Federal Election Commission

Annual Report 1994

Federal Election Commission
Washington, DC 20463

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OFFICE OF THE CHAIRMAN

June 1, 1995

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

Dear Mr. President, Senators and Representatives:

We are pleased to submit for your information the 20th Annual Report of the Federal Election Commission, pursuant to 2 U.S.C. § 438(a)(9). The Annual Report 1994 describes the activities performed by the Commission in the last calendar year. The report also includes the legislative recommendations the Commission has adopted and transmitted to the President and the Congress for consideration. Most of these have been recommended by the Commission in previous years. It is our belief that these recommendations, if enacted, would assist the Commission in carrying out its responsibilities in a more efficient manner.

This report documents the rapidly increasing demands on Commission resources brought about by record numbers of federal candidates and campaign expenditures. Despite new Commission initiatives to handle filings, audits, and enforcement matters more efficiently, the Commission remains overwhelmed by a growing enforcement case load and by massive amounts of data flowing from record election activity.

The current system of reporting requirements and contribution prohibitions and limitations, and the resulting audit and enforcement mechanisms required to administer these provisions, are complex. The Commission remains in urgent need of additional resources to meet those responsibilities.

Respectfully,

Danny L. McDonald

Danny L. McDonald
Chairman

Table Of Contents

Introduction 1

Chapter One
Administration of the Law 3
Enforcement and Litigation 3
Audits 6
Public Disclosure 7
Press Office 8
Review of Reports 8
Regulations 8
Advisory Opinions 9
Assistance and Outreach 9
National Clearinghouse on Election Administration 10

Chapter Two
Presidential Public Funding 13
Audits of 1992 Committees 13
Final Audit Reports and Determinations 15
Legal Issues Related to Primary Committee Audits 17
Other Audit-Related Legal Issues 19
Looking Ahead to 1996: New Regulations 20

Chapter Three
Legal Issues 21
Corporate/Labor Communications to Public 21
Definition of Member 22
Corporate Solicitations to Employees 23
Prohibited Corporate Activities 24
Bank Loans 25
Definition of Political Committee: Major Purpose 25
Disaffiliation 26
Best Efforts Rules Upheld 26
New Rule on Use of Candidate's Name in Opposition Project 27
Rulemaking on Personal Use 27
Compliance 28
Coordinated Party Expenditures 29
Constitutional Issues 29

Chapter Four
The Commission 31
Commissioners 31
Equal Employment Opportunity Office 31
Ethics 31
Inspector General 31
The FEC's Budget: Fiscal Year 1995 32
The FEC's Budget: Fiscal Year 1996 33

Chapter Five
Legislative Recommendations 35

Chapter Six
Campaign Finance Statistics 65

Appendices
1. Biographies of Commissioners and Officers 75
2. Chronology of Events 79
3. FEC Organization Chart 83
4. FEC Offices 85
5. Statistics on Commission Operations 89
6. 1994 Federal Register Notices 93
7. House and Senate Campaign Finance Reform 95

Introduction

During 1994, the Commission faced another year of unprecedented growth in campaign finance activity. The total amount spent in the 1994 cycle exceeded $1.7 billion. Spending by House and Senate candidates reached $724 million—up 6 percent from 1992, itself a recordbreaking election cycle. The high level of financial activity translated into more reports for Commission staff to review this cycle and a surge in the Commission's disclosure workload.

The year was notable in other ways as well. The Federal Election Commission saw recent reforms reap rewards in timely completion of Presidential audits, vigorous pursuit of civil enforcement and increased efficiency in overall Commission procedures.

In 1994, the Commission completed all audits related to the 1992 Presidential election cycle. Completing the audits within two years of the election was a feat last accomplished in 1981. Streamlined procedures, simplified regulations and an increase in FEC staff made this achievement possible.

The FEC's enforcement program, however, experienced a setback when the Supreme Court, in December 1994, issued its decision in *FEC v. NRA Political Victory Fund.* The Court ruled that the Commission did not have authority to petition the Court to review cases involving the Federal Election Campaign Act. Because the Court did not rule on the constitutionality of the FEC's composition, the decision left intact the U.S. Court of Appeals ruling that the composition of the Commission violated the Constitution's separation of powers doctrine.

Despite this ruling, 1994 was a significant year for enforcement—largely due to the new enforcement prioritization system. The system proved to be a successful tool for using Commission resources more efficiently and strengthening civil enforcement. During 1994, the Commission concluded a significant number of conciliation agreements that resulted in a record total of $1,692,854 in civil penalties. This figure included $177,000 in civil penalties for violations of the foreign national prohibition and the highest civil penalty in agency history, $550,000, for illegal corporate fundraising activity.

The chapters that follow document the Commission's work during 1994.

Chapter One
Administration of the Law

Enforcement and Litigation

FEC v. NRA Political Victory Fund

Late in the year, on December 5, 1994, the U.S. Supreme Court issued its opinion in *FEC v. National Rifle Association Political Victory Fund (NRA)*, a ruling that curtailed the FEC's ability to bring cases before the Supreme Court and left standing a 1993 appellate court ruling that the composition of the agency was unconstitutional.

In October 1993, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the presence of the Clerk of the House and the Secretary of the Senate as *ex officio,* nonvoting members of the FEC, an independent agency with executive powers, violated the Constitution's separation of powers doctrine. The court said that, because of its unconstitutional composition, the FEC could not litigate a lawsuit against the NRA Political Victory Fund for accepting prohibited corporate contributions.[1]

The FEC sought Supreme Court review of that decision. At the same time, it reconstituted itself as a six-member body without the Congressionally appointed *ex officio* members and revoted or ratified many past actions, including enforcement matters. (See next section.)

The question of whether the Commission had authority to petition the Supreme Court for review was raised by the Justices themselves in *NRA*. They asked the U.S. Solicitor General for his opinion on the issue after the FEC had filed its *NRA* petition for certiorari. The Solicitor General argued that the FEC lacked authority to represent itself but proceeded to authorize the FEC's petition. However, the authorization was made long after the 90-day deadline for such petitions.

In reaching its decision,[2] the Court compared the Title 26 language, which specifically authorizes the FEC "to petition the Supreme Court for certiorari," with the Title 2 language, which authorizes the agency to "appeal any civil action." (See 2 U.S.C. §437d(a)(6) and 26 U.S.C. §§9010(d) and 9040(d).) Although it stated that there were important policy reasons that would suggest giving the Commission authority independent of the Solicitor General to conduct Title 2 litigation in the Supreme Court, the Court interpreted the difference in language as indicating Congressional intent to restrict the FEC's independent litigating authority at the Supreme Court level to Title 26 (i.e., matters involving the Presidential public funding laws). Acknowledging that the FEC had previously represented itself in a number of Title 2 Supreme Court cases, the Court nevertheless pointed out that its authority to do so had not previously been challenged.

Finding that the FEC could not petition the Court independently and that the Solicitor General's authorization was untimely, the Court dismissed the case for lack of jurisdiction without ruling on the constitutionality of the FEC's makeup and the related issue concerning the validity of the agency's past enforcement actions prior to the *NRA* decision. This issue was raised in several other suits, as discussed below.

Impact of the *NRA* Decision on Enforcement

As a result of the 1993 appellate court decision in *NRA*, the Commission undertook several steps to ensure uninterrupted enforcement of the law, including: reconstituting itself as a six-member body; ratifying regulations, forms and advisory opinions; and revoting or ratifying many of its prior actions in ongoing audits, enforcement cases (Matters Under Review or MURs) and litigation. This process demanded a significant dedication of legal resources and effectively halted progress on ongoing MURs.

The enforcement staff had to review each MUR in light of the *NRA* decision and in many instances had to return to the initial stages of a case to ensure compliance with *NRA*.

In addition, parties in several pending MURs and court cases asked the courts to rule that they were also entitled to relief under the *NRA* decision, arguing that FEC enforcement actions pending at the time of the decision were subject to dismissal because they had been initiated by an unconstitutional FEC.

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[1] See the *Annual Report 1993*, pp. 3-4, for more details on the *NRA* appellate court decision.

[2] The Court voted 7-1 in this decision, with Chief Justice William Rehnquist writing the opinion, Justice John Paul Stevens dissenting and Justice Ruth Bader Ginsburg not participating.

Over 10 cases of this kind were litigated in 1994. While most were pending at year's end, two cases heard by the U.S. District Court for the District of Columbia had conflicting outcomes. In February 1994, a district court judge ruled that the FEC's reconstitution and ratification of its enforcement findings cured the problem of the agency's unconstitutional status when the FEC enforcement action was initiated. *(FEC v. National Republican Senatorial Committee,* 93-1612.) By contrast, another district court judge, in dismissing an FEC enforcement suit on October 12, concluded that the *NRA* decision had to be given full, retroactive effect on pending cases and could not be overcome by later remedial actions. (*FEC v. Legi-Tech, Inc.*, 91-0213.)

In spite of these setbacks, the Commission's new enforcement system allowed for a record breaking year of enforcement in 1994.

Prioritization

Throughout 1994, the Commission employed its prioritization system to deter illegal activity and enforce federal election law more effectively. The prioritization system, implemented in May 1993, is a comprehensive case management system designed to focus the Commission's limited resources on more significant cases, while at the same time resolving these cases more expeditiously.

The Commission adopted the system to manage a burgeoning caseload involving thousands of respondents and complex financial transactions. The concept of prioritization was predicated on the Commission's acknowledgment that it would never have sufficient resources to pursue all enforcement matters. The agency adopted formal criteria to decide which cases to pursue and which cases, because of their age or relative lack of importance, to close without action.

Additionally, the Commission decided to focus on specific areas of the law warranting special attention. In 1994, the FEC targeted three areas for enforcement: the foreign national prohibition, the $25,000 annual limit and the 48-hour reporting requirement. The Commission was troubled by the lack of compliance in these areas and wanted to draw attention to the legal requirements.

Civil Penalties

During 1994, the Commission continued to move towards high civil penalties when serious violations of the law were found. This year, civil penalties soared to $1,692,854. This increase reflected the Commission's decision to send a message to the regulated community that it will not back down when negotiating penalties.

Included in the almost $1.7 million total was a $550,000 penalty, the largest in the agency's history (see p. 24 for a summary of this case). Even excluding this figure, total civil penalties in 1994 exceeded 1993 penalties by $546,755. (See graph.)

The FEC's 1994 enforcement efforts resulted in substantial penalties for violations in the three targeted areas mentioned above.

Foreign Nationals

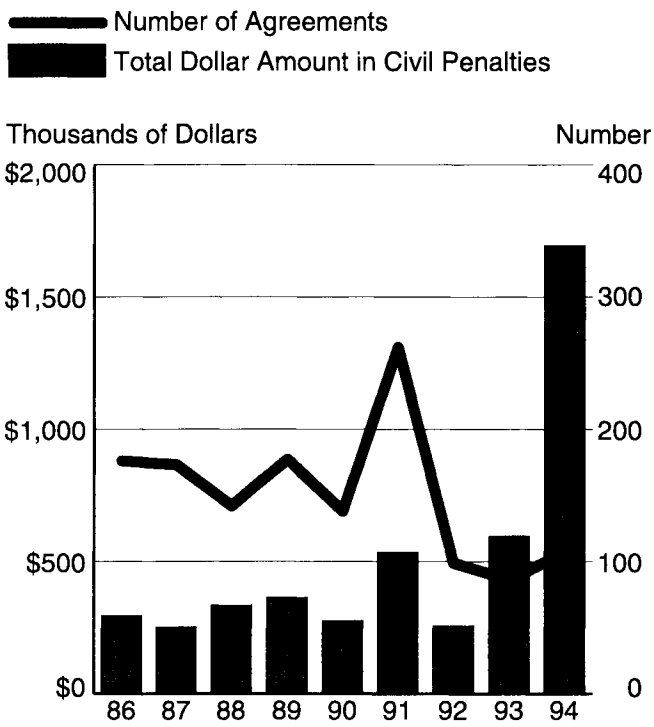
Federal election law places broad prohibitions on the involvement of foreign nationals in U.S. elections. Foreign nationals are prohibited from making contributions or expenditures in connection with federal, state or local elections. In addition, foreign nationals are prohibited from participating, directly or indirectly, in decisions concerning the making of contributions or the administration of a political committee. The law also prohibits *any* person from soliciting or accepting contributions from a foreign national. 11 CFR 110.4.

To focus attention on the prohibition, FEC Chairman Trevor Potter held an August 1994 press conference announcing the completion of a major investigation into contributions by foreign nationals. Chairman Potter said that the law—one of the few federal prohibitions that also apply at the state and local levels—was "not [as] widely known and understood as it should be . . . especially in the foreign business community."

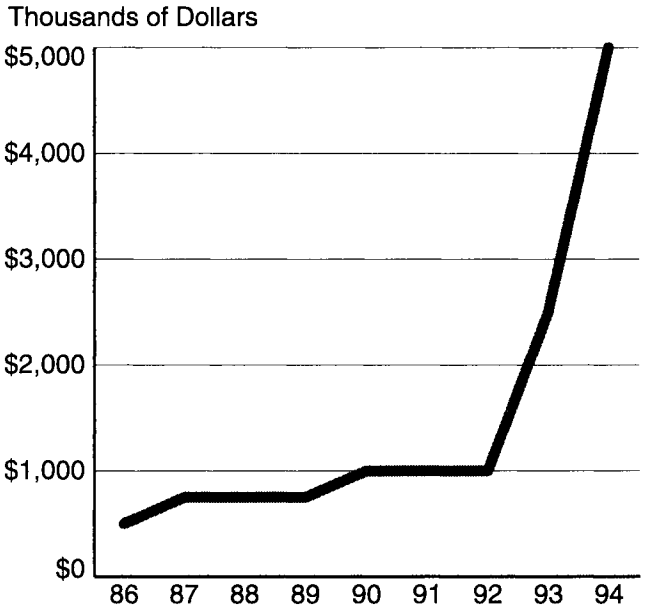
In conjunction with this effort to educate the regulated community, the FEC published a new brochure explaining the foreign national prohibition. Over 18,000 copies were sent to foreign diplomats, foreign manufacturers and lobbyists registered as foreign agents.

The three foreign national prohibition MURs summarized below were closed in 1994.

Concilation Agreements by Calendar Year*



Civil Penalties by Calendar Year*



* An enforcement case may include several respondents. Because some respondents enter into conciliation agreements more quickly than others, agreements calling for civil penalties in a single enforcement case may be concluded in different years. The figures in this chart represent the total penalties included in all conciliation agreements entered into during the calendar year specified, whether or not the case itself was concluded during that year.

Note that conciliation agreements for a given case are not made public until the entire case closes.

MUR 2892. This investigation uncovered more than $300,000 in foreign national contributions to over 140 Hawaiian state and local campaigns during four election cycles. The illegal donors were primarily U.S. corporations owned by Japanese companies. The donations were illegal because they were financed by the parent/owner or because foreign nationals were involved in decisions concerning the contributions. All existing recipients of the illegal contributions received an admonishment letter from the Commission and were required to refund or otherwise rid their accounts of the illegal funds. The 26 contributors paid penalties totaling $162,225.

MUR 3460. In this case, a U.S. subsidiary of a foreign corporation and its Japanese directors agreed to pay a $57,000 penalty for making illegal contributions. Five directors of Sports Shinko (Pukalani) Co., Ltd.—four of whom were Japanese citizens—authorized a "contribution committee" to make political and charitable contributions and appointed the U.S. citizen director as the sole member. Between 1990 and 1991 the corporation issued checks totaling $12,500 to Hawaiian candidates. The Commission determined that the decision to form and fund a committee, and to appoint the sole member, constituted sufficient foreign involvement to violate the Act.

MUR 3541. During 1991, a Spanish foreign national, Jose Antonio Boveda, wired a $25,000 contribution from his company to Vincent Schoemehl's Missouri gubernatorial campaign. Mr. Boveda made the contribution at the request of his business partner, John Suarez, a U.S. citizen and a personal friend of the candidate. Although the Schoemehl committee refunded the contribution in May 1992, the violation nevertheless resulted in civil penalties totaling $24,000 for Mr. Boveda, Mr. Suarez, the Schoemehl committee and its treasurer and Mr. Schoemehl himself. This case highlighted Commission intent to pursue not only foreign contributors, but also campaigns receiving—and agents soliciting—contributions from foreign nationals.

Violations of the $25,000 Annual Contribution Limit

Under the law, individuals may not give more than $25,000 annually in total contributions to federal candidates, party committees and PACs. 11 CFR 110.5(b). In pursuing violations of this provision in 1994, the Commission entered into nine conciliation agreements that called for $163,179 in civil penalties.

In an effort to educate donors on this issue, FEC Chairman Potter and Vice Chairman McDonald sent a letter to the chairs of the national committees of the two major parties, asking them to advise their individual contributors on compliance with the annual limit. The July 1994 letter pointed out several situations that have caused individuals to exceed the $25,000 limit inadvertently. The Commission also developed a brochure focusing exclusively on this issue.

48-Hour Notices

Because disclosure remains one of the essential tenants of federal election law, the Commission considers the timely release of campaign finance information to be a priority.

In recent years, the agency has focused on violations of the 48-hour reporting requirement, a provision meant to provide speedy public disclosure of last-minute injections of money into the election process. Candidate committees must file 48-hour notices to disclose contributions of $1,000 or more received shortly before any election in which the candidate is running. Committees must file the notice within 48 hours of receiving the contribution.

In 1994, the Commission reached conciliation agreements in 23 MURs in which candidate committees failed to file 48-hour notices. Civil penalties in these cases totaled over $170,000 and ranged from $500 to $20,000.

Litigation

The Commission dedicated considerable resources to both offensive and defensive litigation in 1994. The Commission had 45 matters in litigation before federal district and appellate courts at year's end.

In addition to the *NRA*-related cases summarized earlier, several 1994 cases are discussed in Chapter Three.

Audits

By the end of 1994, the Commission had completed all audits of the committees involved in the 1992 Presidential public funding program. This was a major improvement over past election cycles, when the Presidential audits took significantly longer to complete. In the 1992 primary election, 12 candidates received a total of $43,430,558 in federal matching funds. In addition to auditing these campaigns, the Commission audited the two national convention committees and the two general election nominees. Federal funding for the conventions and nominees totaled $133 million. (For more information on Presidential audits, see Chapter Two.)

Also part of the Title 26 program, audits of the two convention host committees and a joint fundraising committee authorized by a 1992 Presidential candidate were completed during 1994.

While these audits absorbed most of its resources, the Audit Division was also able to complete four audits of House campaigns and to continue work on four Senate campaign audits. The Congressional audits were initiated "for cause," that is, because reports filed by the committees showed apparent substantial violations.

Public Disclosure

Public disclosure of campaign finance information is a fundamental responsibility of the Commission. During 1994, the Commission focused on improving access to campaign finance information through enhanced computer technology.

Processing Campaign Finance Data

Central to the Commission's disclosure effort is the disclosure database, containing information on campaign committee receipts and disbursements from 1977 through 1994. The database includes "detailed entries" of contributions and expenditures that are itemized on a committee's report. In addition, the database contains summary information taken from the first two pages of each report, providing an overall picture of how much money a committee raises and spends.

During 1994, 950,000 detailed entries of contributions and expenditures were added to the database, along with summary financial information from 44,000 reports filed by candidate committees, PACs and party organizations. (The table below lists detailed entries by election cycle; thus the 1994 figure includes both 1993 and 1994 entries.) Even though 1994 was not a Presidential election year, the number of detailed entries was 10 percent higher in 1994 than in 1992. The increase reflected the high level of financial activity that resulted from the extraordinarily competitive 1994 Congressional races.

Nonfederal receipts and disbursements also increased during the 1994 cycle over 1992. The 1992 election cycle was the first in which the national committees were required to disclose the activity of their nonfederal or "soft money" accounts, which contain money raised outside the limits and prohibitions of the federal campaign finance law. The Commission began requiring disclosure of these funds to monitor compliance with the new allocation rules that became effective in January 1991, the start of the 1992 election cycle.

Statistics generated from the FEC database are published periodically in press releases, which update campaign finance information throughout an election cycle.

The table below tracks the size of the detailed database for each election cycle available.

Size of the Detailed Database

Election Cycle	No. of Entries
1978	478,000
1980	648,000
1982	403,000
1984	509,000
1986	526,000
1988	698,000
1990	767,000
1992	1,400,000*
1994	1,364,000

* The 1992 cycle was the first in which disclosure of nonfederal account activity was required.

Public Access to Campaign Finance Data

The Commission continued a project, begun in 1993, to improve access to campaign finance information through an electronic imaging system. The new system enables an individual sitting at a personal computer workstation to retrieve campaign finance reports and other FEC material and view the pages on a computer screen just as they appear in original form.

During 1994, the digital imaging system went through an initial testing period at workstations set up in the Public Records Office and in the Reports Analysis Division (see Review of Reports, below). Documents available through the system were limited to the campaign finance reports filed by PACs and party committees during the 1994 election cycle.

The Commission's tried and proven Direct Access Program (DAP), now in its ninth year, offers subscribers online computer access to the FEC disclosure database and other information. Paying a small fee, subscribers can retrieve and organize campaign finance data according to their individual needs. The Commission itself benefits because providing information through DAP is significantly more efficient than processing phone orders for the same information. Total DAP subscribers numbered 789 in 1994.

The Commission continued to give state election offices free access to DAP and, by the end of 1994,

30 offices were online. In other projects coordinated with the states, the FEC used information provided by state election officials to compile a list of 1994 Congressional candidates on the ballot and the 1994 election results. State offices also helped the Commission track candidate committees that had failed to file copies of their FEC reports with the appropriate state, as required under federal law. These committees received letters from the FEC notifying them of their delinquent filing status.

In terms of assisting the public, the Commission responded to public demand by developing a new independent expenditure index with expanded information on this type of campaign spending. To help members of the public take advantage of the information available at the FEC, the agency introduced a new brochure, *Researching Public Records,* and revised another one, *Using FEC Campaign Finance Information.*

In an effort to educate the national and local press on campaign finance information, the Commission participated in an hour-long National Press Club forum broadcast on C-SPAN from the FEC's Public Records Office. The program, called "Analyzing Campaign Finance Reports," demonstrated how to access and analyze the information disclosed by committees in their FEC reports.

Press Office

The Commission's Press Office had another busy year, answering 14,670 calls from media representatives and preparing over 150 press releases. Additionally, the office coordinated the August 3 press conference at which FEC Chairman Trevor Potter announced the completion of a major investigation into foreign national violations (see p. 4).

Review of Reports

To ensure full and accurate disclosure of campaign finance activity, the Commission reviews the reports filed by political committees. The agency also reviews reports for compliance with the Act and Commission regulations. If a report shows omissions or errors, or suggests that the committee may have violated the law, the Commission sends a letter, called a request for additional information (RFAI). In response, the committee treasurer can correct mistakes in the report or provide missing information. Apparent violations may lead to FEC enforcement action.

With the installation of 43 computer workstations in the Reports Analysis Division—a project completed in March 1994—half of the reports analysts were able to take advantage of the new document imaging system, which provided access to over 1 million digitized pages from reports filed at the FEC. Analysts could review on-screen images of reports at their workstations, which also provided access to the FEC disclosure database. Although the imaging system does not completely eliminate the need to review microfilm and paper copies of reports, the technology helped the division keep pace with escalating campaign finance activity in the 1994 election cycle.

In July 1994, the agency approved streamlined procedures for processing debt settlement plans (Directive 3). These procedural refinements were one more example of the Commission's efforts to enhance efficiency. During the year, the Commission completed review of 49 debt settlement plans. In October 1994, the Commission revised its procedures for administrative terminations (Directive 45) to parallel the new procedures for debt settlement plans and to accelerate the termination process. Under these procedures, the Commission encourages committees that could terminate but for their outstanding debts, to settle their debts and terminate.

Regulations

1994 New Regulations

In 1994, the Commission adopted new and revised regulations in three areas:

- Implementation of the National Voter Registration Act of 1993, including development of a national voter registration form (see p. 10);
- Federal financing of Presidential nominating conventions (see p. 20);
- Use of a candidate's name in an opposition project (see p. 27).

1994 Rulemakings in Progress

In addition to completing these projects, the Commission also:

- Published proposed revisions to the public funding regulations for Presidential candidates;
- Drafted changes to regulations affected by the Supreme Court's decision in *FEC v. Massachusetts Citizens for Life, Inc.,* including a draft definition of express advocacy (see p. 21);
- Published proposed changes to the regulations governing the use of disclaimers on campaign communications;[3]
- Held a public hearing and published revised proposed rules on the personal use of campaign funds (see p. 27).[4]

Advisory Opinions

Advisory opinions clarify the election law for the person requesting the opinion and for others with a materially similar situation. The Commission discusses and votes on advisory opinions in public meetings. The Commission issued 30 advisory opinions in 1994.

Selected advisory opinions issued during 1994 are included in the discussion of legal issues, Chapter 3.

Assistance and Outreach

The Commission encourages voluntary compliance with federal election law by offering information and clarification to those seeking help. Outreach activities undertaken in 1994 are discussed below.

Flashfax

This year the Commission introduced Flashfax, a service permitting callers with touch-tone phones to have FEC documents immediately faxed to them. The Flashfax number, 202-501-3413, is operational 24 hours a day, 7 days a week. Members of the public can order over 130 documents, including brochures, reporting forms, recent advisory opinions and regulations.

In 1994, over 1,700 callers used Flashfax to receive 2,550 documents. This automated ordering system not only conserved staff resources but also provided cheaper and faster customer service than traditional phone and mail orders.

Telephone Assistance

During 1994, the Commission also automated its toll-free information line, enabling callers to reach the office they need simply by pressing a button on their touch-tone phones. The toll-free line is a mainstay of the agency's outreach program. During 1994, public affairs specialists continued to research and answer questions about the law. The Information Division handled 91,192 calls in 1994, 26,217 of which were directed to public affairs specialists.

Reporting Assistance

Any committee with reporting questions may call the Commission and speak directly with the reports analyst assigned to review its reports. Reports analysts are trained to answer complex questions on reporting and related compliance matters.

The Commission sends each committee treasurer a prior notice—that is, a reminder of upcoming reporting deadlines—three weeks before the report is due. In addition, the *Record*, the FEC's monthly newsletter, publishes reporting schedules and requirements.

In 1994, the Commission published a new form, FEC Form 6, used by candidate committees to report the receipt of last-minute contributions. The new form, with detailed instructions, made it easier for these committees to comply with the 48-hour notice requirement, one of the areas the Commission targeted in the agency's 1994 enforcement program (see p. 6).

Form 6 was added to the Form 3 reporting packet, which was updated with a new cover page briefly describing the schedules within. The Form 3X packet, used by party committees and PACs, was similarly updated with a new cover page and the addition of Schedule C-1, used for bank loans and lines of credit. The forms and schedules themselves were not changed.

[3] On March 8, 1995, the Commission held a public hearing on the proposed disclaimer rules.

[4] The final rules became effective on April 5, 1995.

Publications

In addition to the new publications mentioned under Public Disclosure, the Commission published a new edition of the *Campaign Guide for Corporations and Labor Organizations* and issued supplements to update the *Campaign Guides* for nonconnected, party and candidate committees. A new brochure, *Foreign Nationals,* covered essential information on the foreign national prohibition, one of the areas the agency focused on under its enforcement priority system (see p. 4).

Finally, the FEC's newsletter, the *Record*, received the 1994 gold award for "overall excellence" in the National Newsletter Clearinghouse competition. All committee treasurers automatically receive the *Record*, but anyone may order a free subscription. The 1994 mailing list included 12,127 subscribers (committees and others).

Survey of Outreach Services

During 1993 and 1994, the Commission assessed its telephone services, publications and reporting forms through a survey sent to 400 registered committees of all types (party, candidate, nonconnected and separate segregated funds). The 212 committees who responded were very satisfied with FEC services.

In response to questions examining the penetration and usefulness of the FEC *Record,* 65 percent of respondents reported reading it regularly, while only 4 percent said they never read it. Seventy-four percent of respondents reported using the *Campaign Guides.*

With respect to FEC reporting forms, committees generally found the forms clear and easy to fill out. Some party and nonconnected committees, however, said that the H Schedules for reporting allocation of federal and nonfederal activity were difficult.

A large number of the responding committees reported calling the FEC to ask questions about the law or for reporting help (the Reports Analysis Division was the most frequently contacted Division). A large majority of committees found FEC staff very helpful, and virtually all committees said that their orders for publications, forms or campaign finance information were filled correctly and received quickly. Survey results indicated, however, that the FEC's telephone system was operating near or at capacity.

The survey also revealed that nonconnected committees were less likely to use FEC services and publications than other types of committees. In addition, results suggested that the terms "separate segregated fund" and "nonconnected committee" were not fully understood by the regulated community, since many nonconnected committees and some separate segregated funds had difficulty identifying themselves on the survey form.

Conferences and Visits

The Commission conducted several conferences to help candidates and committees prepare for the 1994 elections. The first conference of the year, a conference for House and Senate candidates, was held in Washington, DC, on February 11, but a snow storm prevented full attendance. The entire conference was repeated on April 15. In addition to offering workshops conducted by Commissioners and FEC staff, the conference featured guest speakers from the Internal Revenue Service, the Office of Special Counsel and the House and Senate ethics committees.

The Commission also conducted two regional conferences in 1994. The first was held in New Orleans on March 14 and 15, and the second in Pittsburgh on April 28. The conferences included workshops for candidate committees, party committees and corporate and labor PACs and their sponsoring organizations. Attendance at the 1994 conferences totaled 310.

National Clearinghouse on Election Administration

National Voter Registration Act

Clearinghouse efforts during 1994 again focused on carrying out the Commission's responsibilities under the National Voter Registration Act of 1993 (NVRA, also called the "motor voter" law). The NVRA became effective in most states at the start of 1995.

The law requires states to provide voter registration for federal elections at motor vehicle offices (for people applying for or renewing drivers licences), state welfare and disability offices, armed forces recruiting offices and other state-designated offices.

The NVRA also provides for a national mail voter registration form.

In 1993, the Commission opened a rulemaking to determine the content and format of the national voter registration form and the information to be included in biennial reports to Congress that are mandated under the law. These reports, to be compiled by the Commission beginning June 1995, will assess the impact of the NVRA on the administration of federal elections based on statistics provided by the states.

NVRA final rules at 11 CFR Part 8 became effective July 1994. In November 1994, the agency also approved the national voter registration form, which was made available to the public in January 1995.

Citizens in most states [5] can mail the form from anywhere in the country. They may use it to register to vote in their home state or to update voter registration information, such as a change of address. The national form does not supplant state registration forms but is meant to offer greater flexibility in the voter registration process.

During 1994, the Clearinghouse continued its efforts to assist states in implementing the NVRA. Clearinghouse staff visited over a dozen states to speak with election officials, state welfare and disability officials, advocacy groups and other interested parties.[6]

U.S. Voting Sites for South African Elections

Expecting a large voter turnout for the first all-race elections in its history, the South African Government allowed its citizens living in the United States to vote at polling stations in 15 U.S. cities on April 26. In response to a request from the Embassy of South Africa, the Clearinghouse acted as a liaison between the embassy and the local election officials, who located facilities for 25 polling stations.

Integrated Voter Registration Databases

The Clearinghouse awarded a contract in 1994 for the development of a guide on integrated voter registration databases. Scheduled for completion in late 1995, this project was designed to provide a practical guide for integrating voter registration databases with those kept by other offices, such as motor vehicles, public assistance and vital statistics offices and the state and federal courts.

Publications

The Clearinghouse published *Election Directory 94*, which lists the names and addresses of state election officials, and the biennial *Campaign Finance Law 94*, which summarizes the campaign finance laws of each state. The year also saw the publication of three new volumes in a continuing series of monographs describing technical and administrative innovations in election administration, *(Innovations in Election Administration).* Volume 7 describes mail voter registration systems; Volume 8 examines election-document retention; and Volume 9 studies the administration of early voting programs.

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[5] In Arkansas and Virginia, state laws prohibit use of the form until 1996. New Hampshire accepts the form strictly as an application for the state absentee mail-in registration form, and Wyoming, which is exempt from the NVRA, does not accept the form at all. North Dakota does not have voter registration.

[6] In December 1994, California filed a lawsuit in district court challenging the constitutionality of the NVRA. In a March 1995 decision, the court found that the NVRA is constitutional and binding on the State of California.

In January 1995, the Justice Department sued California, Illinois and Pennsylvania for refusing to comply with the statute. Although South Carolina also filed a preemptive lawsuit to prevent the government from forcing it to comply with the law, the Justice Department sued South Carolina in February 1995.

Chapter Two
Presidential Public Funding

Public funding has been an essential part of our Presidential elections since 1976. Using the funds from the $3 tax checkoff, the federal government provides matching funds to qualified candidates for their primary campaigns, funding for major party nominating conventions, and grants to Presidential nominees for their general election campaigns. The Federal Election Commission administers the public funding program and certifies payments to qualified candidates and committees. The U.S. Treasury makes the payments.

Audits of 1992 Committees

By December 1994, the Commission completed all mandatory audits of the 1992 publicly funded Presidential primary and general election campaigns and nominating conventions. This represented a significant reduction in time compared with the 1988 cycle audits.

The law requires the Commission to audit all Presidential candidates and convention committees receiving federal funds to ensure that the funds are not misused and that the committees maintain proper records. Recognizing the importance of concluding the audits speedily, the Commission undertook sweeping measures designed to expedite the process in preparation for the 1992 race.

Changes to Expedite the Audit Process

The timely completion of the 1992 cycle audits was made possible by streamlined procedures, simplified regulations and a six-person staff increase.

To overcome problems that delayed audits in past election cycles, the Commission implemented the procedures described below.

- Getting a head start on the audit process, before audit fieldwork commenced, FEC auditors used committees' computerized records to begin reconciling bank records and identifying possible illegal contributions.
- Also before fieldwork, FEC auditors conducted an inventory of committees' campaign records to expedite the fieldwork process. Deficiencies in records had to be corrected within 30 days or the Commission could compel production of documents through subpoenas.
- Even with more complete records at the onset of fieldwork, the need for specific records was likely to arise during the audit. The Commission set specific dates for committees to produce missing records in order to prevent the delays that occurred in past audits. Again, the Commission could use its subpoena powers to compel compliance.
- The agency also tightened its policy on granting committees extensions of time to respond to audit findings in an effort to prevent multiple extensions of time that had delayed previous audits by several months.
- The agency used a sampling technique to quantify the dollar amount of excessive and prohibited contributions instead of manually compiling lists of potentially illegal contributions. (Excessive and prohibited amounts not resolved in a timely manner were to be paid to the Treasury; see p. 14.)

Under another new policy applied to the 1992 audits, the Commission provided public disclosure of all audit findings in final audit reports. Previously, a report was issued only after the Commission had determined whether to refer potential violations uncovered in the audit to the Office of General Counsel for possible enforcement action. All mention of these potential violations was removed from the final audit report. The new policy provided more complete disclosure and speeded up public release of final audit reports.

Regulatory changes also expedited audits. The Commission simplified the regulations on allocating expenses to the state spending limits—a requirement for primary candidates receiving matching funds. Before this simplification, campaigns had devised complex schemes to reduce the amounts allocated to early primaries held in small states with low spending limits. The Commission was forced to devote considerable time and resources to determine whether campaigns had actually exceeded the limits and to enforce violations. Under the revised regulations first applied to the 1992 election cycle, expenses were allocable to a particular state only if they fell within one of five specified categories. As a result of this change and other factors (such as the late start in fundraising by the 1992 campaigns), none of the

Presidential candidates exceeded the state spending limits for the 1992 primaries. By contrast, about half the 1988 primary candidates exceeded the Iowa and New Hampshire spending limits.

The changes in regulations, technology and staffing are outlined at length in the *Annual Report 1991*, p. 10, *Annual Report 1992*, pp. 8-11, and *Annual Report 1993*, pp. 19-20.

Repayment Process

The final audit report, approved by the Commission and released to the public, may include an initial determination that the committee repay public funds to the U.S. Treasury. A repayment is required when the Commission determines that a primary or general election committee:

- Received public funds in excess of the amount to which it was entitled;
- Had surplus (unspent) funds remaining after debts and obligations were paid;
- Incurred nonqualified campaign expenses by spending in excess of the limits, by using public funds for expenses not related to the campaign or by insufficiently documenting the expenditure of public funds;
- Had stale-dated checks that remained uncashed by the recipient; or
- Earned interest on the investment of public funds.

Primary campaigns, which receive private contributions as well as public funds, must repay only the portion of nonqualified campaign expenses defrayed with matching funds. A ratio formula is used to determine this amount.

Unless a committee disputes the Commission's initial repayment determination (contained in the final audit report), the determination becomes final and the committee must make the repayment to the U.S. Treasury within 30 days. The repayment date is suspended if the committee disputes the initial determination and submits written arguments to support its view. The committee may also request the opportunity to make an oral presentation as part of its response to the final audit report (see table on pp. 15-16).

When making its final repayment determination, the Commission may reduce the amount owed to the Treasury based on the committee's response. The basis for the Commission's final determination is set forth in a statement of reasons.

Under a new policy implemented during the 1992 cycle, the Commission required campaigns to pay to the U.S. Treasury the amount of excessive and prohibited contributions they received and failed to resolve in a timely manner.[1] Previously, campaigns were merely required to return excessive contributions to the donors. The Commission used a sampling technique to calculate the projected amount of excessive and prohibited contributions. Campaigns were given an opportunity to demonstrate that the contributions in the sample—as well as any other questionable contributions discovered during the audit—should not be considered impermissible or unresolved. Contributions that remained unresolved had to be paid to the U.S. Treasury. (Some campaigns objected to the new policy; see p. 18.)

In addition to the payment and repayment requirements imposed during the audit process, a committee may have to pay a civil penalty resulting from an enforcement proceeding (MUR) based on matters uncovered in the audit.

[1] A committee can resolve a prohibited contribution by refunding it to the donor within 30 days of receipt. A committee has 60 days to resolve an excessive contribution either by refunding the excessive amount or by receiving a donor-signed reattribution or redesignation of the excessive amount. 11 CFR 103.3(b)(1) and (3).

Final Audit Reports and Determinations

The following pages highlight findings made in the final audit reports of the 1992 public funding recipients. The "Amount Due U.S. Treasury" figure represents both initial repayment determinations and other required payments to the U.S. Treasury. Because the Commission may re-calculate these figures based on a committee's response to the final audit report and adjustments that occur during the winding down period, the "Amount Due U.S. Treasury" is subject to change until a final determination is reached. Where relevant, the chart includes final determination amounts and the amounts paid. All figures are current through March 22, 1995.

Primary Committees

Agran for President '92
Date Audit Report Approved: June 8, 1993
Total Matching Funds Received: $269,691
(No payment to U.S. Treasury required)

Brown for President
Date Audit Report Approved: May 24, 1994
Total Matching Funds Received: $4,239,405
Amount Due U.S. Treasury: $191,806 *
(Final Determination)
- $171,136—matching funds in excess of entitlement
- $11,423—excessive travel reimbursements from the press ($51,233 refund to press also required; see p. 18)
- $7,913—unspent funds
- $1,334—committee checks never cashed

Amount Paid to Date: $179,049

Buchanan for President †
Date Audit Report Approved: October 11, 1994
Total Matching Funds Received: $5,199,987
Amount Due U.S. Treasury: $490,393 *
- $399,521—matching funds in excess of entitlement
- $61,925—excessive and prohibited contributions
- $28,336—nonqualified campaign expenses
- $611—committee checks never cashed

Amount Paid to Date: $0

* These figures differ from those published in the final audit report due to re-calculations based on information provided by the committee.

† At a March 2, 1995, Commission hearing, the Buchanan for President committee made a presentation as part of its response to the final audit report. No final determination had been made by March 22, 1995.

Bush-Quayle '92 Primary Committee ‡
Date Audit Report Approved: December 27, 1994
Total Matching Funds Received: $10,658,521
Amount Due U.S. Treasury: $841,850 **
- $485,631—matching funds in excess of entitlement
- $195,224—nonqualified campaign expenses (including general election expenditures; see p. 18)
- $141,801—unresolved excessive contributions
- $19,194—committee checks never cashed

Amount Paid to Date: $160,995

Clinton for President Committee
Date Audit Report Approved: December 27, 1994
Total Matching Funds Received: $12,536,135
Amount Due U.S. Treasury: $1,383,587
(Final Determination)
- $1,072,344—matching funds in excess of entitlement (see p. 17)
- $270,384—nonqualified campaign expenses (including general election expenditures; see p. 18)
- $40,859—committee checks never cashed

Amount Paid to Date: $1,383,587

Lenora B. Fulani for President
Date Audit Report Approved: April 21, 1994
Total Matching Funds Received: $2,013,323
Amount Due U.S. Treasury: $1,394
- $1,394—nonqualified campaign expenses

Amount Paid to Date: $1,394

Dr. John Hagelin for President Committee
Date Audit Report Approved: September 14, 1994
Total Matching Funds Received: $353,160
Amount Due U.S. Treasury: $2,907
(Final Determination)
- $2,907—nonqualified campaign expenses

Amount Paid to Date: $2,907

‡ A hearing on the final audit report for the Bush-Quayle primary committee was scheduled for May 17, 1995. The Commission was to make its final determination after the hearing.

** In connection with a joint fundraiser conducted by the Republican Leadership Fund, the Bush-Quayle '92 Primary Committee also refunded $2,326 to the Treasury and $4,719 to the Fund for excessive joint fundraising contributions it had received. As recommended in the final audit report on the fundraiser, the Leadership Fund, in September 1994, paid $26,575 to the U.S. Treasury for unresolved excessive contributions accepted on behalf of the other two participants, the Ohio Republican Party Federal and State Accounts.

Americans for Harkin, Inc.
Date Audit Report Approved: March 15, 1994
Total Matching Funds Received: $2,103,362
Amount Due U.S. Treasury: $35,316 *
(Final Determination)
• $33,033—prohibited and excessive contributions
• $2,283—committee checks never cashed
Amount Paid to Date: $35,316

Kerrey for President
Date Audit Report Approved: March 3, 1994
Total Matching Funds Received: $2,195,530
Amount Due U.S. Treasury: $7,937
(Final Determination)
• $6,762—excessive travel reimbursements from the press (see p. 18)
• $1,175—committee checks never cashed
Amount Paid to Date: $7,937

Democrats for Economic Recovery—LaRouche in '92
Date Audit Report Approved: November 30, 1994
Total Matching Funds Received: $568,435
Amount Due U.S. Treasury: $130,227
(Final Determination)
• $130,227—income earned on federal funds
Amount Paid to Date: $132,300 †

The Tsongas Committee, Inc.
Date Audit Report Approved: December 16, 1994
Total Matching Funds Received: $3,003,981
Amount Due U.S. Treasury: $74,730 (see p. 17)
• $64,163—excessive contributions
• $10,567—nonqualified campaign expenses ($19,733 refund to the press and Secret Service also required; see p. 18)
Amount Paid to Date: $0

Wilder for President ‡
Date Audit Report Approved: April 21, 1994
Total Matching Funds Received: $289,027
Amount Due U.S. Treasury: $40,242
• $19,032—matching funds in excess of entitlement
• $12,026—nonqualified campaign expenses
• $9,184—prohibited and excessive contributions
Amount Paid to Date: $0

Convention Committees **

1992 Democratic National Convention Committee, Inc.
Date Audit Report Approved: March 10, 1994
Total Public Funds Received: $11,048,000
Amount Due U.S. Treasury: $37,338 *
(Final Determination)
• $33,481—nonqualified convention expenses
• $3,847—unspent funds
• $10—committee checks never cashed
Amount Paid To Date: $37,338

Committee on Arrangements for the 1992 Republican National Convention
Date Audit Report Approved: June 23, 1994
Total Public Funds Received: $11,048,000
Amount Due U.S. Treasury: $31,683 *
(Final Determination)
• $30,647—unspent funds
• $1,036—committee checks never cashed
Amount Paid to Date: $31,683

General Election Committees

Bush-Quayle '92 General Committee, Inc., and Bush-Quayle '92 Compliance Committee, Inc.
Date Audit Report Approved: December 27, 1994
Total Public Funds Received: $55,240,000
Amount Due U.S. Treasury: $29,775
• $27,689—committee checks never cashed
• $2,086—income earned on federal funds
Amount Paid to Date: $29,775

Clinton/Gore '92 Committee and Clinton/Gore '92 General Election Compliance Fund
Date Audit Report Approved: December 27, 1994
Total Public Funds Received: $55,240,000
Amount Due U.S. Treasury: $254,546
• $112,100—prohibited contributions
• $78,625—nonqualified campaign expenses
• $57,175—committee checks never cashed
• $6,646—income earned on federal funds
Amount Paid to Date: $109,061

* These figures differ from those published in the final audit report due to re-calculations based on information provided by the committee.

† Repayment was received in response to the interim audit report. In the final audit report the repayment amount was revised downward to $130,227. On January 10, 1995, the Commission certified a $2,073 refund to the committee.

‡ At an October 5, 1994, Commission hearing, the Wilder for President committee made a presentation as part of its response to the final audit report.

** The Commission also conducted audits of the Houston and New York Host Committees. Host committees do not receive public funding but undergo an FEC audit. See the *Record*, February 1994, p. 2, and April 1994, p. 3.

Legal Issues Related to Primary Committee Audits

Included here are selected legal issues that emerged from the final audit reports on the 1992 Presidential primary campaigns. In some cases, the issue was unique, such as the embezzlement of campaign funds. In other cases, the issue concerned an area of the law that proved troublesome for many campaigns, such as contributions resulting from staff advances.

Disposition of Post-Nomination Contributions

The Clinton for President Committee received matching funds in excess of the candidate's entitlement and, by law, was required to repay the excess matching funds to the U.S. Treasury. The six members of the Commission, however, were divided on the amount of matching funds that exceeded the entitlement. At issue was the Committee's use of contributions that were received after President Clinton's nomination on July 15 and later transferred to the Clinton general election legal and accounting compliance fund (GELAC).[2]

July 15 was the candidate's date of ineligibility; after that date he was entitled to receive matching funds only to the extent that he had net outstanding campaign obligations.

Three Commissioners viewed the post-nomination contributions as being designated for the primary campaign because they were solicited for and received by the primary committee. The Commissioners maintained that the transfers were impermissible because the Committee carried a debt at the time of the transfers and the transferred contributions should have been used for debt reduction. 11 CFR 9003.3(a)(1)(iii). This would have decreased the amount of matching funds to which the candidate was entitled, thus necessitating a repayment of over $3.4 million.

The other three members of the Commission, however, believed that the contributions in question were not specifically designated for the primary, according to Commission regulations at 11 CFR 110.1(b)(4), and thus were not required to be used for primary debt retirement. These Commissioners viewed the transfers to the GELAC as permissible. The transferred contributions, because not applied to the primary debt, would increase the candidate's entitlement to matching funds and thus would reduce by almost $2 million the repayment amount for matching funds received in excess of the entitlement.

The Commission adopted this lesser repayment amount ($1,072,344) because, by a split 3–3 vote, they failed to approve the higher amount ($3.4 million).[3]

Embezzled Contributions

The Tsongas Committee's principal fundraiser, Nicholas Rizzo, solicited and accepted $794,000 in campaign loans, almost all of which were diverted to his personal use. The loans, made by 8 individuals, exceeded the donors' limits by a total of $790,750. Mr. Rizzo deposited the loans into an account opened in the Committee's name without its knowledge and into his personal and business accounts. Mr. Rizzo also deposited nearly $200,000 in other campaign contributions into his personal accounts. (Mr. Rizzo received a 52-month sentence in a federal penitentiary for his embezzlement of campaign funds.)

The Committee contended that the funds were not campaign contributions, subject to the limits, because Mr. Rizzo was not acting as a campaign agent when he collected them. The audit report disagreed, stating that Mr. Rizzo—in his role as fundraiser—was an agent of the campaign and, consequently, the funds had to be considered contributions.

Because of the special circumstances, however, the Commission did not require the Committee to make any payments to the Treasury with respect to the excessive loans. The issue could be addressed in an enforcement action.

[2] Presidential general election campaigns receiving federal funding are permitted to establish compliance funds, which are special accounts used to pay for specified expenses, including legal and accounting expenses incurred solely to comply with the campaign finance law. Compliance funds are funded with private contributions.

[3] For information on another case concerning the effect of post-date-of-ineligibility contributions on a candidate's entitlement, see "Challenge to 1988 Repayment," p. 19.

Contributions Reviewed Through Sampling

Several campaigns were critical of the FEC's decision to use a sampling technique to review the legality of contributions, one of the new audit procedures previously discussed. Campaigns also had technical objections to the specific sampling method used, claiming that it inflated projections of excessive and prohibited contributions accepted by the campaigns. The final audit reports pointed out, however, that the technique—the same one used to evaluate matching fund submissions—is widely accepted in the accounting profession.

Campaigns also objected to having to pay the projected amounts to the U.S. Treasury, arguing that the requirement was an invalid regulation implemented without satisfying the public notice and comment provisions under the Administrative Procedures Act (APA). The Commission, however, said that a 1992 notification letter sent to Presidential campaigns to explain the payment requirement was exempt from the APA because it served to interpret, rather than create, a regulation.

Staff Advances as Contributions

Several campaigns were found to have accepted excessive contributions in the form of advances from campaign staff. For example, one campaign received over $53,000 in excessive contributions in the form of staff advances from three individuals. In some cases, these contributions were for the individual's own campaign travel and subsistence and could have been avoided if the committee had reimbursed the advances within the prescribed time period (30 days or, in the case of credit card charges, 60 days). However, in other cases the expenses were not travel related or were the travel costs of persons other than those who paid the expenses. The regulations provide no grace period for reimbursing such expenses before they are considered contributions. 11 CFR 116.5(b).

Disclosure of Donor's Occupation and Employer

Committees are required to disclose the name, mailing address, occupation and employer of any individual whose contributions aggregate more than $200 within a calendar year. Several 1992 Presidential committees failed to disclose complete contributor information, generally omitting the donor's occupation and employer. For example, a sample review of one committee's reports revealed that it failed to report the occupation and name of employer for 56 percent of the items tested.

Committees that inadequately disclosed contributor information and could not demonstrate that they had made "best efforts" to obtain the information, could be subject to FEC enforcement action. (For more information on best effort rules, see p. 26.)

Overbilling the Media for Travel

Three 1992 campaigns had to make repayments to the Treasury or refunds to press organizations for travel overcharges. (See the media-travel repayments and refunds listed under the Brown, Kerrey and Tsongas campaigns, pp. 15-16.) Presidential committees traditionally allow members of the press to accompany the campaign on airplane flights in order to encourage media coverage. However, when seeking a reimbursement from the press for this expense, campaigns must base travel charges on the cost per passenger. Any overcharges—amounts greater than the actual cost plus 10 percent—must be refunded to the travelers. Any profits—amounts greater than the actual cost plus 3-to-10 percent in administrative costs—must be paid to the U.S. Treasury.[4]

Allocation of Mixed Primary/General Expenditures

Primary matching funds used to fund general election activity are considered nonqualified campaign expenses. Both the Bush and Clinton primary committees made such expenditures, the Bush committee spending $1,577,196, and the Clinton campaign, $598,864. The Commission reduced the nonqualified amounts after determining that most of the expenditures should be allocated on a 50-50 basis between the primary and general elections.

The campaigns could take alternative actions to resolve the nonqualified campaign expenses. The primary committees could make pro rata repayments

[4] The administrative cost allowance may range from 3 percent (if no documentation exists) to 10 percent (if the Committee can document costs greater than 3 percent).

to the Treasury in the amounts determined to be general election spending (the repayments representing the amount of federal matching funds used to finance the expenditures). Or the general election committees could reimburse their share of the expenses to the primary committees (in which case no pro rata repayment would be necessary).

Other Audit-Related Legal Issues

In addition to issues stemming from the 1992 audits, the Commission dealt with other Presidential issues, including cases filed by the 1992 and 1988 campaigns of Lyndon LaRouche and enforcement matters from the 1988 cycle.

Court-Ordered Public Funding

On February 17, 1994, the Commission complied with a court mandate to certify Lyndon LaRouche as eligible to receive federal matching funds for his 1992 campaign. The agency certified a $100,000 threshold payment on February 22.

The FEC had originally denied Mr. LaRouche's request for matching funds based on his past violation of the public funding law and his criminal convictions for mail fraud, including fraudulent fundraising.

Ruling that the FEC did not have statutory authority to deny federal funds on that basis, the U.S. Court of Appeals for the District of Columbia Circuit, on July 2, 1993, instructed the agency to certify the candidate as eligible to receive public funds. (See the *Annual Report 1993*, p. 23, for a summary of the decision.) Given the appellate court's decision and the Supreme Court's refusal to review that decision, the Commission certified the $100,000 payment. Mr. LaRouche ultimately received $568,435 in matching funds for his 1992 campaign.

Challenge to 1988 Repayment

Mr. LaRouche received $833,577 in 1988 primary matching funds. The Commission determined that he had to repay $151,269 to the Treasury. The campaign repaid part of that amount in 1992, leaving $146,464 outstanding. In October 1992, Mr. LaRouche and his campaign filed a petition in the Court of Appeals against the FEC seeking review of $109,149 of the repayment. In May 1994, pending a ruling in this suit, the FEC filed suit in district court to obtain repayment of the full outstanding amount ($146,464).

On July 8, 1994, the U.S. Court of Appeals for the District of Columbia Circuit upheld the repayment determination. At issue was the entitlement of a candidate to matching funds after his date of ineligibility (DOI). On May 26, 1988, after receiving less than 10 percent of the vote in two consecutive primaries, Lyndon LaRouche became ineligible to receive matching funds to continue his campaign but was still entitled to matching funds to help defray preexisting net campaign debts of about $300,000. On that basis, the campaign continued to receive matching fund payments through October 1988. However, an FEC audit later found that, by July 22, the campaign had received sufficient post-DOI matching funds and private contributions to satisfy the debt.

The LaRouche campaign argued that the campaign was entitled to collect matching funds for contributions received after the DOI without having to credit the contributions against the net debt figure. Otherwise, the campaign said, the candidate would be limited in his ability to continue the campaign.

The court, however, disagreed, stating that the statute "make[s] clear that Congress wished to restrict the availability of matching payments to candidates it considered viable."

The district court in which the FEC had filed suit to collect payment issued an order in September 1994 holding the 1988 LaRouche campaign liable for repayment of $146,464 in matching funds (the full outstanding amount) plus accrued interest.

The 1992 LaRouche campaign gave the court a $158,304 check as security for the 1988 campaign's repayment obligation plus interest. The court agreed to release the check to the FEC if the 1992 campaign had sufficient excess funds to cover the check after making its own repayment to the Treasury (the 1992 repayment determination was then pending).[5]

[5] Under the Commission's final repayment determination, the 1992 LaRouche committee did have sufficient excess campaign funds to cover the check. The FEC received the check, including interest, on February 1, 1995.

Enforcement Matters from 1988

In 1994, the Commission closed two enforcement matters from the 1988 Presidential election. These cases focused on several violations, including excessive contributions, prohibited corporate contributions and excessive expenditures in primary elections.

MUR 3467. The 1988 campaign committee of George Bush paid a $40,000 civil penalty for violating contribution and expenditure limits. The committee had accepted $188,195 in excessive contributions from individuals. Of this amount, a total of $163,725 was refunded too late to cure the excessive nature of the contributions. On average, it took the committee 112 days to refund excessive contributions; FEC regulations require that refunds be made within 60 days.

The remaining $24,470 in excessive contributions were primary contributions redesignated by contributors to the general election compliance fund. However, because the committee failed to retain any records of when it received the redesignations, they were ineffective, and the contributions remained excessive. Additionally the Bush campaign made untimely refunds of $11,000 in excessive contributions from political committees.

The Bush campaign also exceeded the Iowa and New Hampshire spending limits by a total of $260,460.

MUR 3306. The 1988 Jack Kemp for President Committee and two Kemp fundraising committees—Victory 88 and the Kemp/Dannemeyer Committee—agreed to pay a total of $120,000 in penalties and refund $110,000 in excessive and prohibited contributions. The committees were cited for numerous violations of the federal campaign finance law, including:

- Accepting more than $750,000 in excessive contributions and over $13,000 in direct corporate contributions;
- Accepting corporate in-kind contributions by failing to pay in advance for campaign use of corporate aircraft;
- Exceeding the Iowa spending limit by almost $104,000 and the New Hampshire limit by over $66,000;
- Failing to follow the prescribed methods for calculating and billing the costs of media travel services;
- Failing to comply with the joint fundraising rules; and
- Failing to retain and furnish documents requested by the FEC.

Looking Ahead to 1996: New Regulations

In preparation for the 1996 Presidential elections, the Commission completed revisions on regulations governing public funding of Presidential nominating conventions and began revising public funding regulations for Presidential candidates and committees. The revisions were designed to address several issues that arose during the past election cycle and to anticipate issues that might arise in 1996.

Because the convention funding rules had not been substantively changed in 15 years, the Commission updated them to make them consistent with parallel provisions in the public funding rules for Presidential committees. The convention rules were also simplified and reorganized into a more logical sequence. The rules at 11 CFR Part 9008 became final in August 1994.

Among other changes, the revised rules require convention cities to file post-convention financial statements and allow them to establish municipal convention funds to pay for certain convention expenses. Under another new provision, convention committees may raise contributions to defray exempt legal and accounting compliance costs, as general election Presidential campaigns are permitted to do. The regulations also simplify terminology by substituting "commercial vendor" for several terms previously used to describe businesses that offer reductions, discounts or free items to a convention.

The Commission also began revising the regulations governing the public funding of Presidential primary and general election candidates. On October 6, the Commission published a notice of proposed rulemaking seeking public comment on possible changes.[6]

[6] The Commission held a public hearing on the proposed changes on February 15, 1995.

Chapter Three
Legal Issues

In December 1994, the Supreme Court ruled that, under the Federal Election Campaign Act, the Commission did not have independent authority to appeal cases to the Supreme Court. This decision in *FEC v. NRA Political Victory Fund* and its implications for the agency are discussed under Enforcement, Chapter One.

This chapter examines other legal issues that confronted the Commission in 1994 advisory opinions, enforcement cases and litigation.

Corporate/Labor Communications to Public

The Federal Election Campaign Act (the Act) restricts political communications and other election-related activities by corporations and labor organizations. Specifically, 2 U.S.C. §441b prohibits corporations and labor organizations from making contributions or expenditures in connection with federal elections. The courts have found that this restriction on constitutionally protected speech is justified in light of the potentially corrupting effect that the concentrated power and wealth of corporations and labor unions could have on the democratic electoral process.

MCFL Rulemaking

In its regulations, the Commission interpreted §441b as broadly banning all election-influencing or "partisan" communications by corporations and labor organizations to the public. Several years ago, however, the agency found it had to reexamine its regulations in light of the Supreme Court's interpretation of the §441b prohibition in *FEC v. Massachusetts Citizens for Life, Inc. (MCFL)* and subsequent cases.

The Supreme Court, in its 1986 *MCFL* decision, ruled that "an expenditure must constitute 'express advocacy' in order to be subject to the prohibition of §441b." This ruling narrowed the scope of the prohibition on expenditures to include only independent expenditure communications, which, by definition, contain express advocacy.[1] (The §441b prohibition against *contributions* by corporations and labor organizations remains the same and applies to expenditures that are coordinated in any way with a candidate.)

In *MCFL*, the Court also found that a narrowly defined category of corporations (MCFL-type corporations) is exempted by the Constitution from the prohibition on independent expenditures. The Court said that the prohibition was unconstitutional as applied to nonprofit corporations that were "formed to promote political ideas," and satisfied three other criteria specified by the Court.

In 1994, the Commission continued work on revising its regulations on corporate/labor communications (11 CFR 114.3 and 114.4) to conform with *MCFL* and on crafting new regulations on the exemption for MCFL-type corporations (proposed 11 CFR 114.10). In past years, the agency published four rulemaking notices for public comment and heard testimony at two public hearings. This year, the Commission deliberated over draft final rules. Because express advocacy was critical to the rulemaking, the Commission focused on defining the concept and, in August, approved a new definition. This represented a significant accomplishment given the lack of consensus in court rulings on this issue and the conflicting public comments on alternative draft definitions. The definition of express advocacy approved in 1994 will be subject to a vote to publish it in the Federal Register and send it to Congress.

Definition of Express Advocacy

In a related court case addressing express advocacy, the U.S. District Court for the Southern District of New York ruled on letters sent to the general public by the Survival Education Fund, Inc. The court found that although the letters were undeniably hostile to

[1] An independent expenditure is a communication that expressly advocates the election or defeat of a clearly identified candidate and that is made independently—that is, without any cooperation or consultation with the candidate or his or her authorized committee or agents and without the prior consent, suggestion or request of the candidate, authorized committee or agents.

President Reagan, who was facing reelection at the time of the mailing, they did not constitute prohibited corporate expenditures because they did not expressly advocate his defeat. In its ruling, the court relied on Supreme Court cases, including *Buckley v. Valeo* and *MCFL*, that interpreted the §441b ban on corporate expenditures as applying only to communications that expressly advocate the election or defeat of a candidate using, for example, words such as "vote for," "elect," "support," "vote against" and "reject."

Commercial Ventures and Express Advocacy

In AO 1994-30, the Commission said that a corporation's sale of t-shirts expressly advocating the election of conservative candidates was not prohibited under §441b as long as the activity was purely commercial in purpose—that is, undertaken to turn a profit rather than to influence federal elections. The corporation, Conservative Concepts, Inc. (CCI), could advertise the t-shirts on a radio talk show and sell them at campaign events, as long as the activities did not have an election-influencing purpose and were not coordinated with the campaign.

Definition of Member

Under the Act, only "members" of an incorporated membership organization may be solicited for contributions to the organization's separate segregated fund (SSF, commonly called a political action committee or PAC). Additionally, only members are allowed to receive communications from the organization that advocate the election or defeat of candidates. In November 1993, the Commission prescribed new regulations specifying the criteria for qualifying as a member (11 CFR 114.1(e)).

In 1994, the agency received four advisory opinion requests seeking guidance on the new rules. The Commission issued two advisory opinions in response to these requests, but could not agree upon an opinion in the case of the other two requests. The definition of member was also the subject of two court cases.

Advisory Opinions

In AO 1993-24 (issued in February 1994), the National Rifle Association (NRA), an incorporated membership group, asked the Commission to determine which of its classes of membership would be considered qualified "members." Under the new regulations, members must affirmatively respond to the invitation to join (all NRA members appeared to meet this requirement) and must satisfy one of the following three requirements:

1. Members must have some significant financial attachment to the association beyond the payment of dues; or
2. They must pay regular dues and have the right to vote for at least one member of the highest governing body of the association or for those who select at least one member of that body; or
3. They must have the right to vote for all of those on the highest governing body. 11 CFR 114.1(e)(2).

"Annual" members of the NRA (two-thirds of NRA's total membership) paid dues of $20–$25 a year, but they lacked voting rights and therefore failed to satisfy requirements 2 or 3. Nor did they satisfy requirement 1 merely by paying dues. Consequently, they were not considered "members" for the purposes of receiving NRA solicitations and partisan communications.

Other NRA membership classes, because of their dues obligation and ability to vote for NRA's highest governing body, met the definition of "member" under either 2 or 3.

In AO 1994-12, the American Medical Association asked the Commission whether their 290,000 members qualified as members under the new rules. AMA dues-paying members fell into two categories. "Constituent members" belonged to AMA state medical associations and were entitled to vote for delegates to their state associations' house of delegates. These state bodies, in turn, elected delegates to the AMA House of Delegates, the AMA's highest governing body. Constituent members, therefore, had sufficient voting rights to meet the definition of "member" under FEC rules.

AMA's 45,000 "direct members," a second class of dues-paying members, were generally not entitled to

participate in elections. The Commission, in a 3-3 vote, could not reach agreement on their membership status.

The impasse focused on whether direct members could qualify under 11 CFR 114.1(e)(3). Under that provision, the Commission may determine, on a case-by-case basis, that individuals who do not "precisely meet the requirements of the general rule" nevertheless qualify as members based on "a significant organizational and financial attachment to the association." While three Commissioners believed AMA's direct members qualified under section 114.1(e)(3), the other three Commissioners believed the members lacked sufficient voting rights.

For the same reason—conflicting interpretations of 114.1(e)(3)—the Commission was unable to approve advisory opinions on whether individuals belonging to the U.S. Chamber of Commerce (220,000 members) and the International Council of Shopping Centers (22,343 members) qualified as "members." (Advisory Opinion Requests 1994-4 and 1994-18.)

Legal Challenges

The Chamber of Commerce and the AMA filed suit against the Commission, claiming that the rules on the definition of member violated their constitutional rights of free speech and association by preventing them from sending partisan communications (candidate endorsements) to large segments of their memberships.

In dismissing the case on October 28, 1994, the U.S. District Court for the District of Columbia ruled that the associations lacked standing to bring suit. Because the Commission deadlocked on whether the organizations' supporters were members, the court ruled that the regulations did not pose any threat of enforcement against the groups. For similar reasons, the court said that the matter was not ripe for review. The court also concluded that the regulations were, on their face, within the Commission's authority to construe the statute.

In another case, *Jordan v. FEC,* the district court upheld a definition of member that predated the one codified in the 1993 regulations. The previous regulations had defined "member" simply as a person who satisfied the organization's own requirements for membership, although FEC advisory opinions had refined the term to mean persons who had an obligation to pay regular dues and the right to participate in the organization's governance.

In his suit, Absalom F. Jordan, Jr., challenged the FEC's dismissal of his administrative complaint alleging that Handgun Control, Inc. (HCI) had violated the law by soliciting contributions from individuals who did not qualify as members because they lacked sufficient governance rights.

In dismissing his complaint, the FEC said that his claims were substantially similar to claims already conclusively resolved through a previous complaint filed against HCI by the National Rifle Association (NRA). That complaint resulted in a conciliation agreement requiring HCI to pay a civil penalty and to amend its bylaws to establish voting rights for members. The Commission dismissed subsequent NRA complaints against HCI because they did not raise any new claims.

Finding the FEC's definition of member to be reasonable, the court also upheld the agency's dismissal of the Jordan complaint, and, on May 27, 1994, granted summary judgment to the FEC.

Corporate Solicitations to Employees

Employee Stockholders

When raising funds for its separate segregated fund (SSF), a corporation may solicit contributions from its restricted class, that is, its executive and administrative personnel, stockholders and the families of both groups. In AO 1994-27, the Commission considered whether employees who were not executive or administrative personnel could nevertheless be solicited because they qualified as stockholders through their participation in a company stock ownership plan.

The opinion focused on whether employee-investors satisfied the three criteria for stockholder status: (1) a vested beneficial interest in the stock; (2) the power to direct how the stock is voted; and (3) the right to receive dividends. 11 CFR 114.1(f).

Consumer Power Company offered a stock ownership plan under which employees could invest in common stock through contributions from their salaries and a matching payment by the company.

The first requirement for stockholder status was met by employees who owned one share of stock. All employees met the second requirement because they had the right to vote through a trustee. The third requirement, however, was met only by employees who had actually withdrawn stock or who were able to make withdrawals without significant restrictions. Employees who had unrestricted withdrawal rights and employees who could make partial withdrawals once a year, without penalty, satisfied the third requirement.

Twice-Yearly Solicitations and Charitable Matching Plans

While corporations may solicit contributions from their stockholders and executive and administrative personnel at any time, other employees (i.e., the expanded class) may be solicited only twice a year, and then only under the specific procedures spelled out at 11 CFR 114.6. In three advisory opinions issued in 1994 (AOs 1994-3, 1994-6, 1994-7), the Commission said that corporations could make charitable donations to match SSF contributions collected from expanded class employees in twice-yearly solicitations.

In earlier advisory opinions, the Commission had approved charitable matching plans for contributions from the restricted class. In these opinions, the Commission reasoned that the costs (the matching donations) were exempt solicitation expenses rather than prohibited exchanges of corporate funds for PAC contributions.[2] 2 U.S.C. §441b(b)(2)(C); 11 CFR 114.5(b). For the same reason, the Commission concluded that charitable matching plans for twice-yearly solicitations were permissible as along as the corporation complied with the requirements for such solicitations.

[2] The IRS has concluded that charitable matching plan donations do not result in compensation to the employees and are not tax deductible by the corporation. Judith E. Kindell and John F. Reilly, *Election Year Issues*, IRS publication, 441-444 (1992); see also Rev. Rul. 67-137, 1967-1 C.B. 63.

Prohibited Corporate Activities

Corporate Fundraising on Behalf of Federal Candidates

In MUR 3540, Prudential Securities, Inc. (PSI) agreed to pay a $550,000 civil penalty for having violated the Act by conducting illegal corporate fundraising on behalf of federal candidates. This civil penalty was the largest in the FEC's 19-year history.

From 1986 through 1993, various PSI officers and employees engaged in fundraising activities that raised nearly $250,000 on behalf of candidates. The Commission found that PSI's fundraising activities often involved the use of corporate facilities to solicit contributions from officers and employees of PSI and other securities firms. Some fundraisers were held in PSI board rooms, and PSI clerical staff were asked to prepare materials for fundraising events during their regular work hours. In various instances, PSI collected contributions and forwarded them to the candidates' campaigns. The Commission found several violations of the law in these activities.

The Act prohibits corporations from making contributions—defined as "anything of value"—to candidates for federal office. 2 U.S.C. §§441b(a) and 100.7(a)(i). Because PSI collected and forwarded contributions, thus facilitating the making of contributions to federal candidates, the Commission concluded that PSI had provided something of value to those candidates, which resulted in a prohibited in-kind contribution.

The 441b prohibition also applies to fundraising activities in which a corporation's employees solicit and gather contributions using corporate facilities. PSI's use of employees to conduct an organized fundraising effort resulted in prohibited in-kind contributions. Although employees may make occasional, isolated or incidental use of a corporation's facilities for individual volunteer activity, this exemption does not extend to the collective enterprise undertaken at PSI during which executives directed their subordinates in fundraising projects using corporate resources.

The Commission found that PSI's violations were "knowing and willful" because PSI was involved in a

similar enforcement matter in 1987 that led to a $7,000 civil penalty. Some PSI personnel involved in that matter were also involved in the 1994 case.

Corporate Contributions in the Name of Another

MUR 3781 also involved illegal contributions. During a period of almost 10 years, the University of Osteopathic Medicine and Health Sciences of Des Moines, Iowa, a nonprofit corporation, reimbursed the University's president for his contributions to federal candidates. The contributions, which totaled approximately $19,000, violated the prohibition on corporate contributions and the ban on contributions made in the name of another. 2 U.S.C. §§441b and 441f. The University and its former president paid $19,000 and $16,000 respectively in civil penalties.

Bank Loans

In AO 1994-10, Franklin National Bank was permitted to waive deposit fees and similar service charges when making loans to candidates and political committees as long as the waivers were consistent with normal industry practice and the Bank's ordinary course of business with commercial customers. Otherwise, a prohibited corporate contribution would result.

In AO 1994-26 the Commission ruled that Scott Douglas Cunningham, a 1994 House candidate, could draw funds for his campaign on lines of credit opened with two banks. A bank loan—including a line of credit—does not result in a contribution if, among other conditions, it is made in the "ordinary course of business." One criterion of the "ordinary course of business" standard is that the loan be made on a basis which assures repayment. 11 CFR 100.7(b)(11).

Although the security for the credit (the candidate's personal income) did not specifically meet FEC criteria for assuring repayment, the Commission determined that the draws would not result in prohibited contributions from the banks because: the lines of credit were opened years before Mr. Cunningham's candidacy, indicating his long-standing relationship with the banks; the terms were not unduly favorable; and the credit appeared to be standard.

In MUR 2619, the Commission obtained a $37,000 civil penalty from a Senate candidate who accepted a loan from an institution that did not qualify as a bank, a savings and loan association or a credit union under 11 CFR 100.7(b)(11). A $100,000 loan from Remington Investments, Inc., was deposited into the personal account of the candidate, Michael Antonovich. Mr. Antonovich then issued a personal check for the full amount to his Senate committee, which used the monies for campaign expenses. Because Remington Investments, Inc., was not a bank, a savings and loan association or a credit union, the $100,000 loan constituted an illegal corporate contribution.

Definition of Political Committee: Major Purpose

Under the Act, a group becomes a political committee, and thus triggers registration and reporting requirements, when its aggregate contributions or expenditures exceed $1,000 in a calendar year. 2 U.S.C. §431(4). In interpreting the statutory definition of political committee, the Commission has considered whether the group's major purpose is to elect federal candidates.

In 1994 litigation, the Commission successfully defended its use of the "major purpose test" in determining whether a lobbying group was a "political committee." The Commission also applied the major purpose test in an advisory opinion concerning the proposed activities of a corporation organized to stage a Presidential nominating convention.

Lobbying Group

The case *Akins v. FEC* stemmed from an administrative complaint (MUR 2804) filed by James E. Akins and five other individuals against the American Israel Public Affairs Committee (AIPAC), an incorporated lobbying group. The complainants alleged that AIPAC, in addition to making prohibited corporate expenditures, failed to register and report as a political committee when those expenditures exceeded $1,000 in a calendar year. The Commission found no probable cause to believe that AIPAC was a political

committee because its campaign activity (although probably in excess of $1,000 per year) was small in comparison with its major purpose, which was lobbying.

When the FEC dismissed the complaint, Mr. Akins and the others filed a lawsuit against the Commission, arguing that the agency should have relied solely on the plain wording of the statute.

The court ruled that the FEC was correct in applying the major purpose test, citing *Buckley v. Valeo* and *MCFL,* in which the Supreme Court used the test to define "political committee." The district court observed that the Supreme Court narrowed the statutory definition in order to protect the constitutional rights of groups formed for issue discussion.

Corporation Running Convention

In AO 1994-25, the Commission concluded that FEE Enterprises (FEE), a corporation organized solely to conduct the Libertarian Party's 1996 Presidential convention, qualified as a political committee under the Act. The Commission based its determination on the arrangement proposed by the Libertarian National Committee (LNC) under which FEE, a for-profit corporation founded by four individuals each contributing $3,333 in start-up capital, would organize, promote and stage the convention and perform other convention-related services.

FEE would meet the definition of political committee through its receipt of contributions in excess of $1,000 in one year (the start-up costs). Furthermore, its major purpose was election related, i.e., making arrangements for the Libertarian Party's convention to nominate a Presidential ticket. Such organizations are required to register and report under 11 CFR 9008.1(b).

The Commission pointed out that, based on the affiliation factors in FEC rules, FEE would be affiliated with the Libertarian National Committee and therefore would share contribution limits with the LNC and its other affiliates.

Disaffiliation

Separate segregated funds (SSFs) established by a parent and its subsidiary are automatically affiliated and thus share the same contribution limits. 11 CFR 110.3(a)(2)(i).

In AO 1993-23 (issued in 1994), the Commission, for the first time, determined that a parent corporation and its subsidiary—and their respective SSFs—would no longer be affiliated when the subsidiary, PacTel, separated from the parent, Pacific Telesis Group (PTG), through a "spin-off"—that is, the distribution of PTG's shares in PacTel to the PTG shareholders.

The Commission applied the criteria used to determine whether affiliation exists in the absence of a parent-subsidiary relationship (11 CFR 110.3(a)(3)(ii)) and concluded that the spin-off would effectively disaffiliate the two companies and their respective SSFs because: PTG would no longer hold a controlling interest in PacTel stock; the governance and management of the two corporations would become separate; and they would no longer share any directors, officers or employees. (By contrast, see two previous opinions on spin-offs, AOs 1987-21 and 1986-42.)

Best Efforts Rules Upheld

On July 22, 1994, in *RNC v. FEC,* the U.S. District Court for the District of Columbia granted summary judgment to the FEC, rejecting a challenge to the agency's revised "best efforts" regulations. The revised rules, which became effective March 3, 1994, explain what steps a committee treasurer must take in order to demonstrate that he or she has used best efforts to obtain and report required information on individual contributors whose aggregate contributions to a committee exceed $200 in a calendar year. 11 CFR 104.7(b).

When reported information on contributors is incomplete, a committee will be in compliance with the law if it can demonstrate that "best efforts" were used to obtain the information. 2 U.S.C. §432(i). To satisfy the best efforts standard, a committee must include a clear request for the information in written solicitations, which must also display the following statement:

"Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate over $200 in a calendar year." Furthermore, committees must make a follow-up request to the contributor for any missing information; this request may not include an additional solicitation or material on any other subject.

The plaintiffs—the Republican National Committee, the National Republican Senatorial Committee and the National Republican Congressional Committee—argued that these requirements violated their free speech rights by impermissibly limiting the language and subject matter of solicitations. The court, however, pointed out that the best efforts regulations are not compulsory but "merely [provide] a 'safe harbor' for any committee that is unable to obtain all of the required information."

In a related argument, the committees contended that the requirement for a follow-up request would curtail free speech by imposing additional costs on committees, leaving less money for political speech. The court said that the added cost to the committees was a "minimal burden" given the strong governmental interest in disclosure of contributor information.

The committees filed an appeal that was still pending at year's end.

New Rule on Use of Candidate's Name in Opposition Project

In 1994, the Commission created a limited exception to the general ban on the use of a candidate's name in the title of a "special project" created by an unauthorized committee (i.e., a party committee, PAC or other committee not authorized by any candidate). The exception allows an unauthorized committee to use a candidate's name in project titles that clearly oppose the candidate.

The ban was adopted in 1992 to put a stop to the increasing practice—generally by PACs—of including a candidate's name in the title of a special project fundraiser. There was evidence that this practice had misled contributors into believing they were making contributions to the named candidate, thus diverting substantial funds from the candidate's campaign. However, a group called Citizens Against David Duke petitioned the Commission to repeal the rule, claiming that it infringed upon free speech rights. The FEC said that the ban itself was justified as it protects the integrity of the electoral process. At the same time, the agency recognized that fraud and abuse were less likely to occur where a project title opposed a candidate. The new regulation at 11 CFR 102.14(b)(3) became effective June 30, 1994.

Rulemaking on Personal Use

On December 1, the Commission approved final rules on the personal use of campaign funds. The Commission planned to vote on the explanation and justification for the rules in 1995.[3]

Under the law, candidates have long been prohibited from using campaign funds for personal expenses. However, until the beginning of the 103d Congress in January 1993, many Members of Congress were exempted from this ban. When Congress extended the ban to all candidates, the Commission anticipated that a greater number of questions would arise in this area and initiated a rulemaking to clarify the regulations at 11 CFR 113.1 and 113.2. The Commission sought comments on proposed rules published in August 1993 and in August 1994, and heard testimony at a January 1994 public hearing.

The final rules ban any use of campaign funds for expenses that would exist irrespective of the campaign or the duties of a federal officeholder. The rules apply the personal use prohibition to several situations. For example, the rules prohibit the use of campaign funds to pay the candidate's living expenses (e.g. mortgage, rent, clothing or tuition).

Salary

In a 3-3 split vote, the Commission was unable to decide whether campaign funds could be used to pay the candidate a salary. Three Commissioners believed that campaign salary payments were justified because they would offset the public salary received by incumbents throughout the campaign and mitigate

[3] The final rules became effective on April 5, 1995.

the effects of the prohibition on receipt of a private salary while campaigning.[4] Three Commissioners, however, took the position that: (1) the FEC did not have the authority to exempt salary payments from the personal use ban; and (2) a salary could be used as a loophole for converting campaign funds to personal use.

Campaign Use of Candidate's Property

Under the personal use rules, a campaign is permitted to rent property owned by the candidate or a member of the candidate's family as long as the rental payments do not exceed fair market value and the property is not used as the personal residence of the candidate or family member. Two 1994 advisory opinions (AOs 1994-8 and 1994-22) provided similar guidance, but they also cautioned that paying less than the usual charge would result in a campaign contribution.

The opinions concerned campaign rental of office space and a vehicle from candidate-owned businesses. In both cases, the Commission said that if the committee were to pay more than the usual charge, the excess amount accruing to the candidate's business would constitute personal use of campaign funds. On the other hand, if the committee were to pay less than the usual charge, the candidate-owned business would be making a contribution to the committee—a prohibited contribution, in the case of a corporation.

[4] If a candidate receives compensation from his or her employer for time spent campaigning, the payments are considered a contribution. Such payments are likely to result in prohibited or excessive contributions. However, no contribution results if the compensation payments were made before the individual became a candidate and continue during the campaign and if these additional three conditions are met: the compensation results from *bona fide* employment that is genuinely independent of the candidate's campaign; the compensation is exclusively in consideration of services provided by the candidate as part of that employment; and the compensation is not in excess of the rate at which others would be paid for the same work.

Compliance

During 1994, the initial and final stages of the compliance process were the focus of an advisory opinion and litigation. The advisory opinion articulated the Commission's position on the confidentiality of a complaint, and the court cases served to enforce payment of civil penalties.

The Confidentiality Provision

In AO 1994-32, the Commission determined that Kellie Gasnik could freely share with the public the fact that she had filed an administrative complaint with the Commission, the allegations contained in the complaint, and any other information contained in or related to the subject matter of the complaint.[5] Divulging this information did not violate the provisions safeguarding the confidentiality of a Matter Under Review (MUR). 2 U.S.C. §437g(a)(12)(A) and 11 CFR 111.21. Those provisions protect the confidentiality of information connected with any Commission investigation of a MUR—for example, a notification of findings or an action taken by the FEC in connection with the case—but they do not apply to the substance of the complaint. In the absence of prior advisory opinions dealing with the issue of MUR confidentiality, the Commission relied on precedents set in several MURs.[6]

Payment of Penalties

In March 1994, a U.S. district court held Cesar Rodriguez in contempt of court for failing to pay a $5,000 penalty that had been outstanding since October 1988, when the court ruled that he had knowingly assisted in making contributions in the names of others, a violation of 2 U.S.C. §441f. Under the terms of the 1994 judgment, Mr. Rodriguez was to pay $100 a day until the penalty was paid and to reimburse the FEC its costs in the proceeding.

[5] The respondent in this complaint, Lenora B. Fulani, a 1992 Presidential candidate, filed suit in June 1994 asking the court to enjoin the Commission from investigating the complaint on the grounds that it was improperly filed. This case was pending at year's end. See the August 1994 *Record* for more information.

[6] See MURs 3573, 3170, 3169, 3168, 1244 and 298.

America's PAC and its acting treasurer were also held in civil contempt for failing to pay a penalty. In January 1992, a U.S. district court imposed a $25,000 penalty against the defendants for several violations of the election law. In a May 1994 contempt order, the court reduced the penalty to $5,000 but ordered defendants to pay the penalty in full within 30 days.

In September 1994, the defendants in another suit agreed to a schedule for paying $5,500 in outstanding penalties. The defendants—the Committee of 100 Democrats, the Committee to Elect Fusco to Congress and Dominick A. Fusco—had been ordered to comply with the terms of two conciliation agreements that included $3,500 in penalties. A U.S. district court ordered Mr. Fusco and the Committee to Elect Fusco each to pay an additional $1,000 penalty for violating the terms of both agreements.

Coordinated Party Expenditures

Under the Act, national party committees are permitted to make limited "coordinated party expenditures" on behalf of their House and Senate nominees in the general election. 2 U.S.C. §441a(d). In 1994, the Commission and the courts considered the application of these expenditure limits to the 1992 Senate election in Georgia. In 1992, the Democratic Senatorial Campaign Committee (DSCC) and the National Republican Senatorial Committee (NRSC) were each permitted to spend up to $535,608 on behalf of their party's nominee for the U.S. Senate in Georgia.

Under Georgia law, when an election for U.S. Senate fails to produce a majority winner, a second election must be held between the top two vote getters. None of the Senate candidates in Georgia's November 3, 1992, general election won a majority, and the Democratic and Republican nominees went on to compete in a second election held November 24. The Republican candidate prevailed.

The NRSC had exhausted its coordinated party spending authority by the November 3 election, while the DSCC had not. The NRSC requested an advisory opinion from the FEC as to whether the November 24 election was a second general election or a runoff. Both national party committees would be legally entitled to a new $535,608 spending authority if the election were deemed a general election, but not if it were deemed a runoff. The Commission, however, split 3-3 on this question, and no advisory opinion was issued.

The NRSC proceeded on the basis that the November 24 election was a second general election, spending nearly $535,608 in support of its candidate. The DSCC spent only the balance remaining from the allowance for the November 3 election. The DSCC filed a complaint with the FEC on November 19, 1992, alleging that the NRSC had violated federal election law by exceeding its spending limit in the November 24 race. In voting on whether to pursue the complaint, the Commission again split 3-3 and, as a result, dismissed the complaint. The DSCC then filed suit against the FEC in the U.S. District Court for the District of Columbia.

On November 14, 1994, the court held that the Commission's dismissal of the DSCC's November 1992 administrative complaint was contrary to law. The court concluded that the November 24 election was not a general election because it did not satisfy the definition at 11 CFR §100.2(b): the election was not held on a Tuesday following the first Monday in November in an even numbered year, nor was it held to fill a vacancy.

The court further reasoned that the November 24 election fit the regulatory definition of a runoff election because it was held after a general election and was prescribed by applicable state law as the means for deciding which candidate was the winner. 11 CFR §100.2(d).

The court ordered the FEC to initiate appropriate enforcement proceedings against the NRSC. The Commission asked the court for clarification of procedural aspects of its order.[7]

Constitutional Issues

In addition to the issues addressed *in NRA v. FEC* (discussed in Chapter One), the Commission, in 1994, was faced with other constitutional challenges to the Federal Election Campaign Act.

[7] On March 9, 1995, the court denied the FEC's request. See the April 1995 *Record* for more information.

Nonresident Contributions

Plaintiffs in three separate court cases claimed that the Act was unconstitutional to the extent it permitted contributions by donors living outside a candidate's state or district. They contended that nonresident contributors exercised undue influence over electoral outcomes, thus infringing on the constitutional right of resident voters to elect their U.S. Representatives and Senators. Plaintiffs further argued that nonresident contributions created the appearance that an officeholder was answerable to nonresident contributors rather than to constituents.

Two of these cases, *Froelich v. FEC* and *Whitmore and Quinlan v. FEC*, were dismissed by district courts. The courts ruled that the plaintiffs did not have standing to bring suit. Both courts observed that the general grievances presented in the cases were more properly addressed by the legislative branch. Plaintiffs in both cases filed appeals that were still pending at the end of 1994.

The other case on nonresident contributions, *Lytle v. FEC,* was also dismissed.

Challenger Disadvantage

In another suit unresolved at the end of the 1994, *Albanese v. FEC,* plaintiffs asked the court to rule that the Act is unconstitutional to the extent it permits private campaign contributions and expenditures. The plaintiffs argued that all federal election campaign expenditures made with private money are unconstitutional because such a system, which they labelled a "wealth primary," discriminates in favor of incumbents against poor people and the candidates they support. Plaintiffs sought a court mandated public funding system for Congressional elections.

Chapter Four
The Commission

Commissioners

During 1994, Trevor Potter served as Chairman of the Commission and Danny L. McDonald served as Vice Chairman. On December 15, 1994, the Commission elected Mr. McDonald to be its 1995 Chairman and Lee Ann Elliott to be its 1995 Vice Chairman. Both Commissioners had been reappointed by President Clinton on July 1, 1994.

For biographies of the Commissioners, the Staff Director, General Counsel and Inspector General, see Appendix 1.

Equal Employment Opportunity Office

During 1994, the Commission created a separate Equal Employment Opportunity (EEO) Office with a full-time director and administrative staff. Previously, an FEC staff member performed EEO duties on a part-time basis. The EEO office also increased its collateral duty staff—FEC staff with part-time appointments to the EEO office—with the addition of a complaints investigator and a third EEO counselor.

In its first year of operation, the EEO Office developed a new dispute resolution technique program, the Early Intervention Program, as an alternative to the formal EEO complaint process. Under the Early Intervention Program, Commission employees with an EEO-related problem meet informally with the EEO director and the responsible supervisor. Together they discuss the situation, suggest solutions, create a written agreement to help resolve the problems and schedule follow-up meetings to evaluate progress. The Commission used this informal program to resolve eight cases during 1994. The program not only provided an immediate response to employee concerns but also offered a cost-effective mechanism for addressing those concerns. The cost of a formal complaint, processed to completion, is an estimated $80,000, according to the EEO Commission.

Under the guidance of the EEO Office, the Commission developed a recruitment plan for minority attorneys in 1994 and arranged for external vacancy announcements to be mailed to special emphasis groups—handicapped employees, disabled veterans, women and minorities. In a related effort, the office held a series of programs celebrating ethnic diversity and conducted trainings in cultural diversity, sexual harassment and the EEO complaint process.

Through the efforts of the EEO office, the Commission began participating in the National Urban League Summer Intern Program, hiring its first six interns during July and August.

Ethics

In 1994, the Commission's Ethics staff trained the entire agency on the government-wide standards of conduct issued by the Office of Government Ethics (OGE). The ethics staff also worked with the OGE during its audit of the Commission's ethics program and filed timely reports with that body, including the annual agency ethics report, the annual ethics training plan and semiannual travel payment reports.

Inspector General

The Inspector General Act requires the Commission's Office of the Inspector General (OIG) to conduct audits and investigations of FEC programs to detect waste, fraud and abuse. The OIG conducted three audits and one management review and closed three investigations in 1994.

In order to protect OIG investigative files from access by individuals under investigation—which could compromise the office's enforcement of criminal and civil laws—the Commission approved proposed rules that would exempt those files from certain provisions of the Privacy Act of 1974. The proposed rules were published for public comment on October 27, 1994.[1]

[1] There being no comment or changes made to the proposed rules, the final rules became effective on February 21, 1995.

The FEC's Budget: Fiscal Year 1995

On May 12, 1994, FEC Vice Chairman Danny L. McDonald, as Chairman of the Finance Committee, testified before the Senate Committee on Rules and Administration, requesting $31,793,000 and a staffing level of 347 employees [2] for fiscal year 1995 (which began October 1, 1994). By contrast, the Office of Management and Budget (OMB) proposed an FEC budget of $27,216,000 and 294 employees. The final fiscal year 1995 appropriation approved by Congress was $27,106,000—almost $4.7 million less than the FEC's request—and 327 employees.

Appropriations Oversight

During House floor debate on the fiscal year 1995 FEC appropriation, Congressman Bob Livingston proposed an amendment to reduce the OMB recommended funding by $3.5 million (which would have necessitated a 35 person cut in FEC staff), citing, among other things, the Commission's completion of relatively few of the 1992 Presidential audits and its decision to conclude some enforcement matters without taking action. The House included this amendment in its authorization for the Commission.

In a July 1994 letter to the chairmen of the House and Senate Appropriations Committees, the Commission urged approval of the full funding level recommended by the Office of Management and Budget. In response to Congressman Livingston's criticism, the letter cited recent Commission efforts to streamline operations and put strained resources to their most efficient use.

Chief among these improvements was the enforcement prioritization system, a case management system that focused resources on significant cases and accelerated the closing of less significant or stale cases.[3] The Commission pointed out that no case was closed without a careful review by the enforcement staff and a Commission vote. The FEC also noted that it had already revised its Presidential audit procedures, resulting in substantially improved timeliness for the 1992 election cycle. All mandatory Presidential committee audits were completed in 1994. (See Chapter Two.)

The letter went on to explain the dramatic increases in Commission workload, particularly in the areas of audit and disclosure, that resulted from burgeoning campaign finance activity. By June 1994, the FEC had processed more itemized transactions for the 1994 election cycle than the total transactions for the 1984 and 1986 cycles. The Commission explained that the phenomenal growth expected throughout the 1994 cycle would lead to delays in processing and reviewing reports unless the fiscal year 1995 staffing request was approved.

The House-Senate Conference Committee voted to appropriate fiscal year 1995 funding of $27,106,000, $110,000 less than the OMB recommendation.

Management Plan

The fiscal year 1995 management plan allocated additional positions to the Reports Analysis, Data, Information and Audit Divisions. While staff increases in the first three divisions were aimed at alleviating work overloads, additional Audit staff were required to replace the Government Accounting Office auditors (who had, in previous years, helped conduct Presidential audits) and to conduct non–Presidential audits in the 1996 election cycle.

Under the fiscal year 1995 management plan, a large portion of the $27,106,000 appropriation was allocated for 327 staff positions. The plan also budgeted $972,000 for internal computer enhancements and preliminary work on an electronic filing system for campaign finance reports submitted to the FEC (see below). Four new positions in Data were included in the funding for this project, in addition to $753,500 in hardware, software and other equipment.

Budget allocation comparisons for fiscal years 1994 and 1995 appear in the table and graphs on the pages that follow.

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[2] The term "employees" is used in the budget sections to mean full-time equivalent (FTE) positions.

[3] See Chapter One, p. 4, for a more complete description of the prioritization system.

The FEC's Budget: Fiscal Year 1996

The Commission requested $31,820,000 in funding and 355 employees for fiscal year 1996. The request would continue funding at the fiscal year 1995 level but would provide an additional $2.5 million and three employees specifically for enhancement of the FEC's computer system and development of an electronic filing system. Recommended by the FEC's oversight committees, an electronic filing system would allow PACs and party committees to file their campaign finance reports on computer disks.[4]

OMB proposed a funding level of $29,021,000 and a staffing level of 337 employees (a decrease of $2.8 million and 18 positions from the FEC's request). The Commission agreed to support this proposal absent any other reductions or changes.

Functional Allocation of Budget *

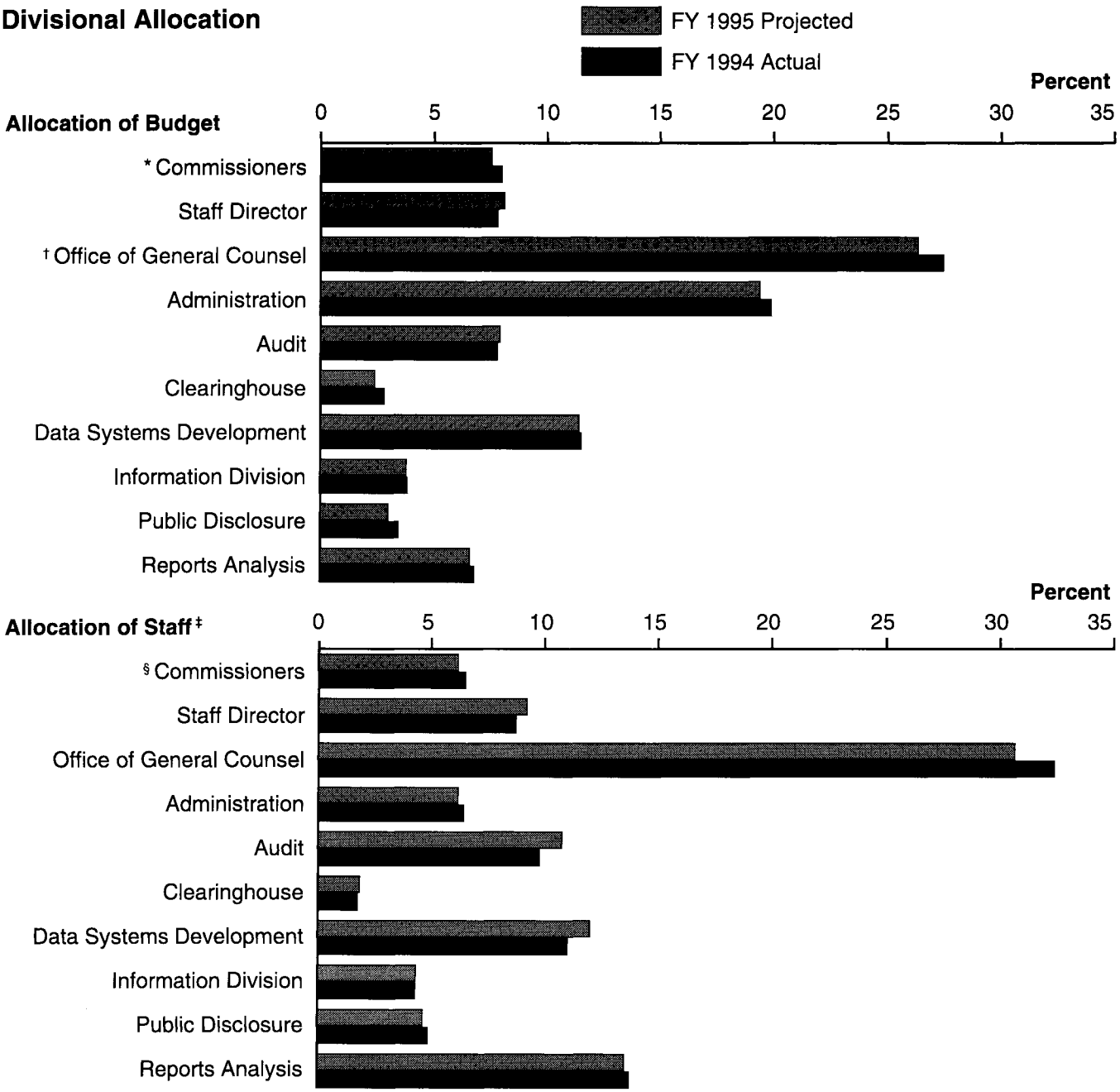
	FY 1994	FY 1995
Salaries and Benefits	$16,865,200	$19,300,000
Travel	314,200	377,200
Space Rental	2,236,300	2,664,600
Equipment Rental	368,500	293,400
Telephone/Telegraph	319,200	318,500
Postage	287,100	260,000
Printing/Microfilm	337,100	441,000
Training	103,300	149,900
Repairs and Maintenance	155,300	524,900
Federal Agency Services	300,400	167,000
Supplies and Materials	331,400	321,500
Publications	257,800	296,500
Contracts	742,100	830,000
Administrative Expenses	351,200	227,500
Equipment Purchases	551,400	934,000
Lapse †	43,500	0
Total	$23,564,000	$27,106,000

* This table differs from previous annual reports to reflect changes in OMB accounting procedures.

† This amount remained unspent in fiscal year 1994 and was returned to the U.S. Treasury.

[4] The agency plans to complete work on the project in fiscal years 1996 and 1997, assuming funding is available.

Divisional Allocation



* Includes Inspector General's office and representational funds.

† The Commission's budget for the Office of General Counsel includes these functions (listed in alphabetical order): administrative law, advisory opinions, enforcement, ethics, litigation, Presidential public financing, regulations and special projects.

‡ The Commission averaged 300 full-time equivalent (FTE) positions in FY 1994 and projected 327 for FY 1995.

§ Includes Inspector General's office.

Chapter Five Legislative Recommendations

On February 7, 1995, the Commission submitted 63 legislative recommendations to the President and Congress in a new, two-part package. The first part, entitled "Legislative Recommendations to Improve the Efficiency and Effectiveness of Current Law," contained 20 administrative and technical recommendations designed to ease the burden on political committees and streamline the administration of current law. The second part, "General Legislative Recommendations," contained 43 additional recommendations concerning areas of the law which have been problematic. In each case, the Commission described the problem and asked Congress to consider clarification or more comprehensive reform of the law.

The complete set of recommendations follows. As in the past, each recommendation is followed by an explanation of the need for and expected benefits from the change. Parenthetical references to 1995 indicate new recommendations or recommendations that were revised in 1995.

Part I Legislative Recommendations to Improve Efficiency and Effectiveness of Current Law

Disclosure

Waiver Authority (revised 1995)
Section: 2 U.S.C. §434

Recommendation: The Commission recommends that Congress give the Commission the authority to adjust the filing requirements or to grant general waivers or exemptions from the reporting requirements of the Act.

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.

Unauthorized committees also face unnecessary reporting requirements. For example, the 1996 October Monthly report will be due three days before the 12-Day Pre-General Election Report; however, both reports will need to be mailed on the same day. A waiver authority would enable the Commission to eliminate the requirement to file the monthly report, as long as the committee includes the activity in the Pre-General Election Report and files the report on time. The same disclosure would be available before the election, but the committee would only have to file one report.

In other situations, disclosure would be served if the Commission had the authority to adjust the filing requirements, as is currently allowed for special elections. For example, runoff elections are often scheduled shortly after the primary election. In many instances, the close of books for the runoff pre-election report is the day after the primary—the same day that candidates find out if there is to be a runoff and who will participate. When this occurs, the 12-day pre-election report discloses almost no runoff activity. In such a situation, the Commission should have the authority to adjust the filing requirements to allow for a 7-day pre-election report (as opposed to a 12-day report), which would provide more relevant disclosure to the public.

Granting the Commission the authority to waive reports or adjust the reporting requirements would reduce needlessly burdensome disclosure demands.

Campaign-Cycle Reporting (revised 1995)
Section: 2 U.S.C. §434

Recommendation: The Commission recommends that Congress revise the law to require authorized candi-

date committees to report on a campaign-to-date basis, rather than a calendar year cycle, as is now required.

Explanation: Under the current law, authorized committees must track contributions received in two different ways. First, to comply with the law's reporting requirements, the committee must track donations on a calendar year basis. Second, to comply with the law's contribution limits, the committee must track contributors' donations on a per-election basis. Simplifying the law's reporting requirement to allow reporting on a campaign-to-date basis would make the law's recordkeeping requirements less burdensome to committees. (Likewise, the Commission recommends that contribution limits be placed on a campaign-cycle basis as well. See the recommendation entitled "Election Period Limitations.")

This change would also benefit public disclosure of campaign finance activity. Currently, contributions from an individual are itemized only if the individual donates more than $200 in the aggregate during a calendar year. Likewise, disbursements are itemized only if payments to a specific payee aggregate in excess of $200 during a calendar year. Requiring itemization once contributions from an individual or disbursements to a payee aggregate in excess of $200 during the campaign would capture information of interest to the public that is currently not available. Moreover, to determine the actual campaign finance activity of a committee, reporters and researchers must compile the total figures from several year-end reports. 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 Commission recommends that the principal campaign committee of a Congressional candidate 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.

Reporting Deadlines for Semiannual, Year-End and Monthly Filers
Section: 2 U.S.C. §§434(a)(3)(B) and (4)(A) and (B)

Recommendation: The Commission recommends that Congress change the reporting deadline for all semiannual, year-end and monthly filers to 15 days after the close of books for the report.

Explanation: Committees are often confused because the filing dates vary from report to report. Depending on the type of committee and whether it is an election year, the filing date for a report may fall on the 15th, 20th or 31st of the month. Congress should require that monthly, quarterly, semiannual and year-end reports are due 15 days after the close of books of each report. In addition to simplifying reporting procedures, this change would provide for more timely disclosure, particularly in an election year. In light of the increased use of computerized recordkeeping by political committees, imposing a filing deadline of the fifteenth of the month would not be unduly burdensome.

Computer Filing of Reports (revised 1995)
Section: 2 U.S.C. §§432(g) and 434(a)(1)

Recommendation: The Commission recommends that Congress clarify that the Commission is explicitly authorized to accept reports filed electronically and to prescribe rules and procedures which identify eligible committees and the process by which they can submit

their reports, including standards to ensure compliance with the signatory duties and responsibilities of treasurers.

Explanation: Since the passage and amendment of the Act's reporting provisions in 1971 and 1979, technology has advanced dramatically. Today, computer technology makes it possible for committees to file their reports electronically. For example, taxpayers may now file tax returns electronically. The advantages of electronic filing include increased convenience for filers and more timely, accurate and thorough disclosure.

The ability of the Commission to move toward electronic filing is hampered, however, in part, by uncertainty regarding the Commission's legal authority to require committees to file using electronic technology. The current law does not give the Commission explicit authority to require committees to use such technology. While the Commission might persuade some filers to voluntarily provide some or all disclosure information in an electronic format, clear authority to mandate that at least some committees file electronically would greatly facilitate such a program. At the same time, the Commission recognizes that some committees choose not to use computers to generate their reports. To alleviate the possible expense and burden to smaller committees, Congress could authorize the Commission to establish minimum financial thresholds for mandated electronic filing by different categories of committees.

In addition, some clarification would be needed concerning how to meet the treasurers' signature requirement. The law requires an original signature by treasurers, attesting to the accuracy of the reports they file. Any statutory change should authorize the Commission to develop a mechanism to meet the signature requirement.

Finally, electronic filing might require some changes within the offices of the Clerk of the House and the Secretary of the Senate. Under the law, these offices are the points of entry for House and Senate reports. Currently, neither office possesses the technology needed to accept electronic filings. Should electronic filing be adopted for House and Senate campaigns, the computer capabilities of the Clerk of the House and the Secretary of the Senate would have to be updated accordingly.

Alternatively, the Commission could be made the point of entry for such filers. Some economies could be realized if separate computer equipment and facilities did not have to be maintained for receiving and processing disclosure information in all three offices. If House and Senate campaign committees filed directly with the Commission, and if the data were in an electronic format, easy access at Senate and House locations could be assured at relatively little cost. (See the recommendation "Commission as Sole Point of Entry for Disclosure of Documents" for a statement of the benefits of this approach.)

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. This would affect the House and Senate candidate committees only. Under current law, those committees alone file their reports with the Clerk of the House and the Secretary of the Senate, respectively, who then forward microfilmed copies to the FEC.

Explanation: The Commission has offered this recommendation for many years. The experience of handling the year-end report (filed in January 1992) provides an excellent illustration of why a single point of entry is desirable. Some 234 reports filed by House and Senate candidate committees were mistakenly filed with the Federal Election Commission instead of with the Clerk of the House and the Secretary of the Senate. Consequently, every day, for two weeks around the filing deadline, the FEC shipped back to the Clerk and the Secretary packages filled with House and Senate reports that were filed with the FEC in error. The result? Disclosure to the public was delayed, and government resources were wasted.

Moreover, if the FEC received the original report, it could use it directly for data entry, as it now uses the

reports filed by PACs, party committees and Presidential committees.

Should Congress decide to codify the previous recommendation on computerized reports, the Commission should become the sole point of entry to process these reports, avoiding the need for all three offices to obtain the technology necessary to accept electronic filings.

We also reiterate here the statement we have made in previous years because it remains valid. 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, 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, recommended that all reports be filed directly with the Commission (Committee Print, 96th Cong., 1st Sess., at 122 (1979)).

Facsimile Machines
Section: 2 U.S.C. §434(b)(6)(B)(iii) and (c)(2)

Recommendation: The Commission recommends that Congress modify the Act to provide for the acceptance and admissibility of 24-hour notices of independent expenditures via telephone facsimiles.

Explanation: Independent expenditures that are made between 20 days and 24 hours before an election must be reported within 24 hours. The Act requires that a last-minute independent expenditure report must include a certification, under penalty of perjury, stating whether the expenditure was made "in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee." This requirement appears to foreclose the option of using a facsimile machine to file the report. The next report the committee files, however, which covers the reporting period when the expenditure was made, must also include the certification, stating the same information. Given the time constraint for filing the report, the requirement to include the certification on the subsequent report, and the availability of modern technology that would facilitate such a filing, Congress should consider allowing such filings via telephonically transmitted facsimiles ("fax" machines). This could be accomplished by allowing the committee to fax a copy of the schedule disclosing the independent expenditure and the certification. The original schedule would be filed with the next report. Acceptance of such a filing method would facilitate timely disclosure and simplify the process for the filer.

State Filing for Presidential Candidate Committees
Section: 2 U.S.C. §439

Recommendation: The Commission recommends that Congress consider clarifying the state filing provisions for Presidential candidate 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. Consid-

eration 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.

Public Disclosure at State Level (revised 1995)
Section: 2 U.S.C. §439

Recommendation: The Commission recommends that Congress 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 already exists in 30 states and has 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.

Contributions and Expenditures

Election Period Limitations for Contributions to Candidates (revised 1995)
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 Commission has had to adopt several rules to clarify which contributions are attributable to which election and to assure that contributions are reported and used for the proper election. Many enforcement cases have been generated where contributors' donations are excessive *vis-a-vis* a particular election, but not *vis-a-vis* the $2,000 total that could have been contributed for the cycle. Often this is due to donors' failure to fully document which election was intended. Sometimes the apparent "excessives" for a particular election turn out to be simple reporting errors where the wrong box was checked on the reporting form. Yet, substantial resources must be devoted to examination of each transaction to determine which election is applicable. Further, several enforcement cases have been generated based on the use of general election contributions for primary election expenses or *vice versa.*

Most of these complications would be eliminated with adoption of a simple "per cycle" contribution limit. 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. The Commission and committees could get out of the business of determining whether contributions are properly attributable to a particular election, and the difficulty of assuring that particular contributions are used for a particular election could be eliminated.

It would be advisable to clarify that if a candidate has to participate in more than two elections (e.g., in a post-primary runoff as well as a primary and general), the campaign cycle limit would be $3,000. In addition, because at the Presidential level candidates might opt to take public funding in the general election and thereby be precluded from accepting contributions, the $1,000/5,000 "per election" contribution limits should be retained for Presidential candidates.

A campaign cycle contribution limit may allow donors to target more than $1,000 toward a particular primary or general election, but this would be tempered by the tendency of campaigns to plan their fundraising and manage their resources so as not to be left without fundraising capability at a crucial time.

Application of $25,000 Annual Limit
Section: 2 U.S.C. §441a(a)(3)

Recommendation: The Commission recommends that Congress consider modifying the provision that limits individual contributions to $25,000 per calendar year so that an individual's contributions count against his or her annual limit for the year in which they are made.

Explanation: Section 441a(a)(3) now provides that a contribution to a candidate made in a nonelection year counts against the individual donor's limit for the year in which the candidate's election is held. This provision has led to some confusion among contributors. For example, a contributor wishing to support Candidate Smith in an election year contributes to her in November of the year before the election. The contributor assumes that the contribution counts against his limit for the year in which he contributed. Unaware that the contribution actually counts against the year in which Candidate Smith's election is held, the contributor makes other contributions during the election year and inadvertently exceeds his $25,000 limit. By requiring contributions to count against the limit of the calendar year in which the donor contributes, confusion would be eliminated and fewer contributors would inadvertently violate the law. The change would offer the added advantage of enabling the Commission to better monitor the annual limit. Through the use of our data base, we could more easily monitor contributions made by one individual regardless of whether they were given to retire the debt of a candidate's previous campaign, to support an upcoming election (two, four or six years in the future) or to support a PAC or party committee. Such an amendment would not alter the per candidate, per election limits. Nor would it affect the total amount that any individual could contribute in connection with federal elections.

Enforcement

Ensuring Independent Authority of FEC in All Litigation (revised 1995)
Section: 2 U.S.C. §§437c(f)(4) and 437g

Recommendation: Congress has granted the Commission authority to conduct its own litigation independent of the Department of Justice. This independence is an important component of the statutory structure designed to ensure nonpartisan administration and enforcement of the campaign financing statutes. The Commission recommends that Congress make the following four clarifications that would help solidify the statutory structure:

1. Congress should clarify that the Commission is explicitly authorized to petition the Supreme Court for *certiorari* under Title 2, i.e., to conduct its Supreme Court litigation.
2. Congress should amend the Act to specify that local counsel rules (requiring district court litigants to be represented by counsel located within the district) cannot be applied to the Commission.
3. Congress should give the Commission explicit authorization to appear as an *amicus curiae* in cases that affect the administration of the Act, but do not arise under it.
4. Congress should require the United States Marshal's Service to serve process, including summonses and complaints, on behalf of and at no expense to the Federal Election Commission.

Explanation: The first recommendation states explicitly that the Commission is authorized to petition the Supreme Court for a writ of *certiorari* in cases relating to the Commission's administration of Title 2 and to independently conduct its Supreme Court litigation under that Title. The Commission explicitly has this authority under Title 26 and had a long-standing practice of doing so under Title 2, until the Supreme Court ruled that Title 2 does not grant the Commission such authority. See *FEC v. NRA Political Victory Fund, 63 U.S.L.W.* 4027 (U.S. No. 93-1151, Dec. 6, 1994). Under this ruling, the Commission must now obtain permission from the Solicitor General before seeking *certiorari* in a Title 2 case. The Solicitor General may decline to authorize this action in cases where the Commission believes Supreme Court review is advisable. Even where acting in accordance with the Commission's recommendation to seek *certiorari* in a given case, the Solicitor General would still control the position taken in the case and the arguments made on behalf of the Commission. This transfer of the Commission's Supreme Court litigation authority to the Solicitor General, who is an appointee of and subject to removal by the President, misconstrues Congressional intent in establishing the Commission as a bipartisan and independent civil enforcement agency. Pertinent provisions of Title 2 should be revised to clearly state the Commission's exclusive and independent authority on all aspects of Supreme Court litigation in all cases it has litigated in the lower courts.

With regard to the second of these recommendations, most district courts have rules requiring that all litigants be represented by counsel located within the district. The Commission, which conducts all of its litigation nationwide from its offices in Washington, D.C., is unable to comply with those rules without compromising its independence by engaging the local United States Attorney to assist in representing it in courts outside of Washington, D.C. Although most judges have been willing to waive applying these local counsel rules to the Commission, some have insisted that the Commission obtain local representation. An amendment to the statute specifying that such local counsel rules cannot be applied to the Commission would eliminate this problem.

Concerning the third recommendation, the FECA explicitly authorizes the Commission to "appear in and defend against any action instituted under this Act," 2 U.S.C. §437c(f)(4), and to "initiate...defend...or appeal any civil action...to enforce the provisions of this Act and chapter 95 and chapter 96 of title 26," 2 U.S.C. §437d(a)(6). These provisions do not explicitly cover instances in which the Commission appears as an *amicus curiae* in cases that affect the administration of the Act, but do not arise under it. A clarification of the Commission's role as an *amicus curiae* would remove any questions concerning the Commission's authority to represent itself in this capacity.

Concerning the final recommendation, prior to its amendment effective December 1, 1993, Rule 4(c)(B)

of the Federal Rules of Civil Procedure provided that a summons and complaint shall be served by the United States Marshal's Service on behalf of the United States or an officer or agency of the United States. Rule 4, as now amended, requires all plaintiffs, including federal government plaintiffs such as the Commission, to seek and obtain a court order directing that service of process be effected by the United States Marshal's Service. Given that the Commission must conduct litigation nationwide from its offices in Washington, D.C., it is burdensome and expensive for it to enlist the aid of a private process server or, in the alternative, seek relief from the court, in every case in which it is a plaintiff. Returning the task of serving process for the Commission to the United States Marshal's Service would alleviate this problem and assist the Commission in carrying out its mission.

Enhancement of Criminal Provisions
Section: 2 U.S.C. §437g(a)(5)(C) and (d)

Recommendation: The Commission recommends that it have the ability to refer appropriate matters to the Justice Department for criminal prosecution at any stage of a Commission proceeding.

Explanation: The Commission has noted an upsurge of §441f contribution reimbursement schemes, that may merit heavy criminal sanction. Although there is no prohibition preventing the Department of Justice from initiating criminal FECA prosecutions on its own, the vehicle for the Commission to bring such matters to the Department's attention is found at §437g(a)(5)(C), which provides for referral only after the Commission has found probable cause to believe that a criminal violation of the Act has taken place.[1] Thus, even if it is apparent at an early stage that a case merits criminal referral, the Commission must pursue the matter to the probable cause stage before referring it to the Department for criminal prosecution. To conserve the Commission's resources, and to allow the Commission to bring potentially criminal FECA violations to the Department's attention at the earliest possible time, the Commission recommends that consideration be given to explicitly empower the Commission to refer apparent criminal FECA violations to the Department at any stage in the enforcement process.

Random Audits
Section: 2 U.S.C. §438(b)

Recommendation: The Commission recommends that Congress consider legislation that would require the Commission to randomly audit political committees in an effort to promote voluntary compliance with the election law and ensure public confidence in the election process.

Explanation: In 1979, Congress amended the FECA to eliminate the Commission's explicit authority to conduct random audits. The Commission is concerned that this change has weakened its ability to deter abuse of the election law. Random audits can be an effective tool for promoting voluntary compliance with the Act and, at the same time, reassuring the public that committees are complying with the law. Random audits performed by the IRS offer a good model. As a result of random tax audits, most taxpayers try to file accurate returns on time. Tax audits have also helped create the public perception that tax laws are enforced.

There are many ways to select committees for a random audit. One way would be to randomly select committees from a pool of all types of political committees identified by certain threshold criteria such as the amount of campaign receipts and, in the case of candidate committees, the percentage of votes won. With this approach, audits might be conducted in many states throughout the country.

Another approach would be to randomly select several Congressional districts and audit all political committees in those districts (with the exception of certain candidates whose popular vote fell below a certain threshold) for a given election cycle. This sys-

[1] The Commission has the general authority to report apparent violations to the appropriate law enforcement authority (see 2 U.S.C. §437d(a)(9)), but read together with §437g, §437d(a)(9) has been interpreted by the Commission to refer to violations of law unrelated to the Commission's FECA jurisdiction.

tem might result in concentrating audits in fewer geographical areas.

Such audits should be subject to strict confidentiality rules. Only when the audits are completed should they be published and publicized. Committees with no problems should be commended.

Regardless of how random selections were made, it would be essential to include all types of political committees—PACs, party committees and candidate committees—and to ensure an impartial, evenhanded selection process.

Expedited Enforcement Procedures and Injunctive Authority

Section: 2 U.S.C. §437g

Recommendation: The Commission recommends that Congress consider whether the FECA should provide for expedited enforcement of complaints filed shortly before an election, permit injunctive relief in certain cases, and allow the Commission to adopt expedited procedures in such instances.[2]

Explanation: The statute now requires that before the Commission proceeds in a compliance matter it must wait 15 days after notifying any potential respondent of alleged violations in order to allow that party time to file a response. Furthermore, the Act mandates extended time periods for conciliation and response to recommendations for probable cause. Under ordinary circumstances such provisions are advisable, but they are detrimental to the political process when complaints are filed immediately before an election. In an effort to avert intentional violations that are committed with the knowledge that sanctions cannot be enforced prior to the election and to quickly resolve matters for which Commission action is not warranted, Congress should consider granting the Commission some discretion to deal with such situations on a timely basis.

Even when the evidence of a violation has been clear and the potential impact on a campaign has been substantial, without the authority to initiate a civil suit for injunctive relief, the Commission has been unable to act swiftly and effectively in order to prevent a violation. The Commission has felt constrained from seeking immediate judicial action by the requirement of the statute that conciliation be attempted before court action is initiated, and 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. Election Camp. Fin. Guide (CCH) ¶ 9147 (D.N.H. 1980). If Congress allows for expedited handling of compliance matters, it should authorize the Commission to implement changes in

[2] 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 which, in my opinion, would meet the four standards set forth in the legislative recommendations. 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 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 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 the Act.

such circumstances to expedite its enforcement procedures. As part of this effort, Congress should consider whether the Commission should be empowered 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. Congress should consider whether the Commission should be authorized to initiate such civil action in a United States district court, under expressly stated criteria, without 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 brings the action would enjoy the procedural protections afforded by the courts.

The Commission suggests the following legislative standards to govern whether it may seek prompt injunctive relief:

1. The complaint sets forth facts indicating that a potential violation of the Act is occurring or will occur;
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.

Public Financing

State Expenditure Limits for Publicly Financed Presidential Primary Campaigns (revised 1995)
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 administered the public funding program in five Presidential elections. Based on our experience, we believe that the limitations could be removed with no material impact on the process.

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

In 1996, however, many larger states (such as New York, California and Texas) will move their primaries to February and March. Consequently, a campaign will have to diversify its resources among more states in the early primaries in order to secure the nomination, and will be far less likely to exceed the spending limit for any particular state.

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. For all these reasons, the Commission decided to revise its state allocation regulations for the 1992 Presidential election. Many of the requirements, such as those requiring distinctions between fundraising and other types of expenditures, were eliminated. However, the rules could not undo the basic requirement to demonstrate the amount of expenditures relating to a particular state. Given our experience to date, we believe that this change to the Act would still be of substantial benefit to all parties concerned.

Fundraising Limitation for Publicly Financed Presidential Primary Campaigns
Section: 2 U.S.C. §§431(9)(B)(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 COLA[3]) 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 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. For example, the Commission would no longer have to ensure compliance with the 28-day rule, i.e., the rule prohibiting committees from allocating expenditures as exempt fundraising expenditures within 28 days of the primary held within the state where the expenditure was made.

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

Eligibility Threshold for Public Financing (revised 1995)
Section: 26 U.S.C. §9033

Recommendation: The Commission recommends that Congress raise the eligibility threshold for publicly funded Presidential primary candidates.

Explanation: The Federal Election Commission has administered the public funding provisions in five Presidential elections. The statute provides for a cost-of-living adjustment (COLA) of the overall primary spending limitation. There is, however, no corresponding adjustment to the threshold requirement. It remains exactly the same as it was in 1974. An adjustment to the threshold requirement would ensure that funds continue to be given only to primary candidates who demonstrate broad national support. To reach this higher threshold, the Commission recommends increasing the number of states in which the candidate had to raise the qualifying amount of matchable contributions; and/or increase the total amount of qualifying matchable contributions that had to be raised in each of the states.

Eligibility Requirements for Public Financing
Section: 26 U.S.C. §§9002, 9003, 9032 and 9033

Recommendation: The Commission recommends that Congress amend the eligibility requirements for publicly funded Presidential candidates to make clear that candidates who have been convicted of a willful violation of the laws related to the public funding process or who are not eligible to serve as President will not be eligible for public funding.

Explanation: Neither of the Presidential public financing statutes expressly restricts eligibility for funding because of a candidate's prior violations of law, no matter how severe. And yet public confidence in the integrity of the public financing system would risk serious erosion if the U.S. Government were to provide public funds to candidates who had been convicted of felonies related to the public funding process. Congress should therefore amend the eligibility requirements to ensure that such candidates do not

receive public financing for their Presidential campaigns. The amendments should make clear that a candidate would be ineligible for public funds if he or she had been convicted of fraud with respect to raising funds for a campaign that was publicly financed, or if he or she had failed to make repayments in connection with a past publicly funded campaign or had willfully disregarded the statute or regulations. In addition, Congress should make it clear that eligibility to serve in the office sought is a prerequisite for eligibility for public funding. See *LaRouche v. FEC,* 992 F.2d 1263 (D.C. Cir. 1993) *cert. denied,* 114 S. Ct. 550 (1993).

Deposit of Repayments
Section: 26 U.S.C. §9007(d)

Recommendation: The Commission recommends that Congress 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 §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.

Part II: General Legislative Recommendations

Disclosure

Consolidated Reporting of Events
Section: 2 U.S.C. §434(b)

Recommendation: The Commission recommends that Congress consider strengthening disclosure by requiring Presidential committees to identify all receipts from a political fundraising event that grosses over $50,000 in itemizable receipts. Congress may wish to require committees to file an event schedule, listing all event-related contributions that meet the itemization threshold.

Explanation: Under present law, it is difficult to see the contribution patterns of major fundraising events. More detailed reporting of major fundraising events would give the public an improved picture of how Presidential committees raise campaign funds.

Candidates and Principal Campaign Committees
Section: 2 U.S.C. §§432(e)(1) and 433(a)

Recommendation: The Commission recommends that Congress revise the law to require a candidate and his or her principal campaign committee to register simultaneously.

Explanation: An individual becomes a candidate under the FECA once he or she crosses the $5,000 threshold in raising contributions or making expenditures. The candidate has 15 days to file a statement designating the principal campaign committee, which will subsequently disclose all of the campaign's financial activity. This committee, in turn, has 10 days from the candidate's designation to register. This schedule allows 25 days to pass before the committee's reporting requirements are triggered. Consequently, the financial activity that occurred prior to the registration is not disclosed until the committee's next upcoming report. This period is too long during an election year.

For example, should a report be due 20 days after an individual becomes a candidate, the unregistered committee would not have to file a report on that date and disclosure would be delayed. The next report might not be filed for 3 more months. By requiring simultaneous registration, the public would be assured of more timely disclosure of the campaign's activity.

PACs Created by Candidates
Section: 2 U.S.C. §441a(a)

Recommendation: The Commission recommends that Congress consider whether PACs created by candidates should be deemed affiliated with the candidate's principal campaign committee.

Explanation: A number of candidates for federal office, including incumbent officeholders, have created PACs in addition to their principal campaign committees. Under current law, such PACs generally are not considered authorized committees. Therefore, they may accept funds from individuals up to the $5,000 limit permitted for unauthorized committees in a calendar year and may make contributions of up to $5,000 per election to other federal candidates once they achieve multicandidate status. In contrast, authorized committees may not accept more than $1,000 per election from individuals and may not make contributions in excess of $1,000 to other candidates.

The existence of PACs created by candidates can present difficult issues for the Commission, such as when contributions are jointly solicited with the candidate's principal campaign committee or the resources of the PAC are used to permit the candidate to gain exposure by traveling to appearances on behalf of other candidates. At times the operations of the two committees can be difficult to distinguish.

If Congress concludes that there is an appearance that the limits of the Act are being evaded through the use of PACs created by candidates, it may wish to consider whether such committees are affiliated with the candidate's principal campaign committee. As such, contributions received by the committees would be aggregated under a single contribution limit and subjected to the limitations on contributions to authorized committees. The same treatment would be accorded to contributions made by them to other candidates.

Require Monthly Filing for Certain Multicandidate Committees
Section: 2 U.S.C. §434(a)(4)

Recommendation: The Commission recommends that multicandidate committees which have raised or spent, or which anticipate raising or spending, over $100,000 be required to file on a monthly basis during an election year.

Explanation: Under current law, multicandidate committees have the option of filing quarterly or monthly during an election year. Quarterly filers that make contributions or expenditures on behalf of primary or general election candidates must also file pre-election reports.

Presidential candidates who anticipate receiving contributions or making expenditures aggregating $100,000 or more must file on a monthly basis. Congress should consider applying this same reporting requirement to multicandidate committees which have raised or spent, or which anticipate raising or spending, in excess of $100,000 during an election year. The requirement would simplify the filing schedule, eliminating the need to calculate the primary filing periods and dates. Filing would be standardized—once a month. This change would also benefit disclosure; the public would know when a committee's report was due and would be able to monitor the larger, more influential committees' reports. Although the total number of reports filed would increase, most reports would be smaller, making it easier for the Commission to enter the data into the computer and to make the disclosure more timely.

Reporting of Last-Minute Independent Expenditures
Section: 2 U.S.C. §434(c)

Recommendation: The Commission recommends that Congress clarify when last-minute independent expenditures must be reported.

Explanation: The statute requires that independent expenditures aggregating $1,000 or more and made after the 20th day, but more than 24 hours, before an election be *reported* within 24 hours after they are made. This provision is in contrast to other reporting provisions of the statute, which use the words "shall be filed." Must the report be received by the filing office within 24 hours after the independent expenditure is made, or may it be sent certified/registered mail and postmarked within 24 hours of when the expenditure is made? Should Congress decide that committees must report the expenditure within 24 hours after it is made, committees should be able to file via facsimile (fax) machine. (See Legislative Recommendation titled "Facsimile Machines.") Clarification by Congress would be very helpful.

Reporting Last-Minute Coordinated Party Expenditures by Party Committees
Section: 2 U.S.C. §§434 and 441a(d)

Recommendation: The Commission recommends that Congress consider requiring state and national party committees to file 48-hour notices when they make coordinated expenditures shortly before an election.

Explanation: Party committees must file pre-general election reports when they make contributions or expenditures supporting general election candidates prior to the 19th day before the election. Candidate committees must file 48-hour notices when they receive last-minute contributions prior to the election. Coordinated expenditures made after the close of books of the pre-election report, however, are not disclosed until after the election. In order to disclose this important financial activity, the Commission recommends that Congress consider requiring state and national party committees to file 48-hour notices when they make coordinated expenditures during the period beginning with the close of books of the pre-election report and continuing through 48 hours before the election. The Commission shall receive this notice within 48 hours of the committee making the expenditure.

Reporting and Recordkeeping of Payments to Persons Providing Goods and Services
Section: 2 U.S.C. §§432(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." The Commission recommends that Congress clarify whether this is meant, in all instances, to require reporting committees to disclose only the payments made by the committee or whether additional reporting is required, in some instances, when a payment is made to an intermediary contractor or consultant who, in turn, acts as the committee's agent by making expenditures to other payees. If Congress determines that disclosure of secondary payees is required, the Act should require that committees maintain the name, address, amount and purpose of the disbursement made to the secondary payees in their records and disclose it to the public on their reports. Congress should limit such disclosure to secondary payments above a certain dollar threshold or to payments made to independent subcontractors.

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), ¶ 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), ¶ 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 Presidential Primary Election Candidates Receiving Public Financing, Federal Election Commission, pp. 123-130 (1992)

(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.

Incomplete or False Contributor Information
Section: 2 U.S.C. §434

Recommendation: The Commission recommends that Congress consider amending the Act to address the recurring problem of committees' inability to provide full disclosure about their contributors.

Explanation: Concern has been expressed by the Commission, the public, and the press about the failure of candidates and political committees to report the addresses and occupations of many of their contributors. While the Commission revised its regulations in 1994 to further ensure that committees make their "best efforts" to obtain and report contributor information, Congress may want to strengthen the law further.

Excluding Political Committees from Protection of the Bankruptcy Code
Section: 2 U.S.C. §433(d)

Recommendation: The Commission recommends that Congress clarify the distribution of authority over insolvent political committees between the Commission's authority to regulate insolvency and termination of political committees under 2 U.S.C. §433(d), on one hand, and the authority of the bankruptcy courts, on the other hand.

Explanation: In 2 U.S.C. §433(d), the Commission is given authority to establish procedures for "the determination of insolvency" of any political committee, the "orderly liquidation of an insolvent political committee," the "application of its assets for the reduction of outstanding debts," and the "termination of an insolvent political committee after such liquidation..." However, the Bankruptcy Code, 11 U.S.C. §101 *et seq.,* generally grants jurisdiction over such matters to the bankruptcy courts, and at least one bankruptcy court has exercised its jurisdiction under Chapter 11 of the Bankruptcy Code to permit an ongoing political committee to compromise its debts with the intent thereafter to resume its fundraising and contribution and expenditure activities. *In re Fund for a Conservative Majority,* 100 B.R. 307 (Bankr. E.D.Va. 1989). Not only does the exercise of such jurisdiction by the bankruptcy court conflict with the evident intent in 2 U.S.C. §433(d) to empower the Commission to regulate such matters with respect to political committees, but permitting a political committee to compromise debts and then resume its political activities can result in corporate creditors effectively subsidizing the committee's contributions and expenditures, contrary to the intent of 2 U.S.C. §441b(a). The Commission promulgated a regulation generally prohibiting ongoing political committees from compromising outstanding debts, 11 CFR 116.2(b), but the continuing potential jurisdiction of the bankruptcy courts over such matters could undermine the Commission's ability to enforce it. Accordingly, Congress may want to clarify the distribution of authority between the Commission and the bankruptcy courts in this area. In addition, Congress should specify whether political committees are entitled to seek Chapter 11 reorganization under the Bankruptcy Code.

Fundraising Projects Operated by Unauthorized Committees
Section: 2 U.S.C §432(e)

Recommendation: The Commission recommends that Congress specifically require that contributions solicited by an unauthorized committee (i.e., a committee that has not been authorized by a candidate as his/her campaign committee) be made payable to the registered name of the committee and that unauthorized committees be prohibited from accepting checks payable to any other name.

Explanation: Unauthorized committees are not permitted to use the name of a federal candidate in their name or in the name of a fundraising project. However, unauthorized committees (those not authorized by candidates) often raise funds through fundraising efforts that name specific candidates. As a result, contributors are sometimes confused or misled, believing that they are contributing to a candidate's authorized committee when, in fact, they are giving to the nonauthorized committee that sponsors the event. This confusion sometimes leads to requests for refunds, allegations of coordination and inadequate disclaimers, and inability to monitor contributor limits. Contributor awareness might be enhanced if Congress were to modify the statute by requiring that all checks intended for an unauthorized committee be made payable to the registered name of the unauthorized committee and by prohibiting unauthorized committees from accepting checks payable to any other name.

Disclaimer Notices (revised 1995)
Section: 2 U.S.C. §441d

Recommendation: The Commission recommends that Congress revise the FECA to require registered political committees to display the appropriate disclaimer notice (when practicable) in any communication issued to the general public, regardless of its content or how it is distributed. Congress should also revise the Federal Communications Act to make it consistent with the FECA's requirement that disclaimer notices state who paid for the communication.

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.

The Commission has issued a Notice of Proposed Rulemaking and plans to schedule a public hearing to seek comments on revising its regulations to address these issues. See 59 FR 50708 (October 5, 1994). Most of these problems would be eliminated, however, 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.

Finally, Congress should change the sponsorship identification requirements found in the Federal Communications Act to make them consistent with the disclaimer notice requirements found in the FECA. Under the Communications Act, federal political broadcasts must contain an announcement that they were furnished to the licensee, and by whom. See FCC and FEC Joint Public Notice, FCC 78-419 (June 19, 1978). In contrast, FECA disclaimer notices focus on who authorized and paid for the communication. The Communications Act should be revised to ensure that the additional information required by the FECA is provided without confusion to licensees and political advertisers. In addition, the FECA should be

amended to require that the disclaimer appear at the end of all broadcast communications.

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. The Commission recommends that a provision be added to this section prohibiting persons from fraudulently misrepresenting themselves as representatives of candidates or political parties for the purpose of soliciting contributions 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. The contributors' funds were used in a manner 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.

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

Recommendation: The Commission recommends that Congress 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 of 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.

Contributions and Expenditures

Candidate's Use of Campaign Funds (1995)
Section: 2 U.S.C. §439a

Recommendation: Congress may wish to examine whether the use of campaign funds to pay a salary to the candidate is considered to be a "personal use" of those funds.

Explanation: Under §439a of the Act, excess campaign funds cannot be converted by any person to personal use. The Commission has recently approved final draft rules on what would constitute "personal use" of excess funds. It was unable, however, to decide whether excess campaign funds may be used to pay a salary to the candidate. In the past, some have argued before the Commission that candidate salary payments are legitimate campaign expenditures, while others have felt that such payments constitute a personal use of excess funds prohibited by §439a. Congressional guidance on this issue would be helpful.

Disposition of Excess Campaign Funds
Section: 2 U.S.C. §439a

Recommendation: In those cases where a candidate has largely financed his campaign with personal funds, the Commission recommends that Congress consider limiting the amount of excess campaign funds that the campaign may transfer to a national, state or local committee of any political party to $100,000 per year.

Explanation: Under current law, a candidate may transfer unlimited amounts of excess campaign funds to a political party. This makes it possible for a candidate to contribute unlimited personal funds to his campaign, declare these funds excess and transfer them to a political party, thus avoiding the limit on individual contributions to political parties.

Contributions and Expenditures to Influence Federal and Nonfederal Elections
Section: 2 U.S.C. §§434 and 441

Recommendation: The Commission recommends that Congress consider whether new legislation is needed to regulate the use of "soft money" in federal 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 to committees that engage in activities that support both federal and nonfederal candidates. The Commission attempted to deal with this problem by promulgating regulations that required such committees to allocate disbursements between federal and nonfederal election activity. The focus of these regulations was on how the funds were spent. The public, however, has been equally concerned about the source of money that directly or indirectly influences federal politics. Much discussion has centered on the perception that soft money is being used to gain access to federal candidates. ("Soft money" is generally understood to mean funds that do not comply with the federal prohibitions and limits on contributions.) Even if soft money is technically used to pay for the nonfederal portion of shared activities (federal and nonfederal), the public may perceive that the contributors of soft money have undue influence on federal candidates and federally elected officials. In light of this public concern, Congress should consider amending the law in this area as it affects the *raising* of soft money. Such changes could include any or all of the following: (1) more disclosure of nonfederal account receipts (as well as "building fund" proceeds exempted under 2 U.S.C. §431(8)(B)(viii)); (2) limits on

nonfederal account donations coupled with tighter affiliation rules regarding party committees; (3) prohibiting nonfederal accounts for certain types of committees; (4) prohibiting the use of a federal candidate's name or appearance to raise soft money; and (5) confining soft money fundraising to nonfederal election years.

In addition, further restrictions on the *spending* of soft money should be considered, such as: (1) requiring all party committees to disclose all nonfederal activity that is not exclusively related to nonfederal candidate support and expressly preempting duplicative state reporting requirements; (2) requiring that all party activity which is not exclusively on behalf of nonfederal candidates be paid for with federally permissible funds; and (3) limiting the use of soft money to nonfederal election year activity.

Broader Prohibition Against Force and Reprisals
Section: 2 U.S.C. §441b(b)(3)(A)

Recommendation: The Commission recommends that Congress revise the FECA to make it unlawful for a corporation, labor organization or separate segregated fund to use physical force, job discrimination, financial reprisals or the threat thereof to obtain a contribution or expenditure on behalf of any candidate or political committee.

Explanation: Current §441b(b)(3)(A) could be interpreted to narrowly apply to the making of contributions or expenditures by a separate segregated fund which were obtained through the use of force, job discrimination, financial reprisals and threats. Thus, Congress should clarify that corporations and labor organizations are prohibited from using such tactics in the solicitation of contributions for the separate segregated fund. In addition, Congress should include language to cover situations where the funds are solicited on behalf of and given directly to candidates.

Use of Free Air Time
Section: 2 U.S.C. §§431(9)(B)(i) and 441b

Recommendation: The Commission recommends that Congress revise the FECA to indicate whether an incorporated broadcaster may donate free air time to a candidate or political committee and, if so, under what conditions and restrictions.

Explanation: The Federal Election Campaign Act prohibits a corporation from providing "anything of value" to a candidate without full payment. However, §§312(a)(7) and 315(b) of the Communications Act require that broadcast stations provide "reasonable access" to federal candidates, and prohibit stations from charging candidates more than the "lowest unit charge" for the same class and amount of time in the same time period. Under FCC rules, broadcasters may satisfy their "reasonable access" obligations by providing free air time to candidates, although the Federal Communications Commission does not require them to provide free time. Therefore, the question has been raised as to whether the donation of free air time by an incorporated broadcaster is a prohibited corporate contribution under the FECA, or whether such a donation comes within the exemption for news stories, commentaries and editorials. The Commission has twice considered and been unable to resolve this issue. Hence, Congress may want to consider offering guidance on whether donations of free air time are permissible under the FECA and, if so, under what conditions and restrictions.

Distinguishing Official Travel from Campaign Travel
Section: 2 U.S.C. §431(9)

Recommendation: The Commission recommends that Congress amend the FECA to clarify the distinctions between campaign travel and official travel.

Explanation: Many candidates for federal office hold elected or appointed positions in federal, state or local government. Frequently, it is difficult to determine whether their public appearances are related to their official duties or whether they are campaign related. A similar question may arise when federal officials who are not running for office make appearances that could be considered to be related to their official duties or could be viewed as campaign appearances on behalf of specific candidates.

Another difficult area concerns trips in which both official business and campaign activity take place. There have also been questions as to how extensive the campaign aspects of the trip must be before part or all of the trip is considered campaign related. Congress might consider amending the statute by adding criteria for determining when such activity is campaign related. This would assist the committee in determining when campaign funds must be used for all or part of a trip. This will also help Congress determine when official funds must be used under House or Senate Rules.

Coordinated Party Expenditures (revised 1995)
Section: 2 U.S.C. §441a(d)

Recommendation: The Commission recommends that Congress clarify the number of coordinated party expenditure limits that are available to party committees during the election cycle.

In addition, Congress may want to clarify the distinction between coordinated party expenditures made in connection with general elections and generic party building activity.

Explanation: Section 441a(d) provides that national and state party committees may make expenditures in connection with the general election campaigns of the party's nominees for House and Senate. The national party committees may also make such expenditures on behalf of the party's general election Presidential and Vice Presidential nominees. The Commission has interpreted these provisions to permit party committees to make nearly any type of expenditure they deem helpful to their nominees short of donating the funds directly to the candidates. Expenditures made under §441a(d) are subject to a special limit, separate from contribution limits.

The Commission has been faced several times with the question of whether party committees have one or two coordinated party expenditure limits in a particular election campaign. In particular, the issue has been raised in special election campaigns. Some state laws allow the first special election either to narrow the field of candidates, as a primary would, or to fill the vacancy if one candidate receives a majority of the popular vote. If a second special election becomes necessary to fill the vacancy, the question has arisen as to whether the party committees may spend against a second coordinated party expenditure limit since both special elections could have filled the vacancy. In a parallel manner, the Commission has been faced with the question of whether party committees have one or two coordinated party expenditure limits in a situation that includes an election on a general election date and a subsequent election, required by state law, after the general election. Although in the latter situation, a district court has concluded that only one coordinated party expenditure limit would apply (see *Democratic Senatorial Campaign Committee v. FEC* (No. 93-1321) (D.D.C., November 14, 1994)), broader Congressional guidance on this issue would be helpful.

Party committees may also make expenditures for generic party-building activities, including get-out-the-vote and voter registration drives. These activities are not directly attributable to a clearly identified candidate. In contrast to coordinated party expenditures, these activities are not subject to limitation.

When deciding, in advisory opinions and enforcement matters, whether an activity is a §441a(d) expenditure or a generic activity, the Commission has considered the timing of the expenditure, the language of the communication, and whether it makes reference only to candidates seeking a particular office or to all the party's candidates, in general. However, the Commission still has difficulty determining, in certain situations, when a communication or other activity is generic party building activity or a coordinated party expenditure. Congressional guidance on this issue would be helpful.

Volunteer Participation in Exempt Activity
Section: 2 U.S.C. §§431(8)(B)(x) and (xii); 431(9)(B)(viii) and (ix)

Recommendation: The Commission recommends that Congress clarify the extent to which volunteers must conduct or be involved in an activity in order for the activity to qualify as an exempt party activity.

Explanation: Under the Act, certain activities conducted by state and local party committees on behalf

of the party's candidates are exempt from the contribution limitations if they meet specific conditions. Among these conditions is the requirement that the activity be conducted by volunteers. However, the actual level of volunteer involvement in these activities has varied substantially.

Congress may want to clarify the extent to which volunteers must be involved in an activity in order for that activity to qualify as an exempt activity. For example, if volunteers are assisting with a mailing, must they be the ones to stuff the envelopes and sort the mail by zip code or can a commercial vendor perform that service? Is it sufficient involvement if the volunteers just stamp the envelopes or drop the bags at the post office?

Colleges and Universities
Section: 2 U.S.C. §§441a and 441b

Recommendation: The Commission recommends that Congress consider amending the FECA to spell out the circumstances in which colleges, universities and other educational institutions may engage in political activities such as sponsoring candidate appearances and candidate debates, and conducting voter registration drives.

Explanation: Under 2 U.S.C. §441b, incorporated private educational institutions, like other corporations, are prohibited from making contributions in connection with any Federal election. Similarly, state-operated educational institutions, if unincorporated, are "persons" and thus subject to the contribution limitations of 2 U.S.C. §441a. Within the existing framework of the FECA, the Commission is currently considering the conditions under which an educational institution may sponsor a candidate appearance or candidate debate or conduct a voter drive, and the conditions under which such activities will constitute in-kind contributions. However, Congress may wish to consider whether the important educational role these institutions play in the democratic process warrants treating them differently from the way other corporations are treated with respect to these or other forms of political activities. The Commission notes that safeguards against certain political activities already exist. For example, under the Internal Revenue Code, private schools that qualify as nonprofit corporations under §501(c)(3) of the Internal Revenue Code may not participate or intervene in political campaigns. Similarly, state-operated schools may be required to ensure that state funds are not used for political purposes.

Direction or Control
Section: 2 U.S.C. §441a(a)(8)

Recommendation: The Commission recommends that Congress consider whether the Act's provisions regarding earmarked contributions should incorporate the concept in the legislative history that contributions count toward a conduit's or intermediary's contribution limits when the conduit or intermediary exercises direction or control over them. If Congress does determine that such contributions count toward a conduit's or intermediary's contribution limit, then the Commission recommends that Congress also include a definition of what constitutes direction or control.

Explanation: Under 2 U.S.C. §441a(a)(8), contributions made by any person which are earmarked through a conduit or intermediary to a particular candidate are treated as contributions from that person to the candidate. The Commission has seen an increase in conduit activity in recent years.

Congress has indicated that "if a person exercises any direct or indirect control over the making of a contribution, then such contribution shall count toward the limitation imposed with respect to such person [under current 2 U.S.C. §441a], but it will not count toward such a person's contribution limitation when it is demonstrated that such person exercised no direct or indirect control over the making of the contribution involved." H.R. Rep. No. 93–1239, 93d Cong., 2d Sess. 16 (1974). The Commission believes that the FECA should be amended to expressly reflect Congressional intent that contributions count toward a conduit's limits if the conduit exercises direction or control over the making of those earmarked contributions. In addition, determining what actions on the part of a conduit or intermediary constitute direction or control has presented difficulties for the Commission. Therefore, an amendment to the Act should also in-

clude standards for determining when "direction or control" has been exercised over the making of a contribution.

Nonprofit Corporations (revised 1995)
Section: 2 U.S.C. §441b

Recommendation: In light of the decision of the U.S. Supreme Court in *FEC v. Massachusetts Citizens for Life, Inc. (MCFL),* the Commission recommends that Congress consider amending the provision prohibiting corporate and labor spending in connection with federal elections in order to incorporate into the statute the text of the court's decision. Congress may also wish to include in the Act a definition for the term "express advocacy."

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. 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 the major purpose of the corporation, and the organization would then become a political committee. The Court also indicated that the prohibition on corporate expenditures for communications is limited to communications expenditures containing express advocacy.

Since the Court decision and subsequent related decisions (e.g., *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990)), the Commission has engaged in a rulemaking proceeding to consider what regulatory changes are needed. However, the Commission believes that statutory clarification would also be beneficial.

Congress should consider whether statutory changes are needed: (1) to exempt independent expenditures made by certain nonprofit corporations from the statutory prohibition against corporate expenditures; (2) to specify the reporting requirements for these nonprofit corporations; and (3) to provide a definition of express advocacy.

Transfer of Campaign Funds from One Committee to Another
Section: 2 U.S.C. §441a(a)(1) and (5)(C)

Recommendation: The Commission recommends that Congress consider requiring contributors to redesignate contributions before they are transferred from one federal campaign to another federal campaign of the same candidate, and to clarify whether such contributions count against the contributors' limits for the transferee committee.

Explanation: The Commission has traditionally permitted a committee to transfer funds from one campaign to another (e.g., from a 1992 election to a 1994 election committee) without the original contributor's redesignation of the contribution or approval of the transfer. Congress may wish to re-examine whether such transfers are acceptable, and if so, how should they affect the original contributor's contribution limit vis-à-vis both committees.

Contributions from Minors
Section: 2 U.S.C. §441a(a)(1)

Recommendation: The Commission recommends that Congress establish a presumption that contributors below age 16 are not making contributions on their own behalf.

Explanation: The Commission has found that contributions are sometimes given by parents in their children's names. Congress should address this potential abuse by establishing a minimum age for contributors, or otherwise provide guidelines ensuring that parents are not making contributions in the name of another.

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, 93d Cong., 2d 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.

Problems have also occurred in situations where the candidate uses assets held jointly with a spouse. When the candidate uses more than one-half of the value of the asset held commonly with the spouse (for example, offering property as collateral for a loan), the amount over one-half represents a contribution from the spouse. If that amount exceeds $1,000, it becomes an excessive contribution from the spouse.

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

Lines of Credit and Other Loans Obtained by Candidates
Section: 2 U.S.C. §431(8)(B)(vii)

Recommendation: The Commission recommends that Congress provide guidance on whether candidate committees may accept contributions which are derived from advances on a candidate's brokerage account, credit card, or home equity line of credit, and, if so, Congress should also clarify how such extensions of credit should be reported.

Explanation: The Act currently exempts from the definition of "contribution" loans that are obtained by political committees in the ordinary course of business from federally-insured lending institutions. 2 U.S.C. §431(8)(B)(vii). Loans that do not meet the requirements of this provision are either subject to the Act's contribution limitations, if received from permissible sources, or the prohibition on corporate contributions, as appropriate.

Since this aspect of the law was last amended in 1979, however, a variety of financial options have become more widely available to candidates and committees. These include a candidate's ability to obtain advances against the value of a brokerage account, to draw cash advances from a candidate's credit card, or to make draws against a home equity line of credit obtained by the candidate. In many cases, the credit approval, and therefore the check performed by the lending institution regarding the candidate's creditworthiness, may predate the candidate's decision to seek federal office. Consequently, the extension of credit may not have been made in accordance with the statutory criteria such as the requirement that a loan be "made on a basis which assures repayment." In other cases, the extension of credit may be from an entity that is not a federally-insured lending institution. The Commission recommends that Congress clarify whether these alternative sources of financing are permissible and, if so, should specify standards to ensure that these advances are commercially reasonable extensions of credit.

Honorarium
Section: 2 U.S.C. §431(8)(B)(xiv)

Recommendation: The Commission recommends that Congress should make a technical amendment, deleting 2 U.S.C. §431(8)(B)(xiv), now contained in a list of definitions of what is not a contribution.

Explanation: The 1976 amendments to the Federal Election Campaign Act gave the Commission jurisdiction over the acceptance of honoraria by all federal officeholders and employees. 2 U.S.C. §441i. In 1991, the Legislative Branch Appropriations Act repealed

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

§441i. As a result, the Commission has no jurisdiction over honorarium transactions taking place after August 14, 1991, the effective date of the law.

To establish consistency within the Act, the Commission recommends that Congress make a technical change to §431(8)(B)(xiv) deleting the reference to honorarium as defined in former §441i. This would delete honorarium from the list of definitions of what is not a contribution.

Acceptance of Cash Contributions
Section: 2 U.S.C. §441g

Recommendation: The Commission recommends that Congress 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.

Explanation: Currently this provision focuses only on persons making the cash contributions. However, these cases generally come to light when a committee has accepted these funds. Yet the Commission has no recourse with respect to the committee in such cases. This can be a problem, particularly where primary matching funds are received on the basis of such contributions.

While the Commission, in its regulations at 11 CFR 110.4(c)(2), has included a provision requiring a committee receiving such a cash contribution to promptly return the excess over $100, the statute does not explicitly make acceptance of these cash contributions a violation. The other sections of the Act dealing with prohibited contributions (i.e., §§ 441b on corporate and labor union contributions, 441c on contributions by government contractors, 441e on contributions by foreign nationals, and 441f on contributions in the name of another) all prohibit both the making and accepting of such contributions.

Secondly, the statutory text seems to suggest that the prohibition contained in §441g applies only to those contributions given to candidate committees. This language is at apparent odds with the Commission's understanding of the Congressional purpose to prohibit any cash contributions which exceed $100 in federal elections.

Independent Expenditures by Principal Campaign Committees
Section: 2 U.S.C. §432(e)(3)

Recommendation: The Commission recommends that Congress consider amending the definition of principal campaign committee to clarify whether these committees may make independent expenditures on behalf of other principal campaign committees.

Explanation: A principal campaign committee is defined as an authorized committee which has not supported more than one federal candidate. It is not clear, however, whether the term "support" is intended to include both contributions and independent expenditures or whether it refers to contributions alone. The same section states that the term "support" does not include a contribution by any authorized committee to another authorized committee of $1,000 or less (2 U.S.C. §432(e)(3)(B)), but it is silent on the question of independent expenditures. The current language does not clearly indicate whether authorized committees can make independent expenditures on behalf of other committees, or whether Congress intended to preclude authorized committees from making independent expenditures.

Certification of Voting Age Population Figures and Cost-of-Living Adjustment
Section: 2 U.S.C. §441a(c) and (e)

Recommendation: The Commission recommends that Congress 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.

Enforcement

Candidate Liability
Section: 2 U.S.C. §§432(e)(2) and 437g

Recommendation: The Commission recommends that Congress review who is liable for committee obligations to pay civil penalties for violations of the FECA. Congress may want to include in this review whether candidates should be jointly and severally liable for civil penalties incurred by their campaign committees.

Explanation: In enforcement cases, the Commission proceeds against both committees and their treasurers because the treasurers are responsible for complying with most requirements of the FECA. In many cases, civil penalties are paid from the principal campaign committee's funds. Because committees may change treasurers several times before a matter is resolved, and it may be very difficult to locate the individual who was treasurer at the time the violation occurred, the Commission generally proceeds against the individual who is currently treasurer at the time of the enforcement matter. This can place a large burden on those who agree to become treasurers, particularly when the campaign committee does not have sufficient funds to pay the civil penalty. Treasurers may be held jointly and severally liable for civil penalties, even in situations where the preparation and review of the reports was done by an assistant treasurer, bookkeeper, or other individual. Treasurers' liability may also make it more difficult for candidates to find individuals who are willing to serve as treasurers for their campaign committees.

While the Commission does make findings against candidates when they are directly involved in the activities that constitute a violation, it does not do so absent such involvement. Under 2 U.S.C. §432(e)(2), candidates are agents of their campaign committees for purposes of receiving contributions and loans, and making disbursements. This statutory provision implies that the candidate is not the principal of the committee, and is therefore not responsible for committee actions absent personal involvement. Accordingly, Congress may want to review whether it would be preferable for liability to be placed on the current treasurer, or the treasurer at the time of the violation, or the candidate.

Persons Who Can Be Named As Respondents
Section: 2 U.S.C. §§434(a)(1), 441a(f), 441b and 441f

Recommendation: The Commission recommends that Congress consider amending the enforcement provisions of the Act to include a section that makes it a violation for anyone to actively assist another party in violating the Act.

Explanation: Many sections of the Act specifically list the parties that can be found in violation of those sections. See, e.g., 2 U.S.C. §§434(a)(1), 441a(f), 441b, and 441f. Oftentimes, however, parties other than those listed are actively involved in committing the violations. For example, §441b makes it illegal for an officer or director of a corporation, national bank or labor union to consent to the making of a contribution prohibited under that section. The Commission has seen many instances where these types of organiza-

tions have made prohibited contributions which were consented to by individuals who have the authority to approve the making of the contributions, even though those individuals did not hold the titles listed in the statute.

This issue has also been addressed on a limited basis in the context of 2 U.S.C. §441f. That section prohibits anyone from making or knowingly accepting a contribution made in the name of another, or from knowingly allowing his/her name to be used to effect such a contribution. In many situations involving this section, there are additional parties, not specified in the statute, who are actively involved in carrying out the violation. Without an "assisting" standard, those active participants cannot be found to have violated that section. The court has recognized such a standard with regard to §441f, *FEC v. Rodriguez,* No. 86-687 Civ-T-10(B) (M.D. Fla. May 5, 1987)(unpublished order denying motion for summary judgment), and the Commission has reflected that decision in its regulations at 11 CFR 110.4.

Although these actions have provided a basis for pursuing additional violators in a limited context, the preferable approach would be to codify the explicit statutory authority to pursue those who actively assist in carrying out all types of violations.

Audits for Cause
Section: 2 U.S.C. §438(b)

Recommendation: The Commission recommends that Congress expand the time frame, from 6 months to 12 months after the election, during which the Commission can initiate an audit for cause.

Explanation: Under current law, the Commission must initiate audits for cause within 6 months after the election. Because year-end disclosure does not take place until almost 2 months after the election, and because additional time is needed to computerize campaign finance information and review reports, there is little time to identify potential audits and complete the referral process within that 6-month window.

Modifying Standard of "Reason to Believe" Finding
Section: 2 U.S.C. §437g

Recommendation: The Commission recommends that Congress modify the language pertaining to "reason to believe," contained at 2 U.S.C. §437g, so as to allow the Commission to open an investigation with a sworn complaint, or after obtaining evidence in the normal course of its supervisory responsibilities. Essentially, this would change the "reason to believe" standard to "reason to open an investigation."

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.

It would therefore 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.

Protection for Those Who File Complaints or Give Testimony
Section: 2 U.S.C. §437g

Recommendation: The Commission recommends that the Act be amended to make it unlawful to improperly discriminate against employees or union members solely for filing charges or giving testimony under the statute.

Explanation: The Act requires that the identity of anyone filing a complaint with the Commission be provided to the respondent. In many cases, this may put complainants at risk of reprisals from the respondent, particularly if an employee or union member files a complaint against his or her employer or union. This risk may well deter many people from filing complaints, particularly under §441b. *See, e.g., NLRB v. Robbins Tire & Rubber Company,* 437 U.S. 214, 240 (1978); *Brennan v. Engineered Products, Inc.,* 506 F.2d 299, 302 (8th Cir. 1974); *Texas Industries, Inc. v. NLRB,* 336 F.2d 128, 134 (5th Cir. 1964). In other statutes relating to the employment relationship, Congress has made it unlawful to discriminate against employees for filing charges or giving testimony under the statute. *See, e.g.*, 29 U.S.C. §158(a)(4) (National Labor Relations Act); 29 U.S.C. §215(3) (Fair Labor Standards Act); 42 U.S.C. §2000e-3(a) (Equal Employment Opportunity Act). The Commission recommends that Congress consider including a similar provision in the FECA.

Public Financing

Compliance Fund
Section: 2 U.S.C. §441a(b)(1)(B); 26 U.S.C. §§9002(11), 9003(b) and (c), and 9004(c)

Recommendation: The Commission recommends that Congress clarify what funds Presidential Election Campaign Fund recipients may utilize to meet the accounting and compliance requirements imposed upon them by the Federal Election Campaign Act. If private funds are not to be used, Congress may wish to either raise the spending limits to accommodate such costs or establish a separate fund of the Treasury to be used for this purpose.

Explanation: Through regulation, the Commission has provided for the establishment by Presidential committees of a General Election Legal and Accounting Compliance Fund (GELAC fund) consisting of private contributions otherwise within the limits acceptable for any other Federal election. The GELAC funds, which supplement funds provided out of the U.S. Treasury, may be used to pay for costs related to compliance with the campaign laws. Determining which costs may be paid is sometimes difficult and complex. Contributions to the GELAC fund are an exception to the general rule that publicly funded Presidential general election campaigns may not solicit or accept private contributions. Congress should clarify whether GELAC funds are appropriate and, if not, specify whether additional federal grants are to be used. If GELAC funds are appropriate, Congress should provide guidelines indicating which compliance costs are payable from such funds.

Supplemental Funding for Publicly Funded Candidates
Section: 26 U.S.C. §§9003 and 9004

Recommendation: The Commission recommends that Congress consider whether to modify the general election Presidential public funding system in instances where a nonpublicly funded candidate exceeds the spending limit for publicly funded candidates.

Explanation: Major party Presidential candidates who participate in the general election public funding process receive a grant for campaigning. In order to receive the grant, the candidate must agree to limit expenditures to that amount. Candidates who do not request public funds may spend an unlimited amount on their campaign. Congress may want to consider whether the statute should ensure that those candidates who are bound by limits are not disadvantaged.

Applicability of Title VI to Recipients of Payments from the Presidential Election Campaign Fund
Section: 26 U.S.C. §§9006(b), 9008(b)(3) and 9037.

Recommendation: The Commission recommends that Congress clarify that committees receiving public financing payments from the Presidential Election Campaign Fund are exempt from the requirements of Title VI of the Civil Rights Act of 1964, as amended.

Explanation: This proposed amendment was prompted by the decision of the U.S. District Court for the District of Columbia in *Freedom Republicans, Inc., and Lugenia Gordon v. FEC,* 788 F. Supp. 600

(1992), *vacated,* No. 92-5214 (D.C. Cir. January 18, 1994). The Freedom Republicans' complaint asked the district court to declare that the Commission has jurisdiction to regulate the national parties' delegate selection process under Title VI. It also requested the court to order the Commission to adopt such regulations, direct the Republican Party to spend no more of the funds already received for its 1992 national nominating convention, and seek refunds of moneys already disbursed if the Republican Party did not amend its delegate selection and apportionment process to comply with Title VI. The district court found that the Commission "does have an obligation to promulgate rules and regulations to insure the enforcement of Title VI. The language of Title VI is necessarily broad, and applies on its face to the FEC as well as to both major political parties and other recipients of federal funds." 788 F. Supp. at 601.

The Commission appealed this ruling on a number of procedural and substantive grounds, including that Title VI does not apply to the political parties' apportionment and selection of delegates to their conventions. However, the court of appeals overruled the district court decision on one of the non-substantive grounds, leaving the door open for other lawsuits involving the national nominating conventions or other recipients of federal funds certified by the Commission. No. 92-5214, slip op. at 15.

In the Commission's opinion, First Amendment concerns and the legislative history of the public funding campaign statutes strongly indicate that Congress did not intend Title VI to permit the Commission to dictate to the political parties how to select candidates or to regulate the campaigns of candidates for federal office. Nevertheless, the potential exists for persons immediately prior to an election to invoke Title VI in the federal courts in a manner that might interfere with the parties' nominating process and the candidates' campaigns. The recommended clarification would help forestall such a possibility.

For these reasons, Congress should consider adding the following language to the end of each public financing provision cited above: "The acceptance of such payments will not cause the recipient to be conducting a 'program or activity receiving federal financial assistance' as that term is used in Title VI of the Civil Rights Act of 1964, as amended."

Enforcement of Nonwillful Violations
Section: 26 U.S.C. §§9012 and 9042

Recommendation: The Commission recommends that Congress consider amending the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act to clarify that the Commission has authority for civil enforcement of nonwillful violations (as well as willful violations) of the public funding provisions.

Explanation: Section 9012 of the Presidential Election Campaign Fund Act and §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.

Contributions to Presidential Nominees Who Receive Public Funds in the General Election
Section: 26 U.S.C. §9003

Recommendation: The Commission recommends that Congress clarify that the public financing statutes prohibit the making and acceptance of contributions

(either direct or in-kind) to Presidential candidates who receive full public funding in the general election.

Explanation: The Presidential Election Campaign Fund Act prohibits a publicly financed general election candidate from accepting private contributions to defray qualified campaign expenses. 26 U.S.C. §9003(b)(2). The Act does not, however, contain a parallel prohibition against the *making* of these contributions. Congress should consider adding a section to 2 U.S.C. §441a to clarify that individuals and committees are prohibited from making these contributions.

Miscellaneous

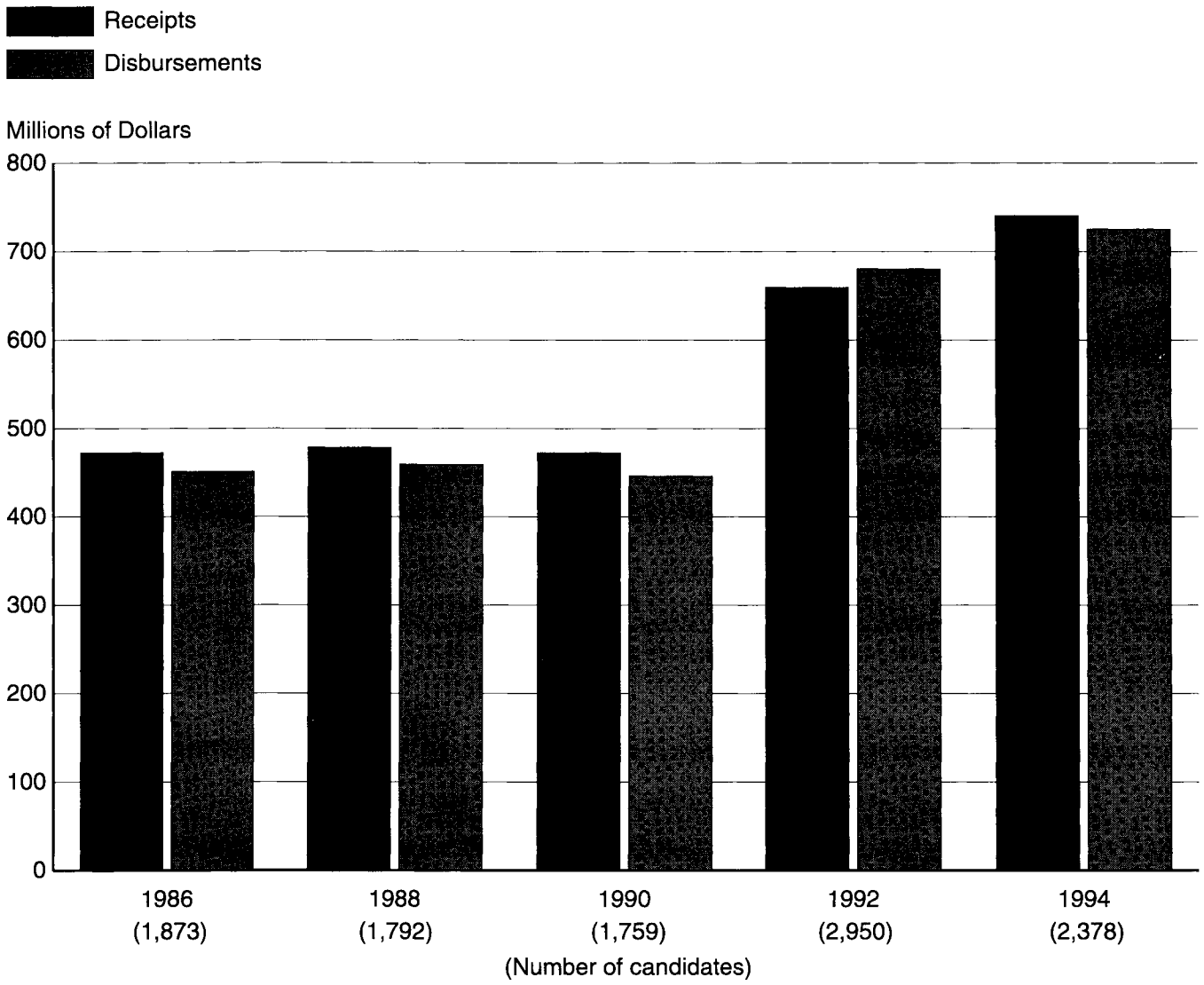
Statutory Gift Acceptance Authority
Section: 2 U.S.C. §437c

Recommendation: The Commission recommends that Congress 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 inance 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.

Chapter Six
Campaign Finance Statistics

House and Senate Activity by Election Cycle

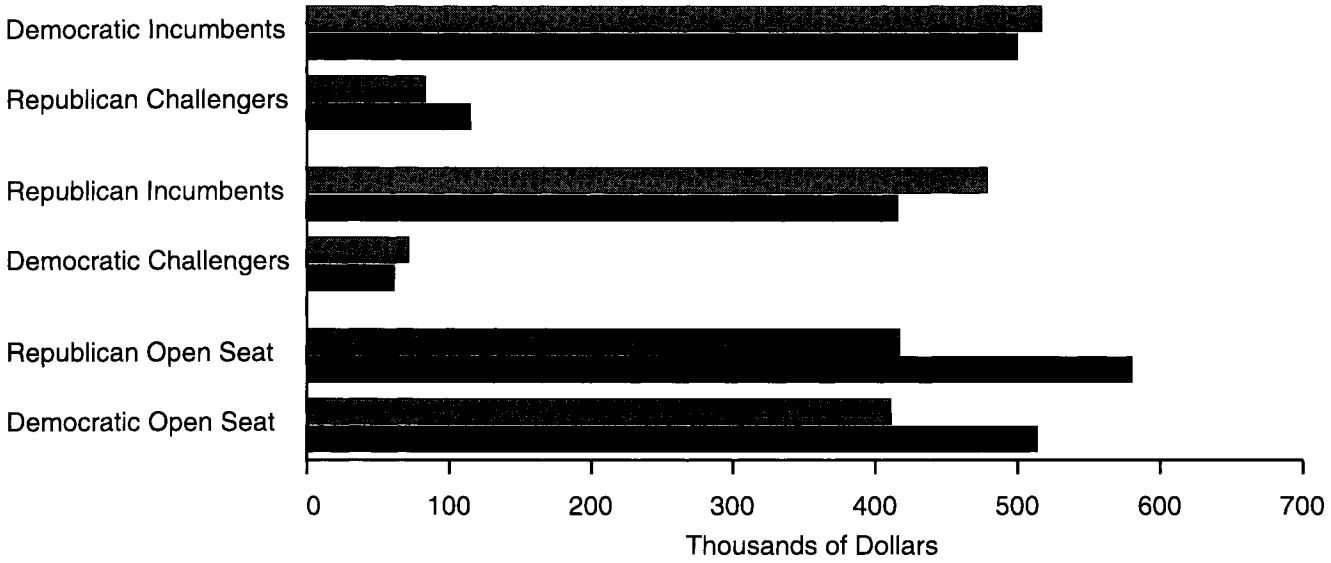


Congressional Campaign Spending

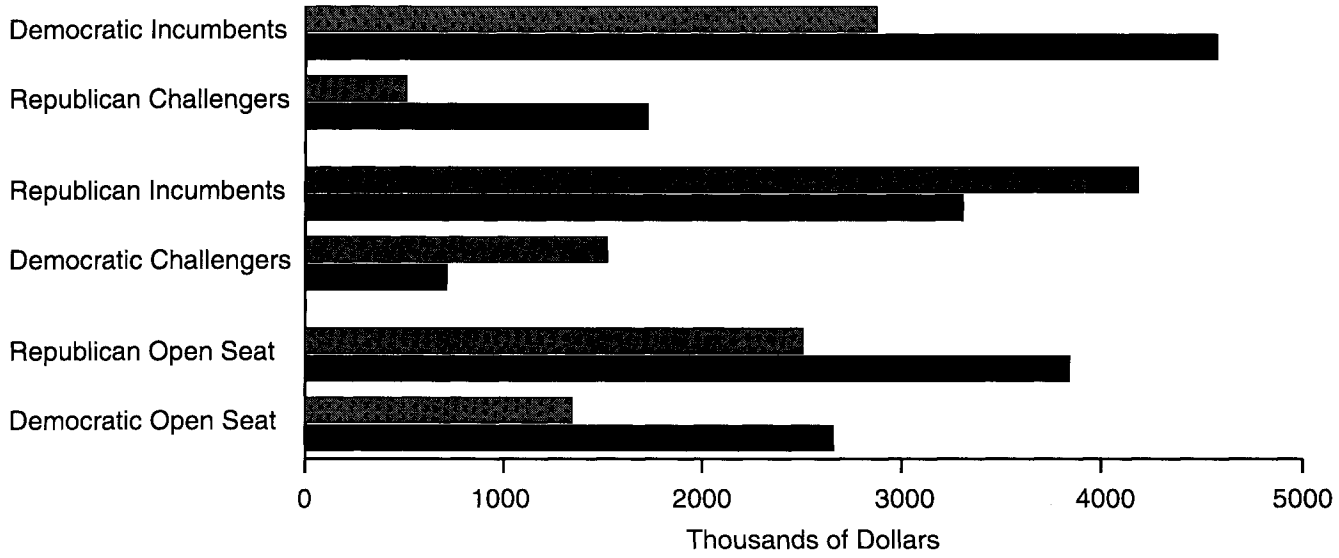
1992

1994

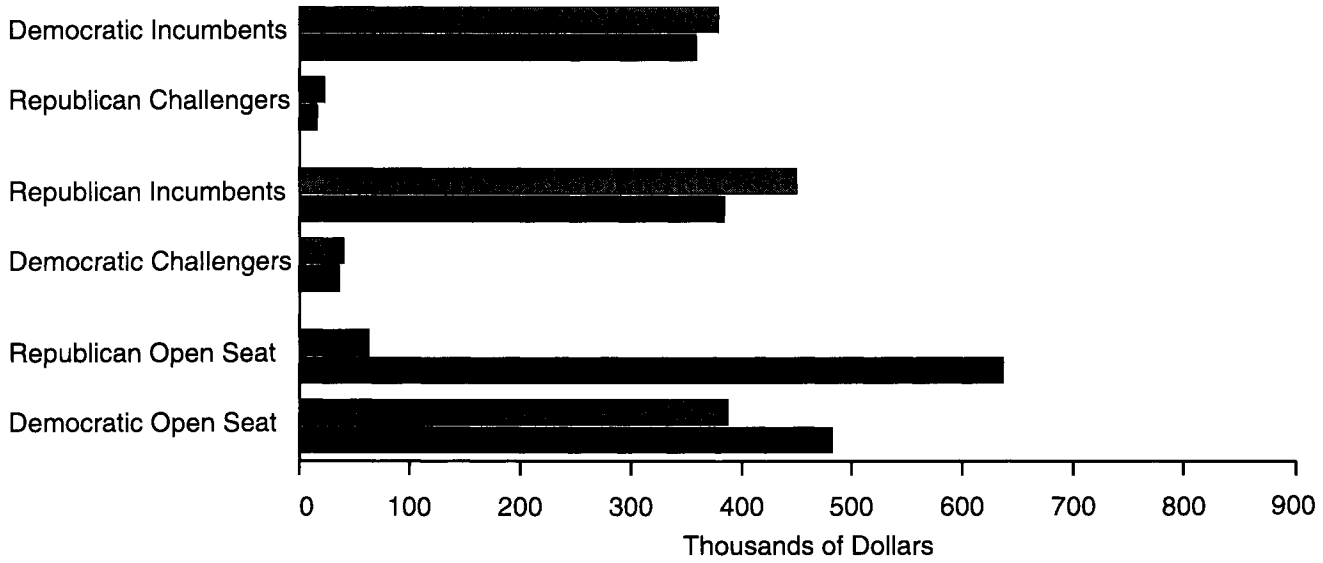
Median Disbursements by House Candidates



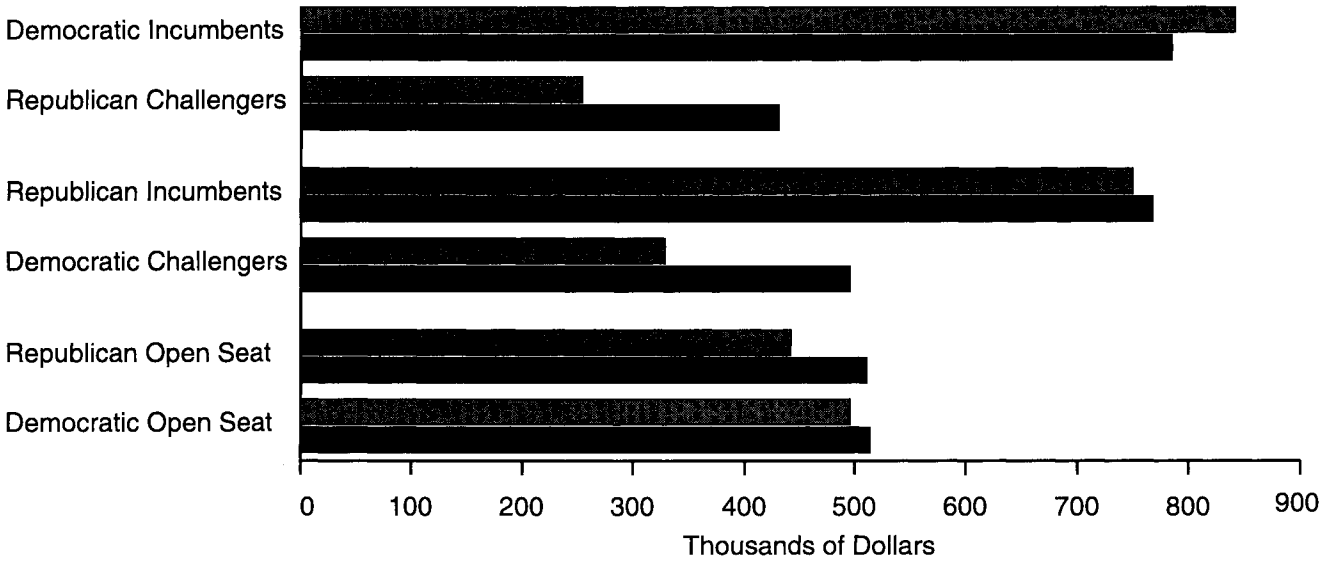
Median Disbursements by Senate Candidates



Median Disbursements by House Candidates Where Winner Received More Than 60 Percent of Vote

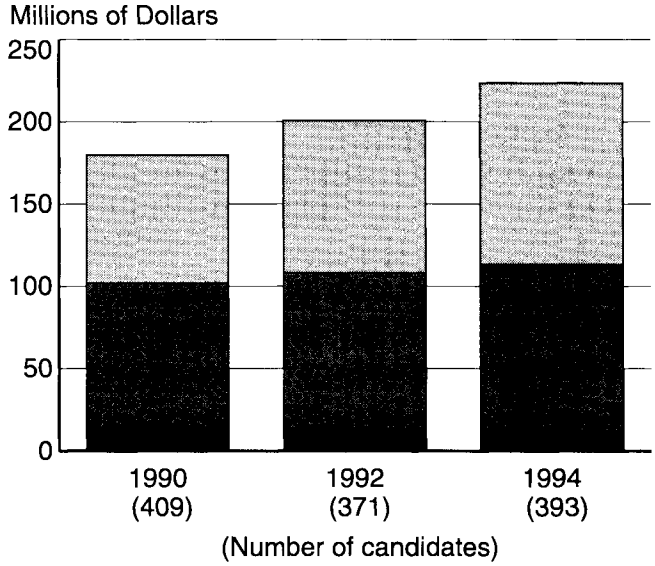


Median Disbursements by House Candidates Where Winner Received Less Than 55 Percent of Vote

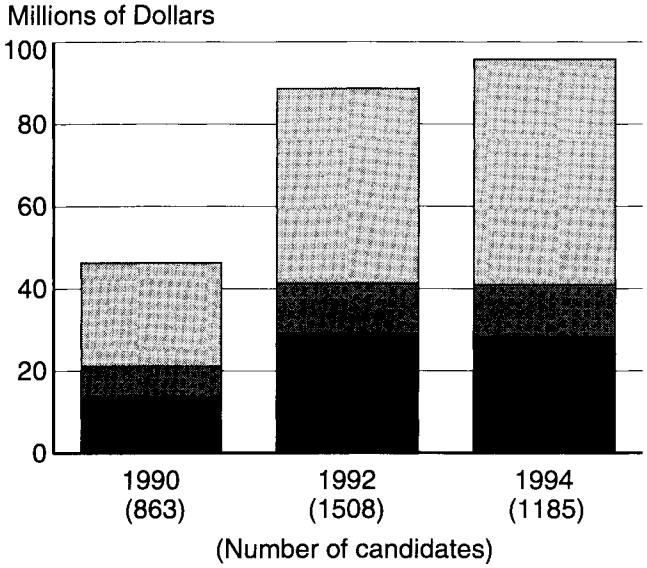


House Candidates' Sources of Receipts: Two-Year Election Cycle

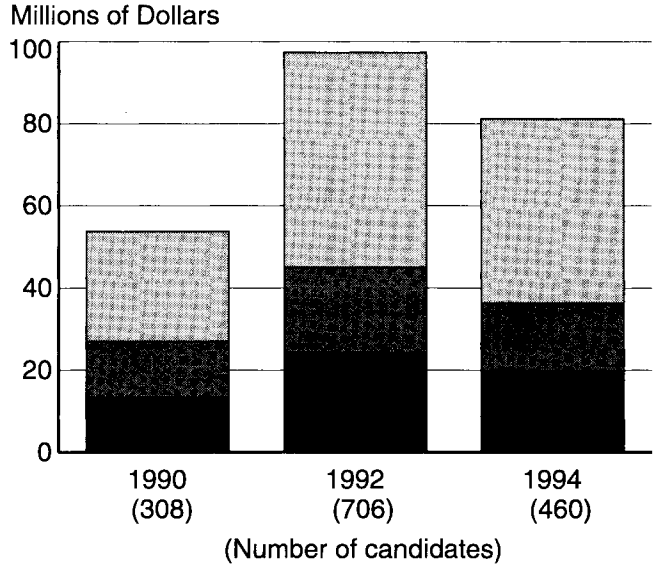
Incumbents‡



Challengers



Open Seat Candidates

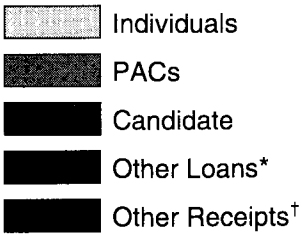


* Other loans include loans from individuals (other than the candidate) and loans from banks.

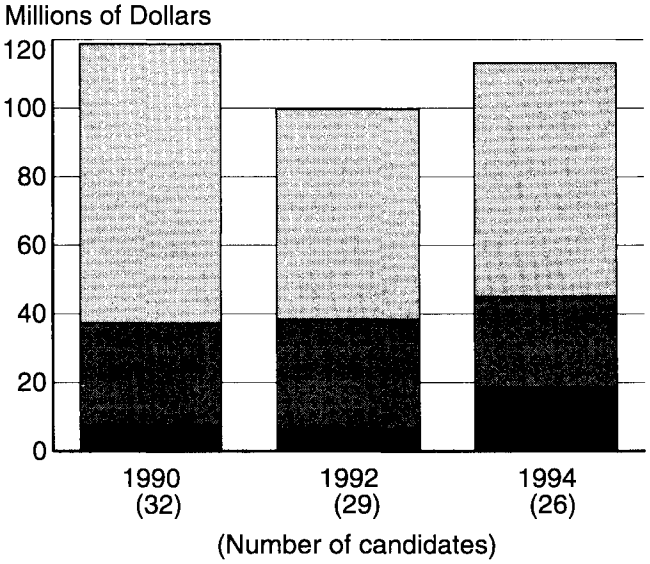
† Other receipts consist of contributions from party committees, transfers (such as joint fundraising proceeds but not funds transferred from committees authorized by the candidate for the current campaign), refunds, rebates and interest income.

‡ Note change in scale between the chart for Incumbents and those for Challengers and Open Seat Candidates.

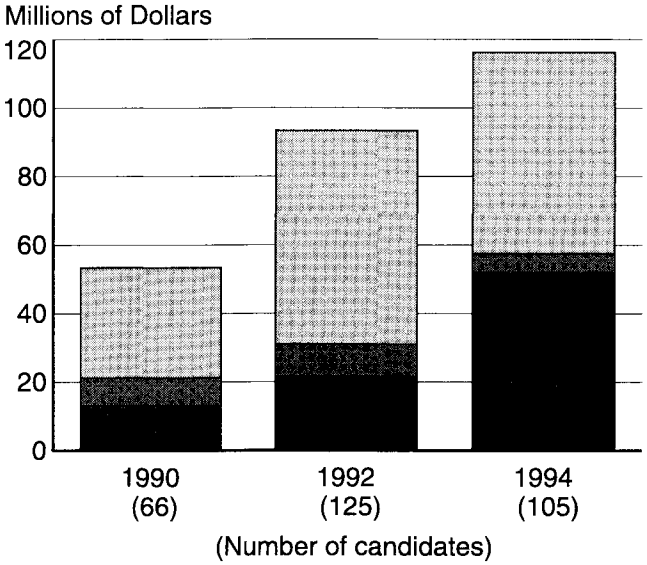
Senate Candidates' Sources of Receipts: Two-Year Election Cycle



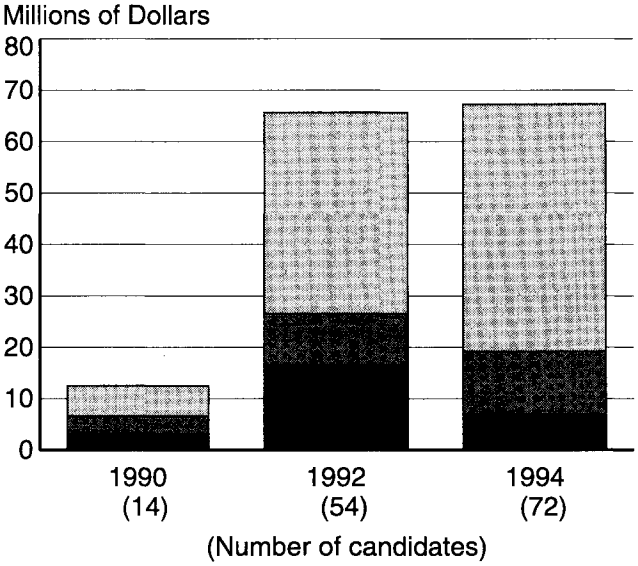
Incumbents



Challengers



Open Seat Candidates ‡



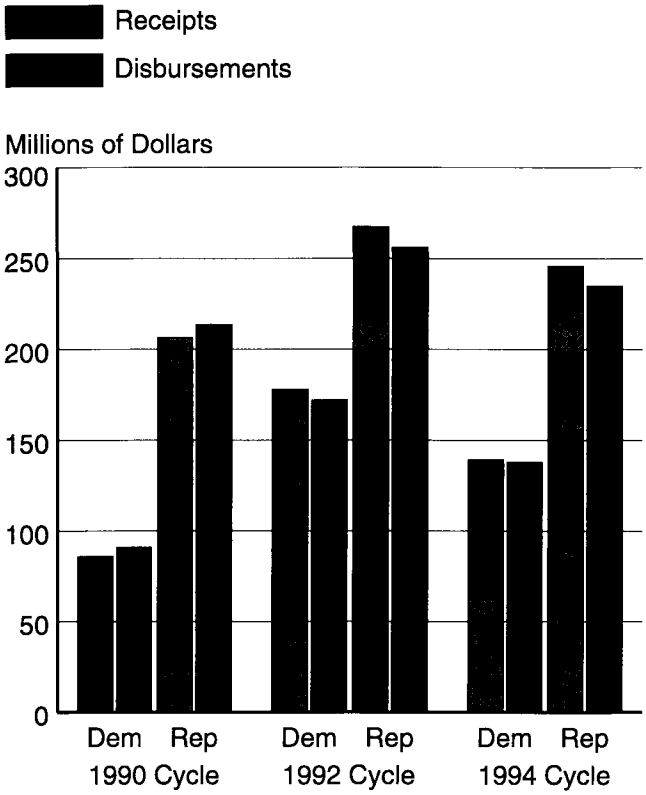
* Other loans include loans from individuals (other than the candidate) and loans from banks.

† Other receipts consist of contributions from party committees, transfers (such as joint fundraising proceeds but not funds transferred from committees authorized by the candidate for the current campaign), refunds, rebates and interest income.

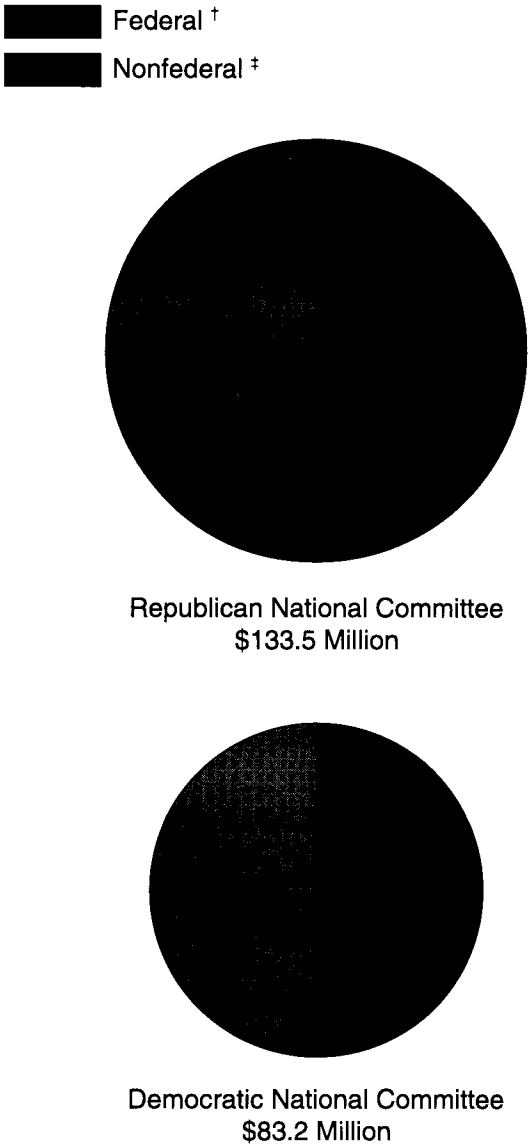
‡ Note changes in scale between the chart for Open Seat Candidates and those for Incumbents and Challengers.

Activity of Party Committees

Federal Receipts and Disbursements*

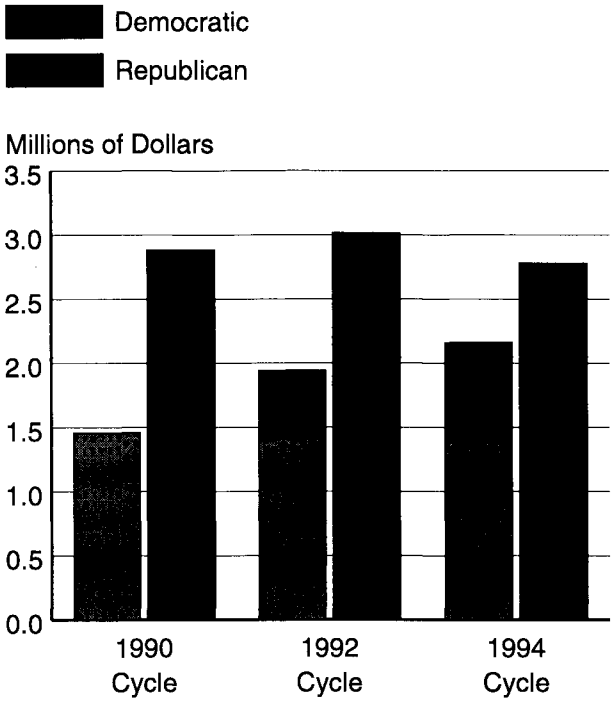


Fundraising by National Party Committees: 1994 Election

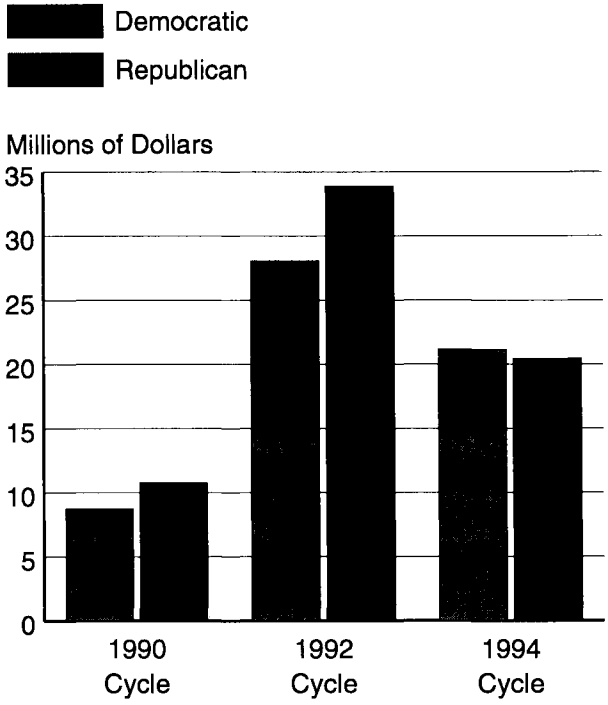


* Includes federal receipts and disbursements at all levels of the party: national, state and local.
† Money raised subject to the prohibitions and limitations of federal election law.
‡ Money raised outside the prohibitions and limitations of federal election law.

National Party Contributions to Federal Candidates

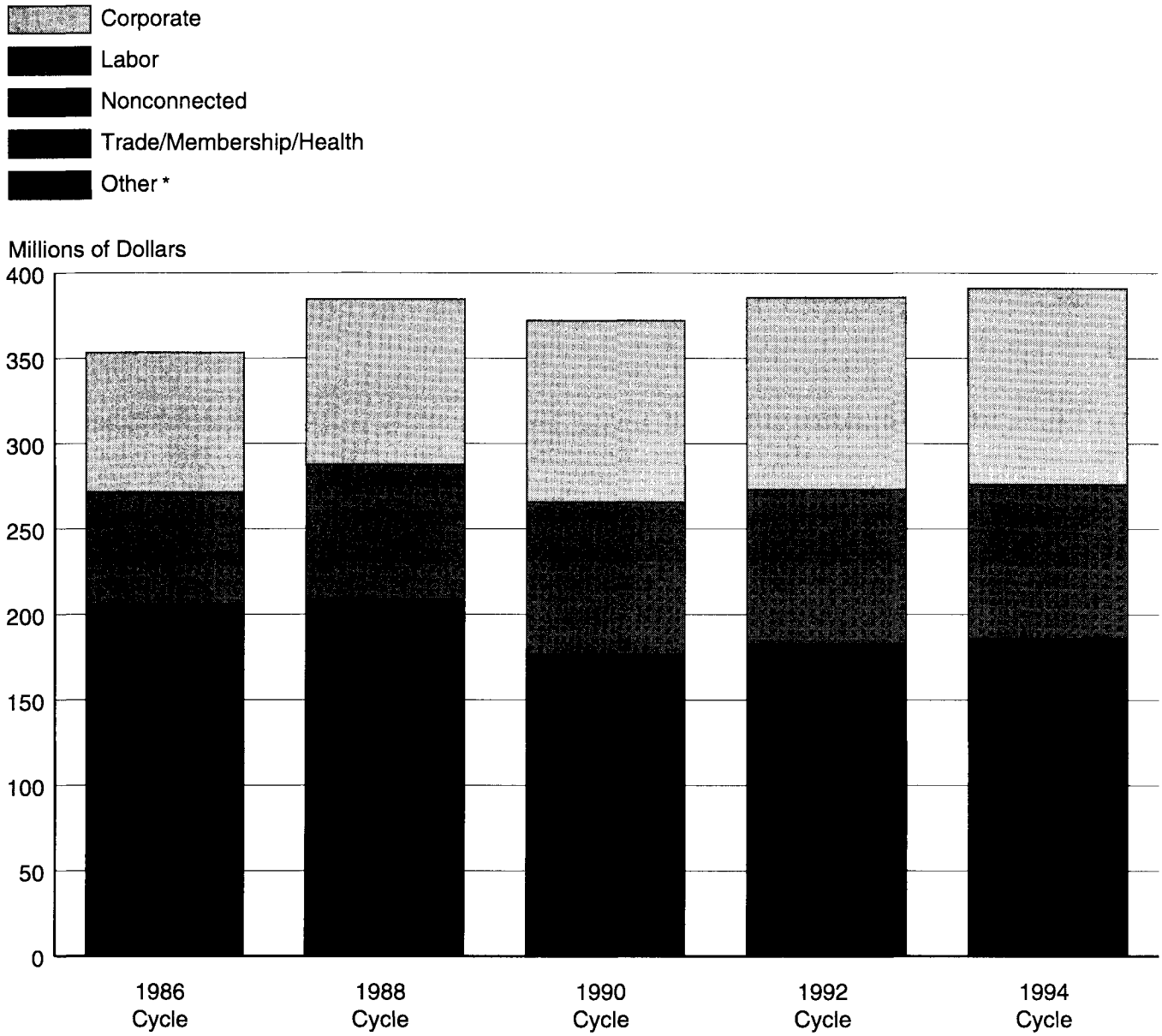


National Party Coordinated Expenditures* on Behalf of Federal Candidates



* National and state party committees may make special expenditures, subject to limits, in connection with the general election campaigns of U.S. House and Senate candidates. These "coordinated party expenditures" are not considered contributions.

PAC Receipts by Type of PAC



* "Other" consists of PACs formed by cooperatives and corporations without capital stock.

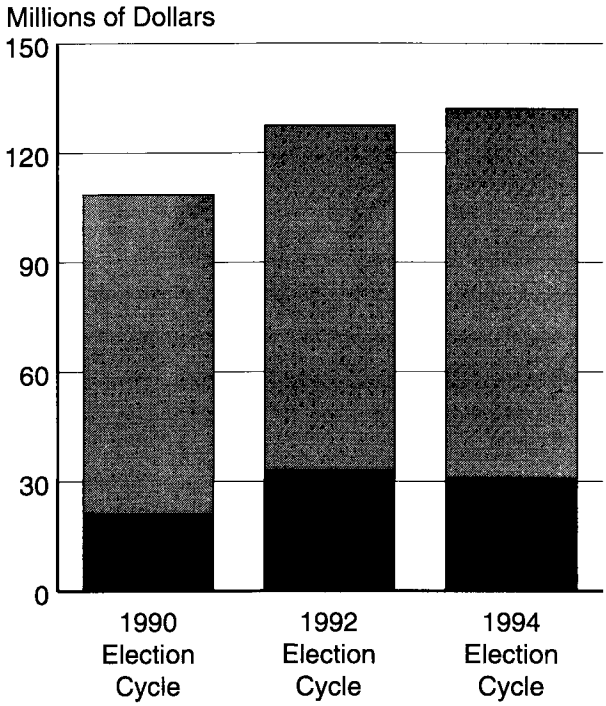
PAC Contributions to Federal Candidates *

Incumbents

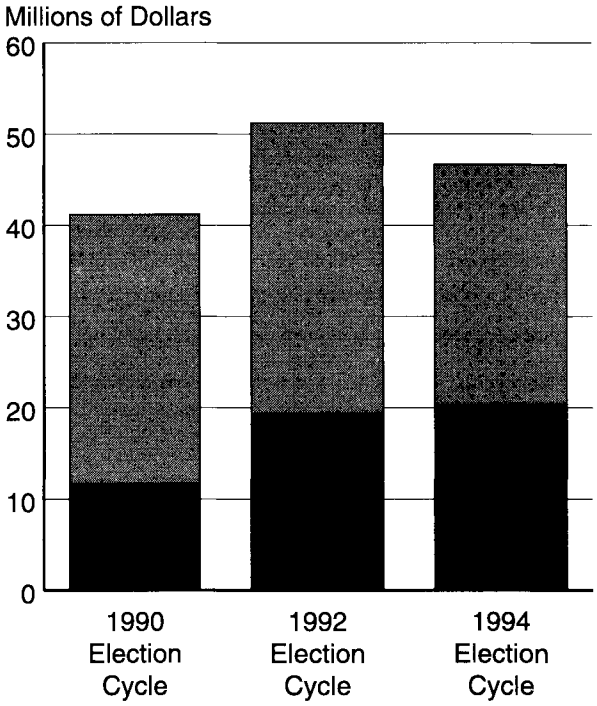
Challengers

Open Seats

PAC Contributions to House Candidates



PAC Contributions to Senate Candidates



* The graphs show PAC contributions given to candidates actively seeking election in the cycle. They do not show contributions for debt retirement or future elections.

Distribution of Contributions by PACs *
1994 Election Cycle

Contribution Range	Number of PACs in Range	Percentage of Total Number of PACs	Percentage of Total Amount of PAC Contributions
$0	1,640	35.5%	0%
$1-$5,000	1,015	22%	1.1%
$5,001-$50,000	1,279	28%	13.2%
$50,001-$100,000	271	6%	10.1%
$100,001-$250,000	246	5%	20.6%
$250,001-$500,000	82	1.8%	15.1%
$500,001-$1,000,000	41	1%	14.4%
$1,000,001 and over	30	0.6%	25.4%
Total	**4,618**	**100%**	**100%**

* For each contribution range shown in the first column, this table shows the number of PACs that made contributions within that range, the percentage of total PACs that number represents and the percentage of total PAC dollars contributed by these PACs. For example, the first row across shows that 1,640 registered PACs did not make any contributions to federal candidates during the 1994 election cycle. These 1,640 PACs represented 35.5 percent of total registered PACs. By contrast, the last row shows that 30 PACs each contributed over $1 million dollars during the cycle. They represented only 0.6 percent of total PACs, but their contributions accounted for 25.4 percent of all PAC dollars contributed to candidates during the cycle.

Appendix 1 Biographies of Commissioners and Officers

Commissioners

Trevor Potter, Chairman
April 30, 1997 [1]

Mr. Potter was confirmed by the Senate as a Commissioner in November of 1991. He served as Vice Chairman of the Commission's Finance Committee and Chairman of its Regulations Task Force during 1992. He was elected Commission Vice Chairman for 1993 and Chairman for 1994.

Before his appointment, Mr. Potter specialized in campaign and election law as a partner in a Washington, D.C. law firm. His previous experience in government includes serving as Assistant General Counsel at the Federal Communications Commission from 1984 to 1985, and as a Department of Justice attorney from 1982 to 1984.

Mr. Potter is a graduate of Harvard College. He earned his J.D. degree at the University of Virginia School of Law, where he served as Editor-in-Chief of the Virginia Journal of International Law and was a member of the Order of the Coif. He is currently Chair of the American Bar Association Committee on Election Law, Administrative Law Section. Mr. Potter is a resident of Fauquier County, Virginia.

Danny L. McDonald, Vice Chairman
April 30, 1999

Now serving his third term as Commissioner, Mr. McDonald was first appointed to the Commission in 1981 and was reappointed in 1987 and 1994. 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 served as FEC Chairman in 1983 and 1989, and in 1994 was elected as the 1995 Chairman.

[1] Term expiration date.

Joan D. Aikens
April 30, 1995

One of the original members of the Commission, Commissioner 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 Commissioner 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, Commissioner Aikens was reappointed by President Bush in 1989. She served as FEC Chairman in 1978, 1986 and 1992.

Before her 1975 appointment, Commissioner 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, Commissioner Aikens has been active in a variety of volunteer organizations and was a member of the Commonwealth Board of the Medical College of Pennsylvania and a past President of Executive Women in Government. She is currently a member of the board of directors of Ursinus College, where she received her B.A. degree and an honorary Doctor of Law degree.

Lee Ann Elliott
April 30, 1999

Commissioner Elliott was first appointed in 1981 and reappointed in 1987 and 1994. She served as chairman in 1984 and 1990. Before her first appointment, Commissioner Elliott was vice president of a political consulting firm, Bishop, Bryant & Associates, Inc. From 1961 to 1979, she was an executive of the American Medical Political Action Committee. Commissioner Elliott was 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, Commissioner Elliott graduated from the University of Illinois. She also completed Northwestern University's Medical Association Management Executive Program and is a Certified Association Executive.

John Warren McGarry
April 30, 1995

First appointed to the Commission in 1978, Commissioner McGarry was reappointed in 1983 and 1989. He served as FEC Chairman in 1991, 1985 and 1981. Before his 1978 Commission appointment, Commissioner 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, Commissioner McGarry was the Massachusetts assistant attorney general.

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

Scott E. Thomas
April 30, 1997

Mr. Thomas was appointed to the Commission in 1986 and reappointed in 1991. He was the 1993 Chairman, having earlier been Chairman in 1987. 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 an 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 District of Columbia bar.

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 Management 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. Mr. Surina served as 1991 chairman of the Council on Government and Ethics Laws (COGEL).

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.

Lynne McFarland, Inspector General

Ms. McFarland became the FEC's first permanent Inspector General in February 1990. She came to the Commission in 1976, first as a reports analyst and then as a program analyst in the Office of Planning and Management.

A Maryland native, Ms. McFarland holds a sociology degree from Frostburg State College and is a member of the Institute of Internal Auditors.

Appendix 2
Chronology of Events

January

1 — Chairman Trevor Potter and Vice Chairman Danny L. McDonald begin their one-year terms of office.

5 — Commission releases final audit report on 1992 Houston Host Committee.

12 — FEC holds public hearing on proposed rules governing personal use of campaign funds.

— U.S. district court finds that public communications hostile to President Reagan did not expressly advocate his defeat in the 1984 Presidential race (*FEC v. Survival Education Fund, Inc.*).

31 — 1993 year-end report due.

February

1 — FEC publishes 11th edition of *Selected Court Case Abstracts.*

— FEC publishes two brochures: *Using Campaign Finance Information* and *The FEC and the Federal Campaign Finance Law.*

11 — FEC holds conference for candidate committees in Washington, DC (due to snow storm, conference was repeated on April 15).

— Commission releases 1993 year-end PAC count.

17 — FEC complies with court mandate and certifies $100,000 in matching funds to 1992 Presidential candidate Lyndon LaRouche.

25 — FEC releases 1993 year-end campaign finance statistics on 1994 Congressional candidates.

March

1 — FEC publishes updated *Campaign Guide for Corporations and Labor Organizations.*

2 — Vice Chairman McDonald testifies on FEC's fiscal year 1995 budget request before House Administration Committee's Subcommittee on Elections.

3 — Effective date of revised "best efforts" regulations on disclosure of contributor information.

— Commission releases final audit report on Kerrey for President.

4 — FEC releases 1993 year-end campaign finance statistics on national party committees.

10 — Commission releases final audit report on 1992 Democratic National Convention Committee, Inc.

— FEC releases 1994 coordinated party expenditure limits.

14 — FEC begins two-day regional conference in New Orleans, Louisiana.

15 — Commission releases final audit report on Americans for Harkin, Inc.

17 — Vice Chairman McDonald testifies on FEC's fiscal year 1995 budget request before House Appropriations' Subcommittee on Treasury, Postal Service and General Government.

April

1 — FEC publishes 1994 *Combined Federal/State Disclosure Directory.*

6 — FEC sends Congress revised final rule on use of candidate names in opposition projects.

15 — FEC repeats candidate conference in Washington, DC.

— Quarterly report due.

21 — Commission releases final audit report on Wilder for President and on Lenora B. Fulani for President.

26 — South Africans living in United States vote at U.S. polling stations in first South African all–race elections.

28 — FEC sends President and Congress 62 legislative recommendations.

— FEC begins two-day regional conference in Pittsburgh, Pennsylvania.

May

1 — Commission publishes *Foreign Nationals* brochure.

9 — FEC releases 15-month campaign finance statistics on Congressional candidates.

10 — Oklahoma holds special general election in 6th Congressional District (primary, March 8; runoff, April 5).

12 — Vice Chairman McDonald testifies on FEC's fiscal year 1995 budget request before Senate Committee on Rules and Administration.
24 — Kentucky holds special general election in 2nd Congressional District.
— Commission releases final audit report on Brown for President.

June
1 — FEC publishes *Annual Report 1993.*
10 — FEC automates its 800 number.
15 — FEC releases 15-month figures on campaign finance activity of PACs and national party committees.
21 — FEC announces $120,000 in civil penalties for violations of law by 1988 Kemp Presidential campaign.
23 — Commission releases final audit report on Committee on Arrangements for the 1992 Republican National Convention.
30 — Revised rule on use of candidate names in opposition projects becomes effective.

July
1 — U.S. Senate confirms reappointment of Commissioners Lee Ann Elliott and Danny L. McDonald.
— FEC publishes supplements to *Campaign Guides* for party and nonconnected committees.
6 — FEC announces closing of cases under MUR prioritization system.
8 — U.S. court of appeals upholds FEC repayment determination for 1988 LaRouche Presidential campaign.
11 — FEC announces $65,000 civil penalty for violations of law by 1984 Glenn Presidential campaign.
15 — FEC releases mid-year PAC count.
— Quarterly report due.
19 — Chairman Potter sends letter to Congress responding to Congressman Livingston's proposal to reduce FEC appropriation by $3.5 million.
21 — Chairman Potter sends letter asking national parties to inform contributors about $25,000 individual annual limit.
22 — U.S. district court rejects challenge by Republican National Committee to revised "best efforts" regulations.
25 — Effective date of rules implementing National Voter Registration Act of 1993.

August
1 — FEC initiates "Flashfax," an automated document access system.
— FEC publishes new supplement to the *Campaign Guide for Congressional Candidates and Committees.*
3 — Chairman Trevor Potter announces that investigation into foreign national contributions resulted in $162,225 in penalties.
8 — FEC releases 18-month figures on party committee activity.
12 — Commission releases final audit report on Republican Leadership Fund (joint fundraising committee for the Bush–Quayle Primary Committee).
— FEC releases 18-month campaign finance statistics on Congressional candidates.
25 — Revised regulations on publicly funded Presidential nominating conventions become effective.

September
1 — FEC's Clearinghouse publishes *Campaign Finance Law 94.*
9 — FEC submits fiscal year 1996 budget request to Office of Management and Budget and Congress.
14 — Commission releases final audit report on Dr. John Hagelin for President Committee.
19 — FEC releases 18-month campaign finance statistics on PAC activity.
28 — U.S. district court orders Lyndon LaRouche's 1988 Presidential campaign to repay $146,464 in primary matching funds to U.S. Treasury.
30 — FEC announces $57,000 civil penalty for violation of foreign national prohibition.

October

1 — FEC publishes new edition of *Pacronyms,* a list of PAC abbreviations.

5 — In open hearing, Wilder for President Committee disputes FEC's initial repayment determination.

6 — FEC publishes Notice of Proposed Rulemaking on public financing of Presidential candidates.

— Commission approves fiscal year 1995 management plan.

11 — Commission releases final audit report on Buchanan for President.

— Supreme Court hears oral argument in *FEC v. NRA Political Victory Fund.*

15 — Quarterly report due.

27 — FEC publishes Notice of Proposed Rulemaking on implementation of Privacy Act.

— Pre-general election report due.

28 — U.S. district court dismisses *Chamber of Commerce of the U.S.A., et al. v. FEC,* finding that plaintiffs lack standing to bring suit and upholding FEC's revised definition of member.

November

2 — FEC releases statistics on pre-election activity of national party committees.

3 — FEC approves national mail voter registration form, mandated by the National Voter Registration Act of 1993 (forms available January 1, 1995).

4 — FEC releases pre-election statistics on Congressional candidates.

8 — General election.

— Oklahoma holds special general election to fill Senate seat (primary, August 23; runoff, September 20).

14 — U.S. district court rules as contrary to law FEC's dismissal of DSCC complaint alleging NRSC exceeded party expenditure limit in 1992 Georgia Senate race.

30 — Commission releases final audit report on Democrats for Economic Recovery—LaRouche in 92.

December

6 — Supreme Court, in *FEC v. NRA Political Victory Fund,* finds FEC lacks authority to petition Court under Title 2; decision leaves intact appellate court decision finding FEC makeup unconstitutional.

8 — Post-general election report due.

12 — Commission releases final audit report on The Tsongas Committee.

15 — Commission elects Danny L. McDonald as 1995 Chairman and Lee Ann Elliott as 1995 Vice Chairman.

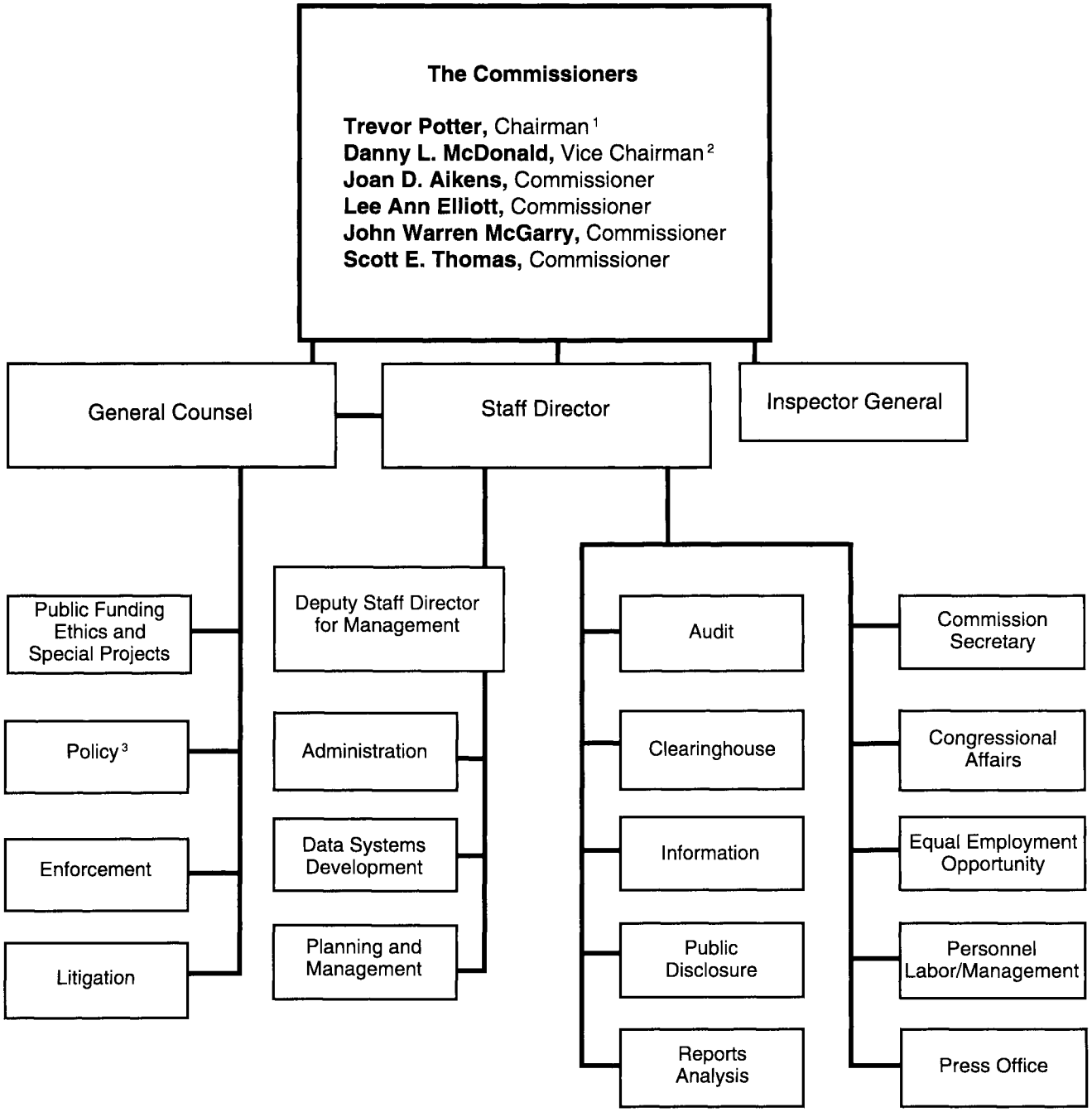
22 — FEC releases record 1994 Congressional spending figures.

— FEC announces that enforcement case against Prudential Securities results in $550,000 penalty, largest in agency's history.

27 — Commission releases final audit reports on 1992 Bush primary and general election committees.

— Commission releases final audit reports on 1992 Clinton primary and general election committees.

Appendix 3
FEC Organization Chart



[1] Danny L. McDonald was elected 1995 Chairman.
[2] Lee Ann Elliott was elected 1995 Vice Chairman.
[3] 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 202-219-3420.**

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, telecommunications, 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 fourth 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, including voter registration and voting statistics.

Local phone: 202-219-3670; toll-free phone: 800-424-9530 (press 4 on a touch-tone phone).

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.

The 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. Local phone: 202-219-4136; toll-free 800-424-9530.

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 database 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 limits. The indexes are available online through the Data Access Program (DAP), a subscriber service managed by the division. The division also publishes the *Reports on Financial Activity* series of periodic studies on campaign finance and generates statistics for other publications.

Among its duties related to internal operations, the division provides computer support for the agency's automation systems and for administrative functions such as management information, document tracking, personnel and payroll systems as well as the MUR prioritization system.

Local phone: 202-219-3730; toll-free phone: 800-424-9530.

Equal Employment Opportunity (EEO) Office

The EEO Office advises the Commission on the prevention of discriminatory practices and manages the agency's EEO Program.

The office is also responsible for: developing a Special Emphasis Program tailored to the training and advancement needs of women, minorities, veterans, special populations and disabled employees; recommending affirmative action recruitment, employment and career mobility; and encouraging informal resolution of complaints during the counseling stage.

General Counsel

The General Counsel directs the agency's enforcement activities, represents and advises the Commission in any legal actions brought against it and serves as the Designated Agency Ethics Official. The Office of General Counsel handles all civil litigation, including Title 26 cases that 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

In an effort to promote voluntary compliance with the law, the Information 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: 202-219-3420; toll-free phone: 800-424-9530 (press 1 on a touch-tone phone).

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 deficiencies 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: 202-219-3312; toll-free: 800-424-9530.

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: 202-219-4155; toll-free 800-424-9530.

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.

The Public Records Office also manages Flashfax, an automated faxing service for ordering FEC documents, forms and publications, available 24 hours a day, 7 days a week.

Local phone: 202-219-4140; toll-free phone: 800-424-9530 (press 3 on a touch-tone phone); Flashfax: 202-501-3413.

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 which requests that the committee either amend its reports or provide further information concerning a particular problem. By sending these letters (RFAIs), 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: 202-219-3580; toll-free phone 800-424-9530 (press 2 on a touch-tone phone).

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 1994	Filers Terminated as of 12/31/94	Continuing Filers as of 12/31/94	Number of Reports and Statements in 1994	Gross Receipts in 1994	Gross Expenditures in 1994
Presential Candidate Committees	**454**	**42**	**412**	**492**	**$9,280,109**	**$7,056,753**
Senate Candidate Committees	**846**	**144**	**702**	**2,301**	**$259,219,443**	**$299,316,785**
House Candidate Committees	**4,015**	**1,152**	**2,863**	**13,490**	**$330,503,975**	**$353,783,117**
Party Committees	**634**	**159**	**475**	**3,367**	**$429,995,340**	**$435,980,255**
Federal Party Committees	585	159	426	2,989	$351,484,957	$361,736,781
Reported Nonfederal Party Activity	49	0	49	378	$78,510,383	$74,243,474
Delegate Committees	**81**	**0**	**81**	**0**	**$0**	**$0**
Nonparty Committees	**4,657**	**703**	**3,954**	**19,204**	**$219,254,320**	**$255,822,255**
Labor Committees	372	39	333	1,673	$46,873,881	$56,689,723
Corporate Committees	1,887	227	1,660	8,404	$60,265,239	$73,782,579
Membership, Trade and Other Committees	2,398	437	1,961	9,127	$112,115,200	$125,349,953
Communication Cost Filers	**205**	**0**	**205**	**94**	**N/A**	**$4,226,849**
Independent Expenditures by Persons Other Than Political Committees	**288**	**34**	**254**	**153**	**N/A**	**$441,726**

Divisional Statistics for Calendar Year 1994

	Total
Reports Analysis Division	
Documents processed	63,830
Reports reviewed	43,987
Telephone assistance and meetings	12,337
Requests for additional information (RFAIs)	9,169
Second RFAIs	3,616
Data coding and entry of RFAIs and miscellaneous documents	21,201
Compliance matters referred to Office of General Counsel or Audit Division	69
Data Systems Development Division*	
Documents receiving Pass I coding	68,581
Documents receiving Pass III coding	45,624
Documents receiving Pass I entry	72,096
Documents receiving Pass III entry	44,857
Transactions receiving Pass III entry	
• In-house	80,545
• Contract	872,245
Public Records Office	
Campaign finance material processed (total pages)	2,042,632
Requests for campaign finance reports	12,547
Visitors	14,705
Total people served	27,252
Information telephone calls	19,579
Computer printouts provided	79,363
Total income (transmitted to U.S. Treasury)	$97,222
Cumulative total pages of documents available for review	12,844,161
Contacts with state election offices	2,579
Notices of failure to file with state election offices	478

	Total
Administrative Division	
Contracting and procurement transactions	3,193
Pieces of outgoing mail processed	127,854
Publications prepared for print	66
Pages of photocopying	9,093,794
Information Division	
Telephone inquiries	91,192
Information letters	92
Distribution of FEC materials	13,952
Prior notices (sent to inform filers of reporting deadlines)	52,054
Other mailings	39,495
Visitors	171
Public appearances by Commissioners and staff	208
State workshops	3
Publications	45
Press Office	
Press releases	179
Telephone inquiries from press	14,670
Visitors	1,765
Freedom of Information Act (FOIA) requests	645
Fees for materials requested under FOIA (transmitted to U.S. Treasury)	$20,959
Clearinghouse on Election Administration	
Telephone inquiries	4,986
Informational letters	3,778
Visitors	81
Publications	6
Foreign briefings	63

*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 1994	4
Requests received	40
Issued	30
Not Issued*	6
Pending at end of 1994	8
Compliance cases†	
Pending at beginning of 1994	318
Opened	342
Closed	340
Pending at end of 1994	320
Litigation	
Cases pending at beginning of 1994	40
Cases opened	20
Cases closed	15
Cases pending at end of 1994	45
Cases won	11
Cases lost	3
Cases voluntarily dismissed	0
Cases dismissed as moot	1
Law Library	
Telephone inquiries	1,593
Visitors	781

*Three advisory opinion requests did not present sufficient facts, two resulted in a 3-3 split vote and one did not qualify for an opinion because it concerned activity that had already taken place.

†In previous annual reports, the category "compliance cases" included only Matters Under Review (MURs). As a result of the enforcement prioritization system, the category has been expanded to include internally-generated matters in which the Commission has not yet made reason to believe findings.

Audit Reports Publicly Released

Year	Title 2*	Title 26†	Total
1976	3	1	4
1977	6	6	12
1978	98‡	10	108
1979	75‡	9	84
1980	48‡	11	59
1981	27‡	13	40
1982	19	1	20
1983	22	0	22
1984	15	2	17
1985	4	9	13
1986	10	4	14
1987	12	4	16
1988	8	0	8
1989	2	7	9
1990	1	6	7
1991	5	8	13
1992	9	3	12
1993	10	2	12
1994	5	17	22
Total	**379**	**113**	**492**

Audits Completed by Audit Division, 1975–1994

	Total
Presidential	93
Presidential Joint Fundraising	11
Senate	16
House	135
Party (National)	46
Party (Other)	116
Nonparty (PACs)	75
Total	**492**

***Audits for cause:** The Commission may audit any federally registered political committee: 1) whose reports do not substantially comply with the law; or 2) if the Commission has found reason to believe that the committee has committed (or is about to commit) a violation of the law. 2 U.S.C. §§438(b) and 437g(2).

†**Title 26 audits:** The statute requires the Commission to give priority to these mandatory audits of publicly funded Presidential candidates and committees and convention committees.

‡**Random audits:** The majority of these audits were performed under the Commission's random audit policy (pursuant to the former 2 U.S.C. §438(a)(8)), which provided for random audits of all categories of political committees. The authorization for random audits was repealed by Congress in 1979.

Status of Audits, 1994

	Pending at Beginning of Year	Opened	Closed	Pending at End of Year
Presidential	15	1	16	0
Presidential Joint Fundraising	1	0	1	0
Senate	5	0	1	4
House	5	0	4	1
Party (National)	0	0	0	0
Party (Other)	3	8	0	11
Nonparty (PACs)	0	0	0	0
Total	**29**	**9**	**22**	**16**

Appendix 6
1994 Federal Register Notices

1994-1
Filing Dates for the Oklahoma Special Elections (59 FR 5769, February 8, 1994)

1994-2
11 CFR Part 104: Recordkeeping and Reporting by Political Committees; Best Efforts; Final Rule; Announcement of Effective Date (59 FR 10057, March 3, 1994)

1994-3
11 CFR Part 8: National Voter Registration Act of 1993; Notice of Proposed Rulemaking (59 FR 11211, March 10, 1994; corrections, 59 FR 14022, March 24, 1994)

1994-4
Rulemaking Petition: Center for Responsive Politics [re Presidential Compliance Funds]; Notice of Availability (59 FR 14794, March 30, 1994)

1994-5
11 CFR Part 102: Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees; Final Rule; Transmittal to Congress (59 FR 17267, April 12, 1994)

1994-6
Filing Dates for the Kentucky Special Election (59 FR 22161, April 29, 1994)

1994-7
Filing Dates for the Oklahoma Special Elections (59 FR 32207, June 22, 1994)

1994-8
11 CFR Part 8: National Voter Registration Act of 1993; Final Rule (59 FR 32311, June 23, 1994)

1994-9
11 CFR Parts 107, 114 and 9008: Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions; Final Rule; Transmittal to Congress (59 FR 33606, June 29, 1994)

1994-10
11 CFR Part 102: Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees; Final Rule; Announcement of Effective Date (59 FR 33643, June 30, 1994)

1994-11
11 CFR Parts 100 and 113: Expenditures; Personal Use of Campaign Funds; Proposed Rule; Request for Additional Comments (59 FR 42183, August 17, 1994)

1994-12
11 CFR Parts 107, 114 and 9008: Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions; Final Rule; Announcement of Effective Date (59 FR 43726, August 25, 1994)

1994-13
11 CFR Parts 9003, 9004, 9006, 9007, 9033, 9034, 9037 and 9038: Public Financing of Presidential Primary and General Election Candidates; Notice of Proposed Rulemaking (59 FR 51006, October 6, 1994; corrections, 60 FR 3700, January 18, 1995)

1994-14
11 CFR Part 110: Communications Disclaimer Requirements; Notice of Proposed Rulemaking (59 FR 50708, October 5, 1994)

1994-15
11 CFR Part 1: Privacy Act; Implementation [re Inspector General Investigatory Files]; Proposed Rule with Request for Comments (59 FR 53946, October 27, 1994)

1994-16
Privacy Act; Proposed Notice of New and/or Revised Systems of Records (59 FR 53977, October 27, 1994)

1994-17
11 CFR Parts 9001–9007: Rulemaking Petition [re Post–Presidential Election Activity]; Anthony F. Essaye and William Josephson; Notice of Availability (59 FR 63274, December 8, 1994)

1994-18
11 CFR Parts 9003, 9004, 9006, 9007, 9033, 9034, 9037 and 9038: Public Financing of Presidential Primary and General Election Candidates; Extension of Comment Period (59 FR 64351, December 14, 1994)

1994-19
11 CFR Part 8: National Voter Registration Act of 1993; Technical Amendment; Final Rule (59 FR 64560, December 15, 1994)

Appendix 7
House and Senate Campaign Finance Reform

During 1994, the House and Senate continued discussion of two major campaign finance reform bills, H.R. 3 and S. 3. The proposed legislation would have had a substantial impact on the campaign finance laws, which have remained essentially unchanged since 1980. However, the legislation was never enacted.

At the heart of H.R. 3 and S. 3 was a system of voluntary campaign spending limits in conjunction with publicly funded benefits for participating candidates.

The Senate passed S. 3 on June 17, 1993, and the House passed H.R. 3 on November 22, 1993. Congress debated the bills during 1994 until September 30, when a procedures vote in the Senate effectively killed the legislation.

The proposed bills addressed 35 of the 63 legislative recommendations that the Commission had sent to Congress in 1993. (See *Annual Report 1993,* p. 37.)

The summary of the two bills that appears below has been excerpted from material prepared by the Congressional Research Service.[1]

The bills [S. 3 and H.R. 3] reflected the positions of the Democratic leadership in each House and were based on a bill...passed by both Houses in the 102d Congress and vetoed by President Bush....

The Senate-passed S. 3—the Congressional Campaign Spending Limit and Election Reform Act of 1993—establishes voluntary spending limits for Senate candidates (only) in exchange for a broadcast rate of 50 percent of the lowest unit rate and two mailings at the third-class non-profit rate (in general election), with public funding as a backup mechanism to compensate a candidate opposed by independent expenditures or by a non-complying opponent who exceeds the limit. Additional spending is allowed to compensate for excess spending by an opponent or independent expenditures. The bill calls for a tax on candidates who exceed the limit....

The House-passed H.R. 3—the House of Representatives Campaign Spending Limit and Election Reform Act of 1993—establishes voluntary spending limits for House candidates in exchange for voter communication vouchers, based on a matching fund system, equal to one-third of the spending limit; additional vouchers are provided to participating candidates opposed by independent expenditures or by a non-complying opponent, or who win closely contested primaries. It establishes a Make Democracy Work Fund to finance vouchers, but makes the bill's provisions contingent on subsequent enactment of revenue legislation....

Both bills address the issue of restraining political action committees (PACs): the House bill imposing an aggregate limit on PAC receipts (and also large donor contributions) by House candidates and the Senate bill prohibiting PAC contributions to Federal candidates (with a fallback of an aggregate PAC receipts limit and lower PAC contribution limit if the ban is declared unconstitutional). Both bills add restrictions on such perceived loopholes in the current system as independent expenditures, bundling, and soft money.

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[1] CRS Report for Congress, "Campaign Finance Reform: Comparison of Current Law with H.R. 3 and S. 3, As Passed by the House and Senate in the 103d Congress," Joseph E. Cantor, Specialist in American National Government, Government Division, and L. Paige Whitaker, Legislative Attorney, American Law Division, December 29, 1993 (93-1067 GOV).