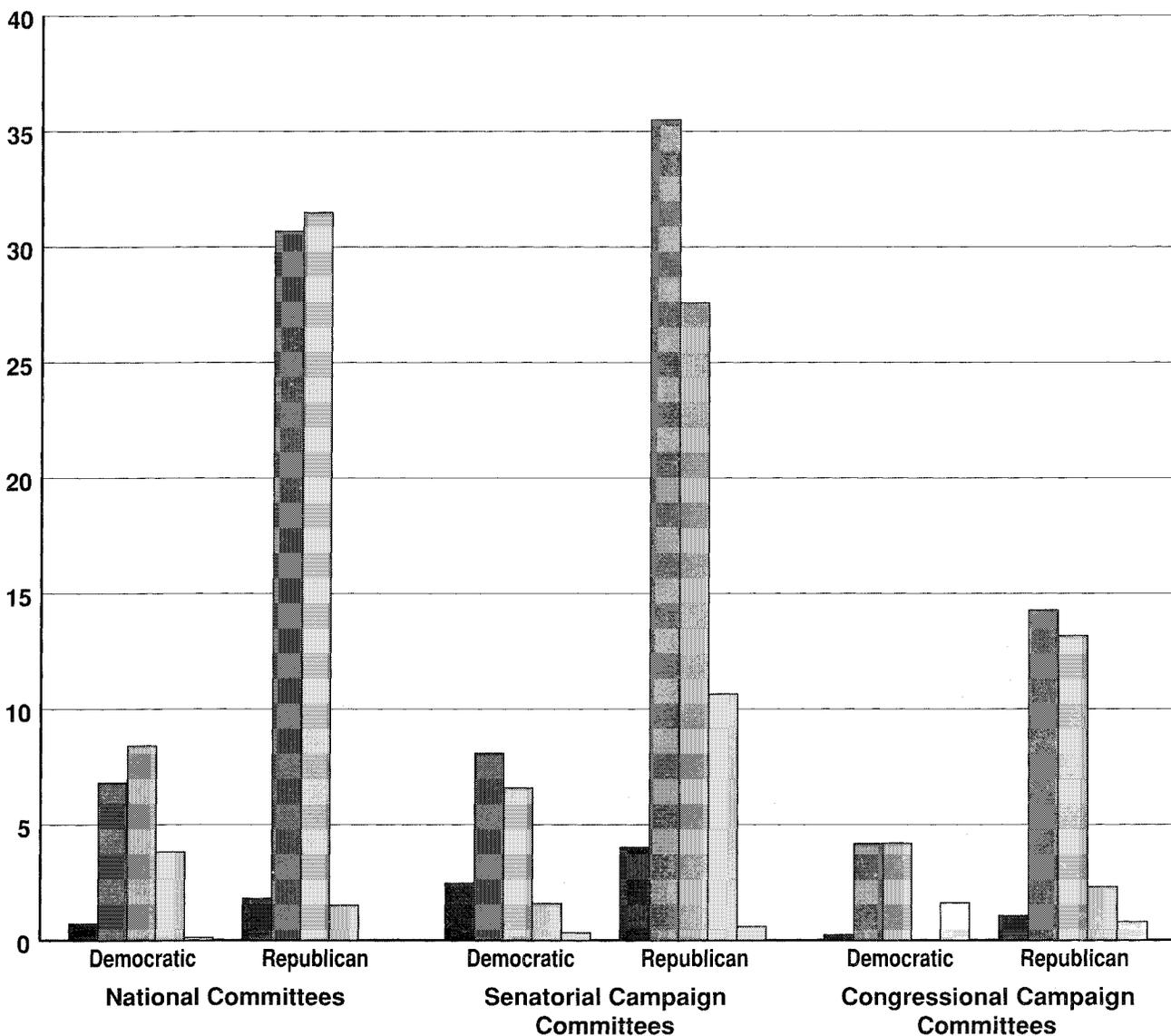
† Only one Democratic challenger and one Republican challenger were active in 1987-88. Their receipts were too small to be represented on this graph.

‡ There are three open seat Senate races in 1990: Colorado, Idaho and New Hampshire.

1989 National Party Activity



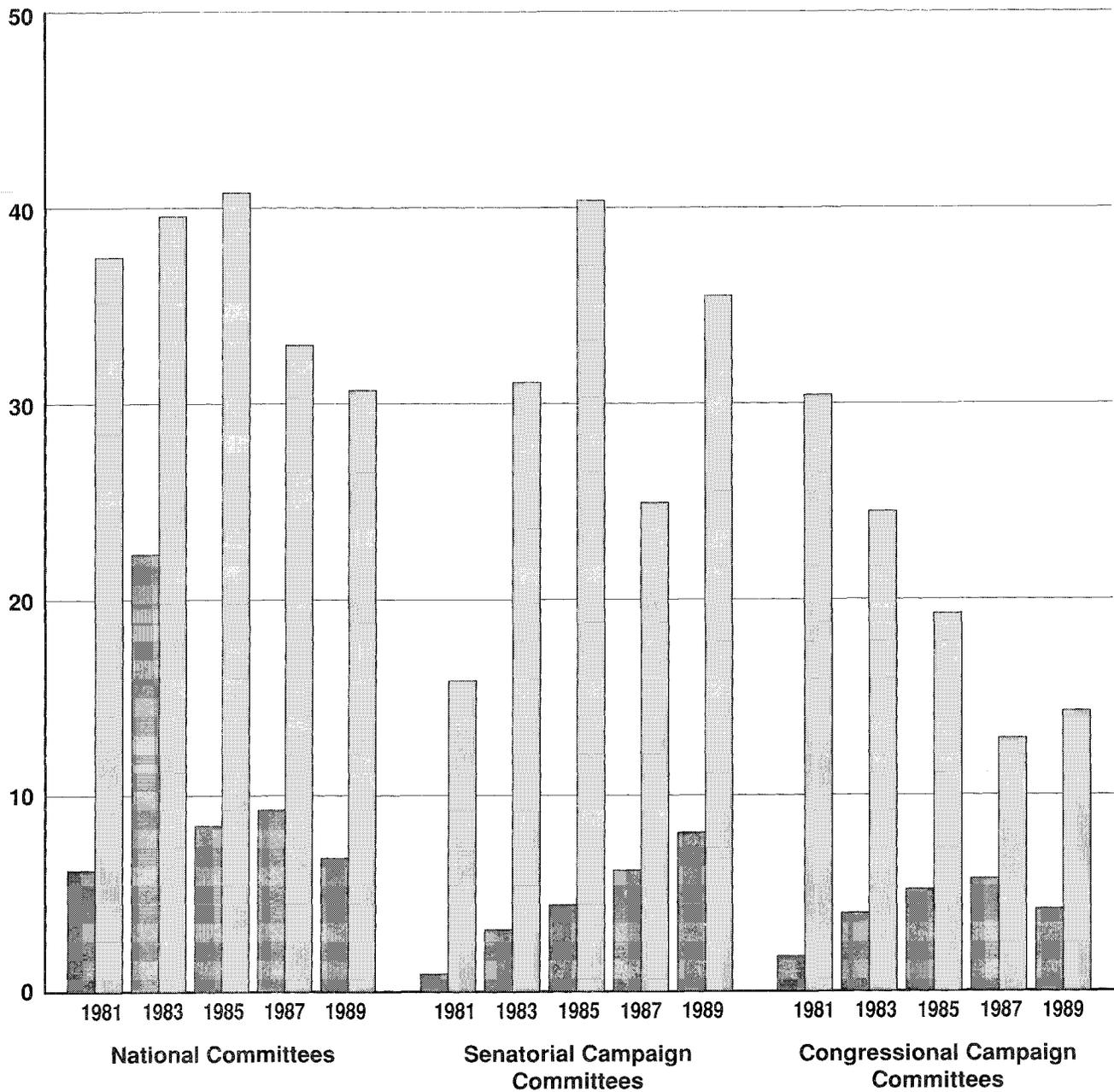
Millions of Dollars



Nonelection Year Receipts of Party Committees

Democratic
 Republican

Millions of Dollars

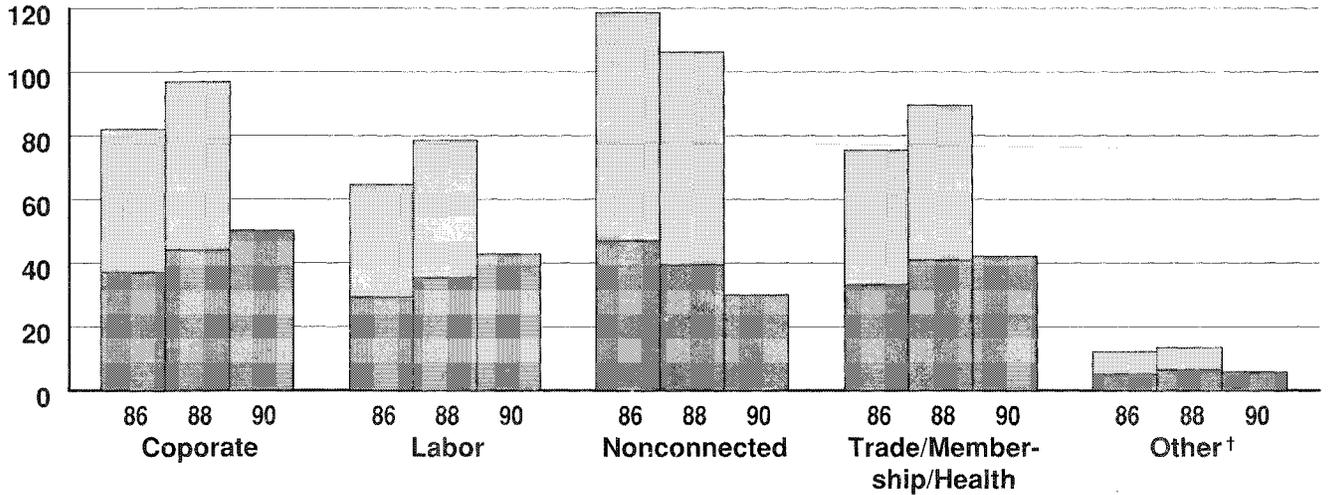


PAC Campaign Finance Activity for Each Year of Election Cycle *

Election Year
 Nonelection Year

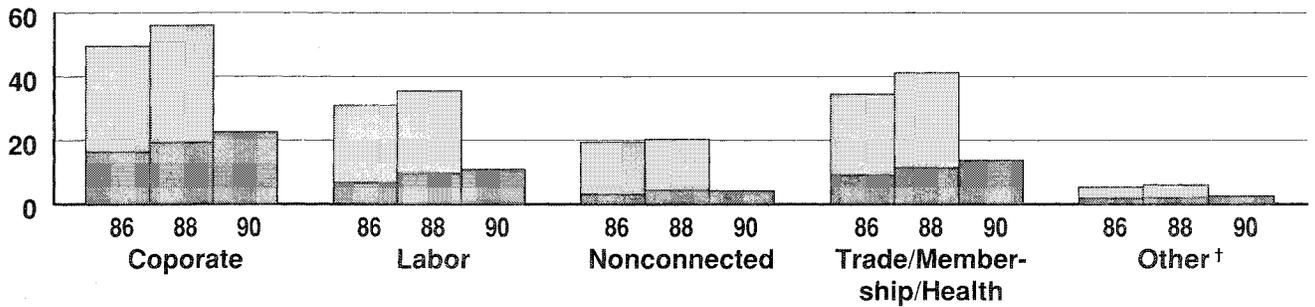
Receipts

Millions of Dollars



Contributions to Candidates

Millions of Dollars

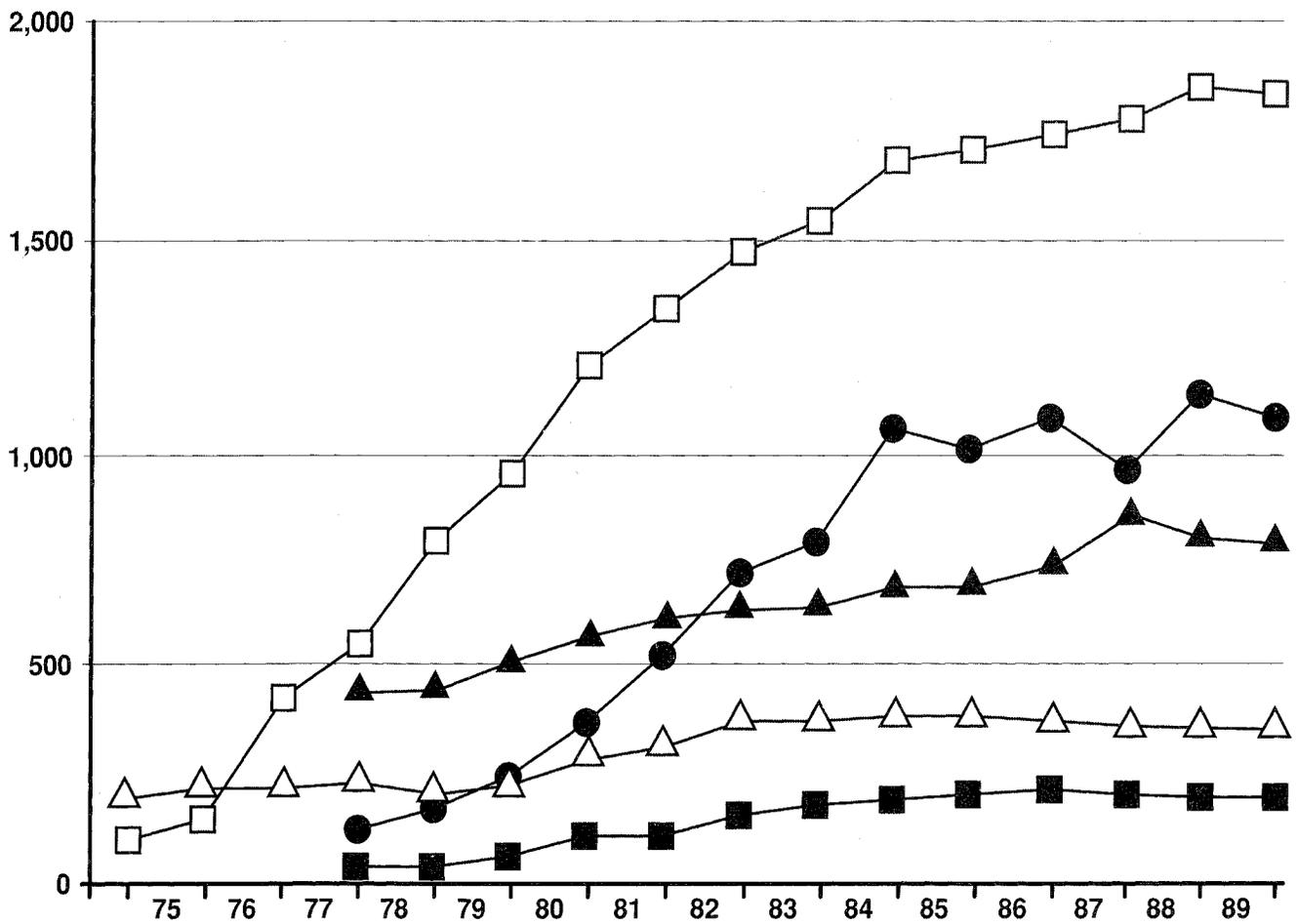


* An election cycle consists of the year before a regularly scheduled election (nonelection year) and the year of the election (election year). Only 1989 data are shown for the 1990 cycle.

† "Other" category consists of PACs formed by corporations without capital stock and PACs formed by incorporated cooperatives.

Number of PACs, 1975-89 *

- Corporate
- Nonconnected
- ▲ Trade/Membership/Health
- △ Labor
- Other †



* For the years 1974 through 1976, numbers are not available for Nonconnected PACs, Trade/Membership/Health PACs and PACs in the "Other" category.

† "Other" category consists of PACs formed by corporations without capital stock and PACs formed by incorporated co-operatives.

Chapter 6

Legislative Recommendations

Public Financing

Presidential Election Campaign Fund (revised 1990)¹

Section: 26 U.S.C. §6096

Recommendation: Congress should amend the Revenue Act to ensure that sufficient funds will be in the Presidential Election Campaign Fund to cover the outlays anticipated in 1992 and prevent future imbalances between the Fund's receipts and the Fund's payouts to Presidential candidates and party convention committees. The present system, wherein a non-indexed, \$1 tax check-off mechanism must fund inflation-indexed payments, is approaching insolvency. Since 1974 (the index year for payments), inflation has increased payments by over 250 percent.

Among the alternative remedies for this imbalance, Congress should consider:

- Periodically adjusting the amount designated on the income tax return to correspond to the index for payments from the Fund;
- Changing the system to an entitlement program wherein the amount of payments would be determined solely by the statutory eligibility criteria; or
- Changing the system to a traditional appropriated account or, should the check-off system be retained, permitting special appropriations to compensate for a projected shortfall.

Explanation: As previously reported, unless the system is changed, the Fund balance is likely to be inadequate to meet the entitlements of candidates for the 1992 Presidential election. Even if a shortfall is avoided in the '92 cycle, a deficiency in the Fund is a certainty by the 1996 elections.

¹ The date "1990" indicates that the recommendation was adopted for the first time in 1990. Recommendations without the date were initially adopted in previous years and reaffirmed by the Commission in 1990.

If Congress wishes to retain the check-off mechanism, it should index the tax check-off to correspond to the index on Fund payments to Presidential candidates. Automatic indexing could be simplified to require a change on tax form 1040 (individual income tax return) only when inflation warranted an increase of a full or a half dollar. This would preclude annual changes and prevent absurdly precise amounts from being printed on the form.

Enforcement of Nonwillful Violations (1990)

Section: 26 U.S.C. §§9012, 9042

Recommendation: Congress should amend the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act to make it clear that the Commission has authority for civil enforcement of nonwillful violations of the public funding provisions.

Explanation: Section 9012 of the Presidential Election Campaign Fund Act and section 9042 of the Presidential Primary Matching Payment Account Act provide only for "criminal penalties" for knowing and willful violations of the spending and contribution provisions and the failure of publicly funded candidates to furnish all records requested by the Commission. The lack of a specific reference to nonwillful violations of these provisions has raised questions regarding the Commission's ability to enforce these provisions through the civil enforcement process.

In some limited areas, the Commission has invoked other statutes and other provisions in Title 26 to carry out its civil enforcement of the public funding provisions. It has relied, for example, on 2 U.S.C. §441a(b) to enforce the Presidential spending limits. Similarly, the Commission has used the candidate agreement and certification processes provided in 26 U.S.C. §§9003 and 9033 to enforce the spending limits, the ban on private contributions, and the requirement to furnish records. Congress may wish to consider revising the public financing statutes to provide explicit authority for civil enforcement of these provisions.

Eligibility for Public Financing (revised 1990)

Section: 26 U.S.C. §§9003, 9033

Recommendation: Congress should reexamine the eligibility requirements for publicly funded Presidential candidates. In particular, two areas merit special attention: (1) the need to raise the threshold amount of matchable contributions required to qualify for Presidential primary matching funds; and (2) the need to ensure that candidates who have previously violated laws related to the public funding process will not be eligible for public funding.

Explanation: Congress should consider raising the threshold amount required to qualify for primary matching payments. The Federal Election Commission has administered the public funding provisions in four Presidential elections. The statute provides for a cost-of-living adjustment (COLA) on the overall primary spending limitation, which has more than doubled since 1976. There is, however, no corresponding adjustment to the threshold requirement. It remains exactly the same as it was in 1976. An adjustment to the threshold requirement would ensure that funds continue to be given only to candidates who demonstrate broad national support. To reach this higher threshold, Congress could increase the number of states in which the candidate must raise the qualifying amount of matchable contributions; and/or increase the total amount of qualifying matchable contributions that must be raised in each of the states.

With regard to the candidate's past experience with the public funding process, neither of the Presidential public financing statutes places any limitation on eligibility for funding based upon a candidate's prior violations of law, no matter how severe. Public confidence in the integrity of the public financing system could be eroded if the Commission were compelled to provide public funds to candidates who have been convicted of felonies related to the public funding process. For example, if a candidate has been convicted of fraud with respect to raising funds for a campaign that was publicly financed, the Commission should not be

required to certify funds for future campaigns. Congress may wish to add a requirement that an individual seeking public funds may not have been convicted of crimes related to the public financing process. Similarly, the Commission should not be required to certify funds to candidates who, in connection with past Presidential campaigns, have failed to make repayments or who have willfully disregarded audit procedures. Congress should amend the eligibility requirements to ensure that such candidates do not receive public financing for their Presidential campaigns.

Fundraising Limitation for Publicly Financed Presidential Primary Campaigns

Section: 2 U.S.C. §§431(9)(A)(vi) and 441a

Recommendation: The Commission recommends that the separate fundraising limitation provided to publicly financed Presidential primary campaigns be combined with the overall limit. Thus, instead of a candidate's having a \$10 million (plus COLA²) limit for campaign expenditures and a \$2 million (plus COLA) limit for fundraising (20 percent of overall limit), each candidate would have one \$12 million (plus COLA) limit for all campaign expenditures.

Explanation: Campaigns that have sufficient funds to spend up to the overall limit usually allocate some of their expenditures to the fundraising category. These campaigns come close to spending the maximum permitted under both their overall limit and their special fundraising limit. Hence, by combining the two limits, Congress would not substantially alter spending amounts or patterns. For those campaigns which do not spend up to the overall expenditure limit, the separate fundraising limit is meaningless. Many smaller campaigns do not even bother to use it, except in one or two states where the expenditure limit is low, e.g., Iowa and New

² Spending limits are increased by the cost-of-living adjustment (COLA), which the Department of Labor calculates annually.

Hampshire. Assuming that the state limitations are eliminated or appropriately adjusted, this recommendation would have little impact on the election process.

The advantages of the recommendation, however, are substantial. They include a reduction in accounting burdens and a simplification in reporting requirements for campaigns, and a reduction in the Commission's auditing task.

State Expenditure Limits for Publicly Financed Presidential Primary Campaigns

Section: 2 U.S.C. §441a

Recommendation: The Commission recommends that the state-by-state limitations on expenditures for publicly financed Presidential primary candidates be eliminated.

Explanation: The Commission has now seen four Presidential elections under the state expenditure limitations. Based on our experience, we believe that the limitations could be removed with no material impact on the process.

Our experience has shown that the limitations have little impact on campaign spending in a given state, with the exception of Iowa and New Hampshire. In most other states, campaigns are unable or do not wish to expend an amount equal to the limitation. In effect, then, the administration of the entire program results in limiting disbursements in these two primaries alone.

If the limitations were removed, the level of disbursements in these states would obviously increase. With an increasing number of primaries vying for a campaign's limited resources, however, it would not be possible to spend very large amounts in these early primaries and still have adequate funds available for the later primaries. Thus, the overall national limit would serve as a constraint on state spending, even in the early primaries. At the same time, candidates would have broader discretion in the running of their campaigns.

Our experience has also shown that the limitations have been only partially successful in limiting expenditures in the early primary states. The use of the fundraising limitation, the compliance cost exemption, the volunteer service provisions, the unreimbursed personal travel expense provisions, the use of a personal residence in volunteer activity exemption, and a complex series of allocation schemes have developed into an art which when skillfully practiced can partially circumvent the state limitations.

Finally, the allocation of expenditures to the states has proven a significant accounting burden for campaigns and an equally difficult audit and enforcement task for the Commission.

Given our experience to date, we believe that this change to the Act would be of substantial benefit to all parties concerned.

Deposit of Repayments

Section: 26 U.S.C. §9007(d)

Recommendation: Congress should revise the law to state that: All payments received by the Secretary of the Treasury under subsection (b) shall be deposited by him or her in the Presidential Election Campaign Fund established by section 9006(a).

Explanation: This change would allow the Fund to recapture monies repaid by convention-related committees of national major and minor parties, as well as by general election grant recipients. Currently the Fund recaptures only repayments made by primary matching fund recipients.

Contributions and Expenditures

Contributions and Expenditures to Influence Federal and Nonfederal Elections

Section: 2 U.S.C. §§441 and 434

Recommendation: Congress may wish to consider whether new legislation is needed to monitor political committees that engage in activities that influence both federal and nonfederal elections.

Explanation: The law requires that all funds spent to influence federal elections come from sources that are permissible under the limitations and prohibitions of the Act. Problems arise with the application of this provision when committees engage in activities that support both federal and nonfederal candidates. In this regard, the Commission has attempted to clarify the rules on allocating disbursements between federal and nonfederal election activity. (The Commission issued a Notice of Proposed Rulemaking and conducted hearings.)

The District Court for the District of Columbia, in *Common Cause v. FEC*, confirmed the Commission's long-standing view that allocation is the appropriate way to reconcile its mandate (to monitor excessive and prohibited funds) and the limits on its jurisdiction (to regulate money influencing federal elections but not state or local). In recent hearings, the Commission acknowledged that the allocation issue had been "clouded by allegations that the campaigns of both Presidential candidates raised large amounts of so-called 'soft money.'"³ In light of this public concern, Congress may wish to reevaluate the Commission's role in regulating political committees that support both federal and nonfederal candidates.

Nonprofit Corporations

Section: 2 U.S.C. §441b

Recommendation: In light of the decision of the U.S. Supreme Court in *Federal Election Commission v. Massachusetts Citizens for Life, Inc. (MCFL)*, Congress may wish to amend the provision prohibiting corporate and labor spending in connection with federal elections in order to incorporate in the statute the text of the Court's decision.

³ Commissioner Thomas J. Josefiak, opening statement at FEC hearings on amendments to 11 CFR 106.1 concerning the allocation of disbursements between federal and nonfederal accounts, December 15, 1988.

Explanation: In the Court's decision of December 15, 1986, the Court held that the Act's prohibition on corporate political expenditures was unconstitutional as applied to independent expenditures made by a narrowly defined type of nonprofit corporation. Since that time, the Commission has published a Notice of Proposed Rulemaking and has conducted hearings on whether regulatory changes are needed as a result of the Court's decision. Congress may wish to consider whether statutory changes are required as well.

The Court found that certain nonprofit corporations were not subject to the prohibitions of 2 U.S.C. §441b. The Court determined, however, that these nonprofit corporations had to disclose some aspect of their financial activity—in particular, independent expenditures exceeding \$250 and identification of persons who contribute over \$200 to help fund these expenditures. The Court further ruled that spending for political activity could, at some point, become a major purpose of the corporation, and the organization would then become a political committee.

Certification of Voting Age Population Figures and Cost-of-Living Adjustment

Section: 2 U.S.C. §§441a(c) and (e)

Recommendation: Congress should consider removing the requirement that the Secretary of Commerce certify to the Commission the voting age population of each Congressional district. At the same time, Congress should establish a deadline of February 15 for supplying the Commission with the remaining information concerning the voting age population for the nation as a whole and for each state. In addition, the same deadline should apply to the Secretary of Labor, who is required under the Act to provide the Commission with figures on the annual adjustment to the cost-of-living index.

Explanation: In order for the Commission to compute the coordinated party expenditure limits and the state-by-state expenditure limits for Presidential candidates, the Secretary of Commerce certifies the

voting age population of the United States and of each state. 2 U.S.C. §441a(e). The certification for each Congressional district, also required under this provision, is not needed.

In addition, under 2 U.S.C. §441a(c), the Secretary of Labor is required to certify the annual adjustment in the cost-of-living index. In both instances, the timely receipt of these figures would enable the Commission to inform political committees of their spending limits early in the campaign cycle. Under present circumstances, where no deadline exists, the Commission has sometimes been unable to release the spending limit figures before June.

Election Period Limitations

Section: 2 U.S.C. §441a

Recommendation: The Commission recommends that limits on contributions to candidates be placed on an election-cycle basis, rather than the current per-election basis.

Explanation: The contribution limitations affecting contributions to candidates are structured on a "per-election" basis, thus necessitating dual bookkeeping or the adoption of some other method to distinguish between primary and general election contributions. The Act could be simplified by changing the contribution limitations from a "per-election" basis to an "election-cycle" basis. Thus, multicandidate committees could give up to \$10,000 and all other persons could give up to \$2,000 to an authorized committee at any point during the election cycle.

Application of Contribution Limitations to Family Members

Section: 2 U.S.C. §441a

Recommendation: The Commission recommends that Congress examine the application of the contribution limitations to immediate family members.

Explanation: Under the current posture of the law, a family member is limited to contributing \$1,000 per election to a candidate. This limitation applies to spouses and parents, as well as other immediate family members. (See S. Conf. Rep. No. 93-1237, 93rd Cong., 2nd Sess., 58 (1974) and *Buckley v. Valeo*, 424 U.S. 1, 51 (footnote 57)(1976).) This limitation has caused the Commission substantial problems in attempting to implement and enforce the contribution limitations.⁴

Problems have arisen in enforcing the limitations where a candidate uses assets belonging to a parent. In some cases, a parent has made a substantial gift to his or her candidate-child while cautioning the candidate that this may well decrease the amount which the candidate would otherwise inherit upon the death of the parent.

The Commission recommends that Congress consider the difficulties arising from application of the contribution limitations to immediate family members.

Acceptance of Cash Contributions

Section: 2 U.S.C. §441g

Recommendation: Congress may wish to modify the statute to make the treatment of 2 U.S.C. §441g, concerning cash contributions, consistent with other provisions of the Act. As currently drafted, 2 U.S.C. §441g prohibits only the **making** of cash contributions which, in the aggregate, exceed \$100 per candidate, per election. It does not address the issue of **accepting** cash contributions. Moreover, the current statutory language does not plainly prohibit cash contributions in excess of \$100 to political committees other than authorized committees of a candidate.

⁴ While the Commission has attempted through regulations to present an equitable solution to some of these problems (see 48 *Fed. Reg.* 19019 (April 27, 1983) as prescribed by the Commission on July 1, 1983), statutory resolution is required in this area.

Explanation: Under the present statute, the Commission is required to make a finding that there is "reason to believe a violation has occurred" before it may investigate. Only then may the Commission request specific information from a respondent to determine whether, in fact, a violation has occurred. The statutory phrase "reason to believe" is misleading and does a disservice to both the Commission and the respondent. It implies that the Commission has evaluated the evidence and concluded that the respondent has violated the Act. In fact, however, a "reason to believe" finding simply means that the Commission believes a violation may have occurred if the facts as described in the complaint are true. An investigation permits the Commission to evaluate the validity of the facts as alleged.

If the problem is, in part, one of semantics, it would be helpful to substitute words that sound less accusatory and that more accurately reflect what, in fact, the Commission is doing at this early phase of enforcement.

In order to avoid perpetuating the erroneous conclusion that the Commission believes a respondent has violated the law every time it finds "reason to believe," the statute should be amended.

Seeking Injunctions in Enforcement Cases

Section: 2 U.S.C. §437g(a)(1)

Recommendation: ⁵ Congress should amend the enforcement procedures set forth in the statute so as to empower the Commission to promptly initiate a civil suit for injunctive relief in order to preserve the status quo when there is clear and convincing evidence that a substantial violation of the Act is about to occur. Under criteria expressly stated, the Commission should be authorized to initiate such civil action in a United States district court without

⁵ Commissioner Elliott filed the following dissent: The Act presently enables the Commission to seek injunctive relief after the administrative process has been completed and this is more than sufficient. (See 2 U.S.C. §437g(a)(6)(A).)

I am unaware of any complaint filed with the Commission during the last eight years which, in my opinion, would meet the four standards set forth in the legislative recommendation. Assuming a case was submitted which met these standards, I believe it would be inappropriate for the Commission to seek injunctive relief prior to a probable cause finding.

First, the very ability of the Commission to seek an injunction, especially during the "heat of the campaign," opens the door to allegations of an arbitrary and politically motivated enforcement action by the Commission. The Commission's decision to seek an injunction in one case while refusing to do so in another could easily be seen by candidates and respondents as politicizing the enforcement process.

Second, the Commission might easily be flooded with requests for injunctive relief for issues such as failure to file an October quarterly or a 12-day pre-general report. Although the Commission would have the discretion to deny all these requests for injunctive relief, in making that decision the Commission would bear the administrative burden of an immediate review of the factual issues.

Third, although the courts would be the final arbiter as to whether or not to grant an injunction, the mere decision by the Commission to proceed to seek an injunction during the final weeks of a campaign would cause a diversion of time and money and adverse publicity for a candidate during the most important period of the campaign.

For these reasons, I disagree with the recommendation to expand the power of the Commission to seek injunctive relief except as presently provided for in the Act.

awaiting expiration of the 15-day period for responding to a complaint or the other administrative steps enumerated in the statute. The person against whom the Commission brought the action would enjoy the procedural protections afforded by the courts.

Explanation: On certain occasions in the heat of the campaign period, the Commission has been provided with information indicating that a violation of the Act is about to occur (or be repeated) and yet, because of the administrative steps set forth in the statute, has been unable to act swiftly and effectively in order to prevent the violation from occurring. In some instances the evidence of a violation has been clear-cut and the potential for an impact on a campaign or campaigns has been substantial. The Commission has felt constrained from seeking immediate judicial action by the requirements of the statute which mandate that a person be given 15 days to respond to a complaint, that a General Counsel's brief be issued, that there be an opportunity to respond to such brief, and that conciliation be attempted before court action may be initiated. The courts have indicated that the Commission has little if any discretion to deviate from the administrative procedures of the statute. *In re Carter-Mondale Reelection Committee, Inc.*, 642 F.2d 538 (D.C. Cir. 1980); *Common Cause v. Schmitt*, 512 F. Supp. 489 (D.D.C. 1980), *aff'd by an equally divided court*, 455 U.S. 129 (1982); *Durkin for U.S. Senate v. FEC*, 2 *Fed. Elec. Camp. Fin. Guide* (CCH) para. 9147 (D.N.H. 1980). The Commission suggests that the standards that should govern whether it may seek prompt injunctive relief (which could be set forth in the statute itself) are:

1. There is a substantial likelihood that the facts set forth a potential violation of the Act;
2. Failure of the Commission to act expeditiously will result in irreparable harm to a party affected by the potential violation;
3. Expeditious action will not result in undue harm or prejudice to the interests of other persons; and

4. The public interest would be served by expeditious handling of the matter.

Disclaimers

Disclaimer Notices

Section: 2 U.S.C. §441d

Recommendation: Congress should revise the statute to require registered political committees to display the appropriate disclaimer notice (when practicable) in any communication issued to the general public, regardless of its purpose or how it is distributed.

Explanation: Under 2 U.S.C. §441d, a disclaimer notice is only required when "expenditures" are made for two types of communications made through "public political advertising": (1) communications that solicit contributions and (2) communications that "expressly advocate" the election or defeat of a clearly identified candidate. The Commission has encountered a number of problems with respect to this requirement.

First, the statutory language requiring the disclaimer notice refers specifically to "expenditures," suggesting that the requirement does not apply to disbursements that are exempt from the definition of "expenditure" such as "exempt activities" conducted by local and state party committees under, for example, 2 U.S.C. §431(9)(B)(viii). This proposal would make clear that all types of communications to the public would carry a disclaimer.

Second, the Commission has encountered difficulties in interpreting "public political advertising," particularly when volunteers have been involved with the preparation or distribution of the communication.

Third, the Commission has devoted considerable time to determining whether a given communication in fact contains "express advocacy" or "solicitation" language. The recommendation here would erase this need.

Most of these problems would be eliminated if the language of 2 U.S.C. §441d were simplified to

require a registered committee to display a disclaimer notice whenever it communicated to the public, regardless of the purpose of the communication and the means of preparing and distributing it. The Commission would no longer have to examine the content of communications or the manner in which they were disseminated to determine whether a disclaimer was required.

This proposal is not intended to eliminate exemptions for communications appearing in places where it is inconvenient or impracticable to display a disclaimer.

Fundraising Projects Operated by Unauthorized Committees

Section: 2 U.S.C. §432(e)(4)

*Recommendation:*⁶ Congress may wish to consider

⁶ Commissioner Elliott filed the following dissent: I support the policy underlying this legislative recommendation and recognize the seriousness of the problem necessitating such a recommendation. However, the scope of the recommendation is far too broad and inflexible given the traditional fundraising events, especially those held by political parties and some unauthorized political committees. Party committees are not authorized committees and therefore would come under the general prohibitions included in the recommendation, precluding the use of a candidate's name for any activity of a party committee. Oftentimes, however, fundraising events conducted by a party committee incorporate the name of a well-known Member of Congress as a fundraising tool. Typically, the fundraising contributions are made in the form of checks made payable to the name of the event, e.g., "Happy Birthday, Senator Smith"; "Mike's Annual Barbecue"; "Sail With Senator Sanford"; "Roast Roberts." I do not believe Congress intends to preclude the use of the candidates' names in such activities, especially when the candidate is not only aware that his/her name is being used but approves and is actively participating in the event.

I would propose that the candidate be entitled to authorize the use of his or her name for such an event or activity provided the authorization is written. Again, I recognize the seriousness and the need to address this issue; however, Congress should not exclude fundraising tools which have been traditionally used by political committees.

Further, the impact of this recommendation has not been evaluated in the context of our joint fundraising regulations.

amending the statute at 2 U.S.C. §432(e)(4) to clarify that a political committee that is not an authorized committee of any candidate may not use the name of a candidate in the name of any "project" or other fundraising activity of such committee.

Explanation: The statute now reads that a political committee that is not an authorized committee "shall not include the name of any candidate **in its name** [emphasis added]." In certain situations presented to the Commission the political committee in question has not included the name of any candidate in its official name as registered with the Commission, but has nonetheless carried out "projects" in support of a particular candidate using the name of the candidate in the letterhead and text of its materials. The likely result has been that recipients of communications from such political committees were led to believe that the committees were in fact authorized by the candidate whose name was used. The requirement that committees include a disclaimer regarding nonauthorization (2 U.S.C. §441d) has not proven adequate under these circumstances.

The Commission believes that the intent behind the current provision is circumvented by the foregoing practice. Accordingly, the statute should be revised to clarify that the use of the name of a candidate in the name of any "project" is also prohibited.

Fraudulent Solicitation of Funds

Section: 2 U.S.C. §441h

Recommendation: The current §441h prohibits fraudulent misrepresentation such as speaking, writing or acting on behalf of a candidate or committee on a matter which is damaging to such candidate or committee. It does not, however, prohibit persons from fraudulently soliciting contributions. A provision should be added to this section prohibiting persons from fraudulently misrepresenting themselves as representatives of candidates or political parties for the purpose of soliciting contribu-

tions which are not forwarded to or used by or on behalf of the candidate or party.

Explanation: The Commission has received a number of complaints that substantial amounts of money were raised fraudulently by persons or committees purporting to act on behalf of candidates. Candidates have complained that contributions which people believed were going for the benefit of the candidate were diverted for other purposes. Both the candidates and the contributors were harmed by such diversion. The candidates received less money because people desirous of contributing believed they had already done so, and the contributors' funds had been misused in a manner in which they did not intend. The Commission has been unable to take any action on these matters because the statute gives it no authority in this area.

Public Disclosure

Commission as Sole Point of Entry for Disclosure Documents

Section: 2 U.S.C. §432(g)

Recommendation: The Commission recommends that it be the sole point of entry for all disclosure documents filed by federal candidates and political committees.

Explanation: A single point of entry for all disclosure documents filed by political committees would eliminate any confusion about where candidates and committees are to file their reports. It would assist committee treasurers by having one office where they would file reports, address correspondence and ask questions. At present, conflicts may arise when more than one office sends out materials, makes requests for additional information and answers questions relating to the interpretation of the law. A single point of entry would also reduce the costs to the federal government of maintaining three different offices, especially in the areas of personnel, equipment and data processing.

The Commission has authority to prepare and publish lists of nonfilers. It is extremely difficult to ascertain who has and who has not filed when reports may have been filed at or are in transit between two different offices. Separate points of entry also make it difficult for the Commission to track responses to compliance notices. Many responses and/or amendments may not be received by the Commission in a timely manner, even though they were sent on time by the candidate or committee. The delay in transmittal between two offices sometimes leads the Commission to believe that candidates and committees are not in compliance. A single point of entry would eliminate this confusion.

Finally, a single point of entry would enhance disclosure. Often the public and FEC staff have difficulty deciphering information from reports filed with the Clerk of the House and the Secretary of the Senate because these reports have been photocopied several times. A single point of entry would reduce the number of times a report had to be photocopied, thereby rendering it more legible and ensuring the placement of more accurate information on the public record.

If the Commission received all documents, it would transmit on a daily basis file copies to the Secretary and the Clerk, as appropriate. The Commission notes that the report of the Institute of Politics of the John F. Kennedy School of Government at Harvard University, *An Analysis of the Impact of the Federal Election Campaign Act, 1972-78*, prepared for the House Administration Committee, recommends that all reports be filed directly with the Commission (Committee Print, 96th Cong., 1st Sess., at 122 (1979)).

Public Disclosure at State Level

Section: 2 U.S.C. §439

Recommendation: Congress should consider relieving both political committees (other than candidate committees) and state election offices of the burdens inherent in the current requirement that political committees file copies of their reports with

the Secretaries of State. One way this could be accomplished is by providing a system whereby the Secretary of State (or equivalent state officer) would tie into the Federal Election Commission's computerized disclosure data base.

Explanation: At the present time, multicandidate political committees are required to file copies of their reports (or portions thereof) with the Secretary of State in each of the states in which they support a candidate. State election offices carry a burden for storing and maintaining files of these reports. At the same time, political committees are burdened with the responsibility of making multiple copies of their reports and mailing them to the Secretaries of State.

With advances in computer technology, it is now possible to facilitate disclosure at the state level without requiring duplicate filing. Instead, state election offices would tie into the FEC's computer data base. The local press and public could access reports of local political committees through a computer hookup housed in their state election offices. All parties would benefit: political committees would no longer have to file duplicate reports with state offices; state offices would no longer have to provide storage and maintain files; and the FEC could maximize the cost-effectiveness of its existing data base and computer system.

Such a system has already been tested in a pilot program and proven inexpensive and effective. Initially, we would propose that candidate committees and in-state party committees continue to file their reports both in Washington, D.C., and in their home states, in response to the high local demand for this information. Later, perhaps with improvements in information technology, the computerized system could embrace these committees as well.

State Filing for Presidential Candidate Committees

Section: 2 U.S.C. §439

Recommendation: Congress should consider clarifying the state filing provisions for Presidential candi-

date committees to specify which particular parts of the reports filed by such committees with the FEC should also be filed with states in which the committees make expenditures. Consideration should be given to both the benefits and the costs of state disclosure.

Explanation: Both states and committees have inquired about the specific requirements for Presidential candidate committees when filing reports with the states. The statute requires that a copy of the FEC reports shall be filed with all states in which a Presidential candidate committee makes expenditures. The question has arisen as to whether the full report should be filed with the state, or only those portions that disclose financial transactions in the state where the report is filed.

The Commission has considered two alternative solutions. The first alternative is to have Presidential candidate committees file, with each state in which they have made expenditures, a copy of the entire report filed with the FEC. This alternative enables local citizens to examine complete reports filed by candidates campaigning in a state. It also avoids reporting dilemmas for candidates whose expenditures in one state might influence a primary election in another.

The second alternative is to require that reports filed with the states contain all summary pages and only those receipts and disbursements schedules that show transactions pertaining to the state in which a report is filed. This alternative would reduce filing and storage burdens on Presidential candidate committees and states. It would also make state filing requirements for Presidential candidate committees similar to those for unauthorized political committees. Under this approach, any person still interested in obtaining copies of a full report could do so by contacting the Public Disclosure Division of the FEC.

Registration and Reporting

False Contributor Information (1990)

Section: 2 U.S.C. §434

Recommendation: Congress may wish to amend the Act to make it unlawful to knowingly provide false contributor information to a political committee.

Explanation: Under 2 U.S.C. §434, political committees are required to report certain information about their contributors to the Commission for public disclosure. Political committees usually must depend upon their contributors to provide truthful information for reporting to the Commission, yet no provision of the Act makes it unlawful for contributors to provide false information to the political committee. A statutory change would protect political committees that attempt to disclose campaign information accurately.

Insolvency of Political Committees

Section: 2 U.S.C. §433(d)

Recommendation: The Commission requests that Congress clarify its intention as to whether the Commission has a role in the determination of insolvency and liquidation of insolvent political committees. 2 U.S.C. §433(d) was amended in 1980 to read: "Nothing in this subsection may be construed to eliminate or limit the authority of the Commission to establish procedures for—(A) the determination of insolvency with respect to any political committee; (B) the orderly liquidation of an insolvent political committee, and the orderly application of its assets for the reduction of outstanding debts; and (C) the termination of an insolvent political committee after such liquidation and application of assets." The phrasing of this provision ("Nothing...may be construed to...limit") suggests that the Commission has such authority in some other provision of the Act, but the Act contains no such provision. If Congress intended the Commission to have a role in determining the insolvency of political committees and the liquidation of their assets, Congress should clarify the nature and scope of this authority.

Explanation: Under 2 U.S.C. §433(d)(1), a political committee may terminate only when it certifies in writing that it will no longer receive any contributions or make any disbursements and that the committee has no outstanding debts or obligations. The Act's 1979 Amendments added a provision to the law (2 U.S.C. §433(d)(2)) possibly permitting the Commission to establish procedures for determining insolvency with respect to political committees, as well as the orderly liquidation and termination of insolvent committees. In 1980, the Commission promulgated the "administrative termination" regulations at 11 CFR 102.4 after enactment of the 1979 Amendments, in response to 2 U.S.C. §433(d)(2). However, these procedures do not concern liquidation or application of assets of insolvent political committees.

Prior to 1980, the Commission adopted "Debt Settlement Procedures" under which the Commission reviews proposed debt settlements in order to determine whether the settlement will result in a potential violation of the Act. If it does not appear that such a violation will occur, the Commission permits the committee to cease reporting that debt once the settlement and payment are reported. The Commission believes this authority derives from 2 U.S.C. §434 and from its authority to correct and prevent violations of the Act, but it does not appear as a grant of authority beyond a review of the specific debt settlement request, to order application of committee assets.

It has been suggested that review by the Commission of the settlement of debts owed by political committees at less than face value may lead to the circumvention of the limitations on contributions specified by 2 U.S.C. §§441a and 441b. The amounts involved are frequently substantial, and the creditors are often corporate entities. Concern has also been expressed regarding the possibility that committees could incur further debts after settling some, or that a committee could pay off one creditor at less than the dollar value owed and subsequently raise additional funds to pay off a "friendly" creditor at full value.

When clarifying the nature and scope of the Commission's authority to determine the insolvency of political committees, Congress should consider the impact on the Commission's operations. An expanded role in this area might increase the Commission's workload, thus requiring additional staff and funds.

Waiver Authority

Section: 2 U.S.C. §434

Recommendation: Congress should give the Commission authority to grant general waivers or exemptions from the reporting requirements of the Act for classifications and categories of political committees.

Explanation: In cases where reporting requirements are excessive or unnecessary, it would be helpful if the Commission had authority to suspend the reporting requirements of the Act. For example, the Commission has encountered several problems relating to the reporting requirements of authorized committees whose respective candidates were not on the election ballot. The Commission had to consider whether the election-year reporting requirements were fully applicable to candidate committees operating under one of the following circumstances:

- The candidate withdraws from nomination prior to having his or her name placed on the ballot.
- The candidate loses the primary and therefore is not on the general election ballot.
- The candidate is unchallenged and his or her name does not appear on the election ballot.

Moreover, a Presidential primary candidate who has triggered the \$100,000 threshold but who is no longer actively seeking nomination should be able to reduce reporting from a monthly to a quarterly schedule.

In some instances, the reporting problems reflect the unique features of certain state election procedures. A waiver authority would enable the Commission to respond flexibly and fairly in these situations.

In the 1979 Amendments to the Act, Congress repealed 2 U.S.C. §436, which had provided the Commission with a limited waiver authority. There remains, however, a need for a waiver authority. It would enable the Commission to reduce needlessly burdensome disclosure requirements.

Campaign-Cycle Reporting

Section: 2 U.S.C. §434

Recommendation: Congress should revise the law to require authorized candidate committees to report on a campaign-to-date basis, rather than a calendar year cycle, as is now required.

Explanation: Under the current law, a reporter or researcher must compile the total figures from several year-end reports in order to determine the true costs of a committee. In the case of Senate campaigns, which may extend over a six-year period, this change would be particularly helpful.

Monthly Reporting for Congressional Candidates

Section: 2 U.S.C. §434(a)(2)

Recommendation: The principal campaign committee of a Congressional candidate should have the option of filing monthly reports in lieu of quarterly reports.

Explanation: Political committees, other than principal campaign committees, may choose under the Act to file either monthly or quarterly reports during an election year. Committees choose the monthly option when they have a high volume of activity. Under those circumstances, accounting and reporting are easier on a monthly basis because fewer transactions have taken place during that time. Consequently, the committee's reports will be more accurate.

Principal campaign committees can also have a large volume of receipts and expenditures. This is particularly true with Senatorial campaigns. These committees should be able to choose a more

frequent filing schedule so that their reporting covers less activity and is easier to do.

Monthly Reports

Section: 2 U.S.C. §434(a)(3)(B) and (4)(B)

Recommendation: Congress should change the reporting deadline for monthly filers from the twentieth to the fifteenth of the month.

Explanation: Committees filing monthly reports are now required to file reports disclosing each month's activity by the twentieth day of the following month. Particularly in the fast-paced Presidential primary period, this 20-day lag does not meet the public's need for timely disclosure. In light of the increased use of computerized recordkeeping by political committees, imposing a monthly filing deadline of the fifteenth of the month would not be unduly burdensome and would ensure timely disclosure of crucial financial data.

Reporting Payments to Persons Providing Goods and Services

Section: 2 U.S.C. §434(b)(5)(A), (6)(A) and (6)(B)

Recommendation: The current statute requires reporting "the name and address of each...person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure." Congress should clarify whether this is meant, in all instances, to require reporting committees to disclose only the payments made by the committee or whether, in some instances, 1) the reporting committees must require initial payees to report, to the committees, their payments to secondary payees, and 2) the reporting committees, in turn, must maintain this information and disclose it to the public by amending their reports through memo entries.

Explanation: The Commission has encountered on several occasions the question of just how detailed a committee's reporting of disbursements must be. See, e.g., Advisory Opinion 1983-25, 1 *Fed. Election Camp. Fin. Guide* (CCH), para. 5742 (Dec. 22, 1983) (Presidential candidate's committee not required to disclose the names, addresses, dates or amounts of payments made by a general media consultant retained by the committee); Advisory Opinion 1984-8, 1 *Fed. Election Camp. Fin. Guide* (CCH), para. 5756 (Apr. 20, 1984) (House candidate's committee only required to itemize payments made to the candidate for travel and subsistence, not the payments made by the candidate to the actual providers of services); *Financial Control and Compliance Manual for General Election Candidates Receiving Public Financing*, Federal Election Commission, pp. IV 39-44 (1984) (Distinguishing committee advances or reimbursements to campaign staff for travel and subsistence from other advances or reimbursements to such staff and requiring itemization of payments made by campaign staff only as to the latter). Congressional intent in the area is not expressly stated, and the Commission believes that statutory clarification would be beneficial. In the area of Presidential public financing, where the Commission is responsible for monitoring whether candidate disbursements are for qualified campaign expenses (see 26 U.S.C. §§9004(c) and 9038(b)(2)), guidance would be particularly useful.

Verifying Multicandidate Committee Status

Section: 2 U.S.C. §§438(a)(6)(C), 441a(a)(2) and (a)(4)

Recommendation: Congress should consider modifying those provisions of the Act relating to multicandidate committees in order to reduce the problems encountered by contributor committees in reporting their multicandidate committee status, and by candidate committees and the Commission in verifying the multicandidate committee status of contributor committees. In this regard, Congress might consider requiring political committees to notify the Commission once they have satisfied the

three criteria for becoming a multicandidate committee, namely, once a political committee has been registered for not less than 6 months, has received contributions from more than 50 persons and has contributed to at least 5 candidates for federal office.

Explanation: Under the current statute, political committees may not contribute more than \$1,000 to each candidate, per election, until they qualify as a multicandidate committee, at which point they may contribute up to \$5,000 per candidate, per election. To qualify for this special status, a committee must meet three standards:

- Support 5 or more federal candidates;
- Receive contributions from more than 50 contributors; and
- Have been registered as a political committee for at least 6 months.

The Commission is statutorily responsible for maintaining an index of committees that have qualified as multicandidate committees. The index enables recipient candidate committees to determine whether a given contributor has in fact qualified as a multicandidate committee and therefore is entitled to contribute up to the higher limit. The Commission's Multicandidate Index, however, is not current because it depends upon information filed periodically by political committees. Committees inform the Commission that they have qualified as multicandidate committees by checking the appropriate box on their regularly scheduled report. If, however, they qualify shortly after they have filed their report, several months may elapse before they disclose their new status on the next report. With semiannual reporting in a nonelection year, for example, a committee may become a multicandidate committee in August, but the Commission's Index will not reveal this until after the January 31 report has been filed, coded and entered into the Commission's computer.

Because candidate committees cannot totally rely on the Commission's Multicandidate Index for current information, they sometimes ask the contrib-

uting committee directly whether the committee is a multicandidate committee.

Contributing committees, however, are not always clear as to what it means to be a multicandidate committee. Some committees erroneously believe that they qualify as a multicandidate committee merely because they have contributed to more than one federal candidate. They are not aware that they must have contributed to 5 or more federal candidates and also have more than 50 contributors and have been registered for at least 6 months.

Agency Funding

Statutory Gift Acceptance Authority (1990)

Section: 2 U.S.C. §437c

Recommendation: Congress should give the Commission authority to accept funds and services from private sources to enable the Commission to provide guidance and conduct research on election administration and campaign finance issues.

Explanation: The Commission has been very restricted in the sources of private funds it may accept to finance topical research, studies, and joint projects with other entities because it does not have statutory gift acceptance authority. In view of the Commission's expanding role in this area, Congress should consider amending the Act to provide the Commission with authority to accept gifts from private sources. Permitting the Commission to obtain funding from a broader range of private organizations would allow the Commission to have more control in structuring and conducting these activities and avoid the expenditure of government funds for these activities. If this proposal were adopted, however, the Commission would not accept funds from organizations that are regulated by or have financial relations with the Commission.

Budget Reimbursement Fund (revised 1990)

Section: 2 U.S.C. §438

Recommendation: The Commission recommends that Congress establish a reimbursement account for the Commission so that expenses incurred in preparing copies of documents, publications and computer tapes sold to the public are recovered by the Commission. Similarly, costs awarded to the Commission in litigation (e.g., printing, but not civil penalties) and payments for Commission expenses incurred in responding to Freedom of Information Act requests should be payable to the reimbursement fund. The Commission should be able to use such reimbursements to cover its costs for these services, without fiscal year limitation, and without a reduction in the Commission's appropriation.

Explanation: At the present time, copies of reports, microfilm, and computer tapes are sold to the public at the Commission's cost. However, instead of the funds being used to reimburse the Commission for its expenses in producing the materials, they are credited to the U.S. Treasury. The effect on the Commission of selling materials is thus the same as if the materials had been given away. The Commission absorbs the entire cost. In FY 1989, in return for services and materials it offered the public, the FEC collected and transferred \$113,466 in miscellaneous receipts to the Treasury. During the first three months of FY 1990, \$25,703 was transferred to the Treasury. Establishment of a reimbursement fund, into which fees for such materials would be paid, would permit this money to be applied to further dissemination of information. Note, however, that a reimbursement fund would not be applied to the distribution of FEC informational materials to candidates and registered political committees. They would continue to receive free publications that help them comply with the federal election laws.

There should be no restriction on the use of reimbursed funds in a particular year to avoid the possibility of having funds lapse.

Miscellaneous

Draft Committees

Section: 2 U.S.C. §§431(8)(A)(i) and (9)(A)(i), 441a(a)(1) and 441b(b)

Recommendation: Congress should consider the following amendments to the Act in order to prevent a proliferation of "draft" committees and to reaffirm Congressional intent that draft committees are "political committees" subject to the Act's provisions.

1. *Bring Funds Raised and Spent for Undeclared but Clearly Identified Candidates Within the Act's Purview.* Section 431(8)(A)(i) should be amended to include in the definition of "contribution" funds contributed by persons "for the purpose of influencing a clearly identified individual to seek nomination for election or election to Federal office...." Section 431(9)(A)(i) should be similarly amended to include within the definition of "expenditure" funds expended by persons on behalf of such "a clearly identified **individual**."
2. *Restrict Corporate and Labor Organization Support for Undeclared but Clearly Identified Candidates.* Section 441b(b) should be revised to expressly state that corporations, labor organizations and national banks are prohibited from making contributions or expenditures "for the purpose of influencing a clearly identified **individual** to seek nomination for election or election..." to federal office.
3. *Limit Contributions to Draft Committees.* The law should include explicit language stating that no person shall make contributions to **any** committee (including a draft committee) established to influence the nomination or election of a clearly identified **individual** for any federal office which, in the aggregate, exceed that person's contribution limit, per candidate, per election.

Explanation: These proposed amendments were prompted by the decisions of the U.S. Court of Appeals for the District of Columbia Circuit in *FEC v. Machinists Non-Partisan Political League* and

FEC v. Citizens for Democratic Alternatives in 1980 and the U.S. Court of Appeals for the Eleventh Circuit in *FEC v. Florida for Kennedy Committee*. The District of Columbia Circuit held that the Act, as amended in 1979, regulated only the **reporting requirements** of draft committees. The Commission sought review of this decision by the Supreme Court, but the Court declined to hear the case. Similarly, the Eleventh Circuit found that “committees organized to ‘draft’ a person for federal office” are not “political committees” within the Commission’s investigative authority. The Commission believes that the appeals court rulings create a serious imbalance in the election law and the political process because a nonauthorized group organized to support someone who has not yet become a candidate may operate completely outside the strictures of the Federal Election Campaign Act. However, any group organized to support someone who has in fact become a candidate is subject to the Act’s registration and reporting requirements and contribution limitations. Therefore, the potential exists for funneling large aggregations of money, both corporate and private, into the federal electoral process through unlimited contributions made to nonauthorized draft committees that support a person who has not yet become a candidate. These recommendations seek to avert that possibility.

Honoraria (revised 1990)

Section: 2 U.S.C. §§431(8)(B)(xiv) and 441i

Recommendation: The Commission offers two suggestions concerning honoraria:

1. Section 441i should be placed under the Ethics in Government Act.
2. As technical amendments, Sections 441i(c) and (d), which pertain to the annual limit on receiving honoraria (now repealed), should be repealed. Additionally, 2 U.S.C. §431(8)(B)(xiv), which refers to the definition of honorarium in Section 441i, should be modified to contain the definition itself.

Explanation: In the Ethics Reform Act of 1989, Congress prohibited the receipt of honoraria by Members of the House of Representatives and officers and employees of the federal government. To conform with this new prohibition, Section 441i was amended to apply only to Senators and officers and employees of the United States Senate. However, Congress had previously eliminated the \$25,000 annual limit on the amount of honoraria that could be accepted, but it did not take out two sections, which only apply to the \$25,000 limit. This clarification would eliminate confusion and thereby help the Commission in its administration of the Act.

Appendix 1

Biographies of Commissioners and Officers

Commissioners

Danny L. McDonald, Chairman

April 30, 1993¹

Now serving his second term as Commissioner, Mr. McDonald was first appointed to the Commission in 1981 and was reappointed in 1987. Before his original appointment, he managed 10 regulatory divisions as the general administrator of the Oklahoma Corporation Commission. He had previously served as secretary of the Tulsa County Election Board and as chief clerk of the board. He was also a member of the Advisory Panel to the FEC's National Clearinghouse on Election Administration.

A native of Sand Springs, Oklahoma, Mr. McDonald graduated from Oklahoma State University and attended the John F. Kennedy School of Government at Harvard University. He previously served as FEC Chairman in 1983.

Lee Ann Elliott, Vice Chairman

April 30, 1993

President Reagan reappointed Mrs. Elliott to her second term as Commissioner in 1987. Before her first appointment in 1981, Mrs. Elliott was vice president of a political consulting firm in Washington, D.C., Bishop, Bryant & Associates, Inc. She spent several years as associate executive director of the American Medical Political Action Committee, having previously served as assistant director. Mrs. Elliott was also on the board of directors of the American Association of Political Consultants and on the board of the Chicago Area Public Affairs Group, of which she is a past president. She was also a member of the Public Affairs Committee of the U.S. Chamber of Commerce. In 1979, she received the Award for Excellence in Serving Corporate Public Affairs from the National Association of Manufacturers.

A native of St. Louis, Mrs. Elliott graduated from the University of Illinois. She also completed Northwestern University's Medical Association Manage-

ment Executive Program and is a Certified Association Executive. She served as Commission Chairman in 1984 and was elected as the 1990 Chairman.

Joan D. Aikens

April 30, 1995

One of the original members of the Commission, Mrs. Aikens was first appointed in 1975. Following the reconstitution of the FEC that resulted from the Supreme Court's *Buckley v. Valeo* decision, President Ford reappointed her to a five-year term. In 1981, President Reagan named Mrs. Aikens to complete a term left open because of a resignation and, in 1983, once again reappointed her to a full six-year term. Most recently, Mrs. Aikens was reappointed by President Bush in 1990. She served as FEC Chairman in 1978 and 1986.

Before her 1975 appointment, Mrs. Aikens was an executive with Lew Hodges Communications, a public relations firm in Valley Forge, Pennsylvania. She was also a member of the Pennsylvania Republican State Committee, president of the Pennsylvania Council of Republican Women and on the board of directors of the National Federation of Republican Women. A native of Delaware County, Pennsylvania, Mrs. Aikens has been active in a variety of volunteer organizations and is currently a member of the Commonwealth Board of the Medical College of Pennsylvania. She is also a member of the board of directors of Ursinus College, where she received her B.A. degree and an honorary Doctor of Law degree.

Thomas J. Josefiak

April 30, 1991

Mr. Josefiak was appointed to the Commission in 1985 and was the 1988 FEC Chairman. He previously served at the Commission as Special Deputy to the Secretary of the Senate. Before assuming that post in 1981, he was legal counsel to the National Republican Congressional Committee. His past experience also includes positions held at the U.S. House of Representatives. He was minority special counsel for federal election law to the

¹ Term expiration date.

Committee on House Administration and served as legislative assistant to Congressman Silvio O. Conte.

A native of Massachusetts, Mr. Josefiak graduated from Fairfield University, Connecticut, and holds a J.D. degree from the Georgetown University Law Center.

John Warren McGarry
April 30, 1995

First appointed to the Commission in 1978, Mr. McGarry was reappointed in 1983 and 1989, serving as FEC Chairman in 1981 and 1985. He was elected as the 1990 Vice Chairman. Before his 1978 Commission appointment, Mr. McGarry served as special counsel on elections to the House Administration Committee. He previously combined private law practice with service as chief counsel to the House Special Committee to Investigate Campaign Expenditures, a special committee established by Congress every election year through 1972. Before his work with Congress, Mr. McGarry was the Massachusetts assistant attorney general.

After graduating cum laude from Holy Cross College, Mr. McGarry did graduate work at Boston University and earned a J.D. degree from Georgetown University Law School.

Scott E. Thomas
April 30, 1991

Mr. Thomas was appointed to the Commission in 1986 and was the 1987 Chairman. He previously served as executive assistant to former Commissioner Thomas E. Harris and succeeded him as Commissioner. Joining the FEC as a legal intern in 1975, Mr. Thomas eventually became the Assistant General Counsel for Enforcement.

A Wyoming native, Mr. Thomas graduated from Stanford University and holds a J.D. degree from Georgetown University Law Center. He is a member of the bars for the District of Columbia, the U.S. Court of Appeals for the Ninth Circuit and the U.S. Supreme Court.

Ex Officio Commissioners

Donald K. Anderson

Mr. Anderson was appointed Clerk of the House of Representatives in 1987. Before his appointment, he was Majority Floor Manager under Speakers Carl Albert and Thomas P. O'Neill, Jr. A native of California, he began his career as a page in the 86th Congress. He was appointed assistant enrolling clerk and clerk in the Finance Office by Representative Hale Boggs. Speaker John W. McCormack later appointed him assistant manager of the Democratic Cloakroom.

Douglas Patton, attorney and Special Deputy to the Clerk of the House, continues to represent Mr. Anderson at the Commission.

Walter J. Stewart

Mr. Stewart was appointed Secretary of the Senate in 1987. He was previously employed by Sonat, Inc., as vice president of government affairs. Before that, he served as Secretary for the Minority of the U.S. Senate and as executive director of the Senate Steering Committee. Other Senate offices held by Mr. Stewart include: counsel to the Senate Appropriations Committee; director of legislative affairs for the Majority Whip, administrative assistant to the Majority Leader for Senate Operations and chief of staff for Senatorial and Presidential delegations traveling to China, Russia and the Middle East. A native of Georgia, Mr. Stewart graduated from George Washington University and received an LL.B. from American University. He is a member of the District of Columbia Bar.

David G. Gartner, attorney and Special Deputy to the Secretary of the Senate, continues to represent Mr. Stewart at the Commission.

Statutory Officers

John C. Surina, Staff Director

Before joining the Commission in 1983, Mr. Surina was assistant managing director of the Interstate Commerce Commission, where he was detailed to the "Reform 88" program at the Office of Manage-

ment and Budget. In that role, he worked on projects to reform administrative management within the federal government. He was also an expert-consultant to the Office of Control and Operations, EOP-Cost of Living Council-Pay Board and on the technical staff of the Computer Sciences Corporation. During his Army service, Mr. Surina was executive officer of the Special Security Office, where he supported senior U.S. delegates to NATO's civil headquarters in Brussels.

A native of Alexandria, Virginia, Mr. Surina holds a degree in Foreign Service from Georgetown University. He also attended East Carolina University and American University.

Lawrence M. Noble, General Counsel

Mr. Noble became General Counsel in 1987, after serving as Acting General Counsel. He joined the Commission in 1977, becoming the Deputy General Counsel in 1983. He previously served as Assistant General Counsel for Litigation and as a litigation attorney. Before his FEC service, he was an attorney with the Aviation Consumers Action Project.

A native of New York, Mr. Noble holds a degree in Political Science from Syracuse University and a J.D. degree from the National Law Center at George Washington University. He is a member of the bars for the U.S. Supreme Court, the U.S. Court of Appeals for the D.C. Circuit and the District of Columbia. He is also a member of the American and District of Columbia Bar Associations.

Appendix 2

Chronology of Events, 1989

January

- 1—Chairman Danny L. McDonald and Vice Chairman Lee Ann Elliott begin one-year terms as officers.
- 13—FEC releases year-end figures on number of PACs.
- 31—1988 year-end report due.

February

- 1—Commission releases *Selected Court Case Abstracts, 1976-1988*.
- 10—FEC sends questionnaires on allocation methods to state party chairmen.
- 15-16—FEC holds public hearings on proposed revisions to debt settlement regulations.
- 24—In *Maine Right to Life Committee, Inc. v. FEC*, district court rules that constitutional challenge to FEC rules on corporate communications was not ripe for court consideration.
 - FEC releases 1988 election cycle figures on House and Senate campaigns.

March

- 1—FEC releases first edition of *Explanation and Justification for FEC Regulations, 1975-Present*.
- 2—FEC testifies on FY 1990 budget request before House Appropriations Subcommittee on Treasury, Postal Service and General Government.
- 7—FEC testifies on FY 1990 budget request before House Administration Subcommittee on Elections.
- 8—In *FEC v. Furgatch*, appeals court affirms maximum civil penalty but instructs district court to limit vacated permanent injunction to reasonable time (see November 20).
- 9—FEC releases final audit report on Pete du Pont's 1988 Presidential primary campaign (see June 28 and December 14).

- 16—FEC submits annual legislative recommendations to the President and Congress.
- 27—FEC releases 1988 election cycle figures on party committee activity.
- 28—Indiana holds special general election in 4th Congressional District.

April

- 3—Chairman McDonald alerts Members of Congress to projected 1996 deficiency in Presidential Election Campaign Fund and consequences to public funding system.
- 4—Alabama holds special general election in 3rd Congressional District (primary: February 14; runoff: March 7).
- 6—FEC testifies on FY 1990 budget request before Senate Rules Committee.
- 9—FEC releases 1988 election cycle figures on PAC activity.
- 12—FEC testifies on FY 1990 budget request before Senate Appropriations Subcommittee on Treasury, Postal Service and General Government.
- 24—FEC appoints acting Inspector General.
- 26—Wyoming holds special general election (at-large House seat).
- 28—Clearinghouse reports to Congress on voting accessibility for elderly and handicapped.

May

- 1—In *Austin v. Michigan State Chamber of Commerce*, Supreme Court agrees to review constitutionality of state law banning corporate independent expenditures (see October 31).
 - In *Goland v. FEC and U.S.*, district court dismisses constitutional challenge to prohibition on contributions made in name of another.
- 8—Concerning bankruptcy petition filed by Fund for a Conservative Majority, bank-

ruptcy court rules that FEC does not have sole civil jurisdiction over debt settlements by political committees.

- 11—In *FEC v. NOW*, district court rules that defendants' mailings did not violate ban on corporate expenditures because they did not contain express advocacy language.
- 19—FEC releases 1988 election cycle figures on independent expenditures.
- 25—FEC releases final audit report on Bruce Babbitt's 1988 Presidential primary campaign.
- 30—In *Common Cause v. FEC* (85-1130), district court rules that agency's dismissal of complaint was reasonable except for one issue remanded to FEC for further consideration.

June

- 1—FEC releases *Annual Report 1988*.
—FEC releases *Federal Elections 88*, the official vote results for federal races.
- 4-14—Delegation from FEC visits Soviet Union at invitation of Central Electoral Commission of the USSR (see September 13 and November 2-11).
- 22—FEC releases final audit report on Alexander Haig's 1988 Presidential primary campaign.
- 28—Amended regulations on trade associations become effective.
—FEC hears presentation by Pete du Pont for President committee contesting agency's initial repayment determination (see December 14).

July

- 13—FEC releases final audit report on Albert Gore, Jr.'s 1988 Presidential primary campaign.
- 26—In *FEC v. Franklin*, district court orders defendant to answer FEC's enforcement-

related questions within 75 days and orders FEC to keep responses confidential (see September 27).

- 27—FEC publishes Notice of Proposed Rulemaking on bank loans.
- 31—Semiannual report due.

August

- 8—Clearinghouse publishes proposed standards for computerized voting systems.
- 11—FEC releases figures on 1990 Senate campaigns.
- 15—FEC releases figures on 1989 activity of national party committees.
- 23-25—Clearinghouse Advisory Panel meets in Washington, D.C.
- 25—FEC releases final report on financial activity of 1988 Presidential primary campaigns.
- 29—Florida holds special general election in 18th Congressional District (primary: August 1; runoff: August 15).
- 31—In *Stern v. FEC*, district court rules that Commission's dismissal of complaint alleging misuse of PAC funds was reasonable.

September

- 12—Texas holds special general election in 12th Congressional District (primary: August 12).
—California holds special general election in 15th Congressional District.
- 13—FEC releases report on June visit to USSR.
- 14-15—FEC holds conference in Philadelphia.
- 27—In *FEC v. Franklin*, appeals court vacates protective order imposed on FEC and orders defendant to answer FEC's questions within 5 days.

October

- 1—FEC completes office automation project.
 - FEC publishes two new brochures, *10 Questions from Candidates* and *Sale and Use of Campaign Information*.
- 5—Senate confirms reappointments of Commissioners Joan D. Aikens and John Warren McGarry.
 - FEC rejects objections to matching fund procedures by Pat Robertson's 1988 Presidential primary campaign.
- 12-13—FEC cosponsors conference in San Francisco.
- 17—Mississippi holds special general election in 5th Congressional District (primary: October 3).
- 25—FEC releases final audit report on 1988 Republican national convention committee.
- 31—FEC releases final report on 1987-88 financial activity of House and Senate campaigns, party committees and PACs.
 - Supreme Court hears oral argument in *Austin v. Michigan State Chamber of Commerce*.

November

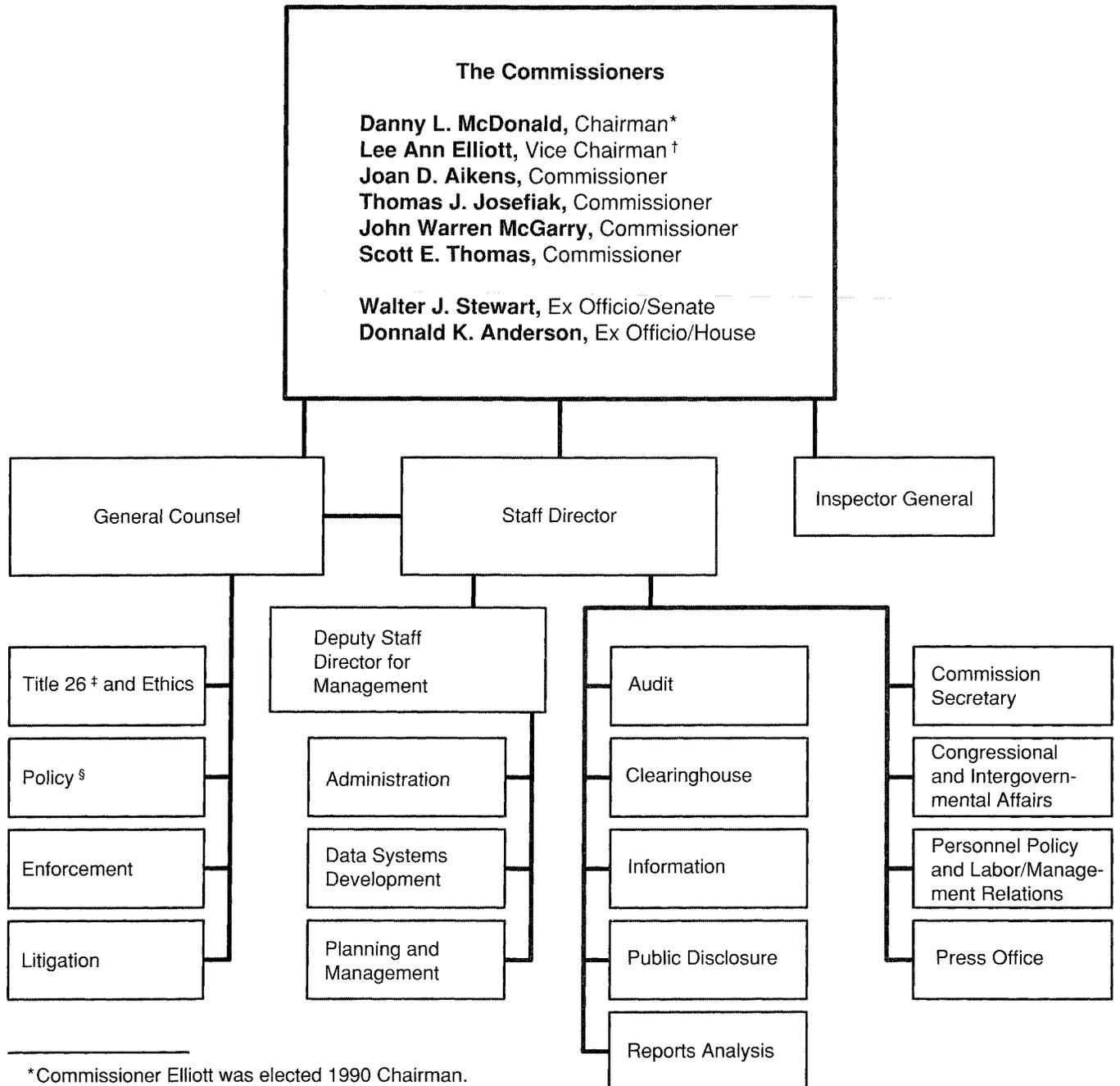
- 1—Chairman McDonald again notifies Congress of projected deficit in Presidential Election Campaign Fund.
 - Clearinghouse releases *Ballot Access*, Volumes 2-4, and *Election Directory 89/90*.
- 2—FEC releases final audit report on Lenora Fulani's 1988 Presidential primary campaign.
- 2-11—Delegation from Central Electoral Commission of USSR visits United States (see December 19).
- 20—In *FEC v. Furgatch*, district court, responding to appeals court instructions, limits injunction imposed on defendant to eight years.

- 21—FEC releases final audit report on 1988 Democratic convention committee.
- 24—Amendments to regulations on affiliation, transfers, earmarking and other areas become effective.
 - FEC transmits to Congress final changes to rules on foreign nationals.
- 30—President Bush signs Ethics Reform Act of 1989 (P.L. 101-194), which amends FECA provisions on honoraria and personal use of excess campaign funds and which requires nonincumbent candidates to file personal financial statements with FEC.

December

- 1—FEC publishes revised *Campaign Guide for Political Party Committees*.
- 9—Texas holds special general election in 18th Congressional District (primary: November 7).
- 14—FEC makes final determination that Pete du Pont for President committee repay \$25,775 in matching funds.
- 19—Commission elects Lee Ann Elliott as 1990 Chairman and John Warren McGarry as 1990 Vice Chairman.
 - FEC releases report on Soviet visit to U.S.

Appendix 3 FEC Organization Chart



*Commissioner Elliott was elected 1990 Chairman.

†Commissioner McGarry was elected 1990 Vice Chairman.

†The Presidential public funding laws are contained in Title 26 of the United States Code.

§Policy covers regulations, advisory opinions, legal review and administrative law.

Appendix 4 FEC Offices

This appendix briefly describes the offices within the Commission, located at 999 E Street, NW, Washington, D.C. 20463. The offices are listed alphabetically, with local telephone numbers given for offices that provide services to the public. Commission offices can also be reached toll-free on 800-424-9530 and locally on 202-376-5140.

Administration

The Administration Division is the Commission's "housekeeping" unit and is responsible for accounting, procurement and contracting, space management, payroll, travel and supplies. In addition, several support functions are centralized in the office such as printing, document reproduction and mail services. The division also handles records management, inventory control and building security and maintenance.

Audit

Many of the Audit Division's responsibilities concern the Presidential public funding program. The division evaluates the matching fund submissions of Presidential primary candidates and determines the amount of contributions that may be matched with federal funds. As required by law, the division audits all public funding recipients.

In addition, the division audits those committees which, according to FEC determinations, have not met the threshold requirements for substantial compliance with the law. Audit Division resources are also used in the Commission's investigations of complaints.

Clearinghouse

The National Clearinghouse on Election Administration, located on the seventh floor, assists state and local election officials by responding to inquiries, publishing research and conducting workshops on all matters related to election administration. Additionally, the Clearinghouse answers questions from the public and briefs foreign delegations on the U.S. election process. Local phone: 376-5670.

Commission Secretary

The Secretary to the Commission handles all administrative matters relating to Commission meetings, including agenda documents, Sunshine Act notices, minutes and certification of Commission votes. The office also circulates and tracks numerous materials not related to meetings, and records the Commissioners' tally votes on these matters.

Commissioners

The six Commissioners—three Democrats and three Republicans—are appointed by the President and confirmed by the Senate. Two ex officio Commissioners, the Secretary of the Senate and the Clerk of the House of Representatives, are nonvoting members. They appoint special deputies to represent them at the Commission.

The six voting Commissioners serve full time and are responsible for administering and enforcing the Federal Election Campaign Act. They generally meet twice a week, once in closed session to discuss matters that, by law, must remain confidential, and once in a meeting open to the public. At these meetings, they formulate policy and vote on significant legal and administrative matters.

Congressional, Legislative and Intergovernmental Affairs

This office serves as primary liaison with Congress and Executive Branch agencies. The office is responsible for keeping Members of Congress informed about Commission decisions and, in turn, for keeping the agency up to date on legislative developments.

Data Systems Development

This division provides computer support for the entire Commission. Its responsibilities are divided into two general areas.

In the area of campaign finance disclosure, the Data Systems Development Division enters into the FEC data base information from all reports filed by political committees and other entities. The division is also responsible for the computer programs that sort and organize campaign finance data into

indexes. These indexes permit a detailed analysis of campaign finance activity and, additionally, provide a tool for monitoring contribution limitations. The division publishes the *Reports on Financial Activity* series of periodic studies on campaign finance and generates statistics for other publications.

The division also provides internal computer support for the agency's automation system (VAX) and for administrative functions such as management information, document tracking, personnel and payroll systems.

General Counsel

The General Counsel directs the agency's enforcement activities and represents and advises the Commission in any legal actions brought against it. The Office of General Counsel handles all civil litigation, including several cases that have come before the Supreme Court. The office also drafts, for Commission consideration, advisory opinions and regulations as well as other legal memoranda interpreting the federal campaign finance law.

Information Services

In an effort to promote voluntary compliance with the law, the Information Services Division provides technical assistance to candidates, committees and others involved in elections. Responding to phone and written inquiries, members of the staff conduct research based on the statute, FEC regulations, advisory opinions and court cases. Staff also direct workshops on the law and produce guides, pamphlets and videos on how to comply with the law. Located on the second floor, the division is open to the public. Local phone: 376-3120; toll-free phone: 800-424-9530.

Inspector General

The FEC's Inspector General (IG) has two major responsibilities: to conduct internal audits and investigations to detect fraud, waste and abuse within the agency and to improve the economy and effectiveness of agency operations. The IG files reports notifying Congress of any serious problems or defi-

ciencies in agency operations and of any corrective steps taken by the agency.

Law Library

The Commission law library, part of the Office of General Counsel, is located on the eighth floor and is open to the public. The collection includes basic legal research tools and materials dealing with political campaign finance, corporate and labor political activity and campaign finance reform. The library staff prepares indices to advisory opinions and Matters Under Review (MURs) as well as a *Campaign Finance and Federal Election Law Bibliography*, all available for purchase at the Public Records Office. Local phone: 376-5312.

Personnel and Labor/Management Relations

This office handles employment, position classification, training and employee benefits. It also provides policy guidance on awards and discipline matters and administers a comprehensive labor relations program including contract negotiations and resolution of disputes before third parties.

Planning and Management

This office develops the Commission's budget and, each fiscal year, prepares a management plan determining the allocation and use of resources throughout the agency. Planning and Management monitors adherence to the plan, providing monthly reports measuring the progress of each division in achieving the plan's objectives.

Press Office

Staff of the Press Office are the Commission's official media spokespersons. In addition to publicizing Commission actions and releasing statistics on campaign finance, they respond to all questions from representatives of the print and broadcast media. Located on the first floor, the office also handles requests under the Freedom of Information Act. Local phone: 376-3155.

Public Records

Staff from the Public Records Office provide information on the campaign finance activities of political committees and candidates involved in federal elections. Located on the first floor, the office is a library facility with ample work space and a knowledgeable staff to help researchers locate documents and computer data. The FEC encourages the public to review the many resources available, including committee reports, computer indexes, advisory opinions and closed MURs. Local phone: 376-3140.

Reports Analysis

Reports analysts assist committee officials in complying with reporting requirements and conduct detailed examinations of the campaign finance reports filed by political committees. If an error, omission or prohibited activity (e.g., an excessive contribution) is discovered in the course of reviewing a report, the analyst sends the committee a letter that explains the mistake and asks for clarification. By sending these letters (RFAs), the Commission seeks to ensure full disclosure and to encourage the committee's voluntary compliance with the law. Analysts also provide frequent telephone assistance to committee officials and encourage them to call the division with reporting questions or compliance problems. Local phone: 376-2480.

Staff Director and Deputy Staff Director

The Staff Director carries the responsibilities of appointing staff, with the approval of the Commission, and implementing Commission policy. The Staff Director oversees the Commission's public disclosure activities, outreach efforts, review of reports and the audit program, as well as the administration of the agency.

The Deputy Staff Director has broad responsibility for assisting in this supervision, particularly in the areas of budget, administration and computer systems.

Appendix 5 Statistics on Commission Operations

Summary of Disclosure Files

	Total Filers Existing in 1989	Filers Terminated as of 12/31/89	Continuing Filers as of 12/31/89	Number of Reports and Statements in 1989	Gross Receipts in 1989	Gross Expenditures in 1989
Presidential Candidate Committees	282	10	272	434	\$7,140,220	\$11,421,683
Senate Candidate Committees	485	32	453	770	\$85,254,826	\$46,076,747
House Candidate Committees	2,367	209	2,158	3,441	\$86,912,532	\$67,539,576
Party Committees	461	49	412	1,038	\$233,519,103	\$227,563,898
Delegate Committees	83	1	82	1	\$0	\$0
Nonparty Committees	4,407	229	4,178	14,094	\$177,747,034	\$135,895,852
Labor committees	361	12	349	1,310	\$44,863,269	\$31,935,933
Corporate committees	1,878	82	1,796	7,183	\$51,931,639	\$40,004,916
Membership, trade and other committees	2,168	135	2,033	5,601	\$80,952,126	\$63,955,003
Communication Cost Filers	176	NA	NA	27	NA	\$89,312
Independent Expenditures by Persons Other Than Political Committees	133	NA	NA	18	NA	\$125,218

Divisional Statistics for Calendar Year 1989

	Total		Total
Reports Analysis Division		Administrative Division	
Documents processed	33,902	Contracting and procurement transactions	1,969
Reports reviewed	39,793	Pieces of outgoing mail processed	276,500
Telephone assistance and meetings	6,438	Publications prepared for print	37
Requests for additional information (RFAs)	5,436	Pages of photocopying	7,500,000
Second RFAs	2,021		
Data coding and entry of RFAs and miscellaneous documents	11,509	Information Services Division	
Names of candidate committees published for failure to file reports	2	Telephone inquiries	49,006
Compliance matters referred to Office of General Counsel or Audit Division	227	Information letters	59
		Distribution of FEC materials	6,437
Data Systems Development Division		Prior notices (sent to inform filers of reporting deadlines)	15,357
Documents receiving Pass I coding*	32,719	Other mailings	16,817
Documents receiving Pass III coding*	31,581	Visitors	71
Documents receiving Pass I entry	28,529	Public appearances by Commissioners and staff	65
Documents receiving Pass III entry	31,828	State workshops	2
Transactions receiving Pass III entry		Publications	24
• In-house	58,617		
• Contract	197,823	Press Office	
		Press releases	137
Public Records Office		Telephone inquiries from press	12,714
Campaign finance material processed (total pages)	721,853	Visitors to Press Office	3,209
Requests for campaign finance reports	7,709	Freedom of Information Act (FOIA) requests	100
Visitors	14,235	Fees for materials requested under FOIA (transmitted to U.S. Treasury)	\$26,328
Total people served	18,944		
Information telephone calls	16,087	Clearinghouse on Election Administration	
Computer printouts provided	68,784	Telephone inquiries	2,742
Total income (transmitted to U.S. Treasury)	\$99,554	Information letters	69
Cumulative total pages of documents available for review	8,633,862	Visitors	49
Contacts with state election offices	3,794	State workshops	15
Notices of failure to file with state election offices	261	Publications	3
		Project conferences	12

* Computer coding and entry of campaign finance information occur in two phases. In the first phase, Pass I, summary information is coded and entered into the computer within 48 hours of the Commission's receipt of the report. During the second phase, Pass III, itemized information is coded and entered.

	Total
Office of General Counsel	
Advisory opinions	
Requests pending at beginning of 1989	0
Requests received	32
Issued, closed or withdrawn*	29
Pending at end of 1989	3
Compliance cases (MURs)	
Pending at beginning of 1989	220
Opened	218
Closed	237
Pending at end of 1989	201
Litigation	
Cases pending at beginning of 1989	42
Cases opened	18
Cases closed	19
Cases pending at end of 1989	41
Cases won	16
Cases lost	0
Cases voluntarily dismissed	1
Cases dismissed as moot	2
Law Library	
Telephone inquiries	2,057
Visitors served	937

Audits Completed by Audit Division, 1975-1989

Presidential	62
Presidential Joint Fundraising	8
Senate	13
House	118
Party (National)	44
Party (Other)	110
Nonparty (PACs)	70
Total	425

* Twenty-six opinions were issued; three opinion requests were closed without issuance of an opinion.

Appendix 6 FEC Federal Register Notices, 1989

Notice *	Title	Date Published	Citation
1989-1	Filing Dates for Alabama Special Election	1/19/89	54 <i>Fed. Reg.</i> 2227
1989-2	Filing Dates for Indiana Special Election	1/19/89	54 <i>Fed. Reg.</i> 2228
1989-3	11 CFR Parts 110, 113, 114 and 116: Debts Owed by Candidates and Political Committees; Additional Public Hearing Date	2/14/89	54 <i>Fed. Reg.</i> 6684
1989-4	11 CFR Part 114: Trade Association Solicitation; Final Rule and Explanation and Justificaion; Transmittal to Congress	3/15/89	54 <i>Fed. Reg.</i> 10622
1989-5	Filing Dates for Wyoming Special Election	3/29/89	54 <i>Fed. Reg.</i> 12954
1989-6	11 CFR Parts 100 and 110: Contributions and Expenditures, Prohibited Contributions and Expenditures; Second Notice of Proposed Rulemaking	6/7/89	54 <i>Fed. Reg.</i> 24351
1989-7	Filing Dates for Florida Special Election	6/20/89	54 <i>Fed. Reg.</i> 25903
1989-8	11 CFR Part 114: Trade Association Solicitation; Announcement of Effective Date	6/28/89	54 <i>Fed. Reg.</i> 27153
1989-9	Filing Dates for California Special Election	6/30/89	54 <i>Fed. Reg.</i> 27704
1989-10	Filing Dates for Texas Special Election (12th CD)	7/12/89	54 <i>Fed. Reg.</i> 29385

* This appendix does not include *Federal Register* notices of Commission meetings published under the Government in the Sunshine Act.

Notice	Title	Date Published	Citation
1989-11	11 CFR Parts 100, 9004 and 9034: Loans From Lending Institutions to Candidates and Political Committees; Notice of Proposed Rule-making	7/27/89	54 <i>Fed. Reg.</i> 31286
1989-12	Voluntary Standards for Computerized Voting Systems; Notice of Proposed Standards	8/8/89	54 <i>Fed. Reg.</i> 32479
1989-13	11 CFR Parts 100, 102, 110, 114 and 9034: Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions; Final Rule and Explanation and Justification; Transmittal to Congress	8/17/89	54 <i>Fed. Reg.</i> 34098
1989-14	Filing Dates for Texas Special Runoff Election (12th CD)	8/25/89	54 <i>Fed. Reg.</i> 35388
1989-15	Filing Dates for Mississippi Special Election	9/6/89	54 <i>Fed. Reg.</i> 37020
1989-16	Filing Dates for Texas Special Election (18th CD)	9/11/89	54 <i>Fed. Reg.</i> 37503
1989-17	Filing Dates for Texas Special Runoff Election (18th CD)	11/22/89	54 <i>Fed. Reg.</i> 48318
1989-18	11 CFR Part 110: Contributions and Expenditures, Prohibited Contributions; Final Rule and Explanation and Justification; Transmittal to Congress	11/24/89	54 <i>Fed. Reg.</i> 48580
1989-19	11 CFR Parts 100, 102, 110, 114 and 9034: Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions; Announcement of Effective Date	11/24/89	54 <i>Fed. Reg.</i> 48580