

Federal Election Commission

Annual Report 2004



Federal Election Commission
Washington, DC 20463

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OFFICE OF THE CHAIRMAN

June 1, 2005

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

Dear Mr. President, Senators and Representatives:

We are pleased to submit for your information the 30th Annual Report of the Federal Election Commission, pursuant to 2 U.S.C. §438(a)(9). The *Annual Report 2004* describes the activities performed by the Commission in the last calendar year.

In 2004, the agency provided critical election-year guidance and oversight. During this Presidential election year, the Commission completed work on five rulemakings, issued 39 advisory opinions, signed 38 conciliation agreements, collected \$2,674,745 in civil penalties for the U.S. Treasury and closed 12 litigation cases. At the same time, the agency efficiently received and made public volumes of financial data—including disclosure information required for the first time under the Bipartisan Campaign Reform Act of 2002--during an election year of unprecedented financial activity.

This report includes the 16 legislative recommendations the Commission recently adopted and transmitted to the President and the Congress for consideration. We believe these proposals would streamline and improve our campaign finance laws.

We hope that you will find this annual report to be a useful summary of the Commission's efforts to implement the Federal Election Campaign Act.

Respectfully,

A handwritten signature in black ink, which appears to read "Scott E. Thomas". The signature is fluid and cursive, with a long, sweeping underline.

Scott E. Thomas

Chairman

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Executive Summary

The 2004 election cycle offered the Commission its first opportunity to administer provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA), and to measure its effects on the way that candidates, parties, political committees and other groups campaign. While experts may disagree on the overall success or failure of the new law, the BCRA's additional reporting requirements certainly increased transparency in the campaign process. Financial activity during the 2004 elections was exceptionally high, with the national committees of the two major parties raising nearly \$1.5 billion, despite new restrictions on their fundraising. Meanwhile, independent expenditures reached unprecedented highs and "electioneering communications" were regulated and reported for the first time. As the 2004 elections progressed, the Commission's regular duties in monitoring elections were augmented both by the need to provide guidance on previously untested provisions of the law and by the imperative to receive and make public volumes of additional campaign finance data in a timely manner.

During 2004, the agency devoted considerable resources to defending the BCRA's constitutionality and responding to court decisions regarding the new law. In September 2004, a district court issued an opinion in *Shays and Meehan v. FEC* which remanded to the FEC a number of BCRA-implementing regulations that the court found to be contrary to the statute or improperly promulgated. The Commission appealed portions of this decision while at the same time taking steps to comply with the court's orders. Another court decision upheld the BCRA's electioneering communications provisions. *Wisconsin Right to Life, Inc. (WRTL)* filed suit asking the court to find the prohibition on the use of corporate funds to pay for electioneering communications unconstitutional as applied to certain grass-roots lobbying activities. The district court denied WRTL's request for a preliminary injunction, and both the U.S. Court of Appeals and the Supreme Court denied its request for an emergency injunction.

The agency provided critical guidance to the regulated community throughout the election year through advisory opinions (AOs) and regulations. During 2004, the Commission received 45 advisory opinion requests, including seven 20-day advisory opinion

requests. Twenty-eight of the requests implicated BCRA issues in the main or in part. In addition, the FEC completed significant rulemakings in 2004. Particularly noteworthy was the Commission's issuance, in October 2004, of the final rules and Explanation and Justification regarding political committee status. This rulemaking generated public interest and participation that was unprecedented in the Commission's history and resulted in significant changes in the manner in which funds received in response to certain communications are treated and the methods separate segregated funds and nonconnected committees must use to allocate certain expenses between their federal and nonfederal accounts.

In addition, during 2004, the FEC completed significant rulemakings regarding inaugural committees, as well as independent and coordinated expenditures by party committees. The agency also began rulemakings regarding contributions by minors, party committee donations to tax-exempt organizations and political organizations, payroll deductions by member corporations for contributions to a trade association's PAC and timely filing of reports by Express Mail, Priority Mail and overnight delivery service.

The Commission continued to process enforcement matters in an efficient and effective matter utilizing the Enforcement Priority System and Case Management System, allowing the Office of General Counsel to focus its enforcement resources on the most serious violations of the Federal Election Campaign Act while referring other matters to the Commission's Administrative Fine program and Alternative Dispute Resolution (ADR) program. Through its standard enforcement process, the FEC entered into conciliation agreements requiring the payment of more than \$2 million in total civil penalties during 2004.

The ADR program produced a total of 35 separate negotiated agreements based on 35 cases during 2004. In addition, the FEC's Administrative Fine program continued to encourage compliance with the law's reporting deadlines by assessing civil money penalties for violations involving failure to file reports on time or at all, including failure to file 48-hour notices. During 2004, the Administrative Fine office processed 158 cases and collected a total of \$214,950 in fines for the U.S. Treasury. During the three years

the program has been in place, the rate of timely filing has increased. For example, eight percent of the 2004 Year End Reports were filed late, an 11 percentage point improvement from 1999 when 19 percent of the Year End Reports were filed late.

The FEC also continued to promote compliance by educating the regulated community. Commissioners and FEC staff hosted a full series of conferences in Washington, DC, and regional locations. In addition, for the first time, the FEC held roundtable workshops on reporting issues prior to each quarterly reporting deadline and provided attendees with the opportunity to meet with staff from the Commission's Electronic Filing Office and with the Campaign Finance Analyst who reviews their committee's reports.

The agency significantly enhanced its disclosure of information during 2004 by upgrading its web site, www.fec.gov. The redesigned site offers a wealth of information in a simple, clearly organized format. Features include cascading menus that improve navigation and interactive pages that allow users to tailor content to their specific needs. The upgraded site also offers a search engine, an interactive calendar of all Commission events and a robust enforcement section that includes the Enforcement Query System, information on closed matters under review (MURs), the Alternative Dispute Resolution program and the Administrative Fine Program and—for the first time—audit reports issued by the Commission.

The material that follows details the FEC's activities during 2004. Supplemental information on most topics may be found in issues of the FEC's monthly newsletter, the *Record*, that were published during the past year.

Chapter One

Keeping the Public Informed

The FEC's public disclosure and educational outreach programs work together to educate the electorate about the various aspects of federal campaign finance law. The financial reports of all federal political committees are accessible to members of the general public, providing an added incentive for the regulated community to comply with the law. Educational outreach helps committees achieve compliance by providing the information necessary to understand the requirements of the law.

Throughout 2004, the Commission maintained its commitment to customer service and expanded public access to Commission information. As detailed below, the Commission implemented changes throughout the year that will further enhance the disclosure and educational outreach programs.

Public Disclosure

During 2004, the disclosure of the sources and amounts of funds spent on federal campaign activity continued to be the focal point of the Commission's work. The Commission received the reports filed by committees, reviewed them to ensure compliance with the law, entered the data into the FEC's computer database and made the reports available to the public within 48 hours of receipt.

Electronic Filing

The Commission's mandatory electronic filing program continued to pay disclosure dividends in 2004. Under the program, committees that receive contributions or make expenditures in excess of \$50,000 in a calendar year, or expect to do so, must file their campaign finance reports electronically.¹ Committees that are required to file electronically, but instead file on paper, are considered nonfilers and could be subject to enforcement actions, including administrative fines. In order to file electronically, committee treasurers obtain passwords from the FEC and use software to fill out the reports, which they can send to the Commis-

sion via Internet connection, modem or floppy disk. The FEC's validation system verifies that the reports meet certain criteria and informs the committees of problems that need to be fixed.

Throughout 2004, the Reports Analysis and Information Technology divisions continued to ensure that both the Commission's free FECFile 5 electronic filing software and other commercially available software allowed users to comply with reporting changes resulting from the Bipartisan Campaign Reform Act of 2002 (BCRA). Additionally, the Reports Analysis Division improved customer service by providing Campaign Finance Analysts with greater electronic filing training. As a result, analysts can now answer political committees' questions regarding technical electronic filing issues, as well as addressing reporting concerns. The Commission hopes that such coordination between departments will reduce the number of calls transferred and allow the agency to respond to filers' questions more efficiently.

State Filing Waivers

The Commission's State Filing Waiver Program continued to ease the reporting and recordkeeping burdens for political committees and state election offices. The program, which began in October 1999, includes 49 states and two territories that have qualified for the waiver.² Under the program, filers whose reports are available on the FEC web site need not file duplicate copies of their reports in states that provide public access to the Commission's web site.

¹ Mandatory electronic filing requirements do not apply to Senate candidates' committees and other committees that only support Senate candidates.

² As of December 31, 2004, the FEC had certified that the following states and territories qualify for filing waivers: Alabama, Alaska, American Samoa, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin and Wyoming. Guam, Montana and Puerto Rico are not currently in the State Filing Waiver Program.

Imaging and Processing Data

The Commission also continued its work in 2004 to make the reports it receives quickly and easily available to the public. The Commission scans all of the paper reports filed with the agency to create digital images of the documents, which are then accessible to the public in the FEC's Public Disclosure Office or on the Commission's web site. In addition to the digital imaging system, the Commission codes and enters the information taken from campaign finance reports into the agency's disclosure database, which contains data from 1977 to the present. Information is coded so that committees are identified consistently throughout the database. For electronic filings, this process is completely automated.

CHART 1-1
Size of Detailed Database by Election Cycle

Year	Number of Detailed Entries*
1990	767,000
1991	444,000 [†]
1992	1,400,000
1993	472,000
1994	1,364,000
1995	570,000
1996	1,887,160
1997	619,170
1998	1,652,904
1999	840,241
2000	2,390,837
2001	661,591
2002	2,281,963
2003	1,109,946
2004	2,131,999

* Figures for even-numbered years reflect the cumulative total for each two-year election cycle.

[†] The FEC began entering nonfederal account data in 1991.

Public Access to Data

As a result of modernized hardware, software and communications infrastructure, the Commission's retrieval system allows anyone with access to the Commission web site—www.fec.gov—to examine the FEC's campaign finance disclosure database. The new system also allows users to perform complex search functions.

The Commission's disclosure database, which contains millions of transactions, enables researchers to select a profile of a committee's financial activity for each election cycle. Researchers can also access information on contributions by using a variety of search elements (*e.g.*, donor's name, recipient's name, date, amount or geographic location).

Visitors to the Office of Public Disclosure can use computer terminals to inspect digital images of reports and to access the disclosure database and more than 25 different campaign finance indices that organize the data in different ways. Visitors can also access the FEC's web site, which offers search and retrieval of more than 3 million images of report pages dating back to 1993 and over 2 million database entries since 1997.

The Office of Public Disclosure continues to make available microfilmed copies of all campaign finance reports, paper copies of reports from Congressional candidates and Commission documents such as press releases, audit reports, closed enforcement cases (MURs) and agenda documents.

Throughout the agency's history, the Commission has continued to improve disclosure information's accessibility and availability to members of the public, the press and the regulated community. This year was no exception. During 2004, the Office of Public Disclosure held extended hours to provide greater opportunities for research and inquiries on site at the Commission. Additionally, as detailed below, the Commission continued to improve the quality and quantity of information available on its web site.

Enforcement Query System

In 2004, the Commission updated the Enforcement Query System (EQS), which became available via the FEC web site at the end of 2003. The program is a web-based search tool that allows users to find and

examine public documents regarding closed Commission enforcement matters. Using current scanning, optical character recognition and text search technologies, the system permits intuitive and flexible searches of case documents and other materials. Previously, these documents were available only at the Commission's offices in Washington, and only on paper or microfilm. Users of the system can search for specific words or phrases from the text of all public case documents. They can also identify single MURs or groups of cases by searching additional identifying information about cases prepared as part of the Case Management System. Included among these criteria are case names and numbers, complainants and respondents, timeframes, dispositions, legal issues and penalty amounts.

Initially, the EQS contained complete public case files for all MURs closed since January 1, 2002. In the past year, however, staff updated the system to provide documents from MURs closed since January 1, 2000. The system was also revamped to provide additional case information and navigation tools, including:

- A redesigned Case Summary section that includes the name of a respondent committee treasurer and any previous treasurer; and
- An online tutorial to help users utilize the system's search capabilities to the fullest extent.

Review of Reports

The Commission's Reports Analysis Division (RAD) reviews all reports to track compliance with the law and to ensure that the public record provides a full and accurate portrayal of campaign finance activity. Analysts reviewed reports more efficiently than ever before, reducing dramatically the typical time between receipt of a report and review of it. In 2004, RAD collaborated with other divisions to provide greater accessibility and more efficient service to members of the regulated community.

RAD implemented a number of innovations throughout 2003 and 2004 to help its campaign finance analysts handle an increasing number of campaign finance transactions. ICF Consulting assessed RAD's operations and issued a report on January 21, 2003, suggesting a number of changes. Based on

those recommendations, the division strengthened management procedures, assigning new Assistant Branch Chiefs and implementing standardized training and practice in both the authorized and nonauthorized branches. The division's mentoring program continued to help newer staff learn from those with more experience, allowing the division to fulfill its functions with greater success. Additionally, committees are now encouraged to call their analysts directly rather than calling a central number, which makes the process more efficient for callers. RAD continues to work closely with the Office of Administrative Review to streamline the compliance process for administrative fines and meets regularly with the Office of General Counsel in an effort to provide greater communication and coordination in enforcement matters.

When Campaign Finance Analysts find that a report contains errors or suggests violations of the law, they send the reporting committee a Request for Additional Information (RFAI). In 2003, the procedure for sending RFAI letters changed. Previously, committees were sent up to two RFAI letters and allowed up to 60 days total to respond to both letters. Over half of the RFAI letter recipients did not respond to the first letter. Under the new procedure, however, analysts now send only one letter requesting additional information, allowing respondents 30 days to reply. This year marks the first complete year of the revised RFAI process. The single letter procedure has prevented duplication and enabled analysts more time to review reports. After receipt of the letter, the committee treasurer can make additions or corrections to the report, which is then added to the public record. Apparent violations, however, may be referred to the Audit Division or to the Office of General Counsel for possible enforcement action.

In addition to the aforementioned changes, the Reports Analysis Division, in coordination with the Information Technology Division, began testing an Electronic Review (E-Review) program in 2004. E-Review is expected to launch in early 2005 and will make the review process more efficient and faster. The program will automate much of the review process and enable analysts and branch managers to keep better records. Additionally, E-Review will allow analysts to circulate letters to and gather information from various

departments within the agency in a paperless form that is readily accessible by all relevant parties.

Educational Outreach

Throughout the year, the Commission continued to promote voluntary compliance with the law by educating committees about the law's requirements.

Home Page (www.fec.gov)

In 2004, FEC staff completed a significant upgrade and redesign of the agency's web site. Since the last major overhaul of the Commission's homepage in 1999, dramatic increases in the quantity of information available overwhelmed the existing site's structure and navigational tools. The new site, which is the result of a collaborative effort among the Staff Director, the Information Technology Division and Information Division, addresses those shortcomings and features more FEC information in a more user-friendly format.

The Commission launched the revamped version of the site in September as part of an ongoing endeavor to make campaign finance information more accessible to the regulated community, researchers and the general public. The new site offers simplified navigation, additional search tools and use of new technology that provides users with an interactive experience that is tailored to their specific needs. The redesign is intended to offer members of the public, press and regulated community the ability to obtain an array of information with ease. Noteworthy features of the new site include: cascading menus with revised categories, a general search engine, an interactive FEC calendar of events, access to litigation documents and a newly expanded enforcement section.

Although the look and feel of the web site have changed, visitors can continue to access publications, current laws and regulations, notices of proposed rulemakings, public comments, final rules and explanations and justifications, advisory opinion requests and agenda documents considered in open meetings. Visitors can also search for advisory opinions (AOs) on the web by using key words or phrases or by entering the year and AO number. Researchers

may also read agency news releases, review federal election results, voter registration and turnout statistics and look up reporting dates. Finally, the National Mail Voter Registration form, FEC registration and reporting forms, copies of the *Record* newsletter, the *Campaign Guide* series and other agency publications may all be downloaded from www.fec.gov.

In addition to improvements made to the web site, the Commission now participates in a government-wide e-rulemaking initiative. This program offers the public a single point of access to rulemakings from a variety of government agencies. While information on FEC rulemakings continues to be available on www.fec.gov, some of the members of the public may now elect to obtain information and comment on active rulemakings through the program.

Telephone Assistance

A committee's first contact with the Commission is often a telephone call to the agency's toll-free information hotline. FEC staff members research relevant advisory opinions and litigation, as needed, to answer specific inquiries. Callers receive FEC documents, publications and forms at no cost. In 2004, the Information Division responded to 22,874 callers with compliance questions. The monthly average was 1,906, peaking in October with 2,572 calls.

E-mail Inquiries

As the use of the Internet has increased in recent years, the FEC has made e-mail available to the public and regulated community as a form of communication with the Commission. The number of questions and comments sent to the Commission's primary information account (Info@fec.gov) has increased dramatically. In 2004, Information Division Staff received 1,309 e-mail inquiries, more than six times the number in 2003.

Other Commission offices with public e-mail addresses include: Alternative Dispute Resolution, Audit, the Commission Secretary, Congressional Affairs, Electronic Filing, Equal Employment Opportunity, Information, Information Technology, the Inspector General, the Law Library, Personnel and Labor Relations, Press, Public Records, Reports Analysis Division and the Staff Director.

Faxline

The Commission's automated Faxline allows the public to obtain publications or other documents quickly and easily. During the year, 385 callers sought information from the 24-hour Faxline and received 435 documents.

Reporting Assistance

During 2004, the FEC's Information Division provided basic reporting assistance to callers who wished to preserve their anonymity. Campaign Finance Analysts assigned to review committee reports were also available to answer complex reporting and compliance questions from committees calling on the toll-free line.

The Commission continued to encourage compliance with the law by mailing committees reminders of upcoming reporting deadlines three weeks before the due dates. The *Record*, the FEC's monthly newsletter, and the FEC's web site also listed reporting schedules and requirements, including new requirements imposed as part of the BCRA.

Roundtables

As part of its educational outreach activities, the FEC's Information Division holds roundtable workshops for the regulated community. These smaller-scale workshops generally focus on new regulations, reporting requirements or other discrete topics. The Commission hosted 10 roundtables in 2004 with a total of 305 participants. Attendees received compliance information and had an opportunity to meet their committee's Campaign Finance Analyst and staff from the Commission's Electronic Filing Office.

In August, the Commission held a roundtable regarding new rules on pre-election communications. Other workshops focused on reporting issues for candidates, PACs and parties. These reporting roundtables were held for each quarterly report due in 2004.

Conferences

Also during 2004, the Commission's Information Division conducted several conferences to help candidates and committees understand and comply with the law. Commissioners and staff members from the

Information Division, Office of General Counsel and Reports Analysis Division conducted workshops to help educate the regulated community. The Commission launched its conference season with a regional meeting in Tampa for candidates, corporations, labor and trade association PACs and state and local party committees. Additionally, the Commission hosted two conferences in Washington, DC, for candidates, parties, corporations and labor organizations. A final conference for trade associations and membership organizations was held in Boston.

Tours and Visits

In addition to holding conferences and roundtable sessions, the Commission welcomes individuals and groups who visit the FEC. Visitors to the Commission during 2004, including 478 groups and foreign delegations, listened to presentations about campaign finance law and, in some instances, toured the agency's Office of Public Disclosure. During 2004, the Commission made an effort not only to welcome visitors to the Commission, but also to make official appearances, domestically and abroad.

Media Assistance

The Commission's Press Office continued to field questions from media representatives and navigate reporters through the FEC's vast pool of information. Press office staff responded to 6,011 calls and visits from members of the press and prepared 149 news releases during 2004. Many of these releases alerted reporters to new campaign finance data and contained statistical graphs and tables. Releases concerning enforcement matters at the Commission include explanatory material to provide a more complete description of the statutory framework of the allegations and the resolution of the matter. As part of the web site update, current and archived press releases were organized chronologically and according to subject matter.

Publications

In 2004, the Commission produced a number of documents to help committees, the press and the general public understand the law and find information about campaign finance. The FEC's Information

Division continued to revise guides and brochures to reflect changes resulting from the BCRA and its implementing regulations, helping to ensure that the regulated community could understand and comply with the new rules for the 2004 elections.

The following brochures were completed and made available to the public: "Advisory Opinions," "Electioneering Communications," "Independent Expenditures," "Local Party Activity," "The Millionaires' Amendment," "Partnerships" and "Volunteer Activity." Additionally, the Commission made the following brochures available in Spanish: "The Citizens Guide," "FEC and the Federal Campaign Finance Law" and "Foreign Nationals." All of these brochures are available on the Commission's web site.

Commission staff also updated the *Campaign Guide* series to reflect the BCRA amendments and implementing regulations. A newly revised *Campaign Guide for Congressional Candidates and Committees* was published in June, and a new *Campaign Guide for Political Party Committees* was published in August. The candidate and party guides were updated first because those committees were most widely affected by the BCRA. In the closing of 2004, the Commission also began updating the *Campaign Guide for Corporations and Labor Organizations* and the *Campaign Guide for Nonconnected Committees*. Until those updates are completed, the agency will continue to make available a *Campaign Guide Supplement*—a compilation of *Record* newsletter articles summarizing provisions of the BCRA.

The Commission also published an updated version of *Selected Court Case Abstracts*. The collection of abstracts includes court cases pertinent to the Federal Election Campaign Act of 1971, as amended. Most of the abstracts originally appeared in the Commission's monthly newsletter, the *Record*. The updated edition includes case summaries through March 2004. The publication has been updated and printed annually and is also available online. By year's end, Commission staff had created an online index of FEC court cases including remaining cases from 2004. Each case in the index is linked to a summary and, in some instances, court opinions and additional documents pertaining to the case. The Commission will continuously update this online index rather than

publishing future editions of *Selected Court Case Abstracts*.

As in past years, the Commission each month distributed more than 10,000 free copies of its *Record* newsletter. The newsletter summarizes recent advisory opinions, compliance cases, audits, litigation and changes in regulations. It also provides campaign finance statistics in graph and table format.

Although the FEC's focus is federal campaign finance disclosure, the Commission also provides some state information to the public with the *Combined Federal/State Disclosure Directory 2004*. This manual directs researchers to federal and state disclosure offices that provide information on campaign finance, candidates' personal finances, lobbying, corporate registration, election administration and election results. In an effort to make Commission resources more accessible, the disclosure directory was available in print, online and on computer disks formatted for popular hardware and software. The online version of the *Disclosure Directory* includes hyperlinks to the web pages of state offices and e-mail addresses for state officials.

Office of Election Administration

In 2004, staff from the Commission's Office of Election Administration were transferred to the newly created Election Assistance Commission (EAC). The EAC was established by the Help America Vote Act of 2002 to assist in the administration of federal elections. As a result of the EAC's establishment, the FEC no longer has the responsibility of serving as a clearinghouse for information regarding election administration.

Chapter Two Interpreting and Enforcing the Law

As part of its mission to administer, interpret and enforce the Federal Election Campaign Act, the Commission promulgates regulations and issues advisory opinions. The regulations interpret and implement the statutory requirements enacted by Congress. Advisory opinions, in turn, clarify how the statute and regulations apply to real-life situations brought to the Commission by candidates, political committees and others in the regulated community. The agency's enforcement actions promote compliance by correcting violations and demonstrating to the regulated community that violations can result in civil penalties and remedial action.

The 2004 elections were the first in which the Commission administered, interpreted and enforced many new legal requirements set forth in the Bipartisan Campaign Reform Act of 2002 (BCRA) as construed by the landmark Supreme Court case *McConnell v. FEC*. During this Presidential election year, the Commission completed work on five rulemakings, issued 39 AOs, signed 38 conciliation agreements, collected \$2,674,745 in civil penalties and closed 12 litigation cases.

Amendments to the Federal Election Campaign Act

On December 8, 2004, the Consolidated Appropriations Act of 2005, which includes amendments to the Federal Election Campaign Act, became law. Pub. L. No. 108-447 §§525 and 532, 118 Stat. 2809 (2004). The amendments expand the permissible uses of campaign funds and increase the limits on the amount of money that one authorized committee can contribute to another.

In the BCRA, Congress amended 2 U.S.C. §439a, which addresses the permissible uses of a candidate's campaign funds. In doing so, Congress removed "any other lawful purpose" from the list of permissible uses designated in the statute. Under the new amendments to the Act, permissible uses now include the following additional uses:

- Donations to state and local candidates, subject to the limits and prohibitions of state law; and
- Any other lawful purpose that does not violate 2 U.S.C. §439a(b).

The second amendment to the Act in 2004 addressed the issue of contributions made by one authorized committee to another. Under the Act, with certain exceptions, no political committee that supports, or has supported, more than one candidate may be designated as an authorized committee. 2 U.S.C. §432(e)(3)(A) and Consolidated Appropriations Act of 2005, Pub. L. No. 108-447, §532, 118 Stat. 2809 (2004). Prior to the new amendment, the definition of support in 2 U.S.C. §432(e)(3)(B) excluded a contribution of \$1,000 or less. Commission regulations have interpreted this to limit candidate-to-candidate contributions to \$1,000 per election. 11 CFR 102.12(c)(2) and 102.13(c)(2). This limit was not raised under the BCRA when the contribution limits for candidates and authorized committees increased to \$2,000. The 2004 amendment to the Act raises to \$2,000 the amount that one authorized committee can contribute to another without that contribution being considered "support." Consolidated Appropriations Act of 2005, Pub. L. No. 108-447, §525, 118 Stat. 2809, (2004). Both of these amendments had been included in the Commission's 2004 legislative recommendations.

Regulations

Congressional action, judicial decisions, petitions for rulemaking or other changes in campaign finance law or practices may necessitate that the Commission update or create new regulations. Consequently, the FEC undertakes rulemakings to revise existing campaign finance rules or create new ones.

Notices of proposed rulemakings (NPRMs) are published in the *Federal Register*, on the FEC's web site and on the U.S. Government web site (www.regulations.gov). The notices provide an opportunity for members of the public and regulated community to review rules, submit written comments to the Commission and testify at public hearings held at the FEC when appropriate. The Commission holds a public hearing when it receives sufficient requests from commentators to testify. The Commission considers public comments and testimony when deliberating on the final rules in open meetings. The text of final rules and corresponding Explanation and Justification

are published in the *Federal Register* and sent to the House of Representatives and Senate once they have been approved. The Commission announces the effective date of the final rule, which is at least 30 days after the final rule and its Explanation and Justification are published in the *Federal Register*.

Rulemakings Completed in 2004

The Commission completed work on the following new regulations during 2004:

- Administrative Fine program extension, final rules approved February 5, 2004.
- Political Committee Status, NPRM approved, March 4, 2004, public hearing held on April 14 and 15, 2004, at Commission, final rules approved August 19, 2004, Explanation and Justification approved October 28, 2004.
- Inaugural committees, NPRM approved, April 1, 2004, and final rules approved September 30, 2004.
- Party committee independent and coordinated expenditures, NPRM approved June 24, 2004, and final rules approved October 28, 2004.
- Technical Amendments to BCRA Regulations, final rules approved November 18, 2004.

Other Rulemakings in Progress

In addition to completing the preceding rules, the Commission initiated regulatory actions by issuing a Notice of Proposed Rulemaking or a Notice of Availability of a Petition for Rulemaking regarding:

- Public access to materials relating to closed enforcement cases, Notice of Availability approved January 7, 2004.
- Contributions by minors, NPRM approved April 1, 2004.
- Electioneering communications exemption, Notice of Availability approved August 19, 2004.
- Party committee donations to tax-exempt organizations and political organizations, NPRM approved December 2, 2004.
- Payroll deductions by member corporations for contributions to a trade association's separate segregated fund, NPRM approved December 16, 2004.
- Timely filing by Express Mail, Priority Mail and overnight delivery service, NPRM approved December 16, 2004.

Advisory Opinions

The Commission responds to questions about how the law applies to specific situations by issuing advisory opinions. When the Commission receives a complete request for an advisory opinion, it generally has 60 days to respond. If, however, a candidate's campaign submits a complete request within 60 days before an election, and the request presents a specific transaction or activity that directly relates to that election, the Commission must respond within 20 days. The Office of General Counsel prepares a draft opinion, which the Commissioners discuss and vote on during an open meeting. A draft opinion must receive at least four favorable votes to be approved.

In 2004, the Commission received 45 advisory opinion requests, including seven 20-day advisory opinion requests. Twenty eight of the requests implicated BCRA issues in the main or in part. Several of the advisory opinions that were issued addressed the issue of candidate appearances, public communications and electioneering communications. These and other advisory opinions issued during the year are explored in greater detail in Chapter 3 "Legal Issues."

Enforcement

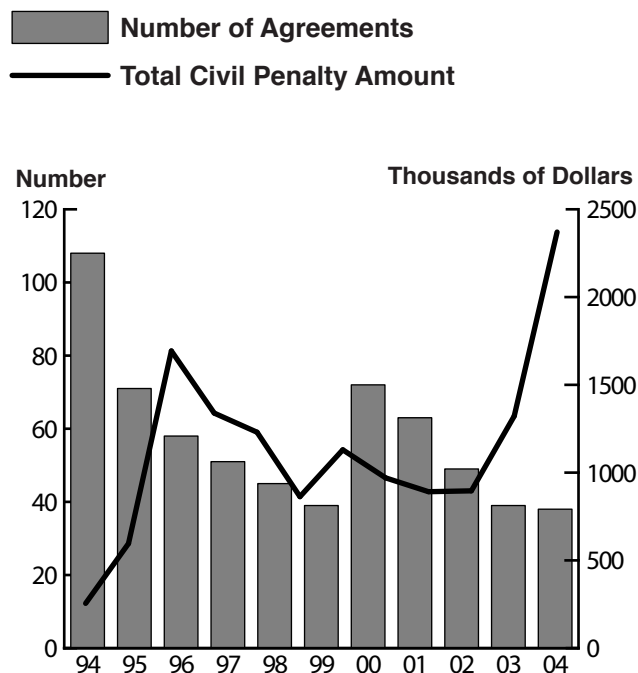
The FEC has implemented a series of changes in recent years aimed at improving the efficiency and effectiveness of enforcement. These management initiatives have included improved prioritization of cases; use of the standard enforcement process for more complicated cases; an administrative fine program for routine filing violations; and alternative dispute resolution (ADR) to address some matters more flexibly. In 2004, the FEC obtained civil penalties and fines through the standard enforcement process, ADR and the Administrative Fine program totaling a record \$2,674,745, which exceeded all previous years. At the same time, the Commission reduced to zero the number of matters dismissed because they were stale or considered less important. This is the first time the Commission has achieved this benchmark since it began tracking this number in 1993.

The Standard Enforcement Process

Under the standard enforcement process set forth at 2 U.S.C. §437g, the Commission learns of possible election law violations in four ways. First, the agency’s monitoring process may discover potential violations through a review of a committee’s reports or through a Commission audit. Second, potential violations may be brought to the Commission’s attention through the complaint process. This process enables anyone to file a sworn complaint alleging violations and explaining the basis for the allegations. Third, the referral process enables other government agencies to refer possible violations to the FEC. Finally, any person or entity who believes it has committed a violation may bring the matter *sua sponte* to the Commission’s attention.

As required by 2 U.S.C §437g, the FEC’s Office of General Counsel reviews and investigates enforcement matters, or matters under review (MUR). Internally generated cases include those generated by other Commission divisions, such as the Audit and Reports Analysis divisions, and those referred to the Commission by other government agencies. Externally generated cases initiated by a formal, written complaint receive a MUR number once OGC determines that the document satisfies specific criteria for a proper complaint. OGC makes recommendations to the Commission regarding the disposition of matters and negotiates conciliation agreements requiring the payment of civil penalties.

**CHART 2-1
Conciliation Agreements
by Calendar Year**



**CHART 2-2
Median Civil Penalty
by Calendar Year**

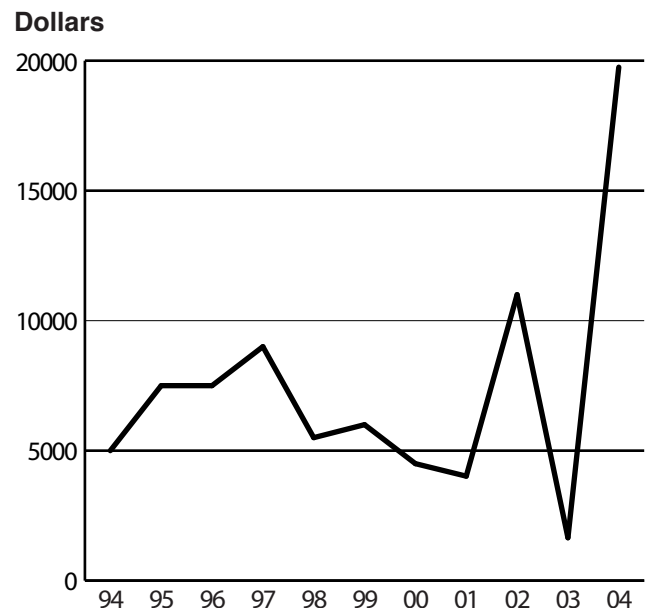


CHART 2-3
Ratio of Active to Inactive Cases by Calendar Year

Active Cases
Inactive Cases

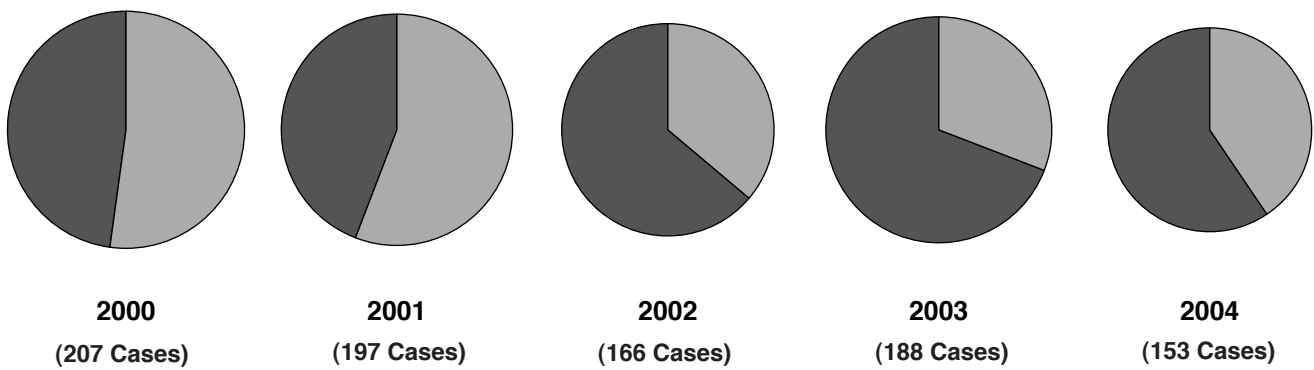


CHART 2-4
Cases Dismissed Under EPS

Stale Cases
Low-Rated Cases

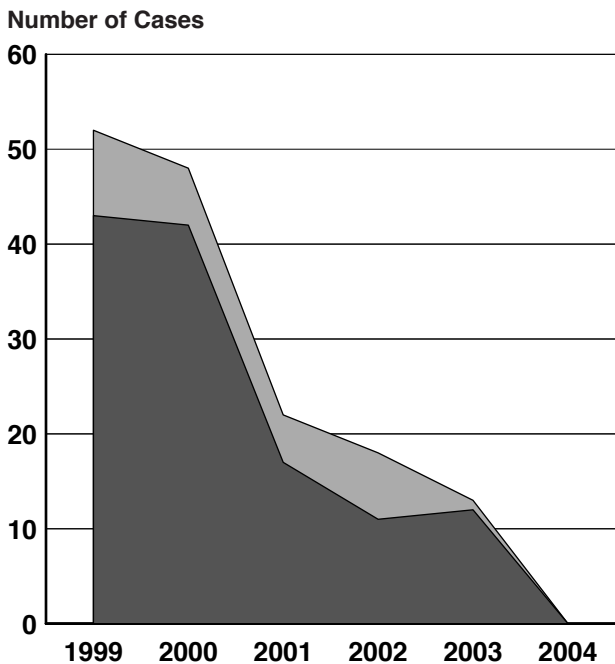
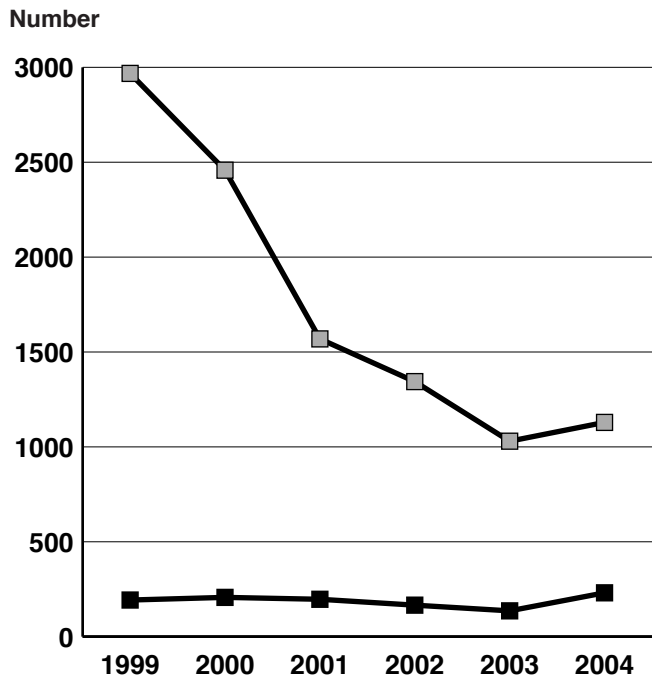


CHART 2-5
Number of Respondents and Enforcement Cases by Calendar Year

Respondents
Cases



In the first step of the standard enforcement process, OGC recommends whether the Commission should find “reason to believe,” that is, whether an investigation is warranted. If the Commission determines there is “reason to believe” a violation has been committed, respondents are notified and, if necessary, an investigation is started. The Commission has authority to subpoena information and ask a federal court to enforce a subpoena. After the investigation, the General Counsel sends a brief to the respondent, stating the issues involved and recommending whether the Commission should find “probable cause to believe” a violation has occurred. In addition to briefs prepared by the General Counsel, the Commission will consider respondents’ reply briefs supporting their positions. If the Commission finds that there is probable cause to believe that a violation of the Federal Election Campaign Act has occurred, it is required to enter into conciliation with the respondents for a period of at least 30 days before initiating a civil action for relief in federal circuit court.

On December 16, 2004, the Commission approved a Statement of Policy to clarify when, in the course of an enforcement proceeding, a treasurer is subject to Commission action in his or her official or personal capacity, or both. The policy explains that in enforcement actions where a political committee is a respondent, the committee’s treasurer will typically be subject to Commission action only in his or her official capacity. However, in other limited circumstances, such as when a treasurer has knowingly and willfully violated the Federal Election Campaign Act, as amended, the Presidential Election Campaign Fund Act or the Presidential Primary Matching Payment Account Act; recklessly failed to fulfill duties specifically imposed by the law; or intentionally deprived himself or herself of facts giving rise to the violation, the Commission will consider the treasurer subject to action in a personal capacity and will make findings accordingly.

Enforcement Initiatives

Since 1983, the FEC has used information management tools that allow it to activate more cases, dispose of more cases with substantive action and resolve cases that would otherwise have been dis-

missed. Development of the Enforcement Priority System (EPS) in May of 1993, for example, has enabled the FEC to classify and prioritize cases in tiers of complexity and importance and to focus enforcement resources on more substantive matters. Similarly, implementation of the Case Management System (CMS) in FY 2000 has allowed the FEC to track and store data electronically that is related to cases and respondents in a searchable database. Both of these initiatives have helped the FEC to assess electronically the timeliness of enforcement actions and manage its caseload more efficiently. Today, OGC continues to focus its enforcement resources on the most serious violations of the Federal Election Campaign Act, including failure to register and report as a political committee, prohibited contributions and expenditures, corporate contributions, contributions in the name of another and fraudulent misrepresentation of campaign authority.

In matters resolved through the standard enforcement process, the FEC’s Office of General Counsel negotiated \$2,370,395 in civil penalties in 2004, over \$200,000 more than in 2003. OGC also reduced by 30 percent from 2003 the median number of days from the date a complaint was received to the date the matter was closed with substantive analysis, with a 16 percent reduction in the average number of days from receipt to closing.

Administrative Fine Program

The Administrative Fine program began in July 2000 and was originally mandated to last only throughout December 31, 2001. However, the program has proven to be an integral part of the Commission’s effort to promote timely compliance with the law’s reporting deadlines, and, on January 23, 2004, Congress passed legislation to extend the program through December 31, 2005. The program allows the Commission to assess civil money penalties for violations involving:

- Failure to file reports on time;
- Failure to file reports at all; and
- Failure to file 48-hour notices.

How the Program Works

Prior to establishing the Administrative Fine program, the Commission handled violations involving late and nonfiled reports under its standard enforcement procedures, as described above. The Administrative Fine program has created a streamlined process for addressing these reporting violations.

Administrative fine actions originate in the Reports Analysis Division (RAD). RAD monitors committees registered with the Commission for possible filing violations and recommends to the Commission those committees that appear to be in violation. If the Commission finds “reason to believe” (RTB) that a committee has violated the applicable reporting provisions, RAD provides a written notification to the committee and its treasurer containing the factual and legal basis of its finding and the amount of the proposed civil money penalty. The respondents have 40 days from the date of the RTB finding to either pay the designated penalty or submit a written response to the Office of Administrative Review. The response should provide proper supporting documentation outlining why the committee believes the Commission’s finding and/or penalty has been administered erroneously. If the committee submits a response to the Office of Administrative Review, RAD forwards its information about the case to that office for consideration by an impartial reviewing officer who was not involved in the original RTB recommendation.

After reviewing the RTB finding and the respondent’s written submission, the reviewing officer forwards a recommendation to the Commission along with all documentation. Respondents may submit written responses to the reviewing officer’s recommendation. A final determination is then made by the Commission as to whether the respondent violated the law. The Commission assesses a civil money penalty if a violation has occurred and the respondent has not demonstrated the existence of “extraordinary circumstances” that prevented the respondent from filing the report in a timely manner.

Should a respondent fail to pay the civil money penalty or submit a challenge within the original 40 days, the Commission will issue a final determination with an appropriate civil money penalty. The respondent will then have an additional 30 days after receipt

of the FEC’s final determination to pay the penalty or to seek judicial review.

The Commission may transfer cases to the U.S. Department of Treasury for collection when respondents fail to pay the penalty or seek judicial review after a final determination has been made. Alternatively, the Commission may decide to file suit in the appropriate U.S. district court to collect owed civil money penalties under 2 U.S.C §437g(a)(6).

Calculating Penalties

Under the program, respondents may face administrative penalties that vary depending on the interaction of several factors:

- Election sensitivity of the report;
- Whether the committee is a late filer (and the number of days late) or a nonfiler;
- The amount of financial activity in the report; and
- Prior civil money penalties for reporting violations.

Administrative Fines in 2004

During 2004, the Commission processed 158 cases and collected a total of \$214,950 in fines. Overall, the FEC publicly released a total of 1,020 cases by the close of 2004, with a total of \$1,370,827 in civil money penalties collected.

Alternative Dispute Resolution Program

In 2004, the Alternative Dispute Resolution (ADR) program completed its second year as a permanent program at the FEC. The program was established in October of 2000 as a pilot to determine the viability of using ADR procedures to address and resolve campaign finance law violations. The goal of ADR negotiations is to reach an expeditious resolution through mutually agreeable terms that promote compliance with the Act and Commission regulations. Mediation to resolve a negotiation impasse is available by mutual agreement between the respondent(s) and the Commission representative. Negotiations reached through direct and, when necessary, mediated negotiations are submitted to the Commission for final approval. Thus far, no cases have required mediation.

The program’s success in reaching its goal of expediting the resolution of enforcement matters is

evident in changes that have taken place both at the Commission and within the regulated community. For example, ADR has established a presence among the regulated community, with members of the election bar requesting that matters be considered by the program. Moreover, the process has become more efficient under procedures adopted by RAD and the Audit Division that allow cases to be referred directly to ADR without review by the Office of General Counsel.

However, not all cases are eligible for the ADR program. Cases may be assigned to the program only after they have been reviewed to determine suitability. A case will be excluded from ADR consideration if it:

- Raises issues requiring a definitive resolution for precedential value;
- Raises issues that bear on government policy;
- Affects other persons or organizations that are not parties to the proceeding; or
- Would benefit from a full public record of the proceeding.

Additional internal factors help to determine whether a case is appropriate for ADR. Such factors are addressed on a case-specific basis.

At the close of 2004, the Office had processed 224 cases since the Program's inception, of which 64 percent were accepted into ADR. The remaining cases were either deemed inappropriate for ADR or dismissed for lack of evidence or due to the *de minimis* nature of the matter. Additionally, cases involving respondents who rejected the ADR option were not processed by the Office. Seventy-seven percent of the total caseload arose from complaints filed with the Commission. The remainder originated as referrals from the Reports Analysis Division, Audit or *sua sponte* submissions. Cases not assigned to ADR were returned to OGC for processing. At the close of 2004, 143 cases assigned to ADR during the program's tenure had produced 138 separate negotiated agreements based on 113 cases. Of that total, all except four were approved by the Commission. A number of cases had multiple parties, which led to multiple agreements. The remaining 30 cases were in various stages of negotiations at the close of the year.

The Office completed the cases in an average of 120 days from the time the case was assigned to

ADR until the agreement was approved by the Commission. The Office, however, aims to further expedite the process in order to meet its goal of resolving cases, in the negotiation portion of the process, within 77 days.

Audit

Over the past several years, the Audit Division has worked to develop a stand-alone Title 2 audit function and to increase the Audit presence in the regulated community. Since the mandatory audits of publicly funded Presidential campaigns have traditionally required a large portion of the Division's resources, relatively few other audits could be accomplished. However, significant progress has been made with the increased use of computer technology, including electronic filing of disclosure reports, some streamlining of audit procedures, the Division's reorganization and the addition of modest staff resources.

In the 1998 election cycle, the Division audited 35 non-Presidential committees (Authorized and Non-Authorized combined). In the 2000 election cycle—a Presidential election cycle—the number rose to 39, an 11 percent increase. In the 2002 election cycle the number was 55. In 2004, the number of non-Presidential audits continued to grow as the Division completed 48, an overall increase of 37 percent from 1998.

Chapter Three Legal Issues

The FEC is the independent regulatory agency responsible for interpreting, administering and enforcing the Federal Election Campaign Act (FECA/the Act). As part of this task, the Commission promulgates regulations implementing the Act's requirements and issues advisory opinions that apply the law to particular circumstances brought forth by requesters. Additionally, the Commission has jurisdiction over the civil enforcement of the Act. Finally, Commission attorneys handle civil litigation arising out of any legal actions brought by or against the Commission.

During 2004, the Commission devoted much of its resources to clarifying the application of the Bipartisan Campaign Reform Act of 2002 (BCRA) in light of the Supreme Court's decision in *McConnell v. FEC*, which substantially upheld the BCRA. The Commission provided further interpretation of its regulations implementing the BCRA in response to questions that arose during the 2004 elections—the first election-cycle conducted under the new statutory framework. The Commission also promulgated new regulations that define as “contributions” proceeds raised using certain solicitations and that address allocation by PACs.

In addition to initiating rulemakings to conform to the *McConnell* decision and responding to advisory opinion requests from the regulated community, the Commission defended the BCRA and its regulations in court. For example, during the year the FEC successfully defended the BCRA electioneering communication provision in *Wisconsin Right to Life v. FEC*. Also in 2004, the U.S. District Court for the District of Columbia ruled on a suit filed by U.S. Representatives Christopher Shays and Martin Meehan challenging certain of the Commission's BCRA-implementing regulations, and Representatives Shays and Meehan filed a second suit in the district court to challenge the Commission's new rules on the status of political committees. The Commission also issued several BCRA-related advisory opinions in 2004. This chapter reviews the major legal issues considered by the FEC in rulemakings, advisory opinions, litigation and enforcement actions in 2004.

Shays and Meehan v. FEC

On September 18, 2004, the U.S. District Court for the District of Columbia granted in part and denied in part the plaintiffs' motion for summary judgment in this case. Of the hundreds of rules the Commission adopted in 2002 to implement the BCRA, fewer than two dozen were challenged in court. Of those that were challenged, four were upheld and the rest were invalidated on substantive or procedural grounds. Those that were invalidated were remanded to the Commission, requiring the Commission to reconsider these rules and/or the way in which they were promulgated.

Court Decision

The standard for judicial review in a case such as this, where one party alleges that an agency's actions are contrary to the statute, is called *Chevron* review. In *Chevron* review, the court asks first whether Congress has spoken to the precise issue at hand. If so, then the agency's interpretation of the statute must implement Congress's unambiguous intent. If, however, Congress has not spoken explicitly to the question at hand, the court must consider whether the agency's rules are based on a permissible reading of the statute.

In this case, the plaintiffs also claimed that in some instances the FEC failed to engage in a reasoned analysis when it promulgated the regulations, or failed to follow proper procedures regarding public notice and comment. Under the Administrative Procedure Act, regulations that are promulgated without a reasoned analysis may be found “arbitrary and capricious” and may be set aside by a reviewing court. 5 U.S.C. §706(2)(A).

The court found that the challenged portions of four regulations passed *Chevron* review and were consistent with requirements of the Administrative Procedure Act:

- The safe harbor at 11 CFR 300.2(c)(3) that provides that an entity will not be considered to be directly or indirectly established, maintained or controlled by another entity based solely on activities that occurred before November 6, 2002;

- The rules at 11 CFR 300.32(a)(4) providing for the payment of Levin fund fundraising costs;
- The rules at 11 CFR 300.30(c)(3), which describe permissible accounting procedures for keeping nonfederal and Levin funds in a single account; and
- The definitions of “State committee,” “district committee” and “local committee” at 11 CFR 100.14.

The court, however, found that portions of other challenged regulations either failed to pass *Chevron* review or violated the Administrative Procedure Act. These included:

- The coordinated communications content test regulations at 11 CFR 109.21(c), including the provision excluding Internet communications from the coordinated communication rules at 11 CFR 109.21(c)(iv) and from the definition of “public communication” in 11 CFR 100.26;
- The definition of “agent” under the coordination rules at 11 CFR 109.3 and the nonfederal funds rules at 11 CFR 300.2(b);
- The definitions of “solicit” and “direct” at 11 CFR 300.2(m) and 300.2(n);
- The safe harbor for federal candidates’ and officeholders’ activities at state party fundraising events at 11 CFR 300.64(b);
- The definitions (for the purposes of defining “federal election activity”) of voter registration activity, get-out-the-vote activity, voter identification and generic campaign activity at 11 CFR 100.24(a)(2)-(a)(4) and 100.25;
- The provisions for paying the salaries and wages of state party committee employees who spend less than 25 percent of their compensated time on activities in connection with a federal election (11 CFR 300.33(c)(2));
- The exemption allowing certain federal election activity expenses that are under \$5,000 per year in the aggregate to be paid entirely with Levin funds (11 CFR 300.32(c)(4));
- The exemption for section 501(c)(3) organizations from the electioneering communications rules at 11 CFR 100.29(c)(6); and
- The requirement at 11 CFR 100.29(b)(3)(i) that electioneering communications must be distributed for a fee.

The court denied the plaintiffs’ request to enjoin the Commission from enforcing these regulations and to require the Commission to commence proceedings to promulgate new regulations within 15 days of the court’s decision. Instead, the court remanded the case to the Commission for further action consistent with the court’s opinion.

On October 28, 2004, the Commission voted to ask the U.S. Court of Appeals for the D.C. Circuit Court to overturn some of the district court’s conclusions and to review findings about the plaintiff’s standing and the ripeness of the issues in this litigation. While the appeal was pending, the FEC undertook rulemaking proceedings in response to the district court’s decision. On November 18, 2004, the Commission approved a rulemaking schedule to implement these and other rulemaking priorities.

Political Committee Status, Definition of Contribution and Allocation for PACs

On March 4, 2004, the Commission approved a Notice of Proposed Rulemaking regarding “political committee status.” Members of the public, members of Congress and members of the regulated community submitted over 100,000 comments via mail, hand delivery, e-mail and facsimile to the Commission’s Office of General Counsel regarding the proposed rulemaking, which far exceeds the number of comments the Commission has ever received on any of its rulemakings. Additionally, 31 witness, representing hundreds of interested groups, participated in public hearings held at the Commission regarding the subject on April 14th and 15th.

In this rulemaking, the Commission considered whether to revise its regulatory definition of “political committee” to explicitly include a “major purpose” test. Existing 2 U.S.C. §431(4)(A) defines “political committee” in terms of the amount of annual “contributions” and “expenditures” received or made by an entity. To address overbreadth concerns, the Supreme Court has held that only such organizations whose major purpose is campaign activity can potentially qualify as political committees under the Act. See *e.g.*, *Buckley v. Valeo* 424 U.S. 1, 79 (1976); *FEC*

v. Massachusetts Citizens for Life, 479 U.S. 238, 262 (1986).

The NPRM proposed four alternatives for revisions to the definition of a “political committee” in 11 CFR 100.5(a). The proposed alternatives differed mainly in whether, and if so, how, the definition of “political committee” should include a test to determine an organization’s “major purpose.” The Commission considered whether an organization’s status as a section 527 organization under the Internal Revenue Code should be specifically addressed in determining whether its major purpose is campaign activity. Ultimately, the Commission chose not to modify the definition of “political committee.”

On August 19, 2004, the Commission adopted final rules and on October 28, 2004, the Commission concluded the political committee status rulemaking by approving its Explanation and Justification for the final rules. The new rules adopted by the Commission address the treatment of funds received in response to certain communications and also change the methods PACs (i.e., separate segregated funds and nonconnected committees) use to allocate certain expenses between their federal and nonfederal accounts.

Definition of Contribution

Under the new rule at 11 CFR 100.57, funds received in response to a communication that indicates any portion of the funds will be used to support or oppose the election of a clearly identified federal candidate will be considered contributions to the person making the solicitation. These contributions count toward the recipient’s \$1,000 threshold for registering with the FEC as a political committee.

Allocation

The new regulations regarding allocation methods replace the “funds expended” allocation method with a new flat minimum federal percentage. The revised regulations require PACs to pay with at least 50 percent federal funds administrative expenses and costs of generic voter drives that encourage support of candidates of a particular party or associated with a particular issue, without mentioning a specific candidate. Additionally, public communications that refer

to a political party, but not to specific candidates, must be financed using a minimum of 50 percent federal funds. 11 CFR 106.6(c). Finally, the new rules require PACs to use 100 percent federal funds to pay for voter drives and public communications that refer to a clearly identified candidate, but no clearly identified nonfederal candidate, regardless of whether a political party is also mentioned. 11 CFR 106.6(f)(1). The Commission updated reporting forms to reflect these changes.

Soft Money

BCRA prohibits national party committees and federal candidates and officeholders from raising or spending funds not subject to the prohibitions, limits and reporting requirements of the Act, *i.e.* nonfederal funds or “soft money.” Provisions of the BCRA also address the activities of state and local party committees, significantly expanding the Act’s treatment of these committees’ activities. For example, the rules provide a new definition of “federal election activity” and require parties to finance these activities using more federally permissible funds. In addition, the rules provide for a special category of nonfederal funds, called “Levin funds,” that may be used, usually in allocation with federal funds, by state and local party committees for certain federal election activities. These provisions were among those challenged in litigation, but ultimately upheld by the Supreme Court in *McConnell v. FEC*. The Commission was asked to issue a number of advisory opinions regarding the application of the new soft money provisions.

Advisory Opinions Involving Federal Candidates and Officeholders

During 2004, the Commission issued a number of advisory opinions regarding the appearances of federal candidates and officeholders at events and in advertisements. Generally, the Commission permitted federal candidates and officeholders to make such appearances, but emphasized the restrictions the Act imposes on their participation in raising or spending soft money. The Commission considered circumstances that involved nonfederal organizations, other federal candidates and charitable organizations.

In AO 2003-36, the Commission determined that federal candidates and/or officeholders may participate in fundraising activities on behalf of the Republican Governors Association (RGA) under certain conditions. RGA is an organization registered under section 527 of the Internal Revenue Code that conducts activities in connection with the election of gubernatorial and other state candidates. According to the Commission, federal candidates may, subject to certain conditions, appear as featured guests or speakers at RGA fundraisers, and may otherwise participate in the fundraising activities, so long as they do not solicit, direct, receive, transfer or spend funds outside the Act's limits and prohibitions.

In AO 2004-1, the Commission addressed a federal candidate's appearance in endorsement ads for another federal candidate. The Commission determined that advertisements featuring President Bush and endorsing Congressional candidate Alice Forgy Kerr that were distributed within 120 days of the Kentucky Presidential primary would be coordinated communications that would result in in-kind contributions to Bush-Cheney '04, Inc. if paid for entirely by Alice Forgy Kerr for Congress. The Commission also determined that advertisements publicly distributed more than 120 days before the primary would not be coordinated communications and would not constitute in-kind contributions to Bush-Cheney '04.

The Commission concluded in AO 2004-14 that a federal officeholder could appear in public service announcements (PSAs) to benefit a nonprofit organization without triggering reporting requirements for contributions or coordinated communications. According to the Commission, Representative Tom Davis could appear in PSAs to promote a tournament to benefit the National Kidney Foundation. The funds raised through the tournament were solely for charitable purposes, and, therefore, Congressman Davis's appearance did not constitute a solicitation of funds in connection with an election, subject to the requirements of the Act. Representative Davis's Congressional office paid for the cost of taping the announcements; thus, the PSAs were not coordinated communications resulting in an in-kind contribution to the Representative.

In AO 2004-25, the Commission concluded that U.S. Senator and Democratic Senatorial Campaign Committee (DSCC) Chairman Jon Corzine could donate his personal funds to organizations engaging in voter registration activity, as defined at 11 CFR 100.24(a)(2), without triggering the Act's provisions regulating the raising and spending of funds by officers of national party committees and federal candidates and officeholders. Because Senator Corzine would be acting in his individual capacity rather than on behalf of the DSCC, the Act's restrictions do not apply despite his role as chairman of the DSCC. In addition, because the funds Senator Corzine planned to donate would not be solicited or received from others, he would not incur an obligation toward any other person that would raise concerns regarding corruption or the appearance thereof. Thus, Senator Corzine could donate his funds in amounts that exceed the Act's limits to organizations that engage in "federal election activity," irrespective of his status as a national party committee officer, federal candidate or officeholder.

The Commission concluded in AO 2004-29 that a federal candidate could participate in certain activities that support a ballot initiative committee. U.S. Representative Todd Akin, a candidate for re-election, planned to support or oppose ballot initiatives using his campaign funds and refer to the initiatives in solicitations for his principal campaign committee (PCC). The Commission's decision permitted Representative Akin to appear in ads focusing on ballot initiatives if his PCC made reimbursements to pay for the attributable portion of the cost of the communications to prevent the PCC from receiving an excessive or prohibited contribution from the "coordinated communications." Finally, the opinion stated that Representative Akin could use contributions received by his committee to make donations to state and local candidates who support his positions on specific ballot initiatives.

Use of Campaign Funds

In 2002 the BCRA deleted the phrase "for any other lawful purpose" from the list of permissible uses of campaign funds at 2 U.S.C. §439a, and the

Commission subsequently removed that phrase from its regulations. Therefore, in addition to paying expenses in connection with the campaign for federal office, the use of campaign funds was permitted only for expenses incurred in connection with the duties of a federal officeholder, donations to a charitable organization and unlimited transfers to a national, state or local political party committee. On December 8, 2004, Congress amended the Act to expand the permissible uses of campaign funds. Prior to that, the Commission issued AO 2004-27 regarding the use of campaign funds to pay salaries for campaign workers who had agreed to volunteer their services to the campaign.

Advisory Opinions

In AO 2004-27, the Commission concluded that Quayle 2000, Inc. could not use its remaining campaign funds to pay salary to campaign employees who had signed agreements to work without salaries for one month in 1999. Because the committee initially treated the unpaid service as volunteer work and never reported the unpaid amounts as debt, retroactive payment for services was not a permissible use of campaign funds.

Public Communications and Disclaimers

The BCRA imposes a number of new requirements on individuals and committees making public communications, defined as “a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising.” 11 CFR 100.26. As part of its 2002 BCRA rulemakings, the Commission promulgated new regulations concerning disclaimer requirements for radio, television, print and other communications. For television and radio communications authorized by a candidate, the regulations require the candidate to deliver a statement identifying himself or herself and stating that he or she has approved the communication. In 2004, the Commission was called upon to address this requirement in two advisory opinions.

Advisory Opinions

In AO 2004-1, the Commission determined that advertisements featuring President Bush endorsing Alice Forgy Kerr, a Congressional candidate, must include appropriate disclaimers from each candidate’s committee. The disclaimer for ads paid for by both committees could state, “Paid for and approved by Alice Forgy Kerr for Congress and Bush/Cheney ’04.” Ads purchased entirely by the Kerr for Congress committee could state, “Paid for by Kerr for Congress and approved by Kerr and Bush/Cheney ’04.” The Commission further concluded that the Bush and Kerr campaigns could structure dual approval statements in the ad, but were not required to do so in order to comply with the Act.

The Commission concluded in AO 2004-10 that a ten-second radio message sponsored by a federal candidate and read by a reporter in a helicopter must include the disclaimer statement required for candidate-sponsored radio ads. However, as an exception to the general rule, the reporter may read the required statement, rather than the federal candidate authorizing the sponsorship message. The Commission has long recognized certain circumstances where it is impracticable to provide a full disclaimer statement as prescribed in the regulations. In this case, the specific physical and technological limitations described by Metro Networks make it impracticable to require the approving candidate to speak the statement himself or herself.

In AO 2004-37, the Commission considered the appropriate disclaimer for a brochure produced by one federal candidate committee but proportionately reimbursed by other federal candidate committees whose candidates were promoted in the brochure. The Commission concluded that it would be acceptable to place an asterisk next to each candidate’s name and indicate that the brochure was “paid for by the authorized committees of the candidates marked with an asterisk.”

Electioneering Communications

The 2004 elections were the first conducted under the BCRA’s electioneering communication provisions. During the year, the Commission successfully defend-

ed the electioneering communications regulations in court and issued a number of advisory opinions clarifying the application of its electioneering communication regulations to specific proposed activities. In addition, the Commission received a Petition for Rulemaking asking the Commission to revise its regulations at 11 CFR 100.29(c) to exempt the promotion of political documentary films from the definition of “electioneering communication.”

Wisconsin Right to Life, Inc. v FEC

During the year, the Commission successfully defended in court the BCRA’s electioneering communications provisions. In July of 2004, WRTL filed suit in the U.S. District Court for the District of Columbia, asking the court to find the prohibition on the use of corporate funds to pay for electioneering communications unconstitutional as applied to certain grass-roots lobbying activities, including three WRTL ads referencing Senators Kohl and Feingold. Additionally, the organization asked the court to preliminarily and permanently enjoin the Commission from enforcing this prohibition against it for any of these communications. WRTL argued that its ads represented *bona fide* grass-roots lobbying because they expressed an opinion on pending Senate legislative activity, urged their listeners to contact their Senators and did not refer to any political party or support or attack any candidate. It asserted that, as a result, the ads were not the “functional equivalent of express advocacy” and, thus, there was no constitutional justification for the prohibition on corporate payments for the ads. See *McConnell v. FEC*, 124 S. Ct. at 696.

A three-judge panel rejected WRTL’s motion for a preliminary injunction, ordered all parties to file appropriate supplemental memoranda addressing the potential dismissal of the matter and denied WRTL’s post judgment motion to enter an injunction while WRTL pursued an appeal.

Pending its appeal of the district court decision, WRTL sought an emergency injunction to allow the broadcast of ads designed to influence the votes of the aforementioned Senators on the expected filibuster of federal judicial nominees. The United States Court of Appeals for the District of Columbia Circuit granted the FEC’s motion to dismiss WRTL’s motion

for injunction, citing a lack of jurisdiction. As a result, WRTL applied to the Supreme Court for an injunction pending appeal. On September 14, 2004, the Court denied the request, determining that WRTL failed to establish the appropriateness of such an injunction.

Advisory Opinions

In AO 2004-15, the Commission concluded that proposed radio and television ads for a documentary film about the Bill of Rights were electioneering communications if they referred to a federal candidate, were aired within 30 days of a primary or 60 days of the general election and met the other elements that define an electioneering communication. The Commission found that the film’s producer, David T. Hardy, President of the Bill of Rights Educational Foundation (the Foundation), could pay for the ads himself with his personal funds so long as he complied with the Act’s disclosure requirements for electioneering communications that exceed \$10,000 in the aggregate during a calendar year. However, as a corporation, the Foundation was prohibited from financing electioneering communications.

The Commission determined in AO 2004-31 that the Russ Darrow Group, Inc. (RDG), a Wisconsin corporation, could run radio and television ads that included the name “Russ Darrow” because the ads did not refer to a clearly identified candidate under 11 CFR 100.29(b)(2) and were therefore not electioneering communications. While Russ Darrow, Jr. (the candidate) is the founder, Chief Executive Officer and Chairman of the Board of RDG, his son, Russ Darrow III, is the President and chief Operating Officer of RDG and had been the public face of the corporation for over a decade. The Commission determined that since the candidate’s son appeared in the ads and any mention of “Russ Darrow” referred to the business entity or Russ Darrow III and not the candidate, the proposed ads did not constitute electioneering communications.

In AO 2004-33, the Commission concluded that the Ripon Society, an incorporated 501(c)(4) organization, could not fund the production and dissemination of a televised ad featuring U.S. Representative Sue Kelly if the ad was aired in Representative Kelly’s

Congressional district during the 30 days before her primary or the 60 days before the general election if she won the primary. The ad would constitute an electioneering communication, and therefore could not be paid for with corporate funds. The Commission determined, however, that the Ripon Society could pay to televise the communication outside Representative Kelly's district so long as it did not coordinate its plans with any Republican Party officials.

Media Exemption

Under the media exemption, no contribution, expenditure or electioneering communication results from costs incurred in covering or carrying a news story, commentary or editorial by any broadcast station unless the facility is owned by any political party, political committee or candidate. 2 U.S.C. §431(9)(B)(i); 11 CFR 100.73 and 100.29(c)(2). The Commission issued two advisory opinions concerning the media exemption in 2004.

Advisory Opinions

In AO 2004-30, the Commission concluded that a televised documentary and ads featuring Senators John Kerry and John Edwards would not qualify for the electioneering communications media exemption. The Commission's decision stated that Citizens United, an incorporated 501(c)(4) organization, could not pay to broadcast a documentary film or ads that fell within the electioneering communications definition. Because the organization would not be acting as a media entity in connection with the documentary or with a book that it intended to publicize in the ads, and because the ads for the documentary and for the book would not be appearing in a news story, commentary or editorial, the media exception to the definition of electioneering communication would not apply to the proposed activities.

In AO 2004-7, the Commission concluded that MTV television network could produce and promote a mock Presidential election without making a prohibited corporate contribution because its proposed activities fell within the Act's "media exemption." According to the Commission, most of MTV's proposed activities fell within the network's legitimate press

functions and, therefore, were exempt from the definitions of contribution and expenditure. Additional non-partisan voting activities were similarly permissible. Furthermore, the Commission indicated that none of the proposed activities would constitute an electioneering communication.

Contributions

The Act imposes limits and prohibitions on contributions to federal political committees. Included among the groups or entities prohibited from contributing to federal campaigns and committees are corporations and foreign nationals. In 2004, the Commission issued advisory opinions related to each of these prohibited sources. In addition, the Act imposes shared contribution limits on political committees that are affiliated. In 2004, the FEC entered into conciliation agreements regarding contributions made by corporations, labor organizations, partnerships and affiliated political committees.

Corporate Prohibition

The Act prohibits corporations and labor organizations from using their treasury funds to make contributions or expenditures in connection with federal elections. 2 U.S.C. §441b. In several 2004 advisory opinions, the Commission determined that certain corporate activities were exempt from that prohibition.

In AO 2004-6, the Commission concluded that Meetup, Inc. could provide both its free and fee-based web services to federal candidates, political committees and their supporters without making a contribution as long as it does so on the same terms and conditions available to the general public.

In AO 2004-17, the Commission determined that a federal candidate's compensation for part-time employment did not constitute a contribution to her campaign. According to the Commission, Becky A. Klein, a Congressional candidate, could receive compensation from a law firm for *bona fide* services that she rendered to the firm. According to Commission regulations, employment compensation is considered a contribution unless certain requirements in 11 CFR 113.1(g)(6)(iii)(A), (B) and (C) are met. According to the Commission, Ms. Klein's proposed employment

compensation met all of the aforementioned requirements and was therefore permissible.

Enforcement

In MUR 5268, the Commission entered into a conciliation agreement with the Indiana-Kentucky Regional Council of Carpenters (the successor to the Kentucky State District Council of Carpenters, or KSDCC), former KSDCC Executive Secretary Treasurer J. Stephen Barger and other former union officials resulting in a \$297,000 civil penalty. The conciliation agreement resolved violations of the Act stemming from the organization's use of union employees for federal campaign activity and requiring employees to make contributions to federal candidates.

According to the agreement, KSDCC assigned union employees known as "field representatives" to work directly for the campaigns of federal, state and local candidates on union time during at least the 1998, 2000 and 2002 election cycles. As a result, KSDCC provided as much as \$141,000 in salaries for union staff working for candidates, constituting prohibited in-kind contributions for the value of time spent working for federal candidates. In addition, during at least the 2000 and 2002 election cycles, KSDCC solicited and monitored contributions from its employees to federal candidates, acting as a conduit and indicating reprisal for employees who did not participate. In addition, KSDCC made partisan communications expressly advocating the election or defeat of a federal candidate to its members that exceeded the \$2,000 reporting threshold, but failed to disclose those costs to the FEC. The agreement required KSDCC to pay for the aforementioned civil penalty to the FEC and to cease and desist from violating the Act. KSDCC was required to send at least three representatives to an FEC training conference for labor organizations and relay such information to all employees through internal training seminars.

In MUR 5357, the Commission entered into a conciliation agreement with Centex Construction Group, Inc. (CCG), Centex-Rooney Construction Co., Inc. (Rooney), headquartered near Ft. Lauderdale, FL, former CCG and Rooney CEO Bob Moss and various current and former CCG and Rooney officers, resulting in total civil penalties of \$168,000. The conciliation

agreement settled violations of the Act stemming from the company officers' reimbursement of \$56,125 in contributions with corporate funds. The reimbursed contributions went to seven federal candidates, two political party committees and one political action committee between 1998 and 2002. The FEC's investigation stemmed from a sua sponte submission and complaint filed with the FEC by Centex Corporation, headquartered in Dallas, TX.

Foreign National Prohibition

The BCRA strengthened the Act's prohibition on foreign nationals' activities in connection with U.S. elections. Under the BCRA, foreign nationals are barred from making contributions and donations to political committees, organizations of political parties and party committee building funds and from making any disbursements for electioneering communications or expenditures, independent expenditures and disbursements in connection with any election. In 2004, the Commission addressed the ability of a foreign national to attend fundraising events, solicit funds on behalf of a federal candidate and engage in other campaign-related activities.

In AO 2004-26 the Commission concluded that Zury Rios Sosa, a foreign national, could, under the extremely unusual circumstances presented, participate as an uncompensated volunteer in certain activities relating to Representative Gerald C. Weller's campaign committees and another political committee. Specifically, the Commission found that Ms. Rios Sosa, who was engaged to marry Representative Weller, could volunteer her services without compensation, attend and speak at committee events and solicit funds from permissible sources under the Act. Ms. Rios Sosa was not permitted to partake in the management of the committees or engage in decision-making processes. Additionally, the Commission permitted Ms. Rios Sosa to attend fundraising and campaign events of other political committees so long as she did not contribute her personal funds in order to attend.

Partnership Contributions

Under the Act and Commission regulations, a partnership is considered a “person” and may make federal political contributions. 2 U.S.C. §431(11). However, in order to prevent a partnership from being used to evade contribution limits and prohibitions, Commission regulations treat partnership contributions as counting towards the contribution limits of both the partnership and the specific partners to whom the contributions are attributed. In 2004, the Commission closed a significant enforcement case regarding partnership contributions and the issue of attribution.

Enforcement

In MUR 5279, the Commission entered into a conciliation agreement with Charles Kushner, a New Jersey-based real-estate developer, and 40 partnership entities that he controlled regarding over \$500,000 in contributions that the partnerships made. The agreement resulted in a civil penalty of over \$508,900. The Commission found that Mr. Kushner and the 40 partnerships violated the contribution limits and violated Commission regulations by failing properly to obtain the agreement of partners to whom contributions could be attributed. The respondents' activity not only violated the contribution limits, but caused partners to make excessive contributions. In addition, contributions totaling at least \$83,000 were attributed to individuals who were not partners in the contributing partnerships at the time the contributions were made. The respondents agreed to cease and desist from violating the contribution limits and partnership attribution regulation. They further agreed to obtain the prior agreement of the partners to whom contributions are attributed in the future. The Commission also accepted a conciliation agreement with Bill Bradley for President in which the committee admitted to violating the Act by accepting \$34,000 in contributions from Kushner partnerships and paid a civil penalty of \$16,445.

Affiliated Committees

According to the Act, political committees that are established, financed, maintained or controlled by any corporation, labor organization or any other person or group of persons shall be considered to be a single committee, and such affiliated committees shall share contributions limits. 2 U.S.C. §441a(a)(5). Affiliated committees must disclose their affiliated status. 2 U.S.C. §433(b)(2). In 2004, the Commission closed an enforcement matter regarding excessive contributions made by affiliated leadership PACs.

The Commission issued a number of advisory opinions during 2004 regarding affiliation or disaffiliation. The Commission found affiliation between physician practice groups and their business manager (AO 2004-23); between a regional party committee and each state party that supports it (AO 2004-12); and between a separate segregated fund and a limited liability company (AOs 2004-32 and 2004-42). The Commission found disaffiliation between similarly-named but distinct separate segregated funds.

Enforcement

In MUR 5328, the Commission entered into conciliation agreements with PAC to the Future and Team Majority, leadership PACs that are associated with Representative Nancy Pelosi, and three candidate committees. The agreements resolved violations of the Act and resulted in total civil penalties of \$28,000. The investigation stemmed from a complaint filed by Kenneth F. Boehm, Chairman of the National Legal and Policy Center.

According to the conciliation agreement with PAC to the Future and Team Majority, the PACs failed to identify each other as affiliated committees when they registered with the Commission, and both PACs made contributions to several candidates for the 2002 general election, which, when aggregated, exceeded their shared \$5,000 contribution limit. The PACs also received contributions from individuals that exceeded their shared \$5,000 contribution limit and did not refund the excessive portion within 60 days. PAC to the Future and Team Majority were required to pay a \$21,000 civil penalty as a result of the agreement. The committees also agreed to cease and desist from

further violations and waived any right to refunds of excessive contributions. Additionally, three campaign committees who received excessive contributions from the affiliated PACs and did not refund the excessive portions were also administered civil penalties. Julie Thomas for Congress Campaign Committee and Van Hollen for Congress were each required to pay a \$2,500 civil penalty, and Joe Turnham for Congress was required to pay a \$2,000 civil penalty. The three campaigns also agreed to cease and desist from committing further similar violations and agreed to disgorge the excessive contributions to the U.S. Treasury.

Political Party Committees

The BCRA included a “choice provision” that limited party committees’ ability to engage in both coordinated and independent expenditures on behalf of a federal candidate. The Commission promulgated regulations to implement this provision in 2002. In 2004, the Commission revisited these regulations after the “choice provision” was found unconstitutional by the Supreme Court in *McConnell v. FEC*. Additionally, the Commission began work on a rulemaking required by the *McConnell* decision regarding party committee donations to tax exempt organizations and political organizations. The Commission also issued advisory opinions during the year determining whether certain committees qualified for state party committee status and whether various entities and committees are affiliated or disaffiliated. In a separate AO, the Commission addressed whether a state nominating convention was considered an election.

Rulemakings

On June 24, 2004, the Commission approved a notice of proposed rulemaking requesting comments on the proposed deletion of 11 CFR 109.35, which restricted the ability of political party committees to make both independent expenditures and coordinated party expenditures with respect to the same candidate in connection with a general election. The NPRM also proposed deleting section 109.35’s rule prohibiting a political party committee that makes coordinated expenditures with respect to a candidate

from transferring funds to, assigning coordinated expenditure authority to or receiving a transfer from, a political party committee that has made or intends to make an independent expenditure with respect to that candidate. The Commission received three written comments on the proposed rules, none of which opposed the deletion of 11 CFR 109.35. On October 28, 2004, the Commission approved final rules deleting that regulation.

In another party-related rulemaking on December 2, 2004, the Commission approved an NPRM seeking comments on proposed changes to its rules governing the limits on national, state and local party committees’ donations to certain tax-exempt organizations and political organizations. The proposed rules would conform to the U.S. Supreme Court decision in *McConnell* which upheld the BCRA’s restrictions on solicitations for and direct donations to:

- Organizations that are exempt from tax under 26 U.S.C. §501(a) (or have submitted an application to obtain this tax status) and make expenditures or disbursements in connection with an election for federal office, including expenditures or disbursements for “federal election activity;” and
- Political organizations described in 26 U.S.C. 527 that are not a political committee under the Federal Election Campaign Act (FECA), a state, district or local committee of a political party or the authorized campaign committee of a state or local candidate. 2 U.S.C. §441i(d).

The Court stated that this provision of the BCRA could be considered overbroad, however, “if read to restrict donations from a party’s federal account—*i.e.*, funds that have already been raised in compliance with FECA’s source, amount and disclosure limitations.” *McConnell*, 124 S. Ct. at 680-681.

Accordingly, the Commission proposed to amend its rules at 11 CFR 300.11, 300.37, 300.50 and 300.51 to provide that the prohibition on political party committees making or directing donations to these organizations is limited to donations of nonfederal funds and does not apply to donations of federal funds.

Advisory Opinions

The Commission concluded in AO 2004-12 that a regional party organization established by state party

organizations is a state party committee that is affiliated with each of the participating state party committees. Democrats for the West (DFW) was established by the Democratic State party committees of Arizona, New Mexico, Nevada, Colorado, Utah, Wyoming, Idaho, Montana and Alaska in order to conduct polling, training and periodic conferences among and between the participating state committees. According to the opinion, the DFW Committee must comply with limits and prohibitions of the Act and the Commission's regulations for state party committees. Therefore, contributions received by DFW's federal account from persons other than multicandidate committees must not exceed \$10,000 per calendar year, and contributions from multicandidate committees to DFW's federal account must not exceed \$5,000 per calendar year.

Additionally, the Commission stated that DFW shares contribution limits with, and may transfer unlimited funds to and from, each of the participating committees. Contributions to DFW from persons other than the participating state committees will be proportionately attributable to each of the nine participating committees. DFW may, if it chooses, follow the Commission's joint fundraising rules in order to handle contributions that would cause an excessive contribution to one or more of the committees.

Finally, DFW may establish and maintain nonfederal accounts that are not subject to the limits, prohibitions and reporting requirements of the Act. It must comply with the Act in regard to its ability to conduct nonfederal activity and allocate the cost of administrative expenses.

In another party-related opinion, the Commission concluded that party conventions in Connecticut remain separate elections under the Act despite a change in Connecticut state law. As a result, in AO 2004-20, the Commission determined that Democratic House candidate Diane Farrell, who did not participate in Connecticut's August 10, 2004, primary, could not accept undesignated primary contributions after May 10, 2004, the date of her Democratic district convention. Likewise, her principal campaign committee, Farrell for Congress, was not required to file a pre-primary report in connection with the August 10, 2004 primary.

Inaugural Committee Reporting and Prohibition on Accepting Foreign National Donations

On April 1, 2004, the Commission approved a Notice of Proposed Rulemaking regarding provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA) governing Presidential inaugural committees. On September 30, 2004, the Commission approved final rules, and a new disclosure form, implementing the new BCRA provisions.

The new rules require inaugural committees to:

- Register with the FEC by letter within 15 days after appointment by the President-elect (11 CFR 104.21(b)(1));
- Report, within 90 days after the inauguration, all accepted (*i.e.*, deposited) donations that aggregate \$200 or more from a donor (11 CFR 104.21(c));
- Report any refunds of reported donations (11 CFR 104.21(c));
- File supplements to disclose any reportable donations accepted or refunds made after the initial filing (11 CFR 104.21(c));
- Retain records for three years (11 CFR 104.21(d)); and
- Reject donations from foreign nationals (11 CFR 11.20(j)).

The rules took effect on November 5, 2004. In addition, the Commission created and made available FEC Form 13 "Report of Donations Accepted for Inaugural Committee(s)."

Chapter Four

Presidential Public Funding

Public funding has been a key part of our Presidential election system since 1976. The program is funded by the \$3 tax checkoff and administered by the Federal Election Commission. Through the public funding program, the federal government provides matching funds to candidates seeking their party's Presidential nomination, financing for Presidential nominating conventions and grants to Presidential nominees for the general election campaigns. For the 2004 Presidential elections, the Commission certified ten candidates and two convention committees eligible to receive public funding.

2004 Shortfall

In past Presidential election cycles, the Presidential Election Campaign Fund (the Fund) experienced a temporary shortfall in matching funds, requiring the Fund to make pro-rata payments to candidates until sufficient deposits were received. For several years, the Commission has urged Congress to help alleviate the shortfall problem. Possible solutions have included increasing the checkoff amount and revising the "set aside" provision under which funds must be set aside for general election and convention financing before any monies can be used for primary matching payments.

Early projections by the Commission indicated that January 2004 payments to eligible candidates in the 2004 primaries could be less than 20 percent of the amount certified, even if one major party candidate did not take federal matching funds. However, three major party candidates—Howard Dean, John Kerry and President Bush—chose not to participate in the matching payment program, and the U.S. Treasury successfully made the January payments of \$15,417,353.84 to six eligible Presidential candidates. The only shortfall that occurred in the 2004 cycle took place in February, when candidates received approximately 46 cents per dollar certified.

In the 2004 election, a total of eight candidates were certified for Primary Matching funds: Wesley K. Clark, John R. Edwards, Richard A. Gephardt, Dennis J. Kucinich, Lyndon H. LaRouche, Jr., Joseph Lieberman, Ralph Nader and Alfred C. Sharpton.

Certification of Public Funds

Primary matching Funds

Presidential candidates eligible to participate in the matching fund program receive matching federal dollars for a portion of the contributions they raise. To establish eligibility, a candidate must submit documentation showing that he or she raised more than \$5,000 in matchable contributions in each of at least 20 states. The FEC reviews this threshold submission to determine whether the candidate has met the eligibility requirements. The candidate must also agree to comply with the law in a letter of agreement and certification. Once the Commission has determined a candidate to be eligible, the federal government will match up to \$250 per contributor, but only contributions from individuals qualify for matching.

Presidential candidates may establish their eligibility during the year prior to the election (*i.e.*, in 2003 for 2004 primaries), and, once eligible, they may submit additional contributions for matching funds (called matching fund submissions) on specific dates. CHART 4-1, on page 30, shows the total amounts certified to each eligible Presidential candidate in the 2004 primaries.

Convention Funds

Federal election law permits all eligible national committees of major and minor parties to receive public funds to pay the official costs of their Presidential nominating conventions.

Under the statute, major party conventions are fully funded at \$4 million plus an adjustment for inflation. On June 27, 2003, the Commission certified that the Republican and Democratic convention committees met all eligibility requirements for public funding. Each received \$14,592,000 from the U.S. Treasury for planning and conducting their respective 2004 Presidential nominating conventions.

In 2004, the Commission approved an additional payment of \$332,000 to each of the major parties' convention committees. The revised figure reflects an adjustment in the consumer price index, bringing the total received by each committee to \$14,924,000.

CHART 4-1
Matching Fund Certifications

Candidates	Total Certifications
Wesley K. Clark (D) ¹	\$7,615,360.39
John R. Edwards (D) ²	\$6,706,458.44
Richard A. Gephardt (D) ³	\$4,104,319.82
Dennis J. Kucinich (D) ⁴	\$3,291,962.59
Lyndon H. LaRouche, Jr. (D) ⁵	\$1,456,019.13
Joseph Lieberman (D) ⁶	\$4,267,796.85
Ralph Nader (I) ⁷	\$891,968.39
Alfred C. Sharpton (D)	\$100,000.00 ⁸

¹ General Clark publicly withdrew from the Presidential race on February 11, 2004.

² Senator Edwards publicly withdrew from the Presidential race on March 3, 2004.

³ Congressman Gephardt publicly withdrew from the Presidential race on January 2, 2004.

⁴ Congressman Kucinich became ineligible to receive matching funds on March 4, 2004.

⁵ Mr. LaRouche became ineligible to receive matching funds on March 4, 2004.

⁶ Senator Lieberman publicly withdrew from the Presidential race on February 3, 2004.

⁷ Ralph Nader became ineligible to receive matching funds on September 2, 2004.

⁸ On May 10, 2004, the Commission determined that Reverend Sharpton must repay this amount to the U.S. Treasury for matching funds he received in excess of his entitlement.

The Presidential Election Campaign Fund Act also permits a minor party to receive federal funding for holding its convention. A minor party is defined as a political party whose candidate for the Presidency in the preceding Presidential election received more than five percent, but less than 25 percent, of the total popular votes cast. No minor party Presidential candidate in the 2000 general election received more than five percent of the popular vote.

General Election Grants

The Presidential nominee of each major party may become eligible for a public grant of \$20 million (plus a cost of living adjustment) for the general election campaign. In addition, minor and new party candidates may qualify for partial funding in the general election based on their party's electoral performance. Minor party candidates may receive public funds based on the ratio of their party's vote in the previous Presidential election to the average vote for the major

parties' candidates in that election.¹ New party candidates may receive public funds after the election if they receive five percent or more of the vote. The amount granted to a new party candidate is based on the ratio of the new party candidate's vote to the average vote for the major parties' candidates in the election.

In 2004, the general election committees of the major party nominees, George W. Bush and John Kerry, each received \$74.62 million in federal funds to finance their campaigns. Participants in the general election public funding program must spend only those funds awarded by the Commission and raised by the \$3 tax checkoff through the U.S. Department of Treasury. They may not supplement public funds with any private contributions for the campaign. How-

¹ "Minor party candidates" refers to nominees of parties whose Presidential candidates received between five and 25 percent of the vote in the preceding election.

ever, nominees may raise private funds to cover certain legal and accounting costs, which are not subject to the spending limit.

Use of Public Funds

Use of GELAC Funds

In AO 2004-35, the Commission determined that Kerry-Edwards 2004, Inc. could use its general election legal and compliance (GELAC) fund to pay legal expenses that might result from a recount of the November 2, 2004, Presidential election. While FEC regulations governing GELAC funds do not specifically address recount expenses, they do provide that the funds may be used for certain legal and accounting compliance expenses and expenses “associated with the termination of the candidate’s general election campaign.” 11 CFR 9003.3(a)(2)(i)(A), 9003.3(a)(2)(i)(I) and 9004.11(a). Legal expenses, fees for payment of staff and administrative overhead and office equipment expenses that result from a recount generally fit within the permissible GELAC funds uses. As a result, Kerry-Edwards 2004, Inc. could use its GELAC funds for recount expenses if necessary.

Repayment of Public Funds—2000 Election

Once a Presidential election is over, the Commission audits all of the candidates and committees that received public funds to ensure that they have used those funds only for permissible purposes and that they maintained proper records and filed accurate reports. These audits are mandated under the Presidential Primary Matching Payment Account Act and Presidential Election Campaign Fund Act. An audit may find that a candidate or committee exceeded its expenditure limits, spent funds on nonqualified campaign expenses or ended the campaign with a surplus. In such instances, the Commission may require the candidate or committee to repay the U.S. Treasury. The Commission may also determine that repayment is required if it finds that contributions ini-

tially thought to be matchable were later determined to have been nonmatchable. Such determinations may or may not result from the FEC’s audit of the committee.

The FEC made final determinations in 2002 regarding the repayment amounts for publicly funded candidates in the 2000 Presidential elections. Upon administrative review in 2004, the Commission concluded that four Presidential campaign committees had to make the repayments detailed below.

Buchanan Committee

The Commission determined that Patrick Buchanan, Ezola Foster and Buchanan Foster, Inc. had to repay \$24,554 to the U.S. Treasury. The amount represented interest received on public funds. However, the Commission determined that Mr. Buchanan, Mr. Foster and Buchanan Foster, Inc. need not repay an additional \$33,479 in surplus funds as required by the FEC’s 2002 final repayment determination. The repayment amount stemmed from Buchanan Foster, Inc.’s overpayment for a mailing list.

Gore Committee

The Commission made a determination that Al Gore and Gore 2000, Inc. had to repay \$170,591 to the U.S. Treasury for surplus funds. Upon administrative review and consideration of the committee’s responses, the FEC maintained its original 2002 repayment determination.

Keyes Committee

Alan Keyes and Keyes 2000, Inc. must repay \$75,841 to the U.S. Treasury for nonqualified campaign expenses stemming from the committee’s insufficient documentation of its activities, use of cash, costs associated with continuing the campaign, winding down expenses, duplicate payments and convention-related activity. In its 2002 final determination, the Commission had required repayment of \$104,448 to the U.S. Treasury. However, the amount was revised in response to additional documentation provided by the committee.

LaRouche Committee

Lyndon LaRouche, Jr., and LaRouche's Committee for a New Bretton Woods must repay \$224,185 to the U.S. Treasury. The repayment amount includes a \$67,988 pro-rata repayment for nonqualified campaign expenses due to vendor overpayments and \$154,046 for matching funds received in excess of the candidate's entitlement.

Repayment of Public Funds—2004 Election**Sharpton Committee**

In May of 2004, the Commission determined that Reverend Alfred C. Sharpton must repay \$100,000 to the U.S. Treasury for matching funds received in excess of his entitlement. The determination was the result of an FEC investigation that revealed the candidate had knowingly and substantially exceeded his \$50,000 personal expenditure limit as of January 2, 2004—the date he submitted his letter of agreements and certifications seeking to qualify to receive matching funds—and thus he was never eligible to receive payments.

Chapter Five

The Commission

Commissioners

During 2004, Bradley A. Smith served as Chairman of the Commission, and Ellen L. Weintraub served as Vice Chair. On December 16, 2004, the Commission elected Commissioner Scott Thomas as its Chairman and Commissioner Michael Toner as its Vice Chairman for 2005.

For biographies of the Commissioners and statutory officers, see Appendix 1.

Inspector General

Under the Inspector General Act, the Commission's Office of the Inspector General (OIG) is to prevent and detect fraud, waste and abuse in agency programs and promote economy, effectiveness and efficiency within the Commission. The OIG carries out its responsibilities by conducting and supervising audits, investigations and other inquiries relating to Commission programs and operations.

In 2004, the OIG made progress on an audit of the FEC's disclosure process and completed an audit of the FEC's fiscal year 2004 financial statements. The financial statement audit was conducted by an independent public accounting (IPA) firm hired and monitored by the OIG and was the Commission's first financial statement audit as required by the Accountability of Tax Dollars Act of 2002. The IPA firm hired by the OIG issued an unqualified (clean) opinion on the Commission's financial statements and made numerous recommendations to improve internal controls. This achievement reflects the FEC's commitment to sound financial management and reliable financial data upon which budgetary and financial decisions are made.

In addition to conducting the aforementioned audits, the OIG completed a peer review of another Federal OIG during 2004. The Government Accountability Office's Government Auditing Standards (GAS) requires organizations conducting audits in accordance with GAS to undergo external peer review every three years. This process is intended to ensure the quality of audits and compliance with auditing standards. The FEC OIG is scheduled to be reviewed in 2005. In addition to the preceding tasks,

the OIG responded to several hotline complaints and Congressional requests.

Equal Employment Opportunity (EEO)

The FEC's Office of Equal Employment Opportunity has been a leader in the area of Alternative Dispute Resolution (ADR), establishing and successfully utilizing mediation to resolve informally EEO matters since 1994.

Jointly administered by the EEO Director, Personnel Director and three EEO Counselors, the ADR program, or Early Intervention Program, seeks to resolve employee concerns that might otherwise result in formal complaints. Prior to filing an EEO complaint, employees may agree to meet voluntarily, separately or jointly, with the EEO Director or Personnel Director, an EEO Counselor and/or the party allegedly responsible for the discrimination or wrongdoing. If attempts to resolve the problem fail, the employee may proceed with EEO counseling and may file a formal EEO complaint or grievance, if applicable.

In 2004, the Commission's EEO office received new regulations and reporting requirements from the Equal Employment Opportunity Commission. The new regulations, Management Directive 715, provide guidance for establishing and maintaining an affirmative action program. As part of the new Directive, the FEC's EEO office will be required to file reports with the EEOC beginning in 2005.

Ethics

Staff members in the General Counsel's office serve as the Commission's ethics officials. Dissemination of information to FEC employees regarding compliance with the Ethics in Government Act required a number of undertakings throughout the year. The ethics staff conducted ethics orientation sessions for all new employees and provided annual ethics briefings to employees who are required to file public and confidential financial disclosure reports. In order to protect employees against conflict of interest and to help ensure that they remain impartial in the performance of their official duties, the ethics staff also administered the financial disclosure re-

port system. Additionally, staff provided guidance to employees on the *Standards of Ethical Conduct for Employees of the Executive Branch* and other ethics laws and regulations. Finally, ethics staff ensured the Commission's compliance with requirements of the Office of Government Ethics (OGE) by submitting the following documents to the OGE: the annual agency ethics program report, financial disclosure reports filed by Presidential and Vice Presidential candidates and travel payment reports.

FEC's Budget

As previously mentioned, the Commission issued its Performance and Accountability Report (PAR) in 2004. The Accountability of Tax Dollars Act of 2002 extends to small agencies, such as the FEC, certain requirements for the preparation of financial statements, and it requires a full financial audit of the agency's financial management systems and internal management controls. This is the first year that the FEC was required to produce financial statements and undergo a full financial audit. The FEC committed significant resources to improving its financial systems and preparing for the first year of full financial audits.

The 2004 report contains three sections:

- "Management's Discussion and Analysis," which provides an overview of the financial and performance information addressed in the report;
- "Performance," which reports the FEC's accomplishments and its results in meeting its goals and objectives; and
- "Financial," which contains details on the FEC's finances.

The fully unqualified (clean) opinion of the Commission's financial statements indicates that the FEC's budget is based on sound financial statements.

Fiscal Year 2004 Budget

The FEC FY 2004 final appropriation was \$50,456,592 for 391 full time employees (FTE). This reflected an increase of only \$914,721 or less than two percent more than the enacted FY 2003 appropriation of \$49,541,871 and 389 FTE. A slight increase in staff resulted from the additional resources

requested in the FY 2004 budget request to comply with and implement the BCRA of 2002. The Commission's FY 2004 final budget reflects transfer of the Office of Election Administration (OEA), which formerly compiled information and reviewed procedures relating to the administration of federal elections. This function has been transferred to the newly formed Election Assistance Commission which was funded by the President's FY 2004 Budget.

Fiscal Year 2005 Budget

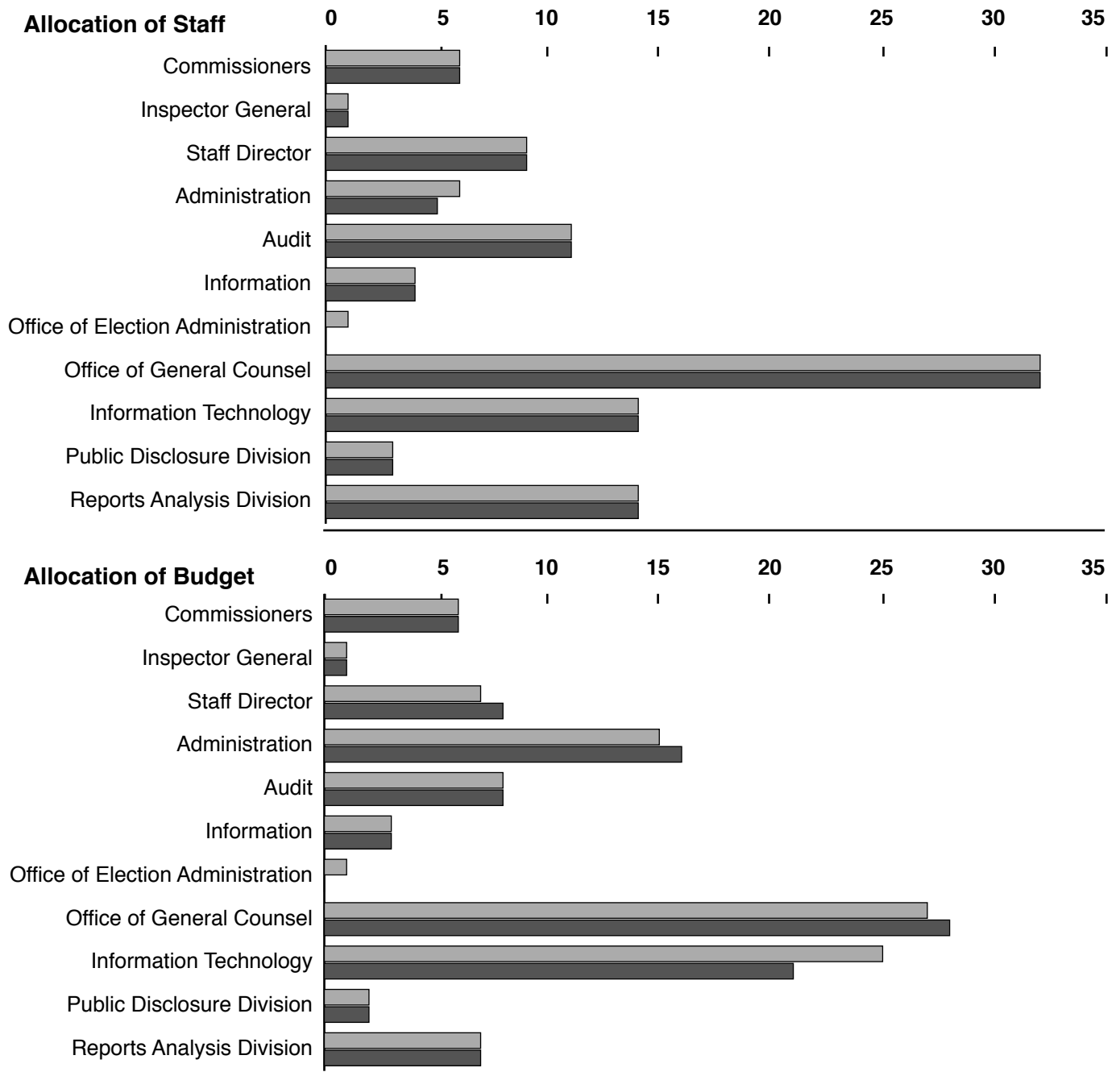
The FEC FY 2005 final appropriation was \$51,741,728 for 391 FTE. The 2005 request proposed no additional staff and reflected a four percent cost of living adjustment for 391 FTE. The final appropriation resulted in an increase of \$1,285,136 or 2.6 percent from the FY 2004 funding level of \$50,456,592.

CHART 5-1 Functional Allocation of Budget

	FY 2004	FY 2005
Personnel	\$35,294,300	37,406,977
Travel/Transportation	312,359	495,251
Space Rental	3,969,197	4,386,000
Equipment Rental/Maint	386,775	819,700
Telephone/Postage	402,619	423,500
Printing	390,431	448,000
Training/Tuition	183,001	336,500
Depositions/Transcripts	29,030	50,000
Federal Agency Services	405,131	694,500
Software/Hardware	3,383,285	1,125,500
Contracts	689,737	3,316,300
Publications	484,911	518,500
Supplies	268,294	236,832
Equipment Purchases	4,121,655	1,401,168
Other	81,795	128,500
Total	\$50,402,520	51,741,728

CHART 5-2
Divisional Allocation of Budget by Percentage

FY 2004 Actual
 FY 2005 Projected



Chapter 6 Legislative Recommendations

On March 25, 2005, the Commission submitted to Congress and the President 16 legislative recommendations—five priority recommendation and 11 additional recommendations, including proposed amendments to address problems that the regulated community and the Commission have encountered.

Part One: Priority Recommendations

Compliance

Addition of Commission to the List of Agencies Authorized to Issue Immunity Orders Under Title 18 (2005)

Section: 18 U.S.C. §6001(1)

Recommendation: The Commission recommends that Congress revise 18 U.S.C. §6001(1) to add the Commission to the list of agencies authorized to issue immunity orders according to the provisions of title 18.

Explanation: Congress has entrusted the Commission with the exclusive jurisdiction for the civil enforcement of the Federal Election Campaign Act of 1971, as amended, the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act. The Commission is authorized, in any proceeding or investigation, to order testimony to be taken by deposition and to compel testimony and the production of evidence under oath pursuant to subpoena. See 2 U.S.C. §437d(a)(3) and (4). However, in some instances, an individual who has been called to testify or provide other information refuses to do so on the basis of his privilege against self-incrimination. There is currently no mechanism whereby the Commission, with the approval of the Attorney General, can issue an order providing limited criminal immunity for information provided to the Commission. Many other independent agencies, including the Federal Communications Commission and the Federal Trade Commission, can grant such immunity.

Federal immunity grants are governed by 18 U.S.C. §§6001-6005. 18 U.S.C. §§ 6002 and 6004(a) provide that if a witness asserts his Fifth Amendment privilege against self-incrimination and refuses to answer questions at any “proceeding before an agency of the United States,” the agency may seek approval from the Attorney General to immunize the witness from criminal prosecution for testimony or information provided to the agency (and any information directly or indirectly derived from such testimony or information). If the Attorney General approves the agency’s request, the agency may then issue an order immunizing the witness and compelling his testimony. Once that order is issued and communicated to the witness, he cannot continue to refuse to testify in the inquiry. The order issued by the agency only immunizes the witness as to criminal liability, and does not preclude civil enforcement action. The immunity conferred is “use” immunity, not “transactional” immunity. The government also can criminally prosecute the witness for perjury or giving false statements if the witness lies during his immunized testimony, or for otherwise failing to comply with the order.

Only “an agency of the United States,” as that term is defined in 18 U.S.C. §6001(1), can avail itself of the mechanism described above. The term is currently defined to mean an executive department or military department, and certain other persons or entities, including a large number of enumerated independent federal agencies. The Commission is not one of the enumerated agencies. When the provision was added to title 18 in 1970, the enumerated agencies were those that already had immunity granting power, but additional agencies have been substituted or added since then. Adding the Commission as one of the enumerated agencies in 18 U.S.C. §6001(1) would enhance its ability to obtain information relevant to the effective execution of its enforcement responsibilities.

Legislative Language:

Title 18, United States Code is amended in section 6001(1) by inserting “the Federal Election Commission,” after “the Federal Deposit Insurance Corporation,”.

Increase the Record Retention Period from Three Years to Five Years (2005)

Section: 2 U.S.C. §432(d)

Recommendation: The Commission recommends that Congress increase the record retention period for political committees from three years after the related report is filed to five years after the related report is filed. This change would make the record retention requirement coincide with the five-year statute of limitations for litigation and would improve the Commission's ability to conduct audits and compliance proceedings.

Explanation: Treasurers of political committees are required to preserve all required records and copies of all reports required to be filed for three years after the report is filed. 2 U.S.C. §432(d). The general Federal five-year statute of limitations, 28 U.S.C. §2462, applies to civil enforcement litigation that seeks the imposition of civil penalties. *See FEC v. Williams*, 104 F.3d 237 (9th Cir. 1996), *cert. denied*, 522 U.S. 1015 (1997). The statute of limitations for criminal violations of FECA at 2 U.S.C. §455(a) was increased by BCRA from three years to five years. Increasing the record retention requirement will correspond more closely with both civil and criminal statutes of limitations. It will also enhance the Commission's ability to obtain information in its civil enforcement and audit proceedings.

Legislative Language:

Section 302(d) of the Federal Election Campaign Act of 1971 (2 U.S.C. §432(d)) is amended by striking the "3" before the phrase "years after the report is filed," and inserting "5" in lieu thereof.

Persons Who Can Be Named As Respondents (2005)

Section: New section 2 U.S.C. §441j

Recommendation: The Commission recommends that Congress add a provision related to enforcement of the Act that makes it a violation for anyone to aid and abet 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. Frequently, however, parties other than those listed are actively involved in committing the violations. For example, section 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 organizations 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 situation also arises in the context of violations 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. Many times, there are additional parties, not specified in the statute, who are actively involved in carrying out the violation. The court has recognized the Commission's authority to enforce the Act against persons who actively assist in the violation of section 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 incorporated that decision in its regulations at 11 CFR 110.4(b).

As a result, the law presents an anomalous situation in which persons can be penalized for aiding and abetting in the violation of some provisions of the Act, but not others. This amendment would eliminate this inconsistency and provide for coherent and consistent application of the Act.

This approach would be consistent with the approach in Title 18 of the United States Code (Crimes and Criminal Procedure) which provides for punishment "as a principal" a person who "aids, abets..." the commission of an offense against the United States. See 18 U.S.C. §2. Currently, this provision allows the U.S. government to file criminal charges against

those who aid and abet violations of campaign finance laws, while there is no parallel provision for civil enforcement against those who aid and abet.

Legislative Language:

Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. §431 *et seq.*) is amended by adding, at new section 441j, the following:

SEC. 329. AIDING AND ABETTING A VIOLATION

Any person who aids and abets another person in committing a violation of any provision of this Act, or of chapter 95 or chapter 96 of title 26, is liable, under 2 U.S.C. §437g, for the violation as if he committed the violation himself.

Disclosure

Making Permanent the Administrative Fine Program for Reporting Violations (Revised 2005)

Section: 2 U.S.C. §437g

Recommendation: The Commission recommends that Congress make permanent the Commission's authority to assess administrative fines for straightforward violations of the law requiring timely reporting of receipts and disbursements. The Commission's current Administrative Fine Program only covers violations that relate to reporting periods through December 31, 2005.

Explanation: On January 23, 2004, President Bush signed the Consolidated Appropriations Act, 2004, which extended the Administrative Fine Program to cover violations of 2 U.S.C. §434(a) that relate to reporting periods through December 31, 2005. Since the Administrative Fine program was implemented with the 2000 July Quarterly report, the Commission has processed and made public 1,042 cases, with \$1,397,823 in fines collected. The Administrative Fine Program has been remarkably successful: over the course of the program, the number of late and nonfiled reports has generally decreased. As a result, the Administrative Fine Program has become an

integral part of the Commission's mission to administer and enforce the Act. By making the program permanent, Congress would ensure that the Commission would not lose one of the most cost-effective and successful programs in its history.

Under the Administrative Fine Program, the Commission considers reports to be filed late if they are received after the due date, but within 30 days of that due date. Election-sensitive reports are considered late if they are filed after their due date, but at least five days before the election. (Election sensitive reports are those filed immediately before an election and include pre-primary, pre-special, pre-general, October quarterly and October monthly reports.) Committees filing reports after these dates are considered nonfilers. Civil money penalties for late reports are determined by the amount of activity on the report, the number of days the report was late and any prior penalties for violations under the administrative fine regulations. Penalties for nonfiled reports are determined by the estimated amount of activity on the report and any prior violations. Committees have the option to either pay the civil penalty assessed or challenge the Commission's finding and/or proposed penalty.

While the Commission strongly supports making the Administrative Fine Program permanent, should Congress decide not to make the program permanent, Congress should, at a minimum, extend the program to cover violations of 2 U.S.C. §434(a) that relate to reporting periods through December 31, 2008.

Electronic Filing of Senate Reports (Revised 2005)

Sections: 2 U.S.C. §§432(g) and 434(a)(11)

Recommendation: The Commission recommends that Congress require:

- Mandatory electronic filing, to be commenced by a date to be determined by Congress, for all Senate candidates (or those candidates' authorized committees) and for those persons and political committees filing designations, statements, reports or notifications pertaining only to Senate elections if they

have, or have reason to expect to have, aggregate contributions or expenditures in excess of \$50,000 in a calendar year.

- Electronically filed designations, statements, reports or notifications pertaining only to Senate elections to be forwarded to the Commission within 24 hours of receipt and to be made accessible to the public on the Internet, if Congress does not change the point of entry for filings pertaining only to Senate elections.

Explanation: Public Law 106-58 required, among other things, that the Commission make electronic filing mandatory for political committees and other persons required to file with the Commission who, in a calendar year, have, or have reason to expect to have, total contributions or total expenditures exceeding a threshold set by the Commission (\$50,000). The Bipartisan Campaign Reform Act of 2002 (Public Law No. 107-155) required the Commission to develop software and software standards that will allow information concerning reportable receipts and disbursements to be “transmitted immediately” and posted on the Commission’s web site “immediately upon receipt.” BCRA also expanded the class of persons required to file electronically, mandating that “each candidate for Federal office (or that candidate’s authorized committee) shall use software” that meets the new standards once such software is made available to the candidate. 2 U.S.C. §434(a)(12)(C). The plain language of this statutory revision does not appear to exempt Senate candidates and their authorized committees from the electronic filing requirements, but it does not specify where the electronic reports must be filed. Thus, a plain reading of these new requirements indicates that all Senate candidates and their authorized committees must use software, presumably to file electronically, with the Senate (or with the FEC). (The Commission notes that legislation was introduced in the 108th Congress (S.1874) to mandate electronic filing by Senate campaigns.)

Data from electronically filed reports is received, processed and disseminated more easily and efficiently, resulting in better use of resources. Reports that are

filed electronically are normally available within five minutes and detailed data is available in the Commission’s databases within 24 to 48 hours. In contrast, the time between the receipt of a report filed through the paper filing system and its appearance on the Commission’s web site is 48 hours. It can take as long as 30 days before some detailed data filed on paper is available in the Commission’s databases.

Electronic filing (by means other than diskette) is also unaffected by disruptions in the delivery of first class mail, such as those arising from the presence of anthrax powder in the Senate buildings and U.S. Postal Service facilities in 2001 and the more recent discovery of Ricin in mail delivered to the Senate office buildings. In each case, the disruptions have significantly delayed amendments to Senate campaign reports that were filed via regular mail. In 2001, reports submitted by regular mail took months to arrive at the Secretary of the Senate (and the FEC), delaying disclosure. In contrast, amendments electronically filed during the same time periods by other types of filers were received and processed in a timely manner.

Legislative Language:

Section 304(a)(11)(D) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)(11)(D)) is amended to read as follows: “As used in this paragraph, the terms “designation”, “statement”, or “report” mean a designation, statement or report, respectively, which - (i) is required by this Act to be filed with the Commission, or (ii) is required under section 302(g) to be filed with the Secretary of the Senate and forwarded by the Secretary to the Commission.”

Section 302(g)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(g)(2)) is amended by inserting “or 1 working day in the case of a designation, statement, or report filed electronically” after “2 working days”.

Section 304(a)(11)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)(11)(B)) is amended by inserting “, or filed with the Secretary of the Senate under section 302(g)(1) and forwarded to the Commission,” after “Act”.

Part Two: Non-Priority/Substantive or Technical Legislative Recommendations

Public Financing

Stabilizing the Presidential Public Funding Program (Revised 2005)

Sections: 26 U.S.C. §§6096, 9008(a) and 9037(a)

Recommendation: The Commission strongly recommends that Congress take immediate action to stabilize the Presidential public funding program for upcoming election years.

Explanation: The Presidential public funding program has experienced shortfalls during each of the last three Presidential elections. The shortfalls are a result of declining participation in the checkoff program and the fact that the checkoff is not indexed to inflation while payouts are indexed. To date, the shortfalls have principally affected primary candidates, whose funding is given lowest priority under the law.

For example, the Presidential Election Campaign Fund experienced a brief shortfall in February 2004, when the U.S. Treasury made its second payment for the 2004 elections. It was only able to provide approximately 46 percent of the public funds that qualified Presidential candidates were entitled to receive at that time. Specifically, only a little over \$2.3 million was available for distribution to qualified primary candidates on February 1, 2004, after the Treasury paid the convention grants and set aside the general election grants.¹ However, the entitlement (*i.e.*, the amount that the qualified candidates were entitled to receive) on that date was \$5 million, twice as much as the amount of available public funds.

The 2004 shortfall could have been considerably more severe had three major party candidates not opted out of public funding for the primary. While this left more money for candidates who chose to participate in the program, the candidates who opted out appeared to do so out of a desire to spend beyond the spending limits. Their ability to operate outside the restrictions of the public funding program may encourage more candidates to opt out in future election years.

The Commission further notes that the 2008 Presidential elections may pose even greater problems than past Presidential elections with respect to a possible shortfall. As was the case in 1988 and 2000, neither major party will include a Presidential incumbent as one of the primary contestants, thus heightening the potential for a more wide open series of primary elections.

The Commission recommends several specific legislative changes. First, to alleviate future shortfalls, the statute should be revised so that Treasury will be able to rely on **expected** proceeds from the voluntary checkoff, rather than relying solely on actual proceeds **on hand** as of the dates of the matching fund payments. Since large infusions of voluntary checkoff proceeds predictably occur in the first few months of the election year, including such estimated proceeds in the calculation of funds available for matching fund payouts would virtually eliminate the shortfall in the near future. Because estimates for expected payouts are an acceptable part of the calculations (*e.g.*, setting aside sufficient funds to cover general election payouts), estimates of the checkoff proceeds could be incorporated, as well. A very simple change in the wording of 26 U.S.C. §9037 would accomplish this: changing “are available” to “will be available.” Expected payments should be based on sound statistical methods to produce a cautious, conservative estimate of the funds that will be available to cover convention and general election payments.

¹ The Commission certified a total of \$29.18 million in convention grants, and \$149.2 million was set aside for use by general election candidates.

A second revision in the statute would further the long-term stability of the Presidential public funding program: indexing the voluntary checkoff amount

to inflation. Although the checkoff amount was increased from \$1 to \$3 beginning with 1993 returns, there was no indexing built in to account for further inflation thereafter. The Commission is mindful that other factors also influence the fund's balance, including the number of candidates participating, the number of contributions they can have matched, the taxpayer participation rate and deposits of repayments. Nevertheless, an indexing of the checkoff amount for inflation would help guarantee some money coming in to replenish the public funding program.

Contributions/Expenditures

Indexing for Inflation the Limit on Contributions by One Authorized Committee to Another (2005)

Sections: 2 U.S.C. §§432(e)(3)(B) and 441a(c)

Recommendation: The Commission recommends that Congress consider indexing for inflation the contribution limitation that applies when a federal candidate's authorized committee contributes to the authorized committee of another federal candidate.

Explanation: Under the Act, with certain exceptions, no political committee that supports, or has supported, more than one candidate may be designated as an authorized committee. 2 U.S.C. §432(e)(3)(A). Until recently, the FECA, at 2 U.S.C. §432(e)(3)(B), defined "support" as excluding a contribution by any authorized committee in an amount of \$1,000 or less to an authorized committee of any other federal candidate. This in effect provided a \$1,000 limit for contributions from one federal candidate's authorized committee to another. As part of the Consolidated Appropriations Act of 2005, Congress raised this limit to \$2,000 to harmonize the limit with that which an individual may contribute to a candidate (found at 2 U.S.C. §441a(a)(1)(A)).

However, as part of the Bipartisan Campaign Reform Act of 2002 (BCRA), Congress indexed for inflation the contribution limits for individuals and other entities. See 2 U.S.C. §441a(c). In 2005, the individual contribution limit as adjusted for inflation increased

to \$2,100 per candidate, per election. Congress did not similarly index for inflation the limit found at section 432(e)(3)(B) for contributions from one authorized committee to another. Thus, unless Congress amends the statute, that limit will remain at \$2,000 while other contribution limits rise with the cost of living.

For consistency purposes, Congress may wish to make a technical amendment to the statute to include the campaign-to-campaign limit at section 432(e)(3)(B) in the list of contribution limits at section 441a(c) that are to be adjusted for inflation.

Legislative Language:

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. §441a) is amended—

(1) in clause (i) of subparagraphs (c)(1)(B) and (c)(1)(C) by inserting in both ", or in section 432(e)(2)(B) of this title," after "(h)";

(2) in clause (ii) of subparagraph (c)(2)(B), by inserting "or in section 432(e)(2)(B) of this title," after "(h),"

Compliance

Modifying Terminology of "Reason to Believe" Finding (Revised 2005)

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" terminology 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, after evaluating the complaint, the respondents’ responses to the complaint (if an externally generated complaint), and information available on the public record, the Commission believes a violation may have occurred. However, the Commission has not yet established that a violation has, in fact, occurred. In order to evaluate the validity of the alleged facts, the Commission needs to investigate, *i.e.*, to seek information, and responses to specific inquiries, from those involved in the alleged activities. 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. Note that the change in terminology recommended by the Commission would not change the standard that this finding simply represents that the Commission believes a violation may have occurred if the facts as described are accurate.

Fraudulent Misrepresentation of Campaign Authority (Revised 2005)

Section: 2 U.S.C. §441h

Recommendation: The Commission recommends that Congress revise the prohibitions on fraudulent misrepresentation of campaign authority to encompass all persons purporting to act on behalf of candidates and real or fictitious political committees and political organizations. In addition, the Commission recommends that Congress remove the requirement that the fraudulent misrepresentation must pertain to a matter that is “damaging” to another candidate or political party.

Explanation: 2 U.S.C. §441h(a) prohibits a Federal candidate or his or her agent or employee from fraudulent misrepresentation such as speaking, writing, or otherwise acting on behalf of a candidate or political party committee on a “matter which is damaging to such other candidate or political party” or an employee or agent of either. The Commission recommends that this prohibition be extended to any person who would disrupt a campaign by such unlawful means, rather than being limited to candidates and their agents and employees. Proving damages as a threshold matter is often difficult and unnecessarily impedes the Commission’s ability to pursue persons who employ fraud and deceit to undermine campaigns. Fraudulent solicitations of funds on behalf of a candidate or political party committee were recently prohibited in BCRA without any required showing of damage to the misrepresented candidate or political party committee. See §441h(b).

In addition, while both §§441h(a) and (b) directly address fraudulent actions “on behalf of any other candidate or political party,” they do not address situations where a person falsely claims to represent another type of political committee or claims to be acting on behalf of a fictitious political organization, rather than an actual political party or a candidate. For example, the narrow scope of the existing language does not bar fraudulent misrepresentation or solicitation on behalf of a corporate or union separate segregated fund or a non-connected political committee.

Congress should consider revising the statute to strengthen these important prohibitions on fraudulent activity.

Legislative Language:

Section 322 of the Federal Election Campaign Act of 1971 (2 U.S.C. §441h) is amended:

- (1) in subsection (a), by striking “who is a candidate for Federal office or an employee or agent of such a candidate”;
- (2) in paragraph (a)(1), by striking “or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party

or employee or agent thereof” and inserting in lieu thereof “, political party, other real or fictitious political committee or organization, or employee or agent of any of the foregoing,”;

(3) in paragraph (b)(1), by striking “or political party or employee or agent thereof” and inserting in lieu thereof “, political party, other real or fictitious political committee or organization, or employee or agent of any of the foregoing,”.

Contributions/Expenditures

Multicandidate Political Committee Contribution Limitations and Non-multicandidate Political Committee Contribution Limitations (Revised 2005)

Section: 2 U.S.C. §441a(a)(2) and 441a(c)

Recommendation: The Commission recommends that Congress consider indexing for inflation the contribution limitations applicable to multicandidate political committees and adjusting the amount such committees may contribute to national party committees to harmonize these limits with the limits applicable to non-multicandidate political committees.

Explanation: A political committee qualifies for multicandidate status if it has been registered with the Commission for six months or more, has received contributions from more than 50 persons, and has contributed to five or more Federal candidates. 2 U.S.C. §441a(a)(4).

FECA, prior to BCRA, provided a significantly higher limit on contributions to candidates for political committees with multicandidate status than for those without that status (\$5,000 per election versus \$1,000 per election). BCRA raised and indexed for inflation the contribution limit on non-multicandidate committees (to \$2,000 per election), and such limit eventually will become higher than the limit imposed on multicandidate committees. It is important to note that a committee cannot opt out of multicandidate status. Instead, under section 441a(a)(4), a committee automatically triggers multicandidate status once it meets the specific requirements listed above.

In addition, the limit for contributions to national party committees from multicandidate committees is \$15,000 per year (as it was prior to BCRA), yet BCRA increased the limit on contributions to the same national party committees from non-multicandidate committees from \$20,000 to \$25,000 per year. 2 U.S.C. §441a(a)(2)(B), (1)(B). Moreover, only the contribution limit for non-multicandidate committees is indexed for inflation, which means that over time the current \$10,000 difference will only increase.

Legislative Language:

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. §441a) is amended—

(1) in subparagraph (a)(2)(B), by striking “\$15,000” and inserting in lieu thereof “\$25,000”;

(2) in clause (i) of subparagraph (c)(1)(B), by inserting “(a)(2)(A), (a)(2)(B),” after “(a)(1)(B),”;

(3) in subparagraph (c)(1)(C), by inserting “(a)(2)(A), (a)(2)(B),” after “(a)(1)(B),”;

(4) in clause (ii) of subparagraph (c)(2)(B), by inserting “(a)(2)(A), (a)(2)(B),” after “(a)(1)(B),”.

Disclosure

Increasing and Indexing all pre-BCRA Registration and Reporting Thresholds for Inflation (Revised 2004)

Sections: 2 U.S.C. §§431 and 434

Recommendation: The Commission recommends that Congress increase and index for inflation all pre-BCRA registration and reporting thresholds.

Explanation: Most of the Act’s registration and reporting thresholds were set in 1974 and 1979. Because over twenty years of inflation had effectively reduced the Act’s contribution limits in real dollars, the BCRA increased some contribution limits to partially adjust for inflation, and then indexed those limits: contributions to candidates and national party committees by individuals and non-multicandidate committees, the biennial aggregate contribution limit for individuals

and the limit on contributions to Senate candidates by certain national party committees. The Commission proposes extending this approach to all pre-BCRA registration and reporting thresholds, which have similarly been effectively reduced as a result of inflation.

Increasing and then indexing these thresholds would ease the registration and reporting burdens on smaller political committees who, in some cases, are unaware of the Act's registration and reporting provisions. Moreover, by increasing and then indexing the thresholds for inflation, Congress would help to ensure that some committees and persons who lack the resources and technical expertise to comply with the Act's registration and reporting requirements would not have to do so. Finally, because of the effect of inflation, increasing and then indexing the registration and reporting thresholds would continue to capture the significant financial activity envisioned when Congress enacted the FECA.

Contributions/Expenditures

Application of the Biennial Contribution Limit (2005)

Section: 2 U.S.C. §441a(a)(1)(B), (a)(3), (c) and (h)

Recommendation: The Commission recommends that Congress make a technical amendment to the law to ensure that the biennial contribution limit for individuals contributing to candidates, at 2 U.S.C. §441a(a)(3), is applied on a two-calendar-year basis, rather than on an election cycle basis. The Commission also recommends that the technical amendment encompass other limits indexed for inflation, including the contribution limit for individuals contributing to national party committees, at 2 U.S.C. §441a(a)(1)(B), and the contribution limit for national party committees contributing to a Senate candidate, at 2 U.S.C. §441a(h).

Explanation: As part of BCRA, Congress replaced the \$25,000 annual contribution limit for individuals, previously codified at 2 U.S.C. §441a(a)(3), with a new biennial contribution limit based on a two-cal-

endar-year cycle (*i.e.*, a period of time beginning with January 1 of an odd-numbered year and ending on December 31 of the next even-numbered year). Prior to that statutory change, contributions to a candidate counted against an individual's annual limit for the year in which the candidate's election was held, regardless of when the contribution was made. This approach caused confusion among donors and led to inadvertent violations of the law. The biennial limit eliminates this confusion by counting contributions against the limit for the period during which the contributions are made.

The biennial contribution limit is among those that Congress chose to index for inflation. See 2 U.S.C. §441a(c)(1)(B) and (C). Section 441a(c)(1)(C) indicates that the indexed limits apply on the first day after the general election and remain in effect until the next general election, *i.e.*, on an election-cycle basis, rather than on a two-calendar-year basis. This is contrary to the wording of section 441a(a)(3) as revised by BCRA.

To the extent that the inconsistency between sections 441a(a)(3) and 441a(c)(1)(C) may have been an oversight, the Commission recommends that Congress make a technical amendment to section 441a(c) specifying that while other indexed limits apply on an election-cycle basis, the indexed biennial limit applies to contributions made between January 1 of odd-numbered years and December 31 of even-numbered years. Such a change will ensure that the biennial contribution limit is applied on a two-calendar-year basis, as described in BCRA's revision of section 441a(a)(3).

For consistency purposes, Congress should also specify that the biennial contribution limit will be applied on a two-calendar-year basis, as described in BCRA's revision of section 441a(a)(3), to the limit on contributions to a national party committee from an individual (located in section 441a(a)(1)(B)) and to the limit on contributions from a national party committee to a Senate campaign (located in section 441a(h)). The Commission notes that the biennial limit technically does not apply to a national party

committee and only applies to contributions made by individuals, but wants to ensure consistency in the statutory and regulatory applications of the limit.

Legislative Language:

Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. §441a) is amended in subparagraph (c)(1)(C) by striking the “s” in “limitations”, by striking “subsections (a)(1)(A), (a)(1)(B), (a)(3) and (h),” by inserting “subparagraph (a)(1)(A)” in lieu thereof, and by inserting after the period, “In the case of limitations under subparagraph (a)(1)(B), paragraph (a)(3) and subsection (h), such increases shall remain in effect for the two-year period beginning on January 1 of the odd-numbered year and ending on December 31 of the next even-numbered year”.

Disclosure

Declaration of Intent to Expend Personal Funds (2005)

Sections: 2 U.S.C. §§434(a)(6)(B) and 441a-1(b),

Recommendation: The Commission recommends that Congress eliminate the requirement that candidates disclose on their Statement of Candidacy the amount by which they intend to exceed the personal spending threshold established by the Millionaires’ Amendment.

Explanation: The so-called Millionaires’ Amendment, enacted as part of the Bipartisan Campaign Reform Act of 2002 (BCRA), permits a candidate whose opponent’s personal spending exceeds certain threshold amounts to accept individual contributions at increased limits and, in some cases, lifts the applicable coordinated party expenditure limit. In drafting this legislation, Congress initially considered using the opposing candidate’s declaration of intent to exceed the threshold amount as the trigger for increased limits. As a result, the BCRA modified section 434 and added new 441a-1(b) to require candidates to notify the Commission or Secretary of the Senate (as appropriate) and each opposing candidate of their intention to spend personal funds when they file their Statement of Candidacy.

Ultimately, Congress determined that **actual** spending in excess of the threshold amount, rather than intended spending, should serve as the trigger for increased limits, and enacted a second notification requirement tied to that principle. §§434(a)(6)(B)(iii) and (iv) and 441a-1(b)(1)(B) and (C). To fulfill that requirement, the Commission created new FEC Form 10, which candidates fax to the government and to each opposing candidate when their spending exceeds the threshold amount. Based on that filing, opposing candidates can determine if they qualify for increased limits.

It appears that the notification of actual spending was meant to replace the notification of intent to spend; yet both provisions were included in the final legislation. The requirement that candidates declare their intent to spend personal funds in excess of the threshold amount and to notify their opponents serves no practical purpose and places an unnecessary burden on candidates. Therefore, to remedy what may have been an oversight during the drafting of the legislation, and to relieve candidates of this unnecessary filing burden, the Commission recommends that Congress make a technical amendment to the statute to remove the “Declaration of Intent” sections at 434(a)(6)(B)(ii) and 441a-1(b)(1)(B).

Miscellaneous

Creation of Senior Executive Service Positions (Revised 2005)

Sections: 2 U.S.C. §437c(f)(1); 5 U.S.C. §3132(a)(1)

Recommendation: The Commission recommends that Congress amend 5 U.S.C. §3132(a)(1) by deleting subsection (C), which specifically excludes the Federal Election Commission from eligibility for the creation of Senior Executive Service positions. The Commission also recommends that Congress revise section 437c(f)(1) to state that the Staff Director and the General Counsel will be paid at rates comparable to those for the Senior Executive Service. This would replace the current provisions stating that they would

be paid at Level IV and Level V of the Executive Schedule respectively.

Explanation: The Commission believes that two statutory changes are needed to bring the Commission's personnel structure in line with that of other comparable federal agencies. This would ensure that the Commission is able to compete with other government agencies and the private sector in recruiting and retaining key management personnel, including the Staff Director and General Counsel. These changes would also enable the Commission, like other agencies, to move to merit-based pay systems for top executives.

Under the current compensation structure, statutorily mandated in 2 U.S.C. §437c(f)(1), the Staff Director and General Counsel are paid \$140,000 and \$131,400, respectively. Thus, the Staff Director earns only \$5,164 more than a GS-15, Step 10, and the General Counsel earns \$271 less than a GS-15, Step 9. The Staff Director and General Counsel have significant responsibilities and oversight duties with respect to both administrative and legal areas, as well as management over almost all agency personnel. Congress recently restructured the SES compensation system into a performance-based, payband system. National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136, Nov. 24, 2003). For 2005, individuals serving in SES positions are compensated in a payband that goes up to \$149,200 (or \$162,100 in agencies with a certified SES performance appraisal system). The Commission proposes a revision providing that the Staff Director and the General Counsel shall be paid at a rate no higher than the highest rate for Senior Executive Service employees in agencies that do not have a certified SES performance appraisal system. By providing the possibility for salary rates higher than those provided in the Act currently, the revision will ensure that the Commission can retain highly qualified individuals to serve in those positions as well as enable it to remain competitive in the marketplace for federal executives when a vacancy arises. At the same time, by not placing the Staff Director and General Counsel positions in the SES system itself, the Commission retains

its salary-setting prerogatives free of merit system protection rights.

The Commission is prohibited by law from creating Senior Executive Service positions within the agency. As a result, its senior managers other than the Staff Director and the General Counsel are employed in Senior Level positions. This pay and benefits structure hinders the Commission's ability to recruit talented executives from other agencies and retain high-performing senior managers. The persons in the Senior Level positions (two Deputy Staff Directors, a Deputy General Counsel, and four Associate General Counsels) oversee major programmatic areas and supervise not only staff, but other managers as well. Although these seven executive positions are designated as Senior Level, OPM's Guide to the Senior Executive Service indicates that the Senior Level system is for non-executive positions. In fact, the OPM Guide provides that supervisory duties should occupy less than 25% of a Senior Level employee's time. At the Commission, by contrast, supervisory and executive responsibilities occupy 100% of the time of Senior Level employees.

In terms of total compensation and benefits, individuals serving in statutory executive-level appointments and Senior Level positions are under-compensated for the responsibilities and duties required by these positions, and under-compensated when compared to individuals serving in similar capacities at virtually all other Federal agencies. Compensating the Staff Director and General Counsel at SES rates would be a useful remedy. Conversion of Senior Level managers to SES positions would provide the Commission with the flexibility needed to allow higher pay ranges for them and enable them to receive performance awards and other benefits not available to statutory officers and/or Senior Level employees. Perhaps most significantly, this includes the ability to carry over many more days of annual leave than Senior Level employees. Given that Senior Level managers frequently work extended periods in which they cannot use much leave, especially in the aftermath of BCRA, an executive's ability to accumulate and defer leave is not only an important benefit to him or her,

but is also a valuable tool for the agency to ensure that executives are available to accomplish agency priorities.

Accordingly, the Commission believes that the positions of Staff Director and General Counsel should be compensated at a rate of pay not to exceed the SES rates. In addition, Senior Level positions within the agency should be converted to SES positions and any future Senior Level positions should be created in the SES. There is a trend toward performance-based pay for executives throughout the government; revising the compensation of the statutory officers and converting Senior Level positions into SES positions would ensure performance-based pay is similarly emphasized for the Commission's senior executive positions. The Commission is confident that these changes would assist in retaining highly qualified individuals and attracting superior candidates when vacancies arise, thus permitting the Commission to remain competitive in the marketplace for federal executives.

Legislative Language:

(1) Section 3132(a)(1)(C) of Title 5 of the United States Code is amended by striking "Federal Election Commission, or".

(2) Section 310(f)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. §437c(f)(1)) is amended by striking the second and third sentences, and replacing them with: "The staff director and general counsel shall be paid at rates not to exceed the range of rates of basic pay in effect for the Senior Executive Service under 5 U.S.C. 5382."

Contributions/Expenditures

Modifying the Definition of Federal Election Activity to Simplify Compliance for State, District and Local Party Committees Where Certain Employees Spend More than 25 Percent of Their Time In Connection with a Federal Election (2004)

Section: 2 U.S.C. §431(20)(A)(iv)

Recommendation: The Commission recommends that Congress amend 2 U.S.C. §431(20)(A)(iv) to allow State, district and local political party committees to comply with that provision of the Act in biweekly, semimonthly or monthly periods, in conformity with the period of time a party committee selects for payroll purposes. Currently, section 431(20)(A)(iv) requires compliance in monthly periods.

Explanation: Under BCRA, "services provided during any month by an employee of a State, district or local committee of a political party who spends more than 25 percent of that individual's compensated time during that month on activities in connection with a Federal election" are Federal election activity. 2 U.S.C. §431(20)(A)(iv). Several party committees have informed Commission staff that this provision imposes a difficult compliance burden because the committees' payroll periods frequently are different than monthly periods. The compliance burden for party committees will be lessened if such committees can elect a section 431(20)(A)(iv) compliance period that is the same as the payroll period used by the committees (*e.g.*, biweekly, semimonthly or monthly payroll period).

For example, a party committee that conducts payroll operations on a biweekly basis can also determine on a biweekly basis whether or not an employee meets the 25 percent test, and thus whether the employee must be compensated from the committee's Federal account.

Legislative Language:

Section 301(20)(A)(iv) of the Federal Election Campaign Act of 1971 (2 U.S.C. §431(20)(A)(iv)) is amended:

- (1) by striking “any month” and inserting in lieu thereof “a payroll period of a State, district or local committee of a political party”;
- (2) by striking “a State, district or local committee of a political party” and inserting in lieu thereof “that party committee”;
- (3) by striking “that month” and inserting in lieu thereof “that payroll period”;
- (4) by inserting at the end the following: “For purposes of this subparagraph, a payroll period may be a biweekly, semimonthly or monthly period.”.

Contributions/Expenditures

Federal Candidates Soliciting, Receiving or Spending Funds (2004)

Section: 2 U.S.C. §441i(e)(1) and (e)(2)

Recommendation: The Commission recommends that Congress amend 2 U.S.C. §441i(e)(1) to clarify the circumstances in which recall elections, referenda and initiatives, recounts, redistricting, legal defense funds, and related activities fall within the scope of activities that are “in connection with a Federal election” and are thus subject to the §441i(e)(1) restrictions. The Commission also recommends that Congress clarify whether under §441i(e)(1)(A) a candidate or officeholder may solicit, direct, or transfer funds to entities not required to file reports with the Commission.

In addition, the Commission recommends that Congress amend 2 U.S.C. §441i(e)(1)(B) to make clear that this provision does not prohibit a Federal candidate or officeholder from spending his or her own personal funds in connection with an election other than an election for Federal office, and recommends that Congress amend 2 U.S.C. §441i(e)(2) to clarify

that the phrase, “refers only to such State or local candidate,” does not apply to non-communicative activity.

Explanation: Section 441i(e)(1)(A) prohibits a Federal candidate or officeholder and certain entities from soliciting, receiving, directing, transferring, spending, or disbursing, in connection with a Federal election funds that are outside the limitations, prohibitions, and reporting requirements of the Act. Because these prohibitions are limited in scope to specific activities conducted “in connection with an election for Federal office,” the Commission requests additional guidance from Congress as to the meaning of this phrase in this context. Specifically, Congress should consider amending the statute to clarify the circumstances in which it intends recall elections, referenda and initiatives, recounts, redistricting, candidate litigation costs and legal defense funds to be encompassed and thus subject to the restrictions in §441i(e).

In addition, because this prohibition extends to the solicitation of funds not “subject to the ... reporting requirements of the Act,” Congress should consider resolving the potential ambiguity that might arise in situations where a candidate wishes to solicit funds on behalf of an entity in connection with a Federal election, including Federal election activity, when that entity is not yet (or may not ever be) required to file reports with the Commission. Even though such an organization’s funds are not subject to the reporting requirements of the Act, they may be subject to the limitations and prohibitions of the Act.

Section 441i(e)(1)(B) similarly prohibits a Federal candidate or officeholder and certain entities from soliciting, receiving, directing, transferring, spending, or disbursing, in connection with a **non-Federal** election, funds that are outside the limitations and prohibitions of the Act. As written, the verbs “spend” and “disburse” in section 441i(e)(1)(B) arguably apply to a Federal candidate’s or officeholder’s donation of his or her personal funds in connection with a State or local candidate or ballot measure election. This provision is meant to prevent corruption or the

appearance of corruption of Federal candidates and officeholders resulting from large soft money donations made at their behest. However, there is little or no chance of such corruption in the context of a Federal candidate or officeholder donating his or her own funds. Thus, to the extent section 441i(e)(1)(B) can be read to prevent such individual donations, the Commission recommends that Congress amend this provision to remove the ambiguity.

Section 441i(e)(2) is an exception to the general rule at 2 U.S.C. §441i(e)(1)(B); the latter provision prohibits a Federal candidate or officeholder from soliciting, receiving, or spending funds in connection with a non-Federal election that are outside the amount limitations and source prohibitions of the Act. In order to qualify for the section 441i(e)(2) exception, a Federal candidate or officeholder must meet two requirements: (1) any solicitation, receipt, or spending of funds by the Federal candidate or officeholder must be permitted under State law; (2) such solicitation, receipt, or spending must “refer only to such State or local candidate, or to any other candidate for the State or local office sought by such candidate, or both.” The second condition is unclear insofar as how non-communicative activity, such as receiving funds, can “refer to” any candidate. The Commission recommends that Congress clarify this language to make clear that the second condition refers to public communications, as defined in 2 U.S.C. §431(22).

Legislative Language:

Section 323(e)(1)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. §441i(e)(1)(B)) is amended by inserting “(except for the candidate’s personal funds)” after “spend funds” and after “disburse funds”.

Section 323(e)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. §441i(e)(2)) is amended by inserting “, in the case of a public communication,” prior to the phrase “refers only to”.

Chapter Seven

Campaign Finance Statistics

The 2004 election cycle was the first cycle regulated under the Bipartisan Campaign Reform Act of 2002 (BCRA), and changes to the campaign finance law had a significant effect on party committees, candidates and even individuals who were active in the elections. Among other things, provisions of the BCRA changed the way that candidates and committees operate by:

- Prohibiting national party committees from raising or spending nonfederal funds, or “soft money”;
- Limiting the ability of state, district and local party committees to spend nonfederal funds to pay for all or part of certain activities;
- Imposing new fundraising and disclosure requirements on broadcast ads that meet the definition of “electioneering communication;”
- Raising the individual contribution limits to candidates and party committees, as well as raising the limit on the total amount that an individual can contribute to influence federal elections over a two-year period; and
- Allowing certain candidates facing self-financed opponents to raise money at increased contributions limits under the “Millionaires’ Amendment.”

Disclosure reports filed with the FEC during 2003-2004 began to show the effects of these new provisions, both on political committees’ fundraising activities and on the ways in which political committees, individuals and other groups chose to spend their funds.

In addition to imposing new restrictions on fundraising and spending, the BCRA also required additional disclosure of certain activities during the campaign. Much of this new disclosure was intended to ensure greater—and faster—public access to information about these activities. Large independent expenditures were disclosed to the Commission within 48 hours of their distribution throughout the campaign, and spending for electioneering communications was reported within 48 hours of the communications’ airing.

The Commission provided new tools for accessing these disclosures in order to ensure comprehensive public access to new information. In addition to making electronic filings available immediately upon receipt, the Commission prepared several summaries

of the new activity during the campaign, and developed new search tools to permit greater access to this new information.

Party Committees

Fundraising

Democratic and Republican party committees raised nearly \$1.5 billion and spent \$1.41 billion between January 1, 2003, and December 31, 2004. Republican national, state and local committees who report to the Commission raised \$784.8 million in federal funds, or “hard money,” during 2003-2004. Democratic committees raised \$683.8 million. Democratic party receipts were more than 89 percent higher than in the comparable period during the 2000 Presidential campaign, while Republican party fundraising grew by 46 percent when compared with the same period.

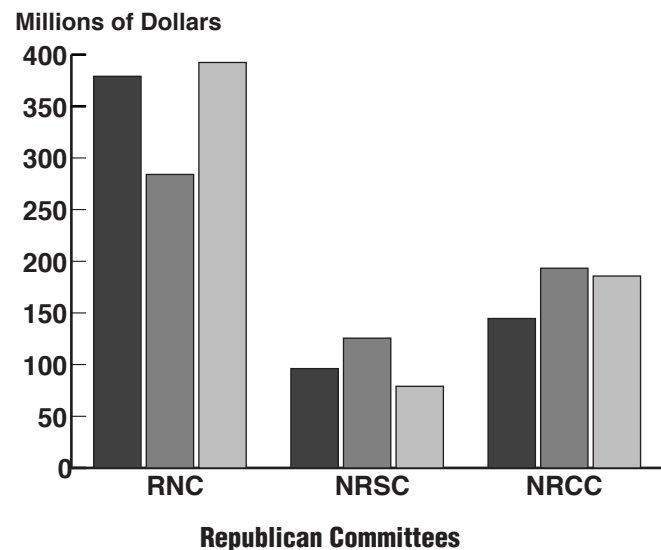
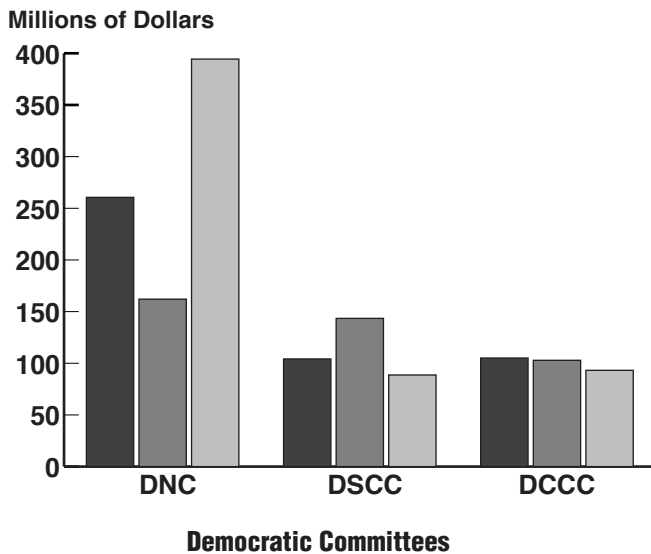
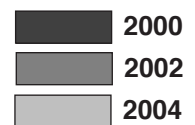
One major objective of the BCRA was to eliminate “soft money” fundraising and spending by national party committees. The 2004 election cycle was the first in which national parties were prohibited from receiving nonfederal funds. The Democratic National Committee (DNC) and the Republican National Committee (RNC)—the two committees that are generally the most affected by whether an election cycle includes a Presidential campaign—were, surprisingly, the least affected by the change in the law in terms of their overall fundraising. Indeed, both committees had shown greater dependence on soft money in prior Presidential cycles than in non-Presidential campaigns, and both were able to overcome that pattern during 2003-2004 by raising substantially more hard money. Overall, the federal fundraising totals for both parties’ national committees were greater during the 2004 cycle than their combined federal and nonfederal fundraising in any prior campaign.

The Democratic Senatorial Campaign Committee (DSCC), the Democratic Congressional Campaign Committee (DCCC), the National Republican Senatorial Committee (NRSC) and the National Republican Congressional Committee (NRCC), in contrast, were less able to meet their past fundraising totals. In recent campaigns, three of the parties’ Congressional

TABLE 7-1
Overall Financial Activity of National Party Committees (in Millions)

	2003-2004				2001-2002			1999-2000		
	Federal Only	Federal	Nonfederal	Total	Federal	Nonfederal	Total	Federal	Nonfederal	Total
DNC	\$394.41	\$67.5	\$94.56	\$162.06	\$124.0	\$136.56	\$260.56			
DSCC	\$88.66	\$48.39	\$95.05	\$143.44	\$40.49	\$63.72	\$104.21			
DCCC	\$93.17	\$46.44	\$56.45	\$102.89	\$48.39	\$56.7	\$105.09			
RNC	\$392.41	\$170.1	\$113.93	\$284.03	\$212.8	\$166.21	\$379.01			
NRSC	\$78.98	\$59.16	\$66.43	\$125.59	\$51.47	\$44.65	\$96.12			
NRCC	\$185.72	\$123.62	\$69.68	\$193.3	\$97.31	\$47.3	\$144.61			

CHART 7-1
Total Fundraising by National Party Committees, 2000-2004 Election Cycles



campaign committees had shown steady increases in soft money fundraising. Although they substantially increased hard money activity in 2004, they were unable to overtake the combined federal and nonfederal fundraising totals from the prior cycle. TABLE 7-1 and CHART 7-1, shown on page 52, illustrate the impact of the nonfederal funds prohibition on the overall financial activity of national committees in 2004, compared with the two prior election cycles.

During the 2004 cycle, all committees of the national parties increased their federal fundraising from virtually every source. One of the largest proportional increases in fundraising came from contributions from candidate committees. For example, the DNC received \$24.1 million from federal candidates for 2004, compared to only \$1.5 million during the last Presidential cycle in 2000. The RNC received \$26.7 million from federal candidates for 2004, compared to \$56,050 in 2000. Similarly, the DSCC received \$14.6 million from federal candidates for the 2004 cycle, compared to \$1.8 million for 2002 and \$1.1 million for 2000. The DCCC received \$24 million for the 2004

cycle, doubling its receipts from federal candidates over the last two election cycles. The \$24.2 million that the NRCC received from federal candidates in 2004 was approximately \$10 million more than it had received during either of the past two election cycles. The NRSC, in contrast, did not see a similar rise in contributions from federal candidates. In 2004 it received \$3.8 million from candidates, compared to \$1.6 million in 2002 and \$3 million in 2000.

Individuals continued to be the major source of contributions for the national party committees in 2004. However, this cycle differed dramatically from past election cycles in that, under the BCRA, unlimited nonfederal contributions were banned at the same time that the limit for federally permissible contributions from individuals to national party committees increased from \$20,000 to \$25,000. Thus, while in past election cycles national party committees often received very large donations from individuals, corporations, labor unions, etc. into their nonfederal accounts, for this cycle the national parties could only receive up to \$25,000 from any person. Under these

CHART 7-2
Ratio of Individual Contributions to DNC at
Maximum Amount Compared to Smaller Individual
Contributions, 2000-2004 Election Cycles

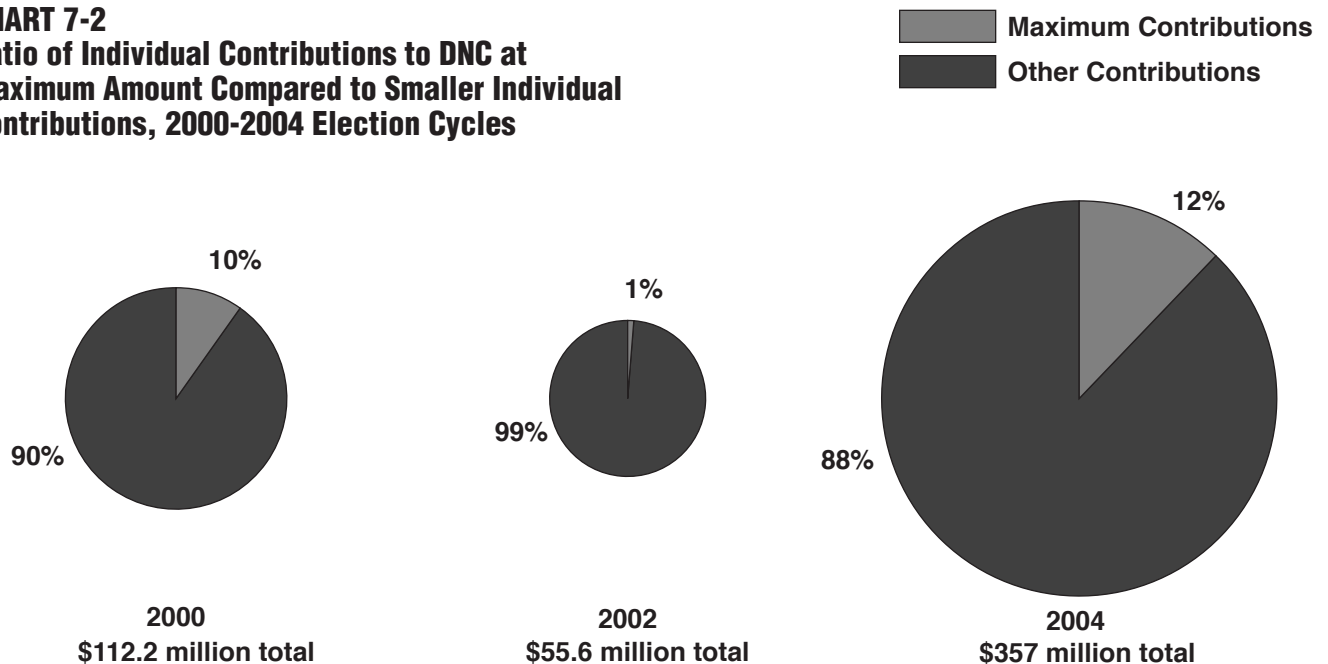
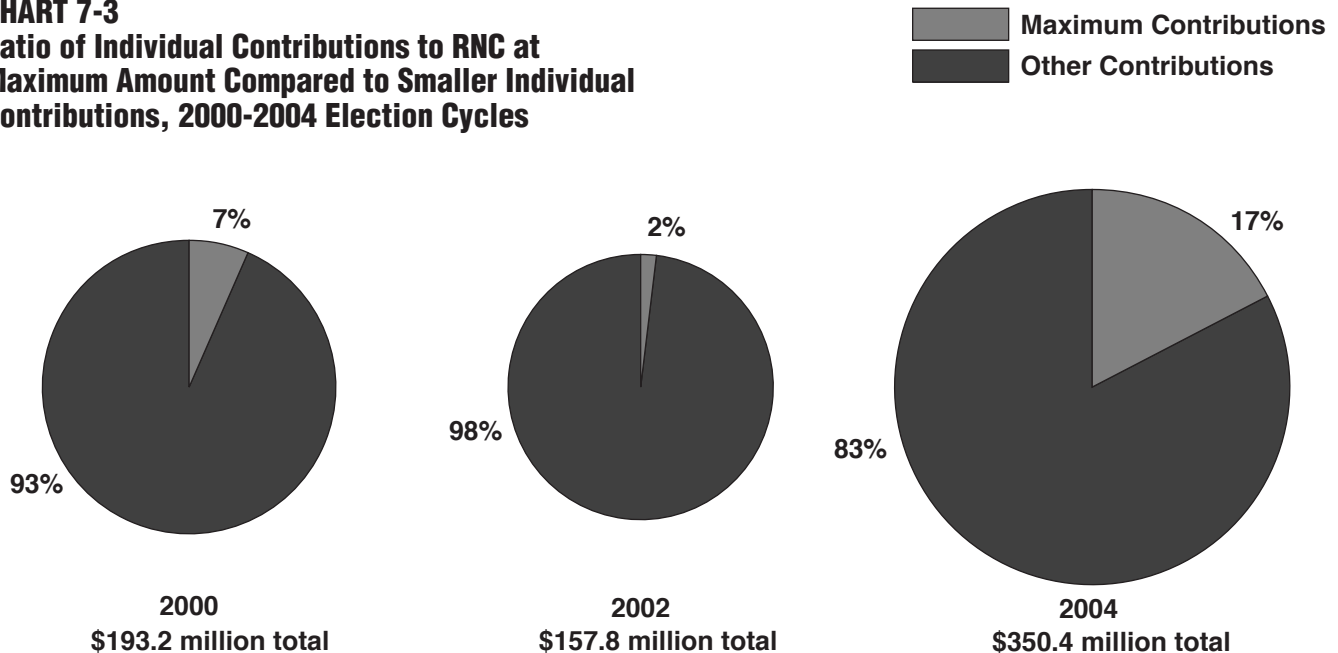


CHART 7-3
Ratio of Individual Contributions to RNC at
Maximum Amount Compared to Smaller Individual
Contributions, 2000-2004 Election Cycles



new regulations, individual hard money contributions at the federal maximum gained significantly for the DNC and the RNC in 2004 over their comparable 2002 hard money totals. See CHART 7-2 and CHART 7-3 for details.

The Senatorial and Congressional committees also saw an increase in contributions at the federal limit. The DSCC more than doubled the percentage of its contributions received at the maximum as compared to the two prior election cycles, while the DCCC's percentage of such contributions tripled.

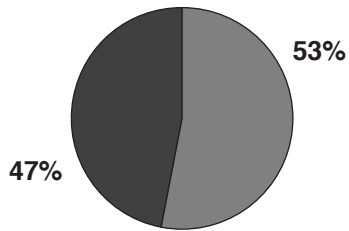
In 2004 the NRSC received more than 10 percent of its individual contributions in the form of \$25,000 contributions—a ten-fold increase from the prior two cycles when the NRSC received less than one percent of its total federal contributions from individuals at the maximum. The NRCC's increase in this category of receipts was less striking, as it increased from less than one percent in 2000 and 2002 to three percent in 2004.

Smaller contributions from individuals also played a significant role in national party committee fundraising. Party committees must itemize contributions once they exceed \$200 in the aggregate from any individual during a calendar year. The total amount of money received from small individual contributions increased substantially in 2004 for both the DNC and the RNC, although such funds made up a smaller proportion of their total federal fundraising from individuals than during the 2002 cycle. CHART 7-4 and CHART 7-5, on the following page, detail these results

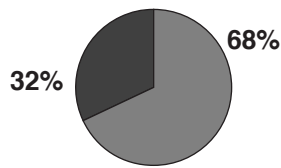
The Democratic Senatorial and Congressional committees also saw a decline in the proportion of funds they received in small donations during the 2004 cycle, over the 2002 cycle, as did the NRCC. For example, the DSCC received 37 percent of its contributions from individuals via contributions of \$200 or less for the 2004 election cycle, compared to 48 percent for the 2000 and 2002 cycles. The DCCC saw an even greater shift, moving from 58 percent

CHART 7-4
Ratio of Itemized to Unitemized Contributions from
Individuals to the DNC—2000-2004 Election Cycles

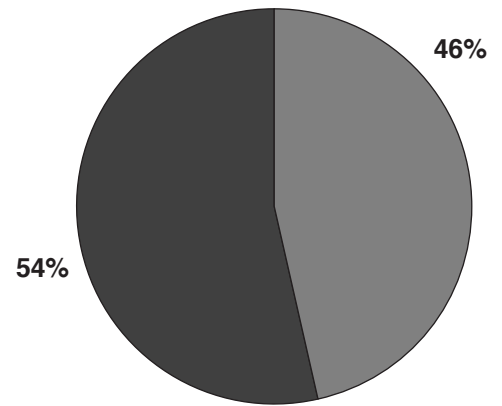
■ Itemized Contributions
 ■ Unitemized Contributions



2000
 \$112.2 million total



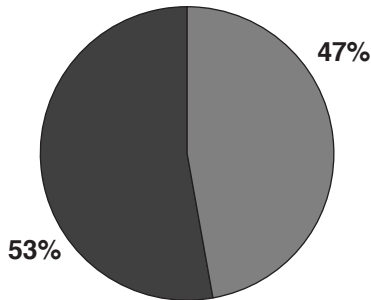
2002
 \$55.6 million total



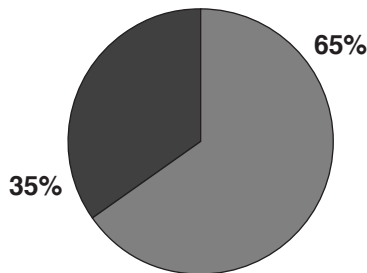
2004
 \$357 million total

CHART 7-5
Ratio of Itemized to Unitemized Contributions from
Individuals to the RNC—2000-2004 Election Cycles

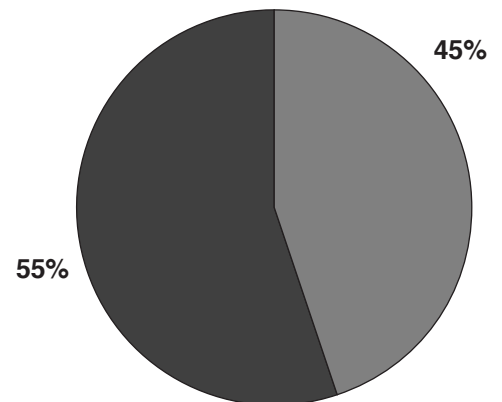
■ Itemized Contributions
 ■ Unitemized Contributions



2000
 \$193.2 million total



2002
 \$157.8 million total



2004
 \$350.4 million total

unitemized donations in 2002 to 50 percent in 2004. The NRCC, which raised about half of its individual contribution in unitemized amounts during the prior two election cycles, received 34 percent of those funds in unitemized amounts in the 2004 cycle. The NRSC, in contrast, remained relatively steady in the proportion of unitemized to itemized funds it received from individuals between the 2004 and 2002 cycles, both of which showed a lower proportion of unitemized funds than totals from 2000. For each of these committees, the increased receipt of larger, itemized federal contributions in 2004 came at the same time that their receipt of unlimited soft money donations into nonfederal accounts was banned under the BCRA.

Spending

In past election cycles, national party committees had generally supported their federal candidates indirectly through the state parties. During the 2004 cycle, however, national parties spent much greater sums on the direct support of candidates. TABLE

7-2 summarizes contributions to Presidential, House and Senate candidates made by each national party committee and the state and local party committees of the two major parties for the 2003-2004 cycle.

TABLE 7-3, shown on page 57, summarizes coordinated party expenditures made for the 2004 general elections. Coordinated expenditures are expenditures that party committees may make under special limits that are adjusted for inflation and account for each state's voting age population. The coordinated party expenditure limits are separate from the contribution limits, and coordinated party expenditures differ from direct contributions in that the party committees must spend the funds on behalf of the candidate, rather than giving the money directly to the campaign. A national party committee may make coordinated party expenditures on behalf of House, Senate and Presidential nominees, while state party committees have coordinated party expenditure limits only for House and Senate candidates. A committee may assign any portion of its coordinated party expenditure to another committee—for example, a

TABLE 7-2
Party Committee Contributions to Federal Candidates,
2003-2004

	DNC	DSCC	DCCC	Democratic State/Local Committees	RNC	NRSC	NRCC	Republican State/Local Committee
President	\$0	\$0	\$0	\$4,892	\$0	\$0	\$0	\$23,476
Senate								
Incumbents	\$0	\$170,000	\$0	\$10,285	\$0	\$70,000	\$10,000	\$43,720
Challengers	\$0	\$139,000	\$0	\$17,124	\$0	\$176,633	\$25,000	\$105,554
Open Seats	\$0	\$274,000	\$955	\$5,050	\$0	\$289,353	\$35,000	\$55,000
House								
Incumbents	\$0	\$0	\$206,495	\$71,747	\$60,000	\$15,000	\$288,412	\$107,366
Challengers	\$0	\$0	\$128,500	\$166,239	\$86,992	\$15,000	\$89,537	\$271,376
Open Seats	\$8,000	\$0	\$139,507	\$63,483	\$82,500	\$50,000	\$130,006	\$285,835
Total	\$8,000	\$583,000	\$475,457	\$338,820	\$229,492	\$615,986	\$577,955	\$892,327

TABLE 7-3
Coordinated Party Expenditures, 2003-2004

	DNC	DSCC	DCCC	Democratic State/Local Committees	RNC	NRSC	NRCC	Republican State/Local Committees
President	\$16,031,562	\$0	\$0	\$27,375	\$16,082,061	\$0	\$0	\$0
Senate								
Incumbents	\$4,570	\$200,006	\$0	\$4,239,901	\$59,746	\$1,483,064	\$0	\$292,959
Challengers	\$0	\$440,994	\$0	\$144,235	\$0	\$1,671,538	\$0	\$464,209
Open Seats	\$0	\$3,646,960	\$0	\$1,514,422	\$0	\$5,294,441	\$0	\$89,407
House								
Incumbents	\$0	\$0	\$1,229,000	\$220,040	\$734	\$0	\$1,116,800	\$393,794
Challengers	\$0	\$0	\$455,570	\$477,396	\$402	\$0	\$1,171,797	\$33,187
Open Seats	\$0	\$0	\$978,286	\$256,321	\$0	\$0	\$782,790	\$30,445

state party committee may assign all or some of its spending limit to a local party committee. The 2004 coordinated party expenditure limits were:

- \$16,249,699 for Presidential nominees;
- \$37,310 for House nominees (\$74,620 for nominees in states that have only one U.S. House Representative); and
- A range from \$74,620 to \$1,944,896 for Senate nominees, depending on each state's voting age population.

Independent Expenditures

Independent expenditures are public communications expressly advocating the election or defeat of clearly identified candidates, and they may be made in unlimited amounts so long as there is no coordination with the campaign. Independent expenditures proved to be an important factor throughout the 2004 races. For example, by the end of November 2004, individuals, groups, parties and PACs had reported spending \$129.7 million on independent expenditures advocating the election or defeat of Congressional

candidates, and they had spent \$192.4 million independently advocating the election or defeat of Presidential candidates.

Party committees accounted for 89 percent of the total 2004 independent expenditures for or against Congressional candidates. In 2002, by contrast, independent expenditures for Congressional races totaled only \$18.8 million, of which only \$3.7 million were made by party committees. These figures represent a shift from the pre-BCRA spending of the prior two election cycles when independent expenditures were declining and the parties were increasingly relying on soft money.

National party committees in particular showed a striking increase in independent expenditures, spending a total of \$260 million for the 2004 cycle. Indeed, Democratic party committees alone reported a total of \$176.5 million in independent expenditures for the 2004 cycle. Of this amount, the DNC reported independent expenditures of \$120.3 million on Presidential candidates. Republican party committees reported \$88 million in independent expenditures and

TABLE 7-4
Party Committee Independent Expenditures
For Federal Candidates, 2003-2004

	DNC	DSCC	DCCC	Democratic State/Local Committees	RNC	NRSC	NRCC	Republican State/Local Committees
President	\$33,155,106	\$0	\$0	\$224,534	\$9,030,171	\$0	\$0	\$2,272,179
Senate								
Incumbents	\$0	\$938,098	\$0	\$0	\$0	\$82,540	\$0	\$53
Challengers	\$0	\$3,812,358	\$0	\$0	\$0	\$339,298	\$0	\$0
Open Seats	\$0	\$14,338,866	\$6,351	\$356,974	\$0	\$1,494,197	\$0	\$17,003
House								
Incumbents	\$0	\$0	\$6,127,266	\$130,548	\$0	\$0	\$1,393,940	\$25,815
Challengers	\$0	\$0	\$8,306,321	\$27,999	\$0	\$0	\$2,433,836	\$20,456
Open Seats	\$0	\$0	\$15,340,145	\$42,467	\$0	\$0	\$9,042,183	\$7,431

TABLE 7-5
Party Committee Independent Expenditures
Against Federal Candidates, 2003-2004

	DNC	DSCC	DCCC	Democratic State/Local Committees	RNC	NRSC	NRCC	Republican State/Local Committees
President	\$87,178,327	\$0	\$0	\$57,788	\$9,238,694	\$0	\$0	\$59,898
Senate								
Incumbents	\$0	\$0	\$0	\$0	\$0	\$3,178,465	\$0	\$767,668
Challengers	\$0	\$0	\$0	\$0	\$0	\$1,725,805	\$0	\$0
Open Seats	\$0	\$0	\$0	\$91,965	\$0	\$12,060,228	\$0	\$0
House								
Incumbents	\$0	\$0	\$1,985,772	\$10,000	\$0	\$0	\$9,917,692	\$0
Challengers	\$0	\$0	\$1,549,639	\$0	\$0	\$0	\$11,056,912	\$0
Open Seats	\$0	\$0	\$2,815,899	\$6,547	\$0	\$0	\$14,144,289	\$0

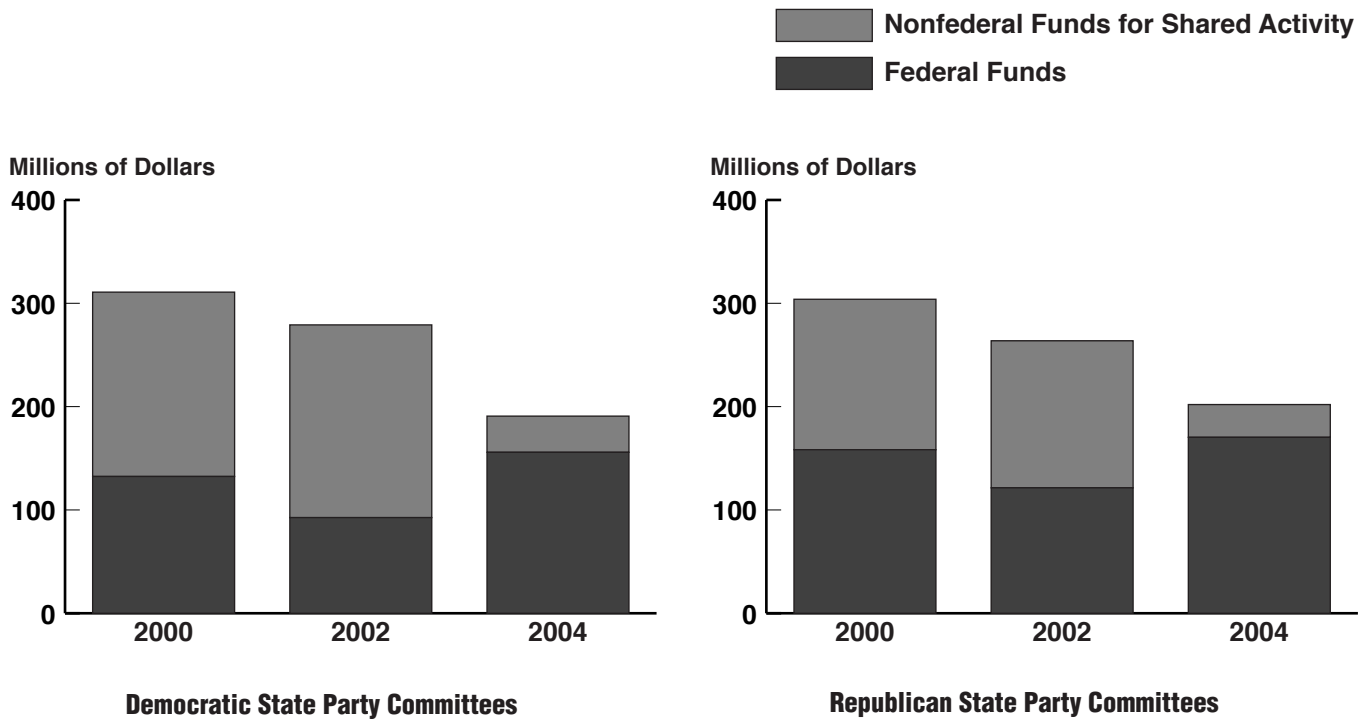
\$29 million in coordinated expenditures. TABLE 7-4 and TABLE 7-5, at left, detail party committee independent expenditures for the 2004 cycle.

In addition, while the RNC reported making \$18.3 million in independent expenditures, it also reported \$45.8 million in “generic media expenses,” which are ads for which it shared the costs with Bush-Cheney '04. The DNC spent an additional \$24 million during the general election period for media production and consulting not included in the independent expenditure totals.

Nonfederal Spending by State, District and Local Party Committees for Allocated Activities

State and local committees of the two major parties also increased their hard money fundraising in 2004, but these increases were not sufficient to make up for reduced soft money totals used by these committees for allocable activity. For the 2004 cycle, the BCRA imposed stricter requirements on the use of soft money for some federal election activities undertaken by state parties. This change, combined with the fact that national committees were no longer raising soft money and transferring it to state committees,

CHART 7-6
Total Disbursements of Federal Funds and Disbursements of Nonfederal Funds for Shared Federal/Nonfederal Activities by State and Local Party Committees—2000-2004 Election Cycles



led to a substantial reduction in federally reported spending by these state and local parties. Total reported spending (which includes all hard money and any soft money used for allocable activity) by state and local committees declined by approximately one-third when compared with the 2000 Presidential election cycle, even though hard money disbursements increased for both parties. CHART 7-6, on the previous page, shows the total federal and nonfederal spending reported by all Democratic state and local party committees and all Republican state and local party committees over the past three election cycles.

Lower nonfederal spending is most dramatic between 2000 and 2004 in those states where the Presidential campaign was most competitive in both years. For example, Florida's state Democratic committee reported spending \$16,499,217 in nonfederal funds for shared activity in the 2000 election cycle, as compared to just \$2,891,444 for the 2004 cycle. Similarly, the Republican state party committee of Florida reported \$24,297,117 in nonfederal disbursements for the 2000 cycle, compared to \$4,233,506 for the 2004 cycle.

Levin Funds

The BCRA allowed state, district and local parties to compensate for some portion of the increased restriction on nonfederal spending by allowing them to raise and spend funds in limited amounts beyond the federal contribution limits and prohibitions. These "Levin" funds (referring to the sponsor of the statutory provision) are funds donated to state, district and local party committees, in accordance with state law, from corporations, labor organizations and other individuals and persons in amounts not to exceed \$10,000 per calendar year.

A party committee may allocate the expenses associated with certain "federal election activities" between federal funds and Levin funds. Levin funds did not represent a significant portion of party financial activity in 2003-2004. State and local parties reported raising just \$4.7 million in Levin funds.

Electioneering Communications

In addition to restrictions on party fundraising and spending, the BCRA imposed new fundraising and disclosure requirements on other groups who pay for certain broadcast ads (radio, television, cable and satellite) that refer to federal candidates and are aired within 30 days of a primary election or 60 days of the general election. Electioneering communications may not be paid for with corporate or labor union treasury funds and must be disclosed to the Commission within 48 hours of their airing.

A total of \$96.2 million in such spending was reported by 46 groups from late 2003 through the November 2 general election. Of this total, \$26.5 million was spent during various 30-day primary election "windows," while \$69.7 million was spent between September 2 and November 2—the 60-day general election "window."

Spending on electioneering communications was dominated by a small number of groups, with the seven largest organizations reporting 88 percent of all electioneering communication spending. See TABLE 7-6, below, for details.

TABLE 7-6
Largest Electioneering Communications Filers

Filers	Total
Media Fund	\$26,869,676
Progress for American Voters Fund	\$26,472,972
Swift Boat Veterans for Truth	\$13,568,351
Moveon.org Voter Fund	\$5,717,031
Citizens for a Strong Senate	\$4,580,471
League of Conservation Voters	\$3,711,570
Club for Growth.net	\$3,633,577

Millionaires' Amendment

Under the BCRA's Millionaires' Amendment, individual candidates who contribute significant sums of their own money to their campaigns may trigger higher limits for their opponents on contributions from individuals. A candidate's personal spending beyond \$350,000 in House races, and according to a graduated scale based on state population in Senate campaigns, may cause contribution limits to increase by as much as six times (or \$12,000 per election from each individual) for other candidates in the race. The coordinated party expenditure limits may also be raised.

A campaign facing a self-financed opponent must use an "opposition personal funds amount" formula to determine whether the opposing candidate has spent sufficient personal funds in comparison to the non-millionaire's own expenditures from personal funds and/or the campaign's own fundraising, depending on the date of calculation, to trigger increased contribution limits. Thus, a candidate with a significant fundraising advantage over a self-financed opponent, or a candidate who has spent significant amounts of his or her own fund on the campaign, might not

receive an increased contribution limit. A candidate must file FEC Form 10 within 24 hours when he or she makes an expenditure from personal funds that aggregates in excess of the threshold amount. His or her opponents then calculate their oppositional personal funds amounts to determine whether they are eligible for increased contribution limits.

Nineteen House candidates running in 13 districts filed FEC Form 10 during the 2003-2004 election cycle, indicating that they had spent or had obligated to spend more than \$350,000. These campaigns reported \$20.7 million in contributions and loans from the candidates. There were 24 other candidates in those districts who reported a total of \$817,000 in contributions from individuals where the amount was greater than the \$2,000 contribution limit from individuals.

In Senate races, 19 candidates from 12 states filed FEC Form 10. These campaigns reported a total of \$67 million in loans and contributions from the candidates. In these states, 36 other candidates reported a total of \$13 million in contributions where the amount of each contribution was more than \$2,000. Approximately \$9.2 million of this total was raised by candidates in the Illinois Senate race where candidates in both parties' primaries made expenditures

CHART 7-7
Total Individual Contributions to Parties, Presidential Candidates and Congressional Candidates—2000 and 2004 Elections

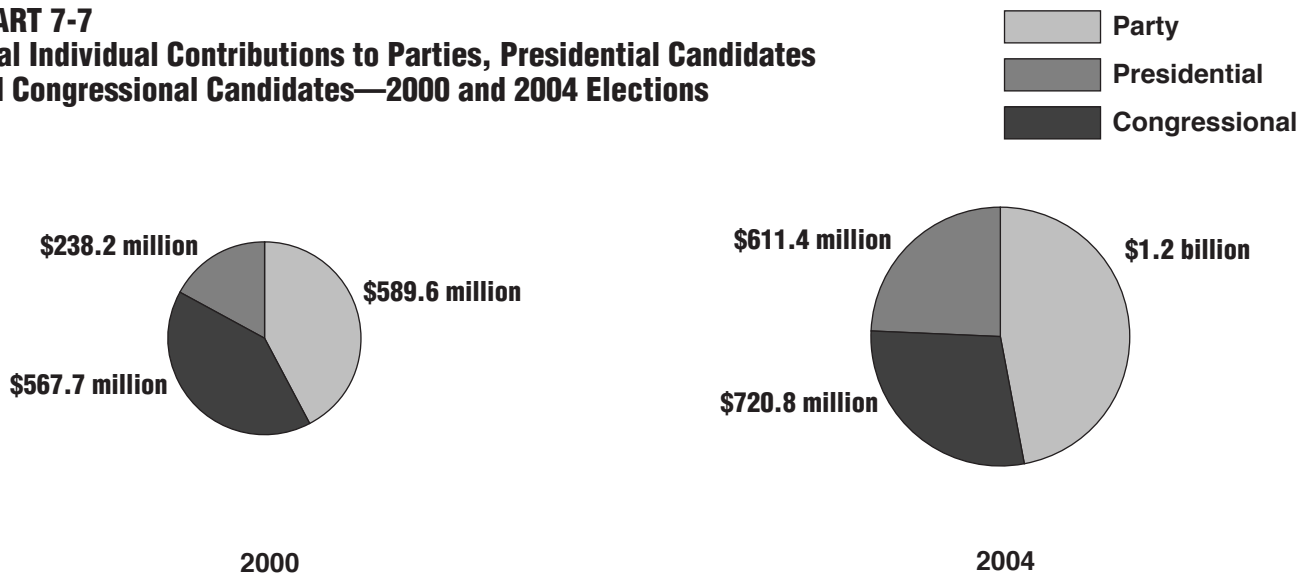


CHART 7-8
Individual Contributions of \$200 or Less
and of Amounts Over \$200, 2000 and 2004 Elections

Amounts of \$200 or Less
 Amounts Greater than \$200

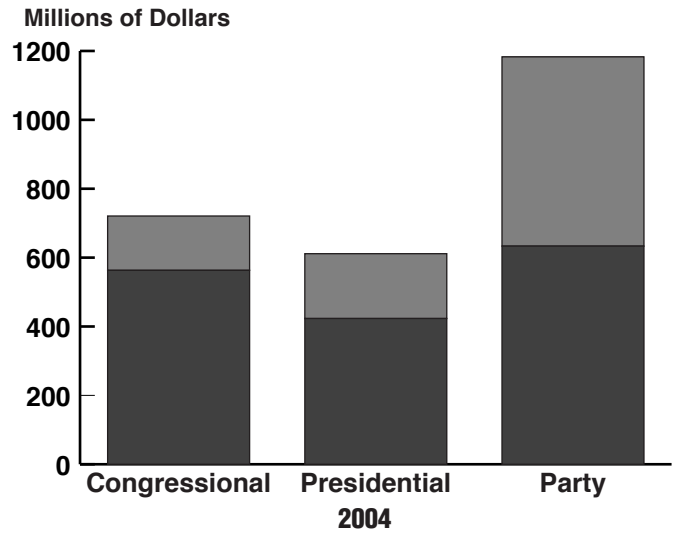
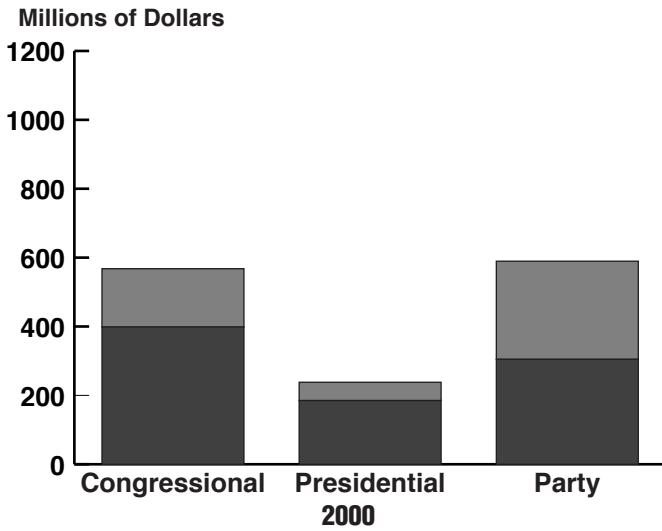
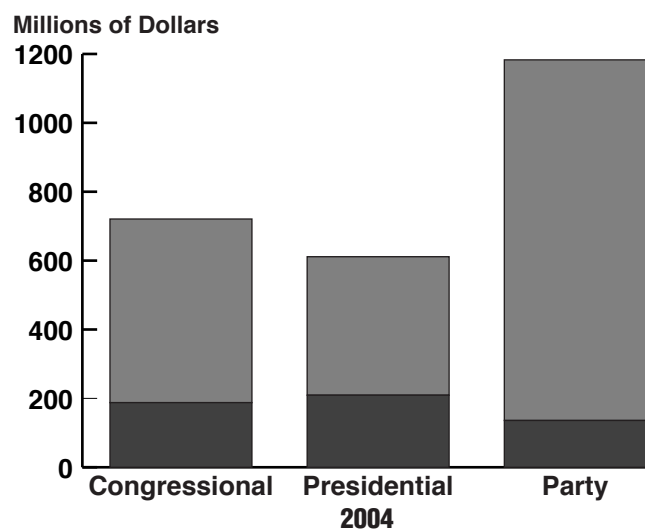
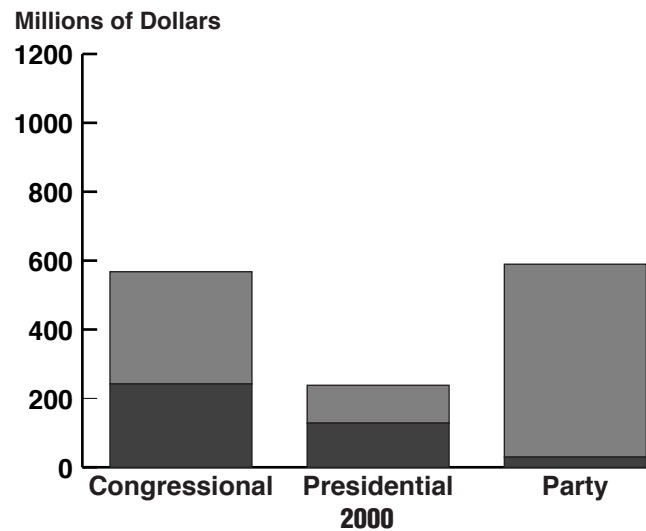


CHART 7-9
Individual Contributions at Contribution Limit, 2000
and 2004 Elections

Other Contributions
 Contributions at Limit



from personal funds that exceeded the threshold for increased contribution limits for their opponents.

Individual Contributors

The BCRA raised contribution limits for individuals from \$1,000 per election to \$2,000 per election for contributions to federal campaigns, and made analogous changes to limits to national party committees (from \$20,000 per year to \$25,000) and for the overall limit on contributions from a single individual in a two-year period (from \$25,000 per year to \$95,000 over two years). These limits are adjusted for inflation every two years.

Campaigns disclosed more than 242,000 contributions with amounts greater than \$1,000 during 2003 and 2004. The proportion of all Congressional candidate receipts coming from individuals has increased from 55 percent in 2002 to more than 60 percent in 2004. CHART 7-7, on page 61, provides an overview of individual contributions to campaigns and parties in the 2000 and 2004 election cycles. CHART 7-8 and CHART 7-9, at left, provide an overview of individual contributions to campaigns and parties in the 2000 and 2004 election cycles.

Presidential Candidates

Financial activity of 2004 Presidential candidates and national conventions totaled more than \$1 billion, 56 percent more than comparable activity during the 2000 campaign. Presidential candidates in the primaries raised \$673.9 million dollars seeking nomination. The two major party nominees received \$74.6 million each in public funds to conduct their general election campaigns, and they raised an additional \$21 million for legal and accounting costs associated with the general election race. For their nominating conventions, the two parties received \$14.9 million each from the U.S. Treasury, while host committees from the two convention cities raised a total of \$142.5 million in support of convention activities.

For the 2004 elections, membership organizations reported \$12.3 million in communications to their members advocating the election or defeat of a Presi-

dential candidate. This amount was little changed from the \$11.5 million these organizations reported during the 2000 campaign. Finally, in 2004 groups reported making \$40.8 million in electioneering communications that made reference to Presidential candidates.

Presidential candidates seeking nominations raised \$611.4 million in contributions directly from individuals, \$28 million in federal matching funds, \$3.5 million from PACs and \$6.8 million in transfers from prior campaigns.

Significantly, 2004 was the first cycle in which both major party nominees declined public matching funds during the primaries, and the \$28 million paid in those funds was the lowest total since the first Presidential election conducted under the system in 1976. The \$269.6 million raised by President Bush prior to the convention was nearly three times his fundraising

CHART 7-10
Total Presidential Primary Matching Fund Payouts and Number of Candidates Participating In Matching Fund Program, 1976-2004 Elections

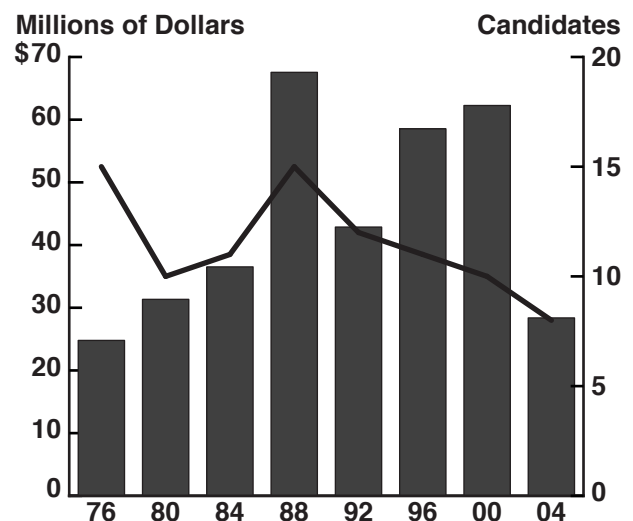
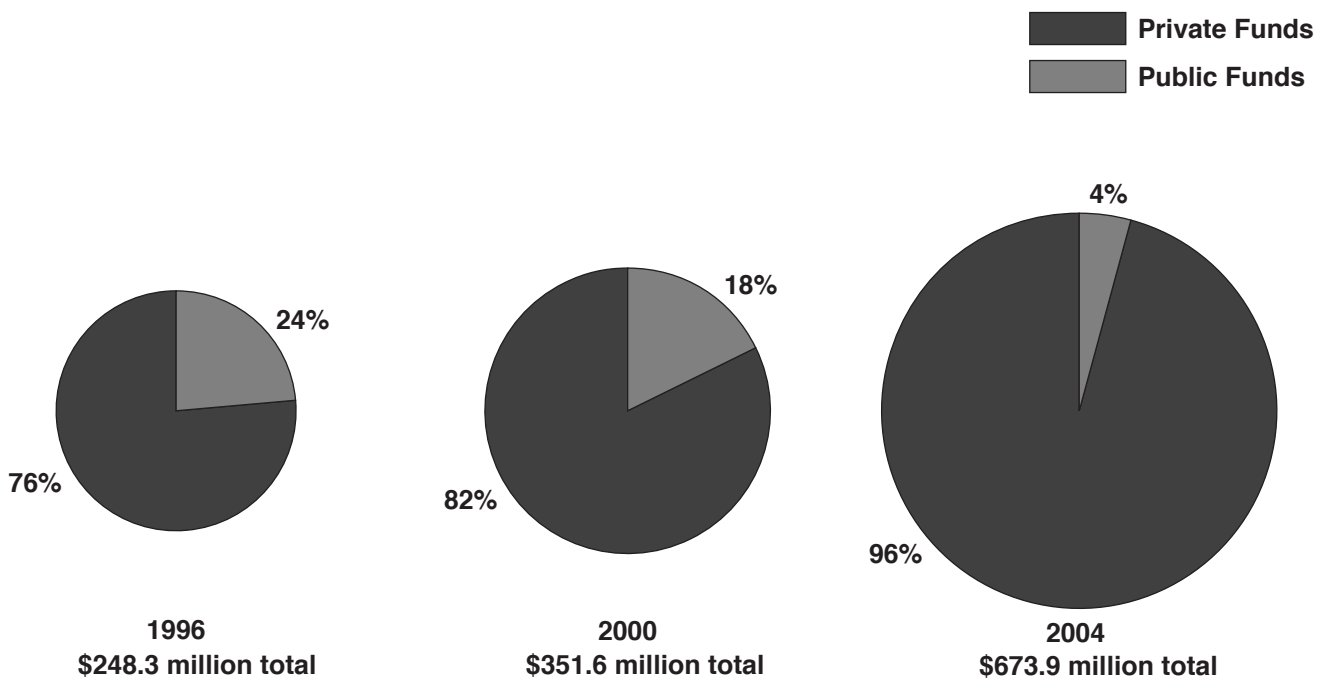


CHART 7-11
Presidential Primary Funding: Ratio of Public to Private Funds, 1996-2004 Elections



total in 2000, when he also declined to accept public funds. John Kerry raised \$234.6 million, nearly six times more than had ever been raised by a Democratic nominee under the public funding program, which imposes spending limits on candidates who accept matching funds and limits the total amount of public funds available. CHART 7-10, on page 63, and CHART 7-11, above, detail total Presidential primary fundraising and matching fund payouts.

Appendix 1

Biographies of Commissioners and Officers

Commissioners

Bradley A. Smith, Chairman

April 30, 2005¹

Bradley Smith was nominated to the Commission by President Clinton on February 9, 2000, and confirmed by the U.S. Senate on May 24, 2000. Prior to his appointment, Commissioner Smith was Professor of Law at Capital University Law School in Columbus, Ohio. His areas of specialty were Election Law, Comparative Election Law, Jurisprudence, Law & Economics and Civil Procedure.

Prior to joining the faculty at Capital in 1993, Mr. Smith had practiced with the Columbus law firm of Vorys, Sater, Seymour & Pease. Throughout his career, he has also served as the United States Vice Consul in Guayaquil, Ecuador, worked as a consultant in the health care field and served as General Manager of the Small Business Association of Michigan. During his tenure at the Small Business Association, Mr. Smith's responsibilities included management of the organization's political action committee.

Commissioner Smith received his B.A. *cum laude* from Kalamazoo College in Kalamazoo, Michigan, and his J.D. from Harvard Law School.

Ellen L. Weintraub, Vice Chair

April 30, 2007

Ellen Weintraub was appointed to the Federal Election Commission on December 6, 2002, by President George W. Bush. On December 9, 2002, Chair Weintraub began her tenure with the FEC as the third woman to serve on the Commission. Prior to her appointment, Ms. Weintraub was Of Counsel to Perkins Coie, LLP, and a member of its Political Law Group. During that time, she counseled clients on federal and state campaign finance laws, political ethics, nonprofit law and lobbying regulation. Ms. Weintraub served on the legal team that advised the Senate Rules Committee during an election contest that arose out of the 1996 election of Senator Mary Landrieu (D-LA). During a previous stint in private practice, Ms. Weintraub

practiced as a litigator with the New York firm of Cahill Gordon & Reindel.

Prior to her tenure at Perkins Coie, Ms. Weintraub was Counsel to the Committee on Standard of Official Conduct for the U.S. House of Representatives (the House Ethics Committee). The Committee on Standards is structured in a manner similar to the Commission in which a bipartisan body is evenly divided between Republican and Democratic members. Ms. Weintraub's focus during that time was the implementation of the Ethics Reform Act of 1989 and subsequent changes to the House Code of Official Conduct. She also served as editor in chief of the House Ethics Manual and as a principal contributor to the Senate Ethics Manual. Ms. Weintraub also advised Members on investigations and frequently had lead responsibility for the Committee's public education and compliance initiatives.

Ms. Weintraub received her B.A., *cum laude*, from Yale College and her J.D. from Harvard Law School. A native New Yorker, she is a member of the New York and District of Columbia bars and the Supreme Court bar. She currently resides in Maryland with her husband, Bill Dauster, and their three children.

David M. Mason, Commissioner

April 30, 2003

David Mason was nominated to the Commission by President Clinton on March 4, 1998, and confirmed by the U.S. Senate on July 30, 1998. Prior to his appointment, Mr. Mason served as Senior Fellow, Congressional Studies, at the Heritage Foundation. He joined Heritage in 1990 as Director of Executive Branch Liaison. In 1995, he became Vice President, Government Relations, and in 1997, Mr. Mason was designated Senior Fellow with a focus on research, writing and commentary on Congress and national politics.

Prior to his work at the Heritage Foundation, Commissioner Mason served as Deputy Assistant Secretary of Defense and served on the Staffs of Senator John Warner, Representative Tom Bliley and then House Minority Whip Trent Lott. Throughout his career, he worked on numerous Congressional, Senate, Gubernatorial and Presidential campaigns. Addition-

¹ Term expiration date.

ally, Mr. Mason was a nominee for the Virginia House of Delegates in the 48th District in 1982.

Commissioner Mason attended Lynchburg College in Virginia and graduated *cum laude* from Claremont McKenna College in California. He is active in political and community affairs at both the local and national levels. Commissioner Mason served as Chairman of the FEC in 2002. He and his wife reside in Lovettsville, Virginia, with their ten children.

Danny L. McDonald, Commissioner
April 30, 2005

Now serving his fourth term as Commissioner, Danny McDonald was first appointed to the Commission in 1981 and was reappointed in 1987, 1994 and 2000. Before his original appointment, Mr. McDonald 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 the chief clerk of the board. He was also a member of the Advisory Panel to the FEC's Clearinghouse on Election Administration.

A native of Sand Springs, Oklahoma, Commissioner McDonald graduated from the Oklahoma State University and attended the John F. Kennedy School of Government at Harvard University. He served as the FEC Chairman in 1983, 1989, 1995 and 2001.

Scott E. Thomas, Commissioner
April 30, 2003

Scott Thomas was appointed to the Commission in 1986 and reappointed in 1991 and 1998. He served as acting chairman during the last four months of 1998, and as Chairman throughout 1999. He previously served as Chairman in 1987 and 1993. Prior to serving as a Commissioner, Mr. Thomas was the executive assistant to former Commissioner Thomas E. Harris. He originally joined the FEC as a legal intern in 1975. He worked as a staff attorney in the Office of General Counsel and later became an Assistant General Counsel for Enforcement.

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

Michael E. Toner, Commissioner
April 30, 2007

Michael E. Toner was nominated to the Federal Election Commission by President George W. Bush on March 4, 2002, and appointed on March 29, 2002. Mr. Toner was confirmed by the U.S. Senate on March 18, 2003.

Prior to being appointed to the FEC, Mr. Toner served as Chief Counsel of the Republican National Committee. Mr. Toner joined the RNC in 2001 after serving as General Counsel of the Bush-Cheney Transition Team in Washington, DC, and General Counsel of the Bush-Cheney 2000 Presidential Campaign in Austin, TX.

Before joining the Bush campaign in Austin, Commissioner Toner was Deputy Counsel at the RNC from 1997-1999. Prior to his tenure at the RNC, Mr. Toner served as counsel to the Dole/Kemp Presidential Campaign in 1996.

Mr. Toner was an associate attorney at Wiley, Rein, & Fielding in Washington, DC, from 1992-1996. His work there included advising political committees and corporate clients on federal and state election law compliance. He was also involved in a number of First and Fourteenth Amendment appellate litigation matters, including two cases that were successful in the U.S. Supreme Court.

Mr. Toner has written widely on campaign finance matters, including in the *Washington Post*, *Boston Globe*, *Chicago Tribune* and *Washington Times*. Mr. Toner is a lecturer in the Department of Politics at the University of Virginia.

Mr. Toner received a J.D. *cum laude* from Cornell Law School in 1992, an M.A. in Political Science from Johns Hopkins University in 1989 and a B.A. with distinction from the University of Virginia in 1986. He is a member of the District of Columbia and Virginia bars as well as the U.S. Supreme Court bar, the Fourth U.S. Circuit Court of Appeals and the U.S. District Courts for the District of Columbia and the Eastern District of Virginia.

Statutory Officers

James A. Pehrkon, Staff Director

James Pehrkon became Staff Director on April 14, 1999, after serving as Acting Staff Director for eight months. Prior to that, Mr. Pehrkon served for 18 years as the Commission's Deputy Staff Director with responsibilities for managing the FEC's budget, administration and computer systems. Among the agency's first employees, Mr. Pehrkon is credited with setting up the FEC's Data Systems Development Division. He directed the data division before assuming his duties as Deputy Staff Director.

An Austin, Texas, native, Mr. Pehrkon received an undergraduate degree from Harvard University and did graduate work in foreign affairs at Georgetown University.

Lawrence H. Norton, General Counsel

Lawrence Norton became General Counsel of the FEC on September 17, 2001. Prior to joining the Commission, Mr. Norton served as an Associate Director at the Commodity Futures Trading Commission for five years. He also worked as an Assistant Attorney General in the Maryland Attorney General's office.

Mr. Norton graduated Order of the Coif from the University of Maryland School of Law.

Lynne A. McFarland, Inspector General

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

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

Appendix 2 2004 Chronology of Events

January

- 1 – Chairman Bradley A. Smith and Vice-Chair Ellen L. Weintraub begin their one year terms of office.
- 14 – Commission conducts reporting roundtables for candidates, PACs and party committees.
- 14 – Commission publishes Notice of Availability of Petition for Rulemaking on Public Access to Materials from Closed Enforcement Matters.
- 21 – District court in *Cox for Senate v. FEC* requires plaintiff to pay civil money penalty for failure to file 48-hour reports documenting campaign contributions in excess of \$1,000.
- 23 – Consolidated Appropriations Act of 2004 becomes law, allowing use of certain overnight/express delivery services and extending Administrative Fine program through December 31, 2005.
- 28 – Commission publishes draft statement of policy concerning naming of treasurers as respondents in enforcement matters.
- 30 – Commission certifies \$5,020,135.71 in federal matching funds to six Presidential candidates for 2004 election.
- 31 – 2003 year-end report due.

February

- 2 – FEC issues semi-annual PAC count.
- 11-12 – Commission holds regional conference in Tampa, Florida.
- 13 – District court in *FEC v. California Democratic Party, et al.*, finds that defendants impermissibly used nonfederal funds for express advocacy ads and failed to include required disclaimers and to report ads as independent expenditures.

March

- 1 – Commission certifies \$3,421,597.65 in federal matching funds to six Presidential candidates for the 2004 election.
- 4 – Commission approves NPRM seeking comments on whether to amend regulatory definition of “political committee.”

- 11 – Commission certifies Alfred C. Sharpton’s Presidential primary committee, Sharpton 2004, eligible to receive Presidential primary matching payments.
- 16-17 – FEC holds candidate/party conference in Washington, DC.
- 30 – District court in *FEC v. Malenick, et al.* finds Triad Management Services, Inc. failed to register and to file with the Commission and accepted excessive contributions.

April

- 1 – Commission approves NPRM on inaugural committees.
- 1 – Commission approves NPRM on contributions and donations by minors to candidates and political committees.
- 7 – Commission conducts reporting roundtables for candidates, PACs and party committees.
- 14-15 – Commission holds public hearings concerning its NPRM on political committee status.
- 15 – Quarterly report due.
- 22-23 – FEC holds conference in Washington, DC, for corporations and their PACs.
- 29 – Commission transmits 12 legislative recommendations to Congress and the President.
- 29 – Commission makes final determination that Reverend Alfred C. Sharpton exceeded his \$50,000 personal expenditure limit and suspends matching fund payments to Sharpton 2004.
- 30 – Commission certifies \$810,755.13 in federal matching funds to five Presidential candidates for the 2004 election.

May

- 6 – Commission submits to Congress its budget request for FY 2005.
- 10 – The Commission determines that Reverend Alfred C. Sharpton must repay \$100,000 to U.S. Treasury for matching funds received in excess of his entitlement.
- 13 – Commission approves 90-day extension for consideration of proposed rules concerning the definition of “political committee.”

- 25-26 – Commission holds conference in Boston for Trade Associations, Membership Organizations and their PACs.
- 27-28 – Commission certifies \$169,648.28 in federal matching funds to two Presidential candidates for the 2004 election.
- 28 – Commission certifies Ralph Nader eligible to receive Presidential primary matching payments for his primary committee, Nader for President.

June

- 4 – District court orders the defendants in *FEC v. California Democratic Party, et al.* to pay \$30,000 civil penalty and enjoins them from further similar violations of the Act,
- 7 – In *FEC v. Dear for Congress*, district court finds that one or more defendants violated contribution limits, reporting requirements, prohibition on contributions made in the name of another and prohibition on corporate contributions.
- 24 – Commission approves NPRM on party committees' ability to make both independent expenditures and coordinated party expenditures in connection with the general election.
- 29 – Commission certifies \$298,758.66 in federal matching funds to Ralph Nader.

July

- 7 – Commission conducts reporting roundtables for candidates, PACs and party committees.
- 15 – Quarterly report due.
- 22/30 – Commission certifies \$427,744.66 in federal matching funds to four Presidential candidates.
- 29 – Appeals court in *LaRouche's Committee for the New Bretton Woods v. FEC* refuses to review FEC's determination that plaintiff repay a portion of Presidential primary matching funds it received in 2000.
- 30 – Commission approves public funding for the general election campaign of Democratic Presidential nominee John Kerry and

his Vice-Presidential running mate, Senator John Edwards.

August

- 4 – Commission hosts a roundtable workshop on new rules for pre-election communications.
- 12 – District court grants in part and denies in part the motions for summary judgment brought by both the defendants and the plaintiffs in *John Hagelin, et al. v. FEC*. The plaintiffs charged that the FEC erroneously dismissed their administrative complaint which asserted that the Commission for Presidential Debates was partisan and, therefore, could not lawfully sponsor Presidential debates.
- 17 – In *Wisconsin Right to Life, Inc. v. FEC*, district court denies plaintiff's motion for preliminary injunction that would have exempted certain broadcast ads from ban on corporate funding of electioneering communications.
- 19 – Commission approves final rules regarding Political Committee Status, Definition of Contribution and Allocation for PACs.
- 27 – Commission certifies \$325,479.23 in federal matching funds to four Presidential primary candidates.

September

- 1 – In *Wisconsin Right to Life, Inc. v. FEC*, appeals court denies plaintiff's request for an injunction pending appeal of decision not to exempt certain broadcast ads from the ban on corporate funding of electioneering communications.
- 1 – FEC issues semi-annual PAC count.
- 2 – Commission approves public funding for the general election campaign of President George W. Bush and Vice President Richard B. Cheney.
- 4 – District court dismisses Alliance for Democracy's complaint that Commission acted contrary to law by delaying action on an investigation of Ashcroft 2000, the Spirit of

America PAC and the treasurer of the committees.

- 14 – Supreme Court denies Wisconsin Right to Life, Inc.’s request for an injunction pending appeal in *Wisconsin Right to Life, Inc. v. FEC*.
- 18 – District court in *Shays and Meehan v. FEC* upholds some challenged regulations, but remands others to the Commission.
- 30 – Commission approves final rules and a new disclosure form to implement provisions of BCRA governing inaugural committees.
- 30 – Commission certifies \$102,321.33 in federal matching funds to Presidential candidate Ralph Nader.

October

- 6 – Commission conducts reporting roundtables for candidates, PACs and party committees.
- 6 – District court grants stay of its decision in *John Hagelin, et al. v FEC*, pending appeal.
- 15 – Quarterly report due.
- 28 – Commission approves explanation and justification to accompany final rules on political committee status.
- 28 – FEC votes to appeal portions of district court’s decision in *Shays and Meehan v. FEC*.
- 28 – Commission approves final rules that remove restrictions on party committees’ ability to make both independent expenditures and coordinated party expenditures with respect to same candidate in the general election.
- 29 – Commission certifies \$203,484.83 in federal matching funds to three Presidential candidates for the 2004 election.

November

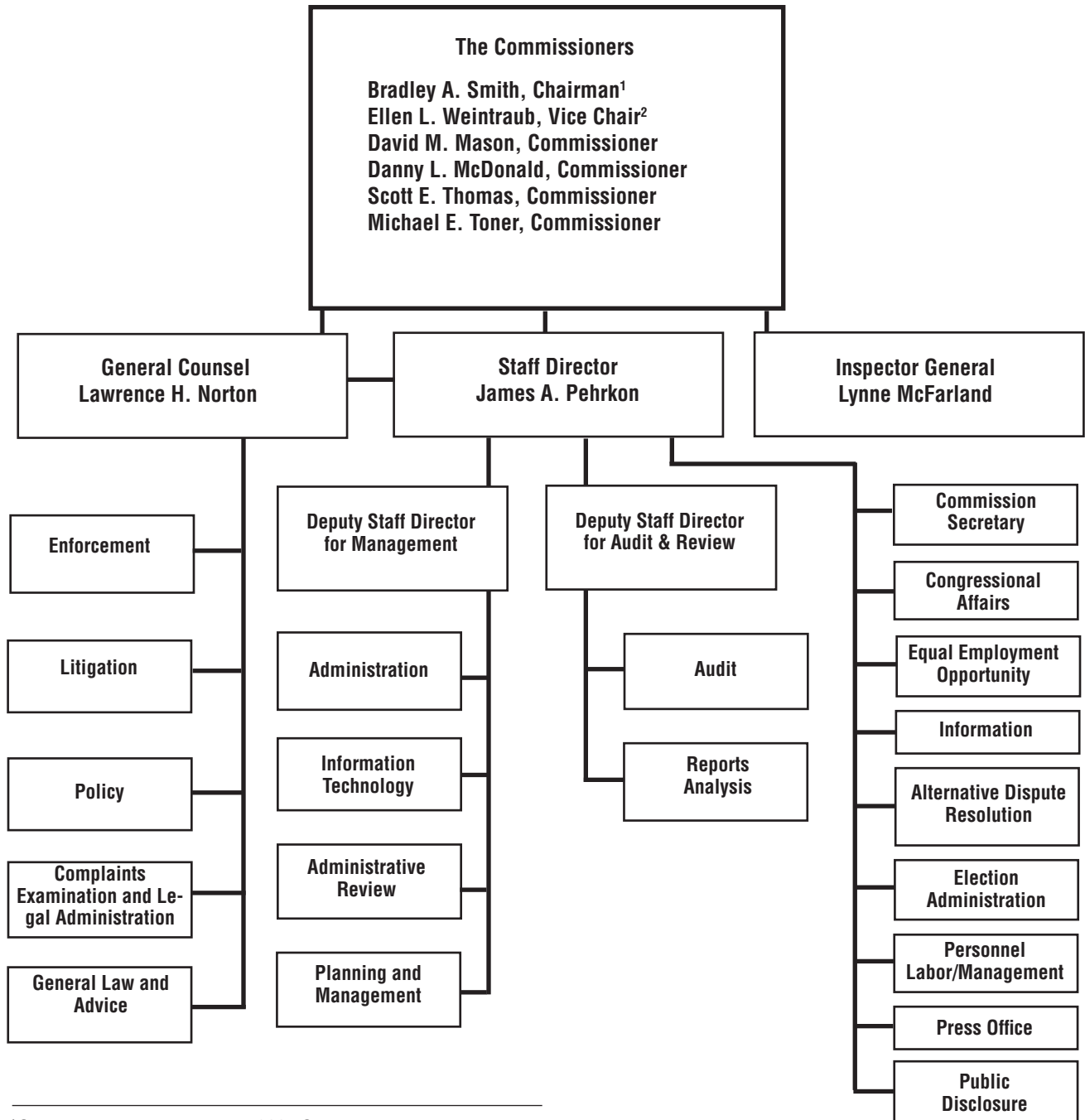
- 18 – Commission approves rulemaking priorities for November 2004 through 2005 in light of district court’s decision in *Shays and Meehan v. FEC*.
- 18 – Commission approves technical amendments to correct certain citations and headings in its final BCRA rules.

- 30 – Commission certifies \$14,023.37 in federal matching funds to two Presidential candidates for the 2004 election.

December

- 2 – Commission approves NPRM regarding limits on national, state and local party committees’ donations to certain tax-exempt organizations.
- 8 – Consolidated Appropriations Act of 2005 amends FECA to return “any other lawful purpose” to the list of permissible uses of campaign funds and to raise candidate-to-candidate contribution limit to \$2,000.
- 16 – Commission approves NPRM regarding filing documents using Priority Mail, Express Mail or an overnight delivery service.
- 16 – Commission approves NPRM on use of payroll deduction by corporate members for contributions to trade association’s PAC.
- 16 – Commission approves a Statement of Policy to clarify when, in enforcement matters, a treasurer is subject to Commission action in personal or official capacity, or both.
- 16 – Commission elects Scott E. Thomas as its Chairman and Michael E. Toner as its Vice Chairman for 2005.
- 28 – Commission certifies \$214,748 in federal matching funds to two Presidential candidates in the 2004 election.

Appendix 3 FEC Organizational Chart



¹ Scott E. Thomas was elected 2005 Chairman.
² Michael E. Toner was elected 2005 Vice Chairman.

Appendix 4 FEC Offices

This appendix briefly describes the offices within the Commission, located at 999 E Street, NW, Washington, DC 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 at 800-424-9530 and locally at 202-694-1100.

Administration

The Administration Division consists of a Finance Office and an Administration Office. The Finance Office administers the agency's accounting and payroll programs. The Administration Office is responsible for procurement, contracting, space management, records management, telecommunications, building security and maintenance. In addition, the office handles printing, document reproduction and mail services.

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 that, 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.

Commission Secretary

The Commission Secretary is responsible for all administrative matters relating to Commission meetings, as well as Commission votes taken outside of the meetings. This includes preparing meeting agendas, agenda documents, Sunshine Act notices, meeting minutes and vote certifications.

The Secretary also logs, circulates and tracks numerous materials not related to Commission meetings, and records the Commissioners' votes on these

matters. All matters on which a vote is taken are entered into the Secretary's database.

Commissioners

The six Commissioners—no more than three of whom may represent the same political party—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: 202-694-1006; toll-free 800-424-9530.

Equal Employment Opportunity (EEO) and Special Programs

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. In addition, the EEO office recommends affirmative action recruitment, hiring and career advancement. The office encourages the informal resolution of complaints during the counseling stage.

Additionally, the office develops and manages a variety of agency-wide special projects. These

include the Combined Federal Campaign, the U.S. Savings Bonds Drive and workshops intended to improve employees' personal and professional lives.

General Counsel

The General Counsel's Office performs its responsibilities through the Enforcement, Litigation, Policy and General Law and Advice Divisions and the Office of Complaint Examination and Legal Administration. The Policy Division drafts, for Commission consideration, advisory opinions and regulations as well as other legal memoranda interpreting the federal campaign finance law. In addition, the Policy Division provides legal advice in response to legislative inquiries and advises other divisions within the agency on legal matters. The Policy Division also provides staff training throughout the agency concerning changes in the law.

The Enforcement Division investigates alleged violations of the law, negotiates conciliation agreements and recommends civil penalties for individuals and entities that have violated the Act.

The Litigation Division handles all civil litigation, including Title 26 cases that come before the Supreme Court, and represents and advises the Commission regarding any legal actions brought by or against the Commission.

The General Law and Advice Division is responsible for processing all audit and repayment matters, as well as handling debt settlements, administrative terminations and administrative fines matters.¹ In addition, this Division handles all administrative law, disclosure, FOIA, Privacy Act, employment and labor law matters, and it administers the Commission's Ethics in Government Act program.

The Complaints Examination and Legal Administration Office is responsible for processing all incoming enforcement matters (including Audit referrals) and tracking performance data for all of the Office of

General Counsel's (OGC) activities.² This Office is also responsible for managing and monitoring all IT projects within OGC and managing the Law Library.

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 through the Internet, e-mail, letters, phone conversations, publications and conferences. Responding to phone and written inquiries, members of the staff provide information on the statute, FEC regulations, advisory opinions and court cases. Staff also lead 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: 202-694-1100; toll-free phone: 800-424-9530.

Information Technology

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 IT Division enters information into the FEC database 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 provide a tool for monitoring contribution limits. 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: 202-694-1250; toll-free phone: 800-424-9530.

¹ The General Law and Advice Division was created during 2003. It assumed all the responsibilities of the Public Financing, Ethics and Special Projects Division, except for enforcement matters, and the administrative law responsibilities that formerly resided with the Policy Division.

² This division was created during 2003.

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 is required to report its activities to Congress on a semiannual basis. These reports may include descriptions of any serious problems or deficiencies in agency operations as well as corrective steps taken by the agency.

Law Library

The Commission law library, a government document depository, is located on the eighth floor and is open to the public. The library contains a basic reference collection, which includes materials on campaign finance reform, election law and current political activity. Visitors to the law library may use its computers to access the Internet and FEC databases. FEC advisory opinions and computer indices of enforcement proceedings (MURs) may be searched in the law library or the Public Disclosure Division. Local phone: 202-694-1600; toll-free: 800-424-9530.

Office of Administrative Review

The Office of Administrative Review (OAR) was established in 2000 after statutory amendments permitted the Commission to impose civil money penalties for violations of certain reporting requirements. Under the program, if the Commission finds "reason to believe" (RTB) that a committee failed to file a required report or notice, or filed it late, it will notify the committee of its finding and the amount of the proposed civil money penalty. Within 40 days, the committee may challenge the RTB finding. OAR reviews these challenges and may recommend that the Commission uphold the RTB finding and civil money penalty, uphold the RTB finding but modify or waive the civil money penalty, determine that no violation occurred or terminate its proceedings. OAR also serves as the Commission's liaison with the U.S. Department of the Treasury on debt collection matters involving unpaid civil money penalties under this program.

Office of Alternative Dispute Resolution

The FEC established the Alternative Dispute Resolution (ADR) office to provide parties in enforcement actions with an alternative method for resolving complaints that have been filed against them or for addressing issues identified by the Reports Analysis Division or identified by the Audit Division during the course of an FEC audit. The program is designed to promote compliance with the federal campaign finance law and Commission regulations and to reduce the cost of processing complaints by encouraging settlements outside the agency's normal enforcement track.

Office of Human Resources and Labor Relations

The Office of Human Resources and Labor Relations provides policy guidance and operational support to managers and staff in all areas of human resources management. The Office plays a critical role in helping the Commission meet strategic performance goals by attracting, developing and retaining a highly qualified, diverse workforce and providing results-driven approaches to position management and classification, pay administration and compensation, performance management and human resource development. The Office also provides expert consultation regarding employee benefits and wellness and family-friendly programs that sustain and enhance the employer-employee relationship. Additionally, the Office administers the Commission's labor-management relations program. Finally, the Office processes all personnel actions and maintains all official personnel records for Commission employees.

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 and provides monthly reports measuring the progress of each division in achieving the plan's objectives.

Press Office

Staff in 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: 202-694-1220; toll-free 800-424-9530.

Public Disclosure

The Public Disclosure Division processes incoming campaign finance reports from federal political committees and makes the reports available to the public. Located on the first floor, the division's Public Records Office has a library with ample work space and knowledgeable staff to help researchers locate documents and computer data. The FEC encourages the public to review the many resources available, which include computer indexes, advisory opinions and closed MURs.

The division's Processing Office receives incoming reports and processes them into formats that can be easily retrieved. These formats include paper, microfilm and digital computer images that can be easily accessed from terminals in the Public Records Office and those of agency staff.

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

Local phone: 202-694-1120; toll-free phone: 800-424-9530; Faxline: 202-501-3413.

Reports Analysis

Campaign Finance 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 (RFAls), 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: 202-694-1130; toll-free phone 800-424-9530.

Staff Director and Deputy Staff Directors

The Staff Director is responsible for appointing staff, with Commission approval, and for implementing agency policy. The Staff Director monitors the administration of the agency by overseeing the Commission's public disclosure activities, audit program, outreach efforts and review of reports.

Two Deputy Staff Directors assist in this supervision, one in the areas of budget, administration and computer systems and the other in the areas of audit and review.

Appendix 5 Statistics on Commission Operations

Summary of Disclosure Files

	Total Filers Existing in 2004	Filers Terminated as of 12/31/04	Continuing Filers as of 12/31/04	Number of Reports and Statements in 2004	Gross Receipts in 2004 (dollars)	Gross Expenditures in 2004 (dollars)
Presidential Candidate Committees	216	50	166	1,394	1,695,553,261	1,899,374,045
Senate Candidate Committees	548	194	354	5,685	744,925,828	906,667,245
House Candidate Committees	2,523	1,073	1,450	27,314	1,038,763,397	1,110,679,726
Federal Party Committees	605	160	445	9,432	3,146,937,098	3,154,360,110
Delegate Committees	1	0	1	12	557,105	485,897
Nonparty Committees						
Labor Committees	328	27	301	3,792	187,113,027	215,942,925
Corporate Committees	1,758	176	1,582	16,898	446,577,476	422,786,515
Membership, Trade and Other Committees	2,820	478	2,342	24,457	744,286,102	755,464,066
Communication Cost Filers	346	0	346	262	0	33,001,739
Independent Expenditures by Persons Other Than Political Committees	529	53	476	905	4,373,909	11,096,811
Electioneering Communications	47	0	47	346	194,999,780	130,160,588

Divisional Statistics for Calendar Year 2004

	Total
Reports Analysis Division	
Documents processed	34,524
Reports reviewed	54,954
Telephone assistance and meetings	15,257
Requests for additional information (RFAs)	10,730
Data coding and entry of RFAs and miscellaneous documents	36,458
Compliance matters referred to Office of General Counsel or Audit Division	27
Administrative Fine cases initiated	221
Information Technology*	
Documents receiving Pass I coding	25,102
Documents receiving Pass III coding	58,571
Documents receiving Pass I entry	87,017
Documents receiving Pass III entry	34,917
Transactions receiving Pass III entry	
• In-house	1,985,989
• Contract	373,720
Public Disclosure Division	
Campaign finance material processed (total pages)	1,198,294
Cumulative total pages of documents available for review	28,864,889
Requests for campaign finance reports	4,432
Visitors	5,527
Total people served	22,458
Information telephone calls	12,499
Computer printouts provided	32,872
Faxline requests	358
Total income (transmitted to U.S. Treasury)	14,219
Contacts with state election offices	4,207
Notices of failure to file with state election offices	16

	Total
Administrative Division	
Contracting and procurement transactions	1,168
Publications prepared for print	31
Pages of photocopying	23,400,700
Information Division	
Telephone inquiries	22,874
E-mail Inquiries	1,309
Information letters	39
Distribution of FEC materials	5,597
Prior notices (sent to inform filers of reporting deadlines)	41,711
Other mailings	12,424
Visitors	478
Public appearances by Commissioners and staff	37
Roundtable workshops	10
Publications	31
Press Office	
News releases	149
Telephone inquiries from press	5,720
Visitors	291
Freedom of Information Act (FOIA) requests	46
Fees for materials requested under FOIA (transmitted to U.S. Treasury)	0

* 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		Total
Office of General Counsel		Legal Review FECA	
Administrative Terminations		Pending at beginning of 2004	8
Pending at beginning of 2004	0	Opened	54
Opened	283	Closed	59
Closed	282	Pending at end of 2004	3
Pending at end of 2004	1	Legal Review Non-FECA	
Advisory opinions		Pending at beginning of 2004	3
Requests pending at beginning of 2004	5	Opened	109
Requests received	45	Closed	98
Issued	39	Pending at end of 2004	14
Not issued	9	Litigation	
Pending at end of 2004	2	Cases pending at beginning of 2004	37
Compliance cases[†]		Cases opened	23
Pending at beginning of 2004	131	Cases closed	12
Opened	250	Cases pending at end of 2004	48
Closed	63	Cases won	7
Transferred to ADR	60	Cases lost	1
Pending at end of 2004	258	Cases won/lost	0
Ethics Guidance		Miscellaneous Cases	4
Pending at beginning of 2004	1	Regulations	
Opened	94	Notices of Proposed Rulemaking	7
Closed	95	Final or Interim Final Rules with	
Pending at end of 2004	0	Explanation and Justification	5
Financial Disclosure Reports		Public Rulemaking Hearings	1
Pending at beginning of 2004	4	Notice of Availability	2
Opened	98	Reports Filed with Office of Government Ethics	
Closed	99	Pending at beginning of 2004	1
Pending at end of 2004	3	Opened	11
Law Library		Closed	11
Telephone inquiries	687	Pending at end of 2004	1
Visitors	527	Special Projects	
Legal Review Audits		Pending at beginning of 2004	0
Pending at beginning of 2004	20	Opened	25
Opened	31	Closed	24
Closed	21	Pending at end of 2004	1
Pending at end of 2004	30		

[†]In annual reports previous to 1994, the category “compliance cases” included only Matters Under Review (MURs). As a result of the Enforcement Priority System (EPS), the category has been expanded to include internally-generated matters in which the Commission has not yet made reason-to-believe findings.

Status of Audits, 2004

	Pending at Beginning of Year	Opened	Closed	Pending at End of Year
Presidential	0	5	0	5
Presidential Joint Fundraising	0	0	0	0
Senate	6	0	6	0
House	11	1	9	3
Party (National)	0	0	0	0
Party (Other)	2	10	4	8
Nonparty (PACs)	9	7	8	8
Total	28	23	27	24

Audits Completed by Audit Division, 1975–2004

	Total
Presidential	130
Presidential Joint Fundraising	12
Senate	35
House	201
Party (National)	47
Party (Other)	169
Nonparty (PACs)	100
Total	694

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
1985	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
1995	12	0	12
1996	23	0	23
1997	7	6	13
1998	5	7	12
1999	20	7	27
2000	14	0	14
2001	15	1	16
2002	20	13	33
2003	21	4	25
2004	27	0	27
Total	543	151	694

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

† Title 26 audits: The Commission must give priority to these mandatory audits of publicly funded committees.

‡ Random audits: Most of these audits were performed under the Commission's random audit policy (pursuant to the former 2 U.S.C. §438(a)(8)). The authorization for random audits was repealed by Congress in 1979.

Appendix 6 2004 Federal Register Notices

2004-1

Filing dates for the Kentucky Special Election in the 6th Congressional District (69 FR 1586, January 9, 2004).

2004-2

Rulemaking Petition: Public Access to Materials Relating to Closed Enforcement Cases; Notice of Availability (69 FR 2083, January 14, 2004).

2004-3

Proposed Statement of Policy Regarding Naming of Treasurers in Enforcement Matters (69 FR 4092, January 28, 2004).

2004-4

Filing dates for the South Dakota Special Congressional Election (69 FR 5350, February 4, 2004).

2004-5

Final Rules and Explanation and Justification on the Extension of Administrative Fines (69 FR 6525, February 11, 2004).

2004-6

Political Committee Status; Notice of Proposed Rulemaking (69 FR 11736, March 11, 2004).

2004-7

Inaugural Committee Reporting and Prohibition on Accepting Donations; Notice of Proposed Rulemaking (69 FR 18301, April 7, 2004).

2004-8

Contributions and Donations by Minors; Notice of Proposed Rulemaking (69 FR 18841, April 9, 2004).

2004-9

Schedule of matching fund submission dates and submission dates for Statements of Net Debts Outstanding Campaign Obligations for 2004 Presidential Candidates Post Date of Ineligibility (69 FR 21533, April 21, 2004).

2004-10

Filing dates for the North Carolina Special Election in the 1st Congressional District (69 FR 36086, June 28, 2004).

2004-11

Coordinated and Independent Expenditures by Party Committees; Notice of Proposed Rulemaking (69 FR 39373, June 30, 2004).

2004-12

Rulemaking petition: Exemption for the Promotion of Political Documentary Films from "Electioneering Communications;" Notice of Availability (69 FR 52461, August 26, 2004).

2004-13

Presidential Inaugural Committee Reporting and Prohibition on Accepting Donations from Foreign Nationals; Final Rules and Explanation and Justification (69 FR 59775, October 6, 2004).

2004-14

Coordinated and Independent Expenditures by Party Committees; Final Rules and Explanation and Justification (69 FR 63919, November 3, 2004).

2004-15

Political Committee Status; Final Rules and Explanation and Justification (69 FR 68056, November 23, 2004).

2004-16

Technical Amendments to Bipartisan Campaign Reform Act Rules and Explanation and Justification (69 FR 68237, November 24, 2004).

2004-17

Political Party Committees Donating Funds to Certain Tax Exempt Organizations and Political Organizations Notice of Proposed Rulemaking (69 FR 71388, December 9, 2004).

2004-18

Payroll Deductions by Member Corporations for Contributions to a Trade Association's Separate Segregated Fund; Notice of Proposed Rulemaking (69 FR 76628, December 22, 2004).

2004-19

Filing Documents by Priority Mail, Express Mail, and Overnight Delivery Service; Notice of Proposed Rulemaking (69 FR 76626, December 22, 2004).

2004-20

Policy Statement Regarding Treasurers Subject to Enforcement Proceedings (70 FR 3, January 3, 2005).

Appendix 7 2004 Advisory Opinions

This appendix includes a comprehensive list of the Advisory Opinions (AOs) issued by the Commission throughout the year. Some of these advisory opinions are explored in greater detail in Chapter 3 “Legal Issues.”

AO 2003-36

Fundraising by federal candidate/officeholder for section 527 organization (Republican Governors Association; issued January 12, 2004).

AO 2003-37

Nonconnected PAC’s use of nonfederal funds for campaign activities (superseded in subsequent rule-making) (Americans for a Better Country; issued February 18, 2004).

AO 2003-39

Charitable matching plan conducted by collecting agent of trade association (Credit Union National Association, Credit Union Legislative Action Council of CUNA and North Carolina Local Government Employees’ Federal Credit Union; issued January 28, 2004).

AO 2003-40

Reporting independent expenditures (U.S. Navy Veterans’ Good Government Fund; issued February 6, 2004).

AO 2004-1

Endorsement ads result in contribution if coordinated communications; “stand-by-your-ad” disclaimer for ad authorized by two candidates (Bush-Cheney ’04 and Alice Forgy Kerr for Congress; issued January 29, 2004).

AO 2004-2

Contributions from testamentary trusts (National Committee for an Effective Congress; issued February 26, 2004).

AO 2004-3

Conversion of authorized committee to multicandidate committee (Dooley for the Valley; issued March 11, 2004).

AO 2004-4

Abbreviated name of trade association SSF (Air Transportation Association of America PAC; issued March 11, 2004).

AO 2004-6

Web-based meeting and services to candidates and political committees (Meetup, Inc.; issued March 25, 2001).

AO 2004-7

MTV’s mock Presidential election qualifies for press exemption—no contribution or electioneering communication results (MTV Networks; issued April 1, 2004).

AO 2004-8

Severance pay awarded to employee who resigns to run for Congress (American Sugar Cane League; issued April 30, 2004).

AO 2004-9

State committee status of a party committee (The Green Rainbow Party; issued April 1, 2004).

AO 2004-10

Stand by you ad disclaimer (Metro Networks Communications, Inc; issued April 10, 2004).

AO 2004-12

Regional party organization established by several state party committees (Democratic state party committees of Alaska, Arizona, New Mexico, Nevada, Colorado, Utah, Wyoming, Idaho and Montana; issued June 14, 2004).

AO 2004-14

Federal candidate’s appearance in public service announcement not solicitation, coordinated communication or electioneering communication (U.S. Representative Tom Davis; issued June 10, 2004).

AO 2004-15

Film ads showing federal candidates are electioneering communications (David T. Hardy and Bill of Rights Education Foundation; issued June 25, 2004).

AO 2004-17

Federal candidate's compensation for part-time employment (Becky Armendariz Klein; issued June 24, 2004).

AO 2004-18

Campaign committee's purchase of candidate's book at discounted price (Friends of Joe Lieberman; issued July 15, 2004).

AO 2004-19

Earmarked contributions made via commercial web site (DollarVote.org, Inc.; issued August 20, 2004).

AO 2004-20

Connecticut party convention considered an election (Adam Wood, Campaign Manager for Farrell for Congress; issued July 29, 2004).

AO 2004-22

Unlimited transfers to state party committee (U.S. Representative Doug Bereuter; issued July 23, 2004).

AO 2004-23

SSF's solicitations of subsidiaries' restricted classes (U.S. Oncology, Inc.; issued August 12, 2004).

AO 2004-24

Use of contributor information by commercial software company (NGP Software, Inc.; issued August 12, 2004).

AO 2004-25

Senator/national party officer may donate personal funds to voter registration organizations that undertake federal election activity (Senator Jon Corzine; August 20, 2004).

AO 2004-26

Foreign national's participation in activities of political committees (U.S. Representative Jerry Weller and Zury Rios Sosa; issued August 20, 2004).

AO 2004-27

Use of campaign funds to reimburse volunteer service from past election (Quayle 2000 Committee; issued September 9, 2004).

AO 2004-28

Disclosure of donations to state party committee's building fund (Iowa Ethics and Campaign Disclosure Board; issued September 9, 2004).

AO 2004-29

Federal candidate's support of ballot initiative committees (U.S. Representative Todd Akin and Todd Akin for Congress; issued September 30, 2004).

AO 2004-30

Documentary and broadcast ads do not qualify for media exception from definition of electioneering communication (Citizens United; issued September 10, 2004).

AO 2004-31

Ads for business with same name as federal candidate not electioneering communications (Russ Darrow Group, Inc.; issued September 10, 2004).

AO 2004-32

SSF's solicitation of affiliated LLC (Spirit Airlines, Inc.; issued September 30, 2004).

AO 2004-33

Corporate-sponsored ads as electioneering communications and coordinated communications (Ripon Society and U.S. Representative Sue Kelly, issued September 10, 2004).

AO 2004-34

State committee status of party committee (Libertarian Party of Virginia; issued October 21, 2004).

AO 2004-35

Presidential candidates may use GELAC funds for recount expenses (Senator John Kerry, Senator John Edwards, Kerry-Edwards 2004, Inc., and Kerry Edwards 2004 General Election Legal and Accounting Compliance Fund; issued September 30, 2004).

AO 2004-36

Reporting in-kind contribution of office space (Mark Risley for Congress; issued October 7, 2004).

AO 2004-37

Brochure advocating candidates not a contribution (U.S. Representative Maxine Waters, Citizens for Waters and People Helping People; issued October 21, 2004).

AO 2004-40

State committee status of a party committee (Libertarian Party of Maryland; issued December 2, 2004).

AO 2004-41

Disaffiliation of SSFs (CUNA Mutual insurance Society; issued December 16, 2004).

AO 2004-42

Limited liability company (LLC) as connected organization for SSF (Pharmavite LLC; issued December 16, 2004).