

Federal Election Commission

Annual Report 1985



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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 1, 1986

The President of the United States
The U.S. Senate
The U.S. House of Representatives

Dear Sirs:

We submit for your consideration the eleventh annual report of the Federal Election Commission, as required by the Federal Election Campaign Act of 1971, as amended. The Annual Report 1985 describes the activities performed by the Commission in carrying out its duties under the Act. It also includes a number of legislative recommendations adopted by the Commission in March 1986.

Respectfully,

A handwritten signature in cursive script that reads "Joan D. Aikens".

Joan D. Aikens
Chairman

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Introduction

During 1985, the Commission carried out its responsibility for administering and enforcing the Federal campaign finance law. Much of the agency's activity stemmed from the 1984 elections—for example, working on the required audit reports on publicly funded campaigns; releasing campaign finance studies on the 1983-84 election cycle; and processing enforcement cases arising from the previous year's election activity.

This report examines the Commission's administration of the law in Chapters 1 and 2, and presents extensive campaign finance statistics in Chapter 3. The agency's internal operations are summarized in Chapter 4, and Chapter 5 lists the Commission's recommendations for legislative change. Several appendices provide supplemental information.

Chapter 1

Presidential Public Funding

Overview

The major elements of the public financing program have remained largely the same since the first publicly financed Presidential elections in 1976. Basically, public funding encompasses:

- Matching funds for Presidential primary candidates who have met qualification requirements;
- Grants to sponsor Presidential nominating conventions of political parties; and
- Full grants for the general election campaigns of major party nominees and partial grants for qualified minor and new party nominees.

The financing for the public funding program comes from the Presidential Election Campaign Fund. This Fund consists of dollars checked off by taxpayers on their Federal income tax returns. The checkoff neither increases the amount of taxes owed nor decreases any refund due.

The FEC has overseen the public financing of three Presidential elections—1976, 1980 and 1984—and has certified a total of \$309 million in payments to 43 candidates and 6 Democratic and Republican nominating convention committees. Payments were made by the U.S. Department of Treasury.

This chapter opens with a summary of a 1985 Supreme Court decision affecting the public funding law and continues with a review of the Commission's certification of public funds. The chapter goes on to discuss several issues related to the repayment of public funds. See Chapter 3 for campaign finance statistics on Presidential campaigns.

Supreme Court Ruling on Expenditures

On March 18, 1985, the Supreme Court ruled that a provision of the campaign finance law was unconstitutional, thus resolving an issue that had been pending since 1980.

Section 9012(f) of the Presidential Election Campaign Fund Act (26 U.S.C.) placed a \$1,000 limit on expenditures made by political committees to further the general election of publicly financed Presidential nominees. The provision was first found unconstitutional in September 1980 by the U.S. District Court for the District of Columbia. The Commission appealed this decision to the Supreme Court. In January 1982, the High Court split four to four (with Justice Sandra O'Connor not participating), leaving the constitutionality of Section 9012(f) unresolved.

The debate resumed in 1983. In an effort to obtain a decisive ruling by the Supreme Court, the FEC filed suit against the National Conservative Political Action Committee (NCPAC) and the Fund for a Conservative Majority (FCM). These two committees had allegedly planned to spend large sums on independent expenditures¹ benefiting President Reagan's 1984 general election campaign, which was publicly financed (*FEC v. NCPAC and FCM*). The FEC's suit was consolidated with a second suit, *Democratic National Committee (DNC) v. NCPAC*, which had been filed in May 1983. The Commission had intervened in that suit as a defendant, arguing that the Democrats lacked standing to bring the action. In the consolidated suits, the FEC and the DNC asked that a three-judge panel of the U.S. District Court for the Eastern Division of Pennsylvania find that Section 9012(f) prohibited NCPAC and

¹An independent expenditure is an expenditure for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made with the cooperation or prior consent of, or in consultation with, or at the request or suggestion of, any candidate or his or her authorized committees or agents.

FCM from making expenditures of over \$1,000 on behalf of the Republican nominee. The Commission also asked the court to rule that Section 9012(f) was constitutional.

In 1983, the Pennsylvania district court ruled that Section 9012(f) was unconstitutional on its face because it violated First Amendment rights of free speech and association. The court also found that the Democrats had standing to bring suit. Again, the Commission appealed.

The Supreme Court brought the issue to a close by affirming the district court's decision on the unconstitutionality of Section 9012(f). The Court concluded that:

Section 9012(f)'s limitation on independent expenditures by political committees is constitutionally infirm, absent any indication that such expenditures have a tendency to corrupt or to give the appearance of corruption. But even assuming that Congress could fairly conclude that large-scale political action committees have a sufficient tendency to corrupt, §9012(f) is a fatally overbroad response to that evil. It is not limited to multimillion dollar war chests, but applies equally to informal discussion groups that solicit neighborhood contributions to publicize views about a particular Presidential candidate.

At the same time, the Court reversed the lower court's ruling that the Democrats had standing to bring suit. The Supreme Court noted that, while the Fund Act authorizes the Democratic National Committee to bring suit against the Commission, its suit against private parties "to construe or enforce the Act [was] inappropriate interference" with the FEC's "responsibilities for administering and enforcing the Fund Act."

Public Funding Payments

The Commission certifies Federal funds to Presidential candidates and committees that have met eligibility qualifications. The table below shows the amount of public funds the Commission certified for the three publicly funded Presidential elections. The maximum amount of matching funds a primary candidate could receive was \$10 million dollars, adjusted for inflation (i.e., half of the national spending limit).² The nominating convention committees of the major parties were entitled to a base grant of \$2 million in 1976, an amount that Congress increased to \$3 million in 1980 and \$4 million in 1984. For each year, the base entitlement was augmented by a cost-of-living adjustment. The entitlement for major party nominees—\$20 million—was also adjusted for inflation.

Public Funding Certifications for the 1976, 1980 and 1984 Presidential Elections (in millions)

Recipient	1976	1980	1984
Primary Candidates*	\$24.8	\$ 31.3	\$ 36.5
Party Convention Committees	4.1	8.8	16.2
General Election Candidates	43.6	63.1**	80.8
Totals	\$72.5	\$103.2	\$133.5

*There were 15 primary matching fund recipients in 1976, 10 in 1980 and 11 in 1984.

**Three nominees received public funding in 1980—the two major party nominees and John Anderson, who qualified as a third party candidate eligible to receive partial public funding.

²Only one candidate—President Reagan, in his 1984 primary campaign—received enough matchable contributions to qualify for the maximum amount of matching funds.

Looking ahead to 1988, the Commission anticipates a much heavier demand on both the Presidential Fund and agency staff. That year's Presidential election will be the first under the public funding provisions in which there will be no incumbent President running for reelection. This should dramatically increase the number of primary candidates qualifying for matching funds.

Audits and Repayments

The campaign finance law requires the Commission to audit all public funding recipients to ensure that Federal funds are spent in compliance with the law. If they are not, a campaign or convention committee may have to repay public funds to the Treasury.

By the end of 1985, the Commission had publicly released several of the audit reports on the Presidential primary campaigns and party convention committees. As a result of these audits, the Commission had requested the return of \$217,048 in public funds, of which \$42,227 was returned to the U.S. Treasury by the end of 1985. (In addition, campaigns made repayments of \$374,489 which were not based on audit reports. In two cases, campaigns voluntarily returned funds before the release of the audit reports; a third repayment resulted from the resolution of a compliance matter.) Audits of the remaining public funding recipients were approaching completion by the year's end. As circumstances warrant, the Commission will issue addenda to completed reports based on follow-up audit fieldwork and repayment determinations.

New Regulations on Repayment of Public Funds

In 1985, the Commission revised its regulations on the repayment of matching funds as a result of a 1984 appeals court ruling. In *Kennedy for President Committee v. FEC* and *Reagan for President Committee v. FEC*, the two primary campaigns had challenged the repayment formula then contained in Commission regulations. The formula

had required repayment of the entire amount of nonqualified campaign expenses incurred by a campaign. In May 1984, the U.S. Court of Appeals for the District of Columbia Circuit held that the Commission's statutory authority limited the agency's repayment determinations to a reasonable estimate of the amount of Federal funds used for nonqualified campaign expenses.

To make its regulations consistent with the court's decision, the Commission drafted revised rules on the repayment of public funds (11 CFR 9007 and 9038). These new rules were published in the *Federal Register* on March 8, 1985 (50 *Fed. Reg.* 9421) and prescribed on June 26, 1985. (For a summary of the regulations, see page 13 of the *1984 Annual Report*.)

In July 1984, nearly a year before the regulations were prescribed, the Commission recalculated the Reagan and Kennedy repayments based on the new formula. As a result, the agency refunded part of the 1980 Reagan campaign's repayment and reduced the amount owed by the Kennedy campaign. The Commission decided not to reconsider repayment determinations it had made with regard to five other 1980 primary campaigns. One of the committees affected, the Carter/Mondale Presidential Committee, asked the Commission to reconsider its decision and, when the agency declined to do so, filed a court appeal (see below).

Carter/Mondale Presidential Committee v. FEC

On November 1, 1985, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the FEC did not abuse its discretion in declining to reconsider a repayment determination regarding the Carter/Mondale Presidential Committee.

In a previous petition for review, filed in 1982, the Carter/Mondale Committee had asked the appeals court to review the FEC's determination that the Committee repay \$104,300 in matching funds to the Treasury. The court dismissed the case on the grounds that it had not been filed

within the time frame required by the campaign finance law.

In its 1985 decision, the court rejected the Committee's assertion that the agency had treated it unfairly and stated: "No favoritism can be attributed to the FEC when it carries out the letter of a court's order" to reconsider the Kennedy and Reagan campaigns' repayments. Nor did the court find merit in the Committee's argument that the FEC had failed to give reasons for refusing to reopen its repayment determination. The court said that the reasons behind the Commission's actions "may be gleaned from its staff's reports." The court also pointed out that the Committee was not in the same position as the Kennedy and Reagan Committees because of its tardiness in filing its original petition seeking court review of the repayment determination.

Candidate's Salary as Nonqualified Campaign Expense

In April 1985, the Commission held a hearing at which the 1984 Presidential primary campaign of former Senator George McGovern appealed an FEC determination that salary payments of \$50,000 to Mr. McGovern constituted nonqualified campaign expenses and that the campaign was thus required to repay a pro rata portion (\$13,549). The campaign argued that the salary payments constituted a qualified campaign expense because "Senator McGovern's personal financial situation is such that he would not have been able to run for the Presidency without the payments." The McGovern campaign further contended that

Congress had "consciously made the determination, in the Federal Election Campaign Act, to leave the decision how to spend money in a political campaign to the candidates themselves, not to the Commission or its staff."

In June, the Commission rejected the McGovern campaign's position, stating:

To argue that a candidate may take public funds for his or her personal benefit does not comport with the fundamental purpose underlying the Matching Payment Account Act, i.e., to help defray the campaign costs incurred by eligible candidates in seeking their party's nomination for the office of President.

Mondale for President Committee v. FEC

In February 1985, the Commission determined that "a potential repayment obligation should *not* be the basis for entitlement to further public monies. . . ." This determination was in response to the Mondale for President Committee's request for matching funds to cover a "contingent liability"—a potential debt resulting from matching fund repayments the Commission might later require. After considering an appeal from the Committee, the Commission reaffirmed its position in May 1985 and again rejected the Mondale request for additional matching funds to cover the contingent liability.

On June 7, 1985, the Committee asked the U.S. Court of Appeals for the District of Columbia Circuit to require the FEC to certify the full amount of matching funds requested by the Committee, including the contingent liability. At the end of 1985, the case was still pending.

Chapter 2 Administration of the Law

This chapter first reviews the Commission's progress in making campaign finance information more widely available. (See also the campaign finance statistics presented in Chapter 3.) The chapter then examines the 1985 activities of other FEC programs and goes on to summarize court decisions and advisory opinions that clarified areas of the Federal campaign finance law. The chapter closes with a description of the activities of the Clearinghouse on Election Administration.

Disclosure¹

In 1985, the Commission enhanced its disclosure of campaign finance information by utilizing computer technology on a larger scale than ever before.

With thousands of campaign finance reports flowing into the FEC each reporting period, the agency relies on the computer to store and organize data taken from the reports. As required by law, copies of the reports are made available to the public within 48 hours. During this same time period, summary data from the reports are coded and entered into the FEC's computer system. The agency processed 64,000 documents in this way during fiscal year 1985.

In a second step, many of the detailed transactions disclosed on reports are coded and entered into the computerized data base. While this process takes longer than entry of summary information, during fiscal year 1985 the Commission captured detailed data from 43,000 documents within a median time of 30 working days.

To share this wealth of information, the Commission expanded a program begun in 1984 and developed a new program to make computerized

information available to people throughout the country. More detail is provided below.

In addition to new projects, the Commission's 1985 disclosure activity included the release of final statistical reports on the 1983-84 election cycle and companion computer tapes. The agency also continued to assist the press and the public with their research.

State Access to Computerized Data

With the addition of three sites, the Commission expanded its program to provide computerized access to FEC campaign finance information in State election offices. The new cities—Montgomery, Alabama; Lansing, Michigan; and Providence, Rhode Island—brought the number of State offices with FEC computer access to 10.²

The primary objective of this program, begun in 1984, was to give those located outside Washington, D.C. immediate access to several standard FEC computer indexes. (FEC indexes are described in Appendix 7.) A computer terminal located in the State election office was linked, through a national telecommunications system, to a computer storing FEC data.

The program benefited local citizens in several ways. The FEC computer indexes offered data on Federal candidates and political committees throughout the country. (State files, by contrast, contain data only on candidates and committees active in that State.) Additionally, the computer indexes greatly reduced the need to copy information from the reports themselves. For these reasons—and considering the agency's substantial investment in maintaining its computerized data base, regardless of whether data access was shared—the Commission believed that the incremental expense of the State access program was well justified. On the average, the Commission spent \$4,000 a month to cover technical re-

¹Prompted by the mandatory cuts resulting from the Gramm/Rudman/Hollings Act, on March 1, 1986, the Commission was forced to cut, among other programs, its disclosure program by reducing the comprehensiveness, timeliness and accuracy of disseminated information. At the time of publication, therefore, the disclosure program was substantially reduced from the description provided on these pages.

²The first sites with computer access were: Los Angeles and Sacramento, California; Denver, Colorado; Atlanta, Georgia; Chicago, Illinois; Boston, Massachusetts; and Olympia, Washington.

quirements, computer time and telecommunications expenses. Each State office provided the local computer hardware. Since the specifications for a usable terminal were not rigid, States were free either to select new equipment or to use existing terminals or personal computers.

A 1985 report on a survey of State participants concluded that the State access program gave the Federal government an efficient means of disseminating campaign finance information and, at the same time, provided State governments with a new resource for local researchers. During the period covered by the survey, most States reported that the computer access program generated more visitors—as many as 40 percent more in some States. As to the information requested, State offices reported that the availability of printouts on PACs virtually replaced the demand for paper copies of PAC reports. By contrast, researchers still continued to request paper files of candidate reports because computerized data did not include an index on individual contributors to candidates' campaigns. In response, the agency added another computer index in 1985, the G Index, which lists individual contributors of \$500 or more. The Commission also included data on the 1985-86 election cycle, in addition to the 1983-84 cycle. A 1985 FEC brochure, *State Computer Access to FEC Data*, which explained the information available, was distributed to the State terminal sites.

Direct Computer Access

In another effort to enhance the FEC's disclosure program, in September 1985, the agency inaugurated a subscription service that provided individuals with direct computer access to the FEC campaign finance disclosure base. Using the same telecommunications network that services the State computer access project, the direct, on-line access program allowed individuals and organizations with personal computers to call up any of the computer indexes available in the State program. In addition, users could request raw

data, which they could store and then arrange according to their own research needs.

This new service was offered under the Freedom of Information Act (FOIA). Persons wishing to subscribe to the service submitted their requests to the FOIA officer. Instead of paying the FEC for computer time spent on line, the subscriber paid the Commission's computer vendor directly. By the year's end, 15 subscribers had signed up for the service.

Campaign Finance Studies

Each election cycle, the Commission publishes *Reports on Financial Activity*, which present summary data in a variety of formats. After issuing numerous *Interim Reports* in 1984, the Commission completed the series with the publication of the *Final Reports* on the 1983-84 cycle, covering independent expenditures, House and Senate campaigns and noncandidate committees. The *Final Reports* reflected amendments committees had made to their previously filed reports. Both the *Interim* and *Final Reports* on House and Senate campaigns provided more detail on sources of campaign funding than had previous studies. Commission press releases highlighted information contained in the studies through statistical tables and computer-produced charts. Soon after it released the *Final Reports on Financial Activity*, the agency also made available for purchase companion computer tapes.

Serving the Public

The Commission's Public Records Office and Press Office respond to the needs of the public and the press for information on Federal campaign finance.

The Public Records Office maintains paper and microfilmed copies of campaign finance reports and other research documents. In addition, the office handles orders for computer indexes, copies of reports and other materials. Working with the public in person or on the toll-free line, office staff help researchers locate the information they need. By using a new printing method in 1985, the

Commission cut in half the purchase price of its most popular computer indexes, such as the multicandidate committee index. During calendar year 1985, the office provided 78,805 printouts to the public.

The Press Office responds to requests from callers and visitors representing the media. Office staff issue press releases on Commission activities and campaign finance statistics; prepare press packets; schedule interviews; and make arrangements for television crews covering the agency. The office also handles requests made under the Freedom of Information Act. In 1985, the office received 8,326 phone calls and 1,354 visitors, issued 147 press releases and responded to 135 requests made under the Freedom of Information Act.

Regulations

In addition to its disclosure duties, the Commission is also required to develop regulations that implement the Federal Election Campaign Act.³ In 1985, the agency continued to work on revisions to the regulations with the goal of providing more guidance on the actual practices of political committees.

Testing the Waters

On March 8, 1985, the Commission transmitted to Congress revised rules governing "testing-the-waters" activities. Under the campaign finance law, a person must register as a "candidate" once campaign activity exceeds \$5,000. FEC regulations, however, provide limited exceptions to this automatic threshold. The exceptions permit an individual to test the feasibility of a campaign for

Federal office without becoming a "candidate." Commonly referred to as "testing-the-waters" exceptions, the rules exclude from the definitions of "contribution" and "expenditure" funds received and payments made to determine whether an individual should become a candidate (11 CFR 100.7(b)(1), 100.8(b)(1) and 101.3). The proposed revisions to the testing-the-waters rules were published in the March 13, 1985, *Federal Register* (50 *Fed. Reg.* 9992) and became effective on July 1, 1985 (50 *Fed. Reg.* 25698).

One major change from the previous rules is that the contribution limits and prohibitions of the law now apply to funds used to test the waters, regardless of whether the individual eventually becomes a candidate.

Like the previous regulations, the new rules limit testing-the-waters activities to those which evaluate a possible candidacy, such as disbursements for opinion polls and travel undertaken to determine whether an individual should run for Federal office. The revised rules include new examples of activities which indicate an individual has decided to become a candidate and which therefore are not considered testing-the-waters activities: obtaining ballot access; making campaign statements that refer to the individual as a candidate; or conducting activity shortly before an election or over a protracted period of time.

Contribution Limits

The Commission sought comments on proposed revisions to its regulations governing contribution limits (11 CFR 110.1 and 110.2) in an April 17, 1985, *Federal Register* notice (50 *Fed. Reg.* 15169). The notice addressed a variety of problems related to the administration of the statutory contribution limits and asked for public comment on numerous possible changes to the regulations that might resolve the problems.

The agency received several written comments in response to the notice and, on October 16, 1985, held a public hearing. Although the agency received three requests to appear at the hearing,

³In addition to the regulatory work described in this section, the Commission prescribed revisions to the regulations on the repayment of public funds (page 5) and asked for public comment on possible changes to the rules governing compliance procedures (page 14). The agency also prescribed new rules implementing the Sunshine Act and published proposed rules on standards of conduct for FEC employees (page 34).

only one witness, a representative from the U.S. Chamber of Congress, actually testified.

The Commission considered both written and oral comments in December, when it discussed different approaches that might be taken in regulating contribution limits. Among the issues the agency addressed were:

- *Designation of Contributions.* The statute establishes separate limits for contributions to the primary and general election campaigns of a candidate. Under the current rules, a contribution automatically applies to the candidate's next election unless the contributor designates the contribution for another election. The Commission considered alternative approaches that would clarify this rule and encourage contributors to designate their contributions.
 - *Redesignation of Contributions.* The agency discussed whether a contribution may be redesignated by the contributor under certain circumstances—for example, if a contribution exceeds the contributor's limit for an election.
 - *Net Debts Outstanding.* The Commission explored various options with regard to a campaign's acceptance of contributions after an election if the campaign does not have debts for that election.
 - *Determining the Date of a Contribution.* Because the timing of a contribution is significant in several situations—for example, in determining whether an undesignated contribution applies toward the primary or general election limit—the Commission considered alternative definitions of when a contribution is made or received.
 - *Aggregation of Contributions.* The agency examined the circumstances under which contributions to a candidate should be aggregated with contributions made to another political committee supporting the same candidate.
- *Contributions for Elections Not Held.* The Commission addressed the question of whether contribution limits and reporting requirements apply to an election not held because the candidate is unopposed or was nominated or elected in a previous election.
 - *Joint Contributions.* The agency considered several issues related to contributions by more than one individual on a single written instrument, such as a joint contribution by spouses.

The Commission planned to continue working on the revision of the contribution limit rules in 1986, building on the extensive work completed during 1985.

Rulemaking Petition on Soft Money

On January 4, 1985, the Commission published a *Federal Register* notice asking for public comment on a rulemaking petition by Common Cause (50 *Fed. Reg.* 477). Common Cause asked that the agency draft regulations on the use of "soft money" in elections, defining "soft money" as:

funds that are raised by presidential campaigns and national and congressional political party organizations purportedly for use by state and local party organizations in nonfederal elections, from sources who would be barred from making such contributions in connection with a federal election, e.g., from corporations and labor unions and from individuals who have reached their federal contribution limits.

In its petition, Common Cause requested that the FEC "initiate a rulemaking proceeding to establish what broader administrative tools, such as additional disclosure requirements, are needed to facilitate the Commission's effective enforcement of the current laws. . . ."

In response to the written comments received on the rulemaking petition, and because of extensive media attention to the role of soft money in Federal elections, the Commission published a notice of inquiry in the *Federal Register* (50 *Fed.*

Reg. 51535, December 18, 1985). In addition to scheduling public hearings for January 29, 1986, the notice sought information and comment on the factual and legal issues raised in Common Cause's petition. Among the topics discussed in the notice was whether the Commission has jurisdiction to regulate the use of soft money or whether legislative amendments would be required. Should regulatory changes be appropriate, the notice asked for suggestions on revisions that would remedy the problem. Finally, the notice called for information on alleged soft money practices to help the agency understand the scope of the problem.

Assistance to Committees

Beginning with the prescription of regulations, which set forth guidelines based on the statute, the agency employs a variety of means to help committees voluntarily comply with the law.

Telephone Assistance

Using the toll-free telephone number (800/424-9530) or local lines, anyone may obtain information about the law directly from Commission staff. Public affairs specialists answer questions and advise callers on what the law requires, citing the statute, regulations and advisory opinions.

Committee workers may also speak to the staff person who reviews the committee's reports (the reports analyst). Familiar with the committee's finances, as well as the law's reporting provisions, the analyst advises the caller on how to report information or correct errors that appeared in previous reports (see "Review of Reports," below).

Advisory Opinions

Any person may formally request an opinion by writing a letter asking the Commission's advice on how the law applies to a specific, factual situation. Anyone else in the same situation as the requester may also rely upon the answers given in an advisory opinion. Of the 36 opinions issued in

calendar year 1985, several are discussed later in this chapter under "Legal Issues."

1985 Conferences

The Commission also helps political committees by conducting conferences where participants attend structured workshops and informally talk to Commissioners and agency staff about problems and concerns. During the fall of 1985, the Commission cosponsored conferences with the Massachusetts and Colorado Secretaries of State. The workshops concentrated exclusively on Federal and State campaign finance laws.

Encouraged by the positive response of attendees (averaging 120 per conference), the Commission expanded the conference program to include workshops designed for particular audiences. In October 1985, the FEC held a one-day conference just for trade associations and other incorporated membership groups. Conducted at George Mason University, the conference was heavily attended by individuals based in the Washington, D.C. metropolitan area.

Publications⁴

The FEC's publications offer still another avenue to political committees and others who seek guidance on the law. For the second consecutive year, the agency received an award from the National Association of Government Communicators for the quality and clarity of its published materials. During 1985, the Commission updated brochures to reflect regulatory changes and published *FEC: The First 10 Years*, a special publication to mark the Commission's tenth year of operation. The report contained graphs displaying campaign finance data from 1978 through 1984 and included a brief history of the campaign finance law.

To ensure that the publications program was meeting the needs of committees and candidates,

⁴For a description of publications produced by the FEC's Clearinghouse on Election Administration, see Appendix 8.

the agency asked readers to evaluate its publications and reporting notices on filing deadlines in a 1985 survey sent to the 11,500 subscribers to the FEC's monthly newsletter, the *Record*. (The *Record* is sent to all political committees and others who request subscriptions.) Survey results, based on responses from 1,150 subscribers, were positive overall. Readers found the publications easy to read and useful; they liked the graphs and charts; they said that the notices provided essential information well in advance of report dates; and they offered ideas for new articles and brochures.

Review of Reports

The Commission reviews all campaign finance reports to ensure accurate and complete disclosure of financial activity and to encourage compliance with the law's reporting provisions.

If the agency discovers a problem in the course of reviewing a report, it sends a letter to the committee requesting additional information. The committee then has the opportunity to amend its report voluntarily and help preserve the integrity of the public record. If a committee receives such a letter (called an RFAI), it should call the reports analyst who signed the letter. Cooperation between the committee and the Commission often results in the settlement of a potential compliance matter without further action by the agency. And, in cases where the Commission must pursue legal action, a committee's attempts to correct a mistake are considered mitigating circumstances by the Commission when it deliberates on the matter.

In an effort to catch errors earlier, and thus notify committees more quickly, the Commission completed review of reports for the 1983-84 election cycle five months faster than it had for the 1981-82 cycle. The table below summarizes the review process over the past four calendar years.

Reports Review Activity

	1982	1983	1984	1985
Number of committees reviewed	2,807	5,510	3,906	6,454
Number of reports reviewed	20,598	39,837	30,154	46,905
Number of reports receiving RFAIs	4,633	5,319	6,292	7,414
Presidential	5	78	246	117
Senate	444	392	496	276
House	2,106	1,403	2,302	1,374
Party	399	413	714	858
Nonparty (PACs)	1,658	2,989	2,494	4,729
Other	21	44	40	60

Enforcement

Possible violations of the Federal campaign finance law are brought to the Commission's attention either internally—through its own monitoring procedures (and referrals from other government agencies)—or externally—through formal complaints originating outside the agency. Potential violations receive case numbers and become MURs, Matters Under Review.

The law requires that all phases of the MUR process remain confidential until a case is closed and put on the public record. The respondents (those alleged to have violated the law) are afforded a reasonable opportunity to demonstrate that no action should be taken against them. If the Commission, after investigation, believes there is sufficient evidence to show that a violation occurred, the agency must try to resolve the matter informally through a conciliation agreement with the respondent. (Conciliation may also be initiated by the respondent.) If unable to reach agreement, the agency may try to enforce the matter through litigation.

Processing MURs⁶

The Commission approved revised enforcement procedures (effective June 3, 1985) to expedite the MUR process. The new procedures are intended to speed up the flow of work, focus issues arising from compliance cases more clearly and obtain more timely replies from respondents.

The new procedures tighten deadlines for completing internal FEC reports on MURs. They also reduce extensions of time granted to respondents from 30 days to 20 days, unless the respondent submits a formal, written request, which is then voted on by the Commissioners. To accelerate the

conciliation process, the procedures allow the Commission to file a civil suit against the respondents after 30 days of conciliation negotiations, if they do not appear fruitful, instead of conducting negotiations the full statutory period of 90 days.

Commission efforts to handle MURs more efficiently were successful. While the average time taken to complete a MUR in fiscal year 1984 was 251 hours, in fiscal year 1985, the average dropped to 168 hours per MUR. The table below compares the MUR caseload over the past six calendar years.

Caseload of MURs

	1980	1981	1982	1983	1984	1985
Cases pending at beginning of year	152	214	113	93	78	172
Cases opened during year	255	66	113	103	283	257
External	133	24	78	42	163	51
Internal	122	42	35	61	120	206
Cases closed during year	193	167	133	118	189	292
External	91	64	67	58	103	97
Internal	102	103	66	60	86	195
Cases pending at end of year	214	113	93	78	172	137

⁶Litigation related to the processing of MURs is summarized under "Legal Issues," page 14.

Revised Regulations on MUR Procedures

The Commission asked for public comment on four major issues and other aspects of the enforcement rules (11 CFR Part 111) in a May 22, 1985, *Federal Register* notice (50 *Fed. Reg.* 21077). The issues had been raised by public groups, by individuals involved in MURs and by Commissioners themselves.

One issue concerned whether the agency should, in the case of externally generated complaints, provide respondents with a separate statement explaining the factual and legal basis for the agency's "reason to believe" finding. Such a statement is automatically sent to respondents of internally generated MURs, but only a copy of the complaint is mailed if the MUR is initiated by a member of the public. Under current procedures, the complaint is considered adequate notice although it may not fully or clearly state the issues. As an alternative, the advance notice proposed that the agency send the respondent a statement analyzing those issues not adequately explained in the complaint.

Another question raised in the *Federal Register* notice was whether the Commission should incorporate in its rules a revised internal procedure concerning extensions of time for respondents. (The revised internal procedures are described above.)

The notice also addressed the issue of the legal liability of committee officials. Under the Federal Election Campaign Act, the Commission may take action against candidates and committee officials for possible violations of the law. In August 1983, the Commission decided to name candidates and committee treasurers (in their official capacities) as respondents in compliance actions brought against their committees (Agenda Document 83-119). In May 1984, the agency decided that, even if alleged violations occurred during the tenure of a past treasurer, the Commission would nevertheless name the current treasurer (in his or her official capacity) as a respondent (Agenda Document 84-79). The question posed in the notice was whether the Commission should in-

clude these procedures in its regulations as a way of providing notice to potential respondents.

Finally, the notice asked for comments on whether to include in the revised rules certain internal procedures and review standards concerning requests for stays of FEC determinations concerning the repayment of public funds.

The agency reviewed comments submitted in response to the advance notice and plans to publish a notice of proposed rulemaking on the compliance regulations in 1986.

Late Filers

Continuing its policy of rigid enforcement with regard to late filers, the Commission handled numerous cases against political committees that were late in filing reports. Civil penalties attached to these MURs reflected the Commission's view that late filing thwarts the purpose of disclosure.

Legal Issues

During 1985, a number of legal issues were clarified through litigation and advisory opinions.⁶ This section first summarizes litigation related to FEC enforcement procedures, including one case arising from a Freedom of Information Act request. Another suit concerns voter publications paid for by a nonprofit corporation.

Corporate involvement in Federal elections was the predominant theme of advisory opinions (AOs) issued in 1985. These and other issues addressed in AOs are discussed later in the section.

Dismissal Date of Complaint

Under the campaign finance law, a suit challenging the FEC's dismissal of a complaint must be filed with the U.S. District Court for the District of Columbia within 60 days after the MUR is dismissed (2 U.S.C. Section 437g(a)(8)(A)). Two

⁶Court cases concerning public funding, including a Supreme Court case, are discussed in Chapter 1.

D.C. district courts reached different conclusions as to when the 60-day period begins to run. In three cases (*Common Cause v. FEC*, *Golar v. FEC* and *Citizens for Percy v. FEC*), one court concluded that the 60 days begin, not on the day the Commission takes final action, but on the day the complainant actually receives the notice of dismissal from the FEC. Based on this ruling, the court dismissed the *Percy* suit, but agreed to hear the other two suits.

In *Antosh v. FEC*, another D.C. court reached a different result. In a suit to review a conciliation agreement entered into by the Commission, the district court concluded that the 60-day period for filing suit began on “the date the Commission approved the conciliation agreements and they became effective.” Finding that the matter had been filed within 60 days of that date, the court agreed to hear the case.

Audits

Under the Federal campaign finance law, the Commission is required to audit public funding recipients.⁷ The agency is also authorized to conduct two other types of audits. Under Section 438(b) of the Federal Election Campaign Act, the Commission may audit any political committee whose reports have not met threshold compliance standards. Section 437g(a)(2), on the other hand, authorizes the agency to conduct audits as part of its investigations into alleged violations of the law by respondents in MURs. One suit filed in 1985 challenged the Commission’s audit authority. A second suit concerned a committee’s effort to obtain the Commission’s internal threshold requirements for auditing committees (under Section 438(b)).

Section 437g(a)(2) Audit. In papers filed with the U.S. District Court for the Northern District of Texas, the Friends of Phil Gramm (the Committee) alleged that, based on a complaint filed against

the Committee and on information gathered through internal procedures, in March 1985 the Commission found “reason to believe” that the Committee had violated several provisions of the Federal Election Campaign Act. The agency then authorized an audit of the Committee to investigate whether the alleged violations had occurred. (The “reason to believe” finding is a statutory prerequisite to an investigation into possible violations.)

On June 19, 1985, the Gramm Committee asked the district court to stop the FEC audit. The Committee claimed that, under Section 438(b) of the Act, the Commission was required to begin the audit within a specified period of time. Because these deadlines had passed, the Committee argued, the FEC had no statutory authority to conduct the audit. The Gramm Committee also contended that the Commission was required to attempt conciliation before conducting the audit. Waiting for the court’s decision, the Committee refused to provide documents the Commission had subpoenaed in connection with the audit.

In its memorandum opinion of October 18, 1985, the Texas court granted the FEC’s motion to dismiss the suit filed by the Gramm Committee. The court noted that the time limit of Section 438(b) “is inapplicable to an audit scheduled under §437” and found that the Gramm audit was “well within its [§437’s] parameters.” Rejecting the Committee’s claim concerning conciliation, the court stated that “the FEC is entitled to conduct its audit and gather the necessary information . . . before it attempts to conciliate with the violator.” Later that month, on October 31, the court decided that the Gramm Committee was required to comply with the FEC’s subpoena.

Section 438(b) Audit. In 1984, the Commission authorized an audit of the Fund for a Conservative Majority (FCM) because its reports did not meet the Commission’s threshold requirements for substantial compliance with the law. FCM then asked the Commission to disclose the threshold requirements as well as staff recommendations

⁷See Chapter 1, page 5.

detailing FCM's failure to meet those requirements. The request was made under the Freedom of Information Act (FOIA). When the agency refused to disclose the materials, FCM filed suit in the U.S. District Court for the District of Columbia, challenging the FEC's refusal.

On February 26, 1985, the court upheld the FEC's action and ruled that the requested information was exempt from disclosure under the FOIA. One provision of the FOIA (Section 552(b)(2)) exempts matters related to internal practices. The court found that the information was "predominantly internal" and did not constitute "secret law." "The plaintiff's argument that it is 'in the dark' as to how to pass that review [i.e., an FEC review of its reports] is especially weak in light of the many letters it has received from the Commission, advising and pointing out apparent reporting inconsistencies and irregularities."

Further, the district court agreed with the Commission that disclosure of the threshold requirements "would enable unscrupulous political committees to tailor their reports to avoid being audited, and ignore statutory reporting requirements that are not central to the internal review procedures."

Corporate Voter Publications

Under 2 U.S.C. Section 441b, an incorporated organization may pay for partisan communications directed to certain individuals associated with the organization (i.e., its restricted class). Partisan communications distributed to the general public, however, result in prohibited corporate expenditures. In response to a complaint filed with the Commission, the agency found probable cause to believe that the Massachusetts Citizens for Life (MCFL), a nonprofit corporation, had made prohibited corporate expenditures by printing and distributing partisan communications to the general public. In September 1978, MCFL published material that exhorted readers to "vote pro-life" and identified by name all candidates it considered to be pro-life. MCFL had not

only mailed free copies to thousands of individuals outside its restricted class but also left copies in public areas for general distribution. After unsuccessfully attempting to conciliate the matter, the FEC filed suit against MCFL in the U.S. District Court for the District of Massachusetts.

On June 29, 1984, the district court held that MCFL's spending for the 1978 publication (and a subsequent supplement) did not constitute prohibited corporate expenditures, as defined under Section 441b(b)(2). Alternatively, the court stated that, if MCFL's publication costs were not exempt from Section 441b's prohibition on corporate expenditures, then the provision would be unconstitutional, as applied.

The FEC appealed this decision and, on July 31, 1985, the U.S. Court of Appeals for the First Circuit overturned the district court's ruling that the publication costs were not prohibited corporate expenditures. The court, however, did affirm the lower court's judgment in favor of MCFL, but on the ground that Section 441b, as applied to MCFL's expenditures, was unconstitutional. The appeals court said that there was no substantial government interest (i.e., to prevent corruption or the appearance of corruption) in prohibiting MCFL's expenditures for the publications. "Because MCFL did not contribute directly to a political campaign, MCFL's expenditures did not incur any political debts from legislators." The appeals court concluded that "the application of section 441b to indirect, uncoordinated expenditures by a non-profit ideological corporation expressing its views of political candidates violates the organization's First Amendment rights."

The Commission appealed this decision to the U.S. Supreme Court, which, on January 13, 1986, agreed to hear the case.

Contribution Limits

A number of advisory opinions (AOs) offered guidance on the application of the law's contribution limits.

Corporate Merger. Under the campaign finance law, political action committees (PACs) established by a parent corporation and its subsidiaries are affiliated committees. Affiliation affects how much the committees may contribute since contributions made by affiliated committees count against one, shared limit. How do the contribution limits apply when two previously unaffiliated PACs, each operating under a separate limit, become affiliated as a result of the merger of their corporate sponsors? This was the situation presented in AO 1985-27.

In this opinion, the Commission said that the respective PACs of R.J. Reynolds Industries and Nabisco Brands became affiliated, and thus subject to a single limit, when Reynolds gained a controlling interest in Nabisco. The PACs would have to aggregate the contributions they had each made before becoming affiliated with contributions they made afterwards.

Commissioner Lee Ann Elliott filed a dissenting opinion in which she concluded that the PACs became affiliated on a later date, when the merger agreement was ratified by stockholders.

Contributions Received After Election. Representative Joe Kolter asked the Commission how he should treat a contribution intended for his 1984 general election but received and deposited the day after the election. Would the contribution count against the contributor's limit for the general election, or would it have to be applied to the limit for Mr. Kolter's next election, the 1986 primary? In AO 1985-5, the Commission decided that the contribution, made by a check dated October 29, would have to be charged to the contributor's limit for the 1986 primary because Mr. Kolter's committee did not receive the contribution until after the general election and because the committee had no outstanding debts at that time.

The Commission based this conclusion on several past advisory opinions which used the "date of receipt" of a contribution and the absence of committee debts as the basis for

determining which election the contribution would count against.

In a concurring opinion, Commissioner Thomas E. Harris noted his "concerns about an approach that focuses on the date of receiving rather than the date of making the contribution. . . ." He went on to state: "It would better effectuate the contributor's intent and relieve recipient committees of a significant administrative burden if the Commission were to rely solely on the date a contribution was made for determining the election to which it is attributable. I would construe the date of 'making' to be the date the contribution left the control of the contributor." Mr. Harris concluded that "rather than suddenly reversing the course taken since 1977 in the context of this advisory opinion, the most prudent course for resolving these issues is through a rulemaking proceeding."⁸

Contributions from Spouses. Some contributors who had purchased tickets to a fundraiser held by the Steve Bartlett Congressional Campaign Committee later made additional contributions to the Committee which caused them to exceed the \$1,000 per-election limit. The Committee asked the Commission if it could reattribute the excessive amounts to donors' spouses. To carry out this plan, the Committee proposed sending a letter and contribution reattribution form to those married individuals who had made excessive contributions. The letter would explain the contribution limits and the donor's option to reattribute the excessive portion of the contributions to his or her spouse. The contribution reattribution form, to be returned to the Committee, would include each spouse's signature and information on the reattributed contribution.

In its response, AO 1985-25, the Commission said that the letter and form would satisfy FEC regulations governing contributions from

⁸In 1985, the Commission began to revise its regulations dealing with contribution limits. See page 9.

spouses and contributions from more than one person using the same check. However, to avoid circumvention of the contribution limits, the opinion said that the Committee, among other things, would have to give contributors the option of asking for a refund of the excess amount. Furthermore, because FEC regulations require contributions that appear to be illegal to be refunded "within a reasonable time" (11 CFR 103.3(b)), the Commission said that "[a]ny refund made within 10 days of the receipt of the donor's request will be presumed to have been made promptly." If a contributor did not respond to the letter, the Committee would have to make the refund within 30 days after receiving the excess contribution.

Party Expenditures

National party committees may contribute directly to candidate committees and, additionally, make limited expenditures on behalf of the party's general election nominees. In AO 1985-14, the Commission had to decide whether political advertisements (via radio, television and direct mail) planned by the Democratic Congressional Campaign Committee (DCCC) would be allocable to specific candidates and thus be considered contributions or party expenditures, subject to limits, or whether, instead, the ads would be considered operating expenditures, not subject to any limits.

DCCC's proposed ads, scheduled for release in June and September 1985, criticized the records of Republican Congressmen and were intended to influence the 1986 election process. (The Commission emphasized that the opinion was limited to the timetable specified by the DCCC). The DCCC planned to disseminate the ad campaign in 20 to 100 Congressional districts represented by Republican Congressmen, some of whom were not announced candidates for 1986. Additionally, in some districts, there would be no announced or qualified Democratic candidates.

In analyzing the scripts and materials for the proposed ad program, the Commission made the following determinations:

- Ads that referred to "Republicans in Congress" as a group would result in operating expenditures, regardless of whether they included an electioneering message urging the audience to "Vote Democratic."
- Ads that referred to "your Republican Congressman" but that did not include the "Vote Democratic" statement would also be considered operating expenditures.
- Direct mail ads that referred to a specific Republican Congressman by name (and that would be disseminated in that Congressman's Congressional district), with or without the "Vote Democratic" message, would result in either contributions or party expenditures on behalf of the eventual Democratic nominee and would therefore be subject to the relevant limits.

With respect to radio and television ads that used both the "your Republican Congressman" wording and the "Vote Democratic" statement, the Commissioners, by a tie vote, could not agree on a determination.

Incorporated Campaign Firm

B.A.D. Campaigns, an incorporated campaign consulting firm, planned to mail slate cards to the general public shortly before the 1986 California primary elections. The slates would urge the voter to support the Federal and State candidates listed on the card. Early in 1986, the firm would decide which Democratic candidates to endorse on the slates. The firm would then offer the chosen candidates the opportunity to purchase additional advertising space. Endorsed candidates, however, would be listed even if they did not purchase special publicity.

In AO 1984-62 (issued in 1985), the Commission said that, by listing nonpaying Federal candidates on a slate that carried a general electioneering message, B.A.D. Campaigns would be providing something of value to those candidates in the form of free campaign advertising. This would

result in prohibited expenditures (and in-kind contributions) of corporate funds in a Federal election.

Purchase/Sale of Campaign Computer Systems

In two opinions involving the sale or purchase of computers, the Commission offered guidance concerning transactions between candidate committees and corporations.

Sale of Computer System. In AO 1985-1, the Commission said that the Ratchford for Congress Committee could sell its computer system, at the usual and normal charge, to a corporation or other potential buyer, assuming the Committee terminated its operations shortly after the sale.

The Commission noted that the opinion might not apply if the Committee sold the computer system but remained in existence as a committee. In a previous opinion, AO 1983-2, the Commission concluded that business or commercial-type ventures of ongoing political committees are simply another form of fundraising, the proceeds of which are subject to the law's prohibitions and limits.

Joint Purchase of Computer System with Corporation. The Commission determined in AO 1985-19 that Congressman Vallely's campaign would be prohibited from jointly purchasing a computer system with a corporation. Under the proposed arrangement, the Committee would have paid only half the cost of the system but would have had unrestricted access. This benefit would have resulted in a prohibited contribution from the corporation to the Committee.

Use of Corporate Facilities

General Mills, Inc. asked the Commission whether it could distribute to its employees some election-related materials written by an employee. (General Mills would not review or approve the materials.) In AO 1985-26, the Commission concluded that General Mills could provide the serv-

ice as long as it was reimbursed by the employee. Under Section 114.9(c) of FEC regulations, a person who uses corporate facilities to produce materials in connection with a Federal election is required to reimburse the corporation the normal and usual charge within a commercially reasonable time. Since the use of corporate facilities for labeling and distributing the literature could "be viewed as part of the process of producing the materials," the Commission concluded that Section 114.9(c) would apply.

Unincorporated Organization's Establishment of PAC

As an exception to the law's broad prohibition on corporate involvement in connection with Federal elections, a corporation may underwrite the costs of establishing and administering a political committee, referred to as a separate segregated fund (SSF) and popularly called a corporate PAC (political action committee). In addition to using treasury funds to set up and run the SSF, the sponsoring corporation may pay the SSF's expenses for soliciting contributions.

The National Football League (NFL) asked the Commission if it could take advantage of this exception by forming an SSF, despite its status as an unincorporated membership group. In AO 1985-24, the Commission said that the NFL was not eligible to establish an SSF because the exemption applies only to incorporated membership groups. The opinion noted that the different treatment that the law accords unincorporated and incorporated organizations was upheld by the Supreme Court in *California Medical Association v. FEC*.

Eligibility for Corporate Solicitation

An SSF may solicit contributions only from certain individuals who are related to the SSF's sponsoring organization, i.e., the restricted class. Several 1985 opinions helped identify which individuals would be included in the restricted class.

Solicitation of Affiliate's Personnel and Stockholders. Under the campaign finance law, a corporation may solicit its own executive and administrative personnel and stockholders and those of an affiliate. Anheuser-Busch Companies, Inc. asked the Commission if its separate segregated fund could solicit contributions from the executive and administrative personnel of wholesale distributors who had equity agreements with Anheuser-Busch, Inc., a subsidiary of the parent corporation. In AO 1985-7, the Commission concluded that the degree of influence Anheuser-Busch held over the wholesale distributors was insufficient to establish affiliation. Therefore, the wholesalers' personnel could not be solicited by the SSF. In reaching this determination, the Commission considered two factors highly relevant: 1) the lack of the corporation's power to choose the wholesalers' managers and 2) the right of the wholesalers to market the products of other brewers.

In AO 1985-31, on the other hand, the Commission found that affiliation did exist between CIGNA Corporation, an insurance firm, and COMPAR insurance agencies. The material difference between the situation presented in this opinion and the situation in the Anheuser-Busch opinion was that the COMPAR agencies could sell only CIGNA insurance (except in special cases, and then only with the prior approval of CIGNA). In addition to this exclusive product factor, the Commission found other evidence of CIGNA's direction and control over COMPAR agencies. For example, while a COMPAR agency could underwrite, price and issue insurance policies, CIGNA reviewed the agency's exercise of this authority and could revoke it. Furthermore, COMPAR agencies were entitled to extensive management and financial assistance from CIGNA. Because COMPAR agencies constituted affiliates of CIGNA, their stockholders and executive and administrative personnel could be solicited for contributions to CIGNA's SSF.

Commissioner Thomas E. Harris dissented from AO 1985-31, as he had from past opinions

presenting similar situations, "largely because I do not feel the contractual arrangement in question rises to the level of control achieved by ownership of controlling shares and the attendant authority to select management." In addition, Mr. Harris pointed out that, as a result of the opinion, any SSFs set up by the COMPAR insurance agencies would have to share one contribution limit with CIGNA's SSF, since affiliated committees are considered one political committee for purposes of the law's limits. Mr. Harris believed the Commission should have explored whether the agencies "would characterize themselves as 'controlled' by CIGNA Corporation. . . ."

Board of Directors. AO 1985-35 considered whether the board of directors of an employee-owned corporation would be considered corporate executives and thus eligible to be solicited for contributions to the corporation's SSF. Only one board member of Wierton Steel was an employee/stockholder. The remainder of the board consisted of outside individuals, most of whom received an annual director's fee (plus reimbursement for expenses incurred in attending board meetings).

The Federal Election Campaign Act defines executive and administrative personnel to mean "individuals . . . paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities." Commission regulations, however, specify that this definition excludes individuals, such as consultants and contractors, whose income tax payments are not withheld from their pay.

Nevertheless, AO 1985-35 stated that "the Commission does not view its regulations as requiring that compensation paid to directors of a corporation be subject to the income withholding tax in order for the directors to qualify as executive or administrative personnel." Accordingly, the Commission concluded that Wierton directors who were paid fixed annual fees would be considered executive/administrative personnel and therefore eligible for solicitation.

Personal Members of Trade Association. In addition to soliciting its executive/administrative personnel for contributions to its SSF, an incorporated trade association may solicit its noncorporate members (and solicitable personnel and stockholders of corporate members that have given prior approval, as discussed below). In its 1982 decision in *FEC v. National Right to Work Committee*, the Supreme Court defined a solicitable member as a person who has some relatively enduring and significant attachment to the organization. Commission advisory opinions have determined that, in order to meet this “organizational attachment” standard, a member must have 1) some right to participate in the governance of the organization and 2) an obligation to sustain the organization through regular, fixed dues payments.

In AO 1985-11, the Commission determined that “personal members,” a new membership class proposed by the Private Truck Council of America, Inc., would not meet the definition of “member” and thus could not be solicited for contributions to the Council’s SSF. Personal members would not qualify as members because, although they would pay dues, they would lack sufficient rights to govern the Council. Specifically, personal members would have no voting rights and, although they would be eligible for election as Council directors, their representation on the governing body was not assured.

Trade Association’s Solicitation Approval Form

In order to request contributions to its SSF from solicitable personnel and stockholders of its corporate members, a trade association must first obtain written permission from the corporation. Once a member corporation grants the approval, it may not authorize solicitations by any other trade association for that year. In AO 1984-61 (issued in 1985), the Commission said that the Society of American Florists could use a single form to obtain corporate approvals for multiple years, rather than a separate document for each

year’s approval. A separate authorizing signature for each year, however, was required on the form.

Use of FEC Information on Contributors

To protect the privacy of individual contributors listed on reports filed at the FEC, the campaign finance law specifically prohibits the use of individual contributor information for soliciting contributions or for commercial purposes. In AO 1985-16, the Commission said that Robert Weiss could not use contributor information obtained from FEC reports to verify the names of contributors contained on a list that he planned to market. (Mr. Weiss had prepared the list he wished to verify without the use of FEC information.) Such use would have increased the commercial value of his list, thereby violating the ban on the commercial use of FEC contributor information.

Clearinghouse on Election Administration

The FEC's National Clearinghouse serves as a central exchange point for research and information regarding the administration of Federal elections. In providing information services to State and local election agencies, the office publishes research studies, conducts workshops and responds to telephone and letter inquiries. During 1985, the Clearinghouse focused on three major projects: a study on Voting System Standards; the implementation of the Voting Accessibility for the Elderly and Handicapped Act; and a guide for local election officials on computerizing election administration. These and other Clearinghouse activities are described below.

Voting System Standards

During 1985, the Clearinghouse worked on a three-phase Voting System Standards project, responding to the need for the development of minimum standards for use by the States in assessing a voting system's reliability, security and performance. Although four types of voting machines are generally used, the Clearinghouse decided to focus first on punchcard and marksense devices, since lever machines are no longer being manufactured and fully electronic systems are not yet widely marketed.

The first volume, scheduled for release in 1986, addresses standards for hardware components, i.e., polling place punching or marking devices, ballot card readers, processors and printers. The hardware standards cover such topics as ballot processing speed and accuracy, equipment maintenance and equipment durability.

The second phase of the study, now under way, is the development of standards for software, such as audit control features and memory requirements. The third phase, also in progress, sets out guidelines for managing the punchcard and marksense voting systems.

Voting Accessibility Act

Congress granted the Commission new responsibilities under the Voting Accessibility for the Elderly and Handicapped Act, signed by the President on September 28, 1984. The Act stipulates that registration and polling places for Federal elections must be accessible to handicapped and elderly individuals. For the next five election cycles, the States will report to the Commission on the accessibility of polling places, giving reasons for the inaccessibility of a site. The Commission will consolidate this information in reports to Congress beginning in 1987, following the 1986 elections.

Although the Act does not assign the FEC the role of developing guidelines or of evaluating States' compliance with the law, the Clearinghouse consulted with election officials and groups representing handicapped and elderly voters in order to gather information of use to States in implementing the Act. The research also helped the Clearinghouse design an FEC form to be used by States in reporting on voting accessibility.

Computerizing Election Administration

The vast majority of election offices today either are using computers in some way or are giving it serious thought. The applications of computers in election administration are now so varied, and their record of success so mixed, that the Clearinghouse has embarked on a three-phase project intended to pool the current wisdom and experience on the subject.

The first phase, *Volume I, Current Applications*, was published in 1985. It provides a brief introduction to using computers effectively and is also intended to facilitate communication among election officials through a survey of approximately 50 jurisdictions that have automated their election functions.

The second phase of the project, nearing completion, presents a design of a totally computer-

ized election system. Election officials may adopt modules of it as needs and resources dictate; they may add capabilities later without restructuring what is already in place.

The third phase, currently under way, suggests appropriate implementation strategies, for example, use of shared versus in-house equipment.

Clearinghouse Panels

On August 5 and 6, two Clearinghouse panels met in Washington—the Advisory Panel, which advises the Clearinghouse on projects and studies, and the Advisory Committee on Voting System Standards, a group formed to help the Clearinghouse on this project. Composed of State and local election officials, the panels shared some of the same members.

In joint sessions, the panels discussed, among other topics, the Voting Accessibility Act, the use of postal change-of-address forms for voter registration, and the State computer access program.⁹

Clearinghouse Publications

The Clearinghouse published several new studies in 1985 and resumed publication of its newsletter, the *FEC Journal of Election Administration*, which had been suspended in 1981 due to limited funds. Appendix 8 lists Clearinghouse publications currently available as well as reports in progress.

⁹See page 7.

Chapter 3 Campaign Finance Statistics

This chapter presents a graphic summary of campaign finance activity for the 1983-84 Federal election cycle. Information depicted in the charts represents final figures on the campaign finance activity of: House and Senate candidates, independent spenders, party committees and political action committees (PACs). The graphs cover activity between January 1, 1983, and

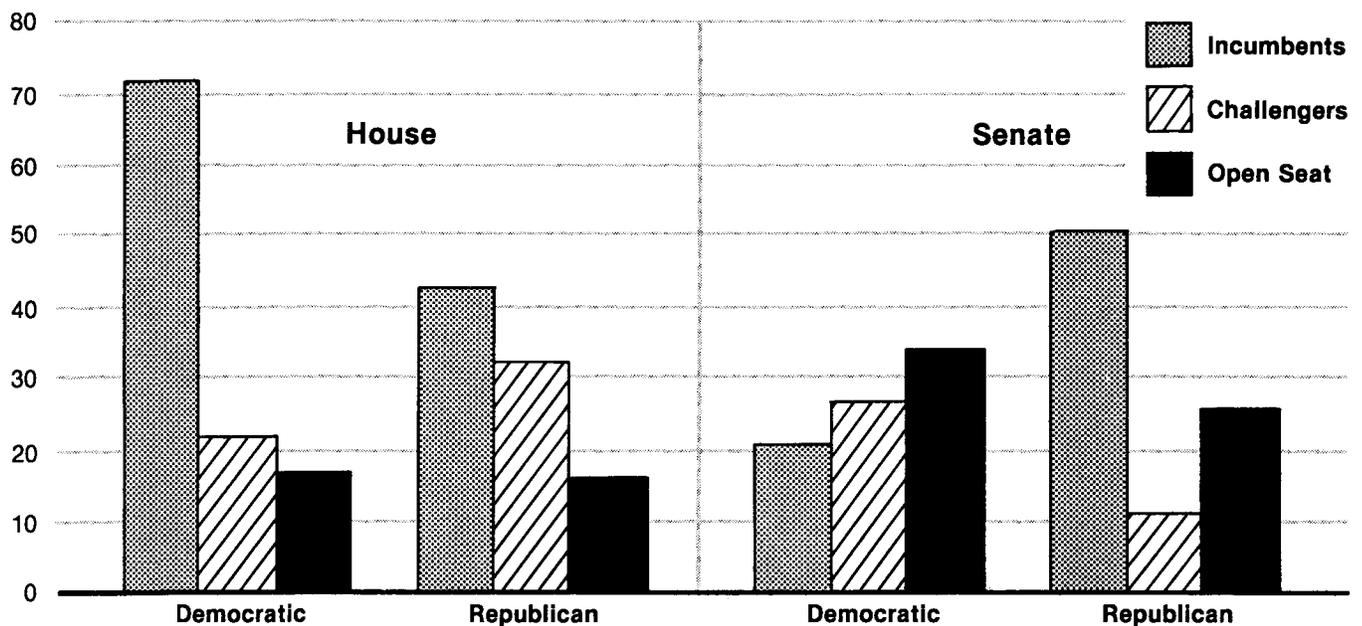
December 31, 1984; the information has been adjusted for transfers among affiliated committees. More detailed information may be obtained from the five-volume study, *FEC Reports on Financial Activity, 1983-84, Final Report*.

In addition, the graphs present preliminary information on the financial activity of Presidential primary campaigns.

House and Senate Candidates

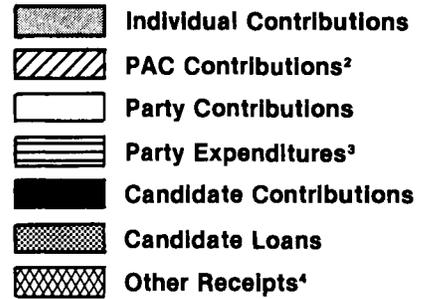
Chart I
Spending by House and Senate Candidates,¹ 1983-1984

Millions of Dollars



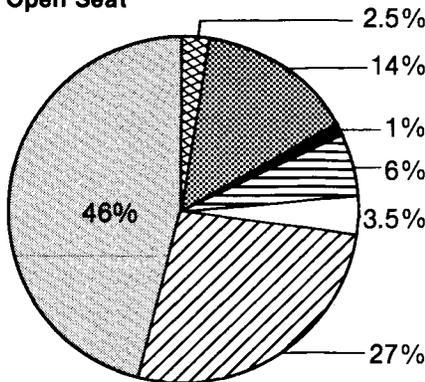
¹Includes spending by House and Senate candidates for 1984 or a future election or for retiring debts of former elections.

Chart II
Sources of Funding,¹ 1983-84

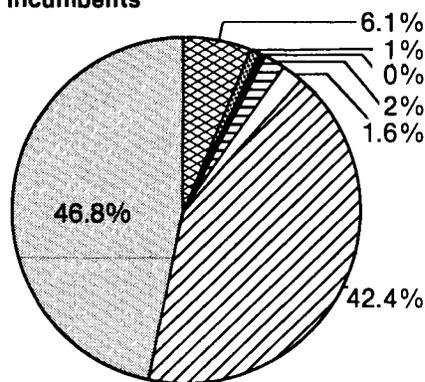


House Candidates

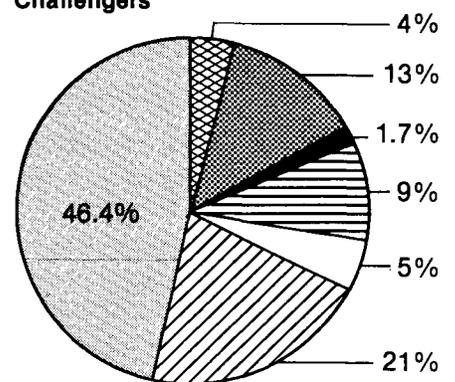
Open Seat



Incumbents

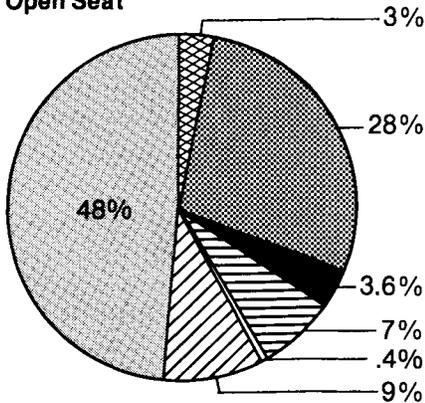


Challengers

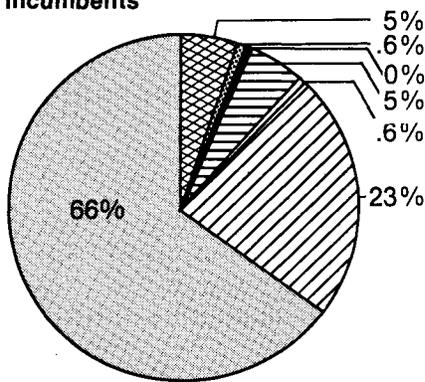


Senate Candidates⁵

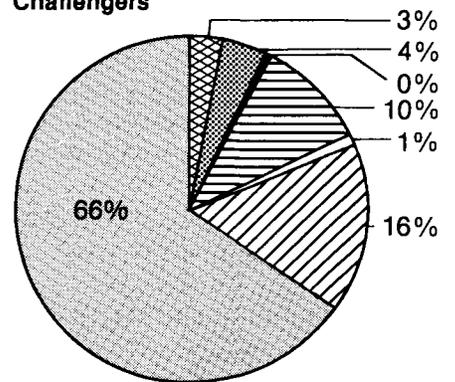
Open Seat



Incumbents



Challengers



¹Chart covers funding for all elections (primary, runoff and general) of those candidates running in the November 1984 general election.

²A "PAC" (or political action committee) is a political committee that is neither a candidate committee nor a party committee.

³"Party Expenditures" are limited expenditures made by party committees on behalf of Federal candidates in the general election. 2 U.S.C. §441a(d).

⁴"Other Receipts" include loans, rebates, refunds, contributions from unregistered entities and other campaign committees, interest and dividends.

⁵Since there are relatively few Senate candidates, total figures on Senate races may be significantly affected by the activity of a single campaign. For example, a West Virginia candidate's loans to his campaign and the North Carolina candidates' large proportion of contributions from individuals have had significant impact on the overall activity depicted in these charts.

Independent Expenditures

Chart III
Independent Expenditures¹ in Congressional Races, 1983-84

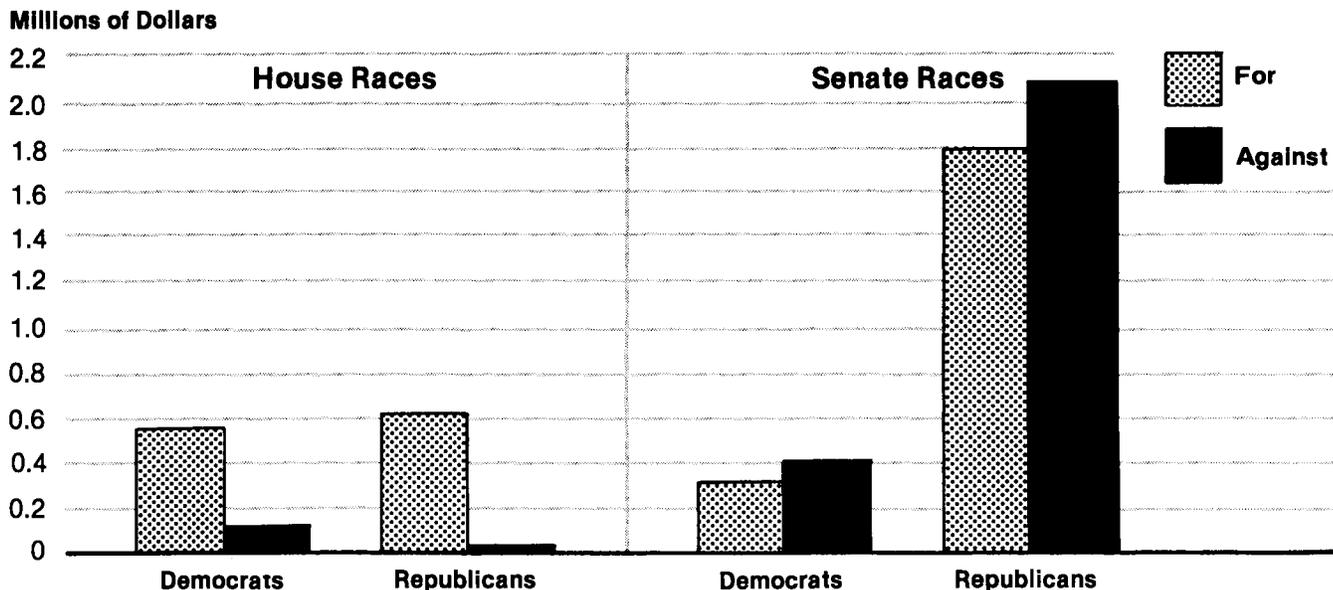
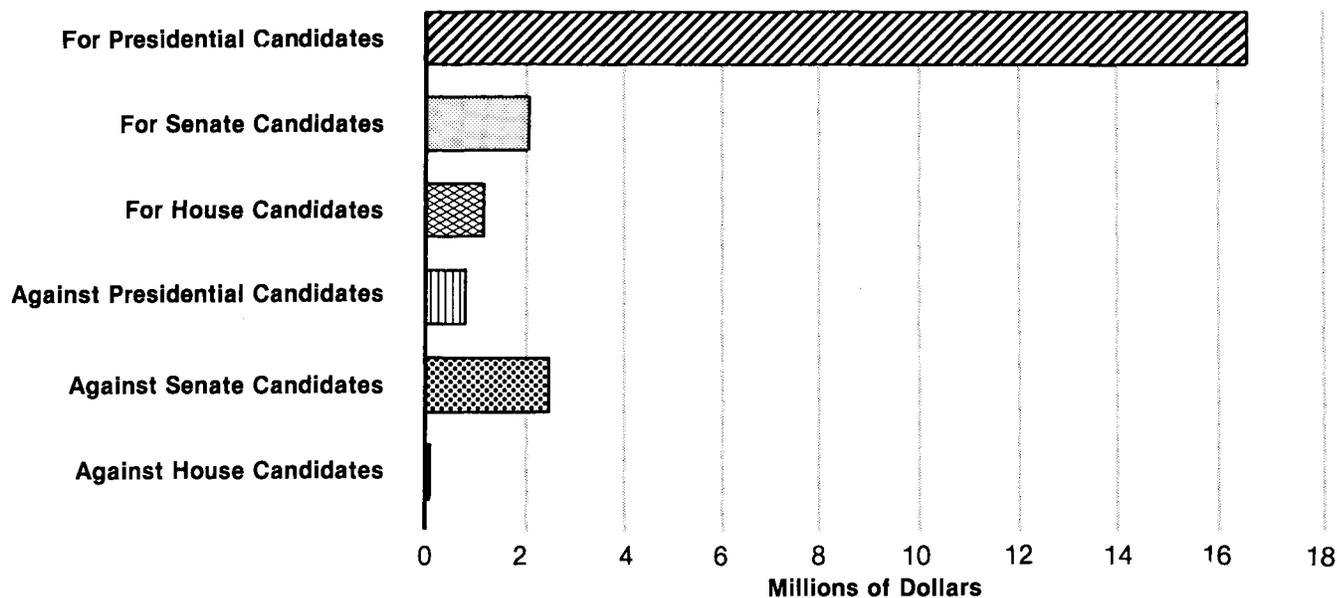


Chart IV
Independent Expenditures¹ in All Races, 1983-84

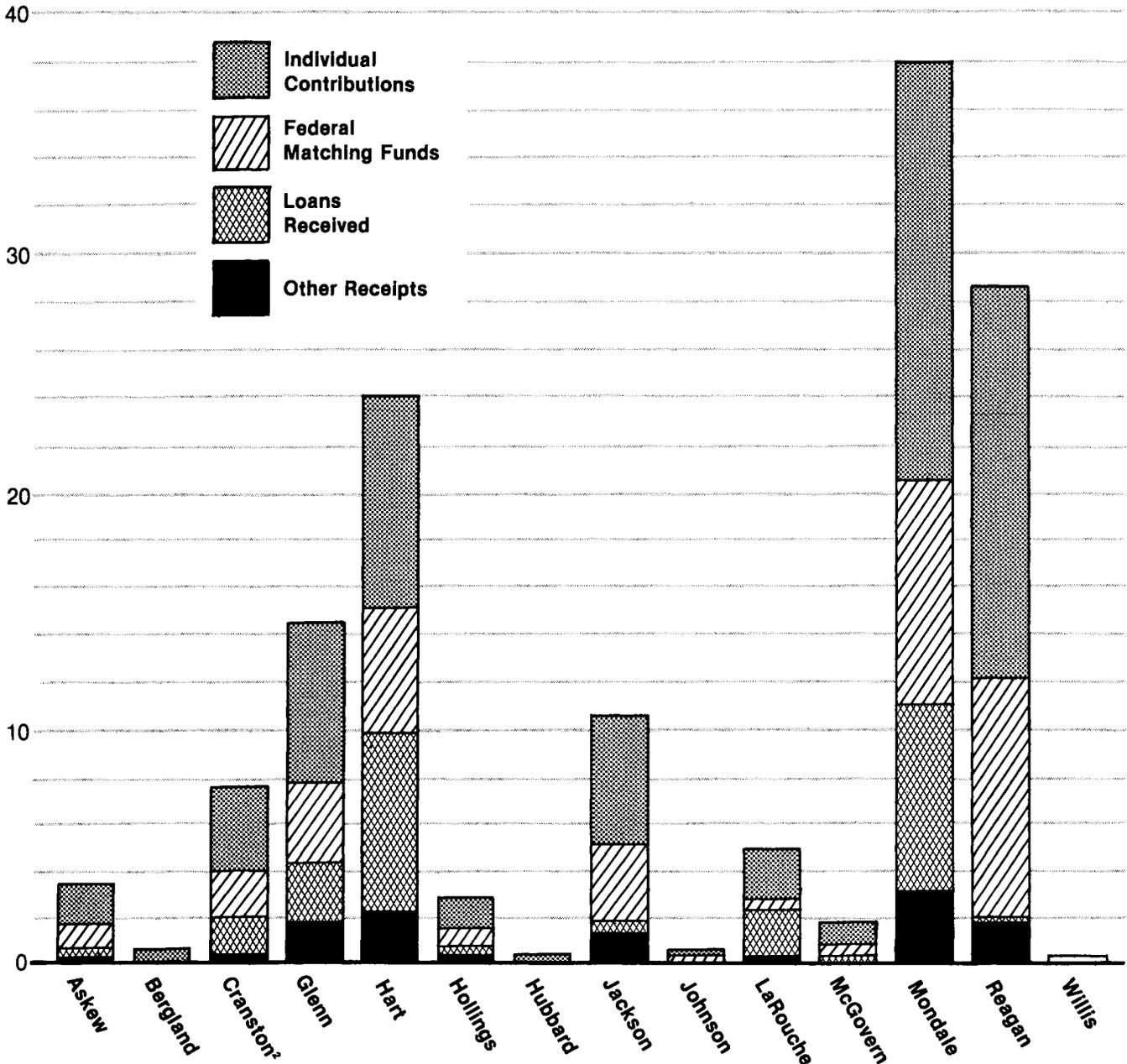


¹Under the Federal election law, an independent expenditure is an expenditure for a communication expressly advocating the election or defeat of a clearly identified candidate. The expenditure must be made without cooperation or consultation with the candidate or his/her campaign.

Presidential Funding

Chart V
Receipts¹ of Presidential Primary Candidates Through 6/30/85

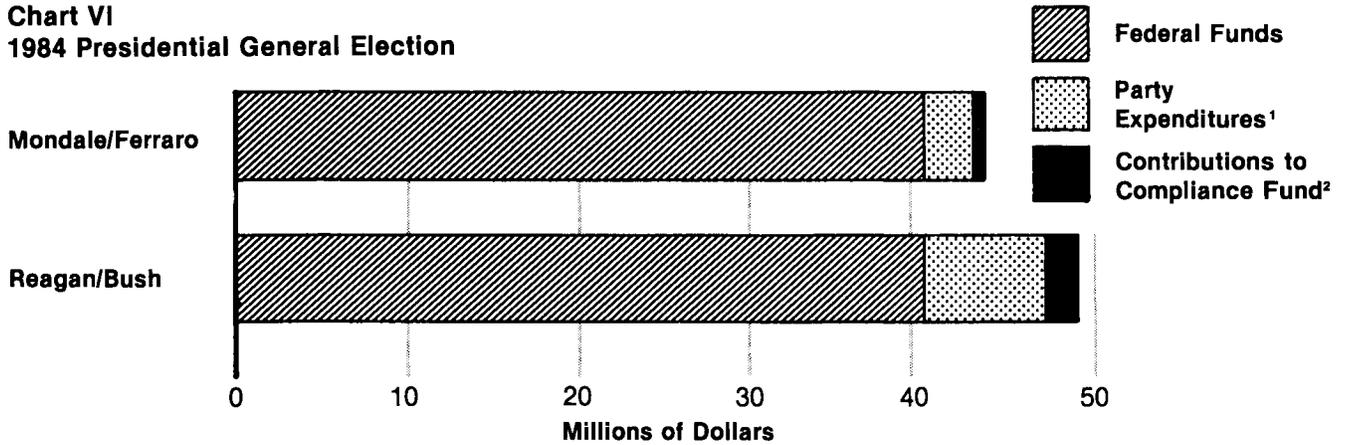
Millions of Dollars



¹Includes total receipts minus transfers between each candidate's authorized committees.

²The Cranston for President Committee has not identified all the sources of funds received during 1984. Consequently, some of the receipt categories may eventually be larger (e.g., individual contributions).

Chart VI
1984 Presidential General Election



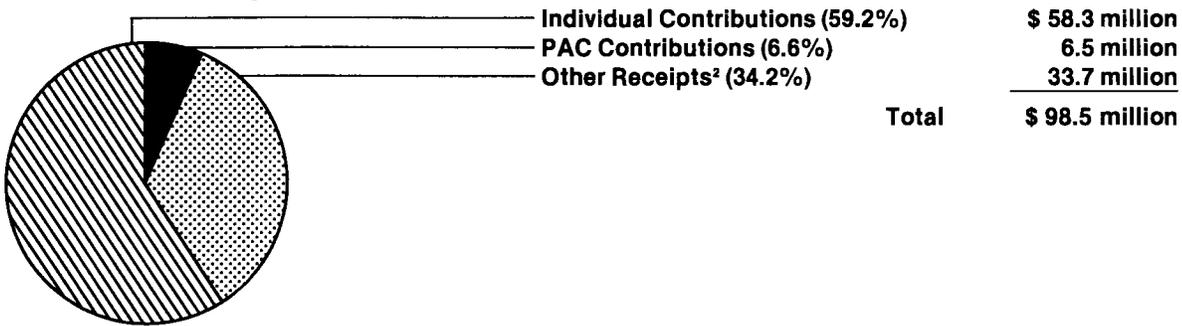
¹See 2 U.S.C. §441a(d).

²Fund supports legal and accounting services related to compliance with the election law.

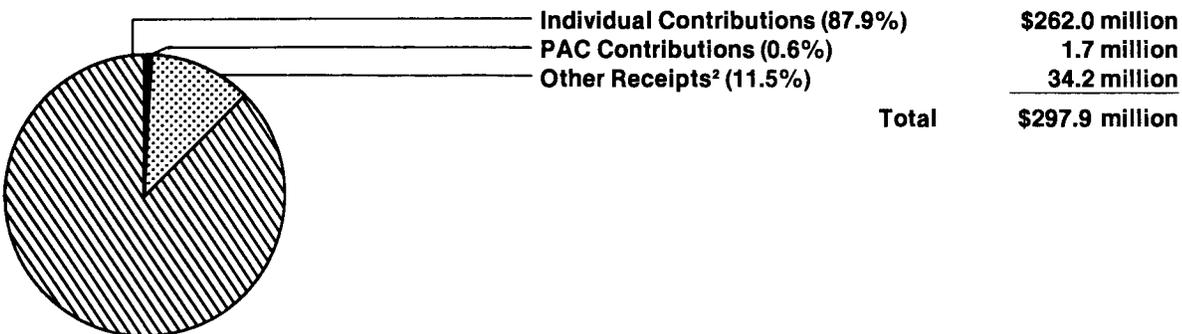
Party Committees

Chart VII
Receipts¹ of Major Parties, 1983-84

Democratic Receipts by Source



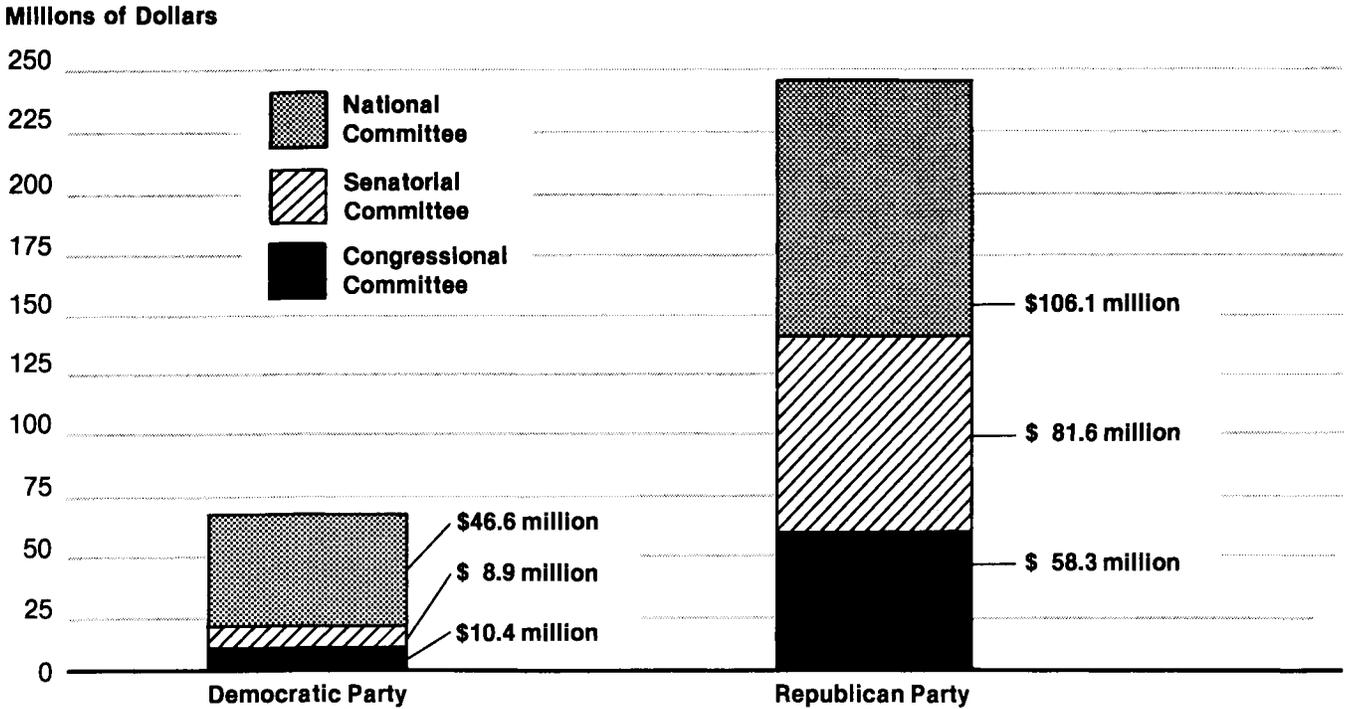
Republican Receipts by Source



¹Includes total receipts minus transfers among each party's committees.

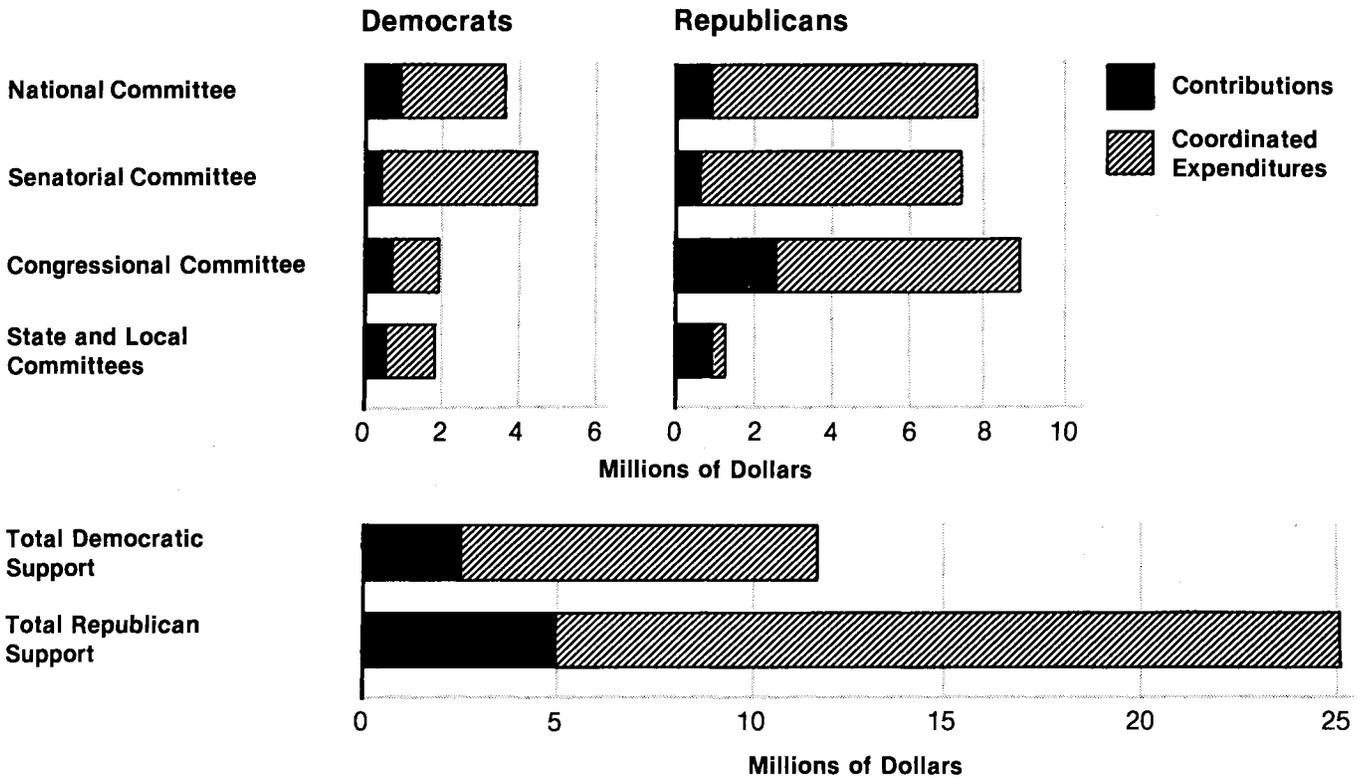
²Other receipts include contributions from other political committees and unregistered organizations (e.g., local party organizations); loans or loan repayments received by party committees; offsets to expenditures; dividends, interest and other miscellaneous income.

Chart VIII
Receipts¹ of National Party Committees, 1983-84



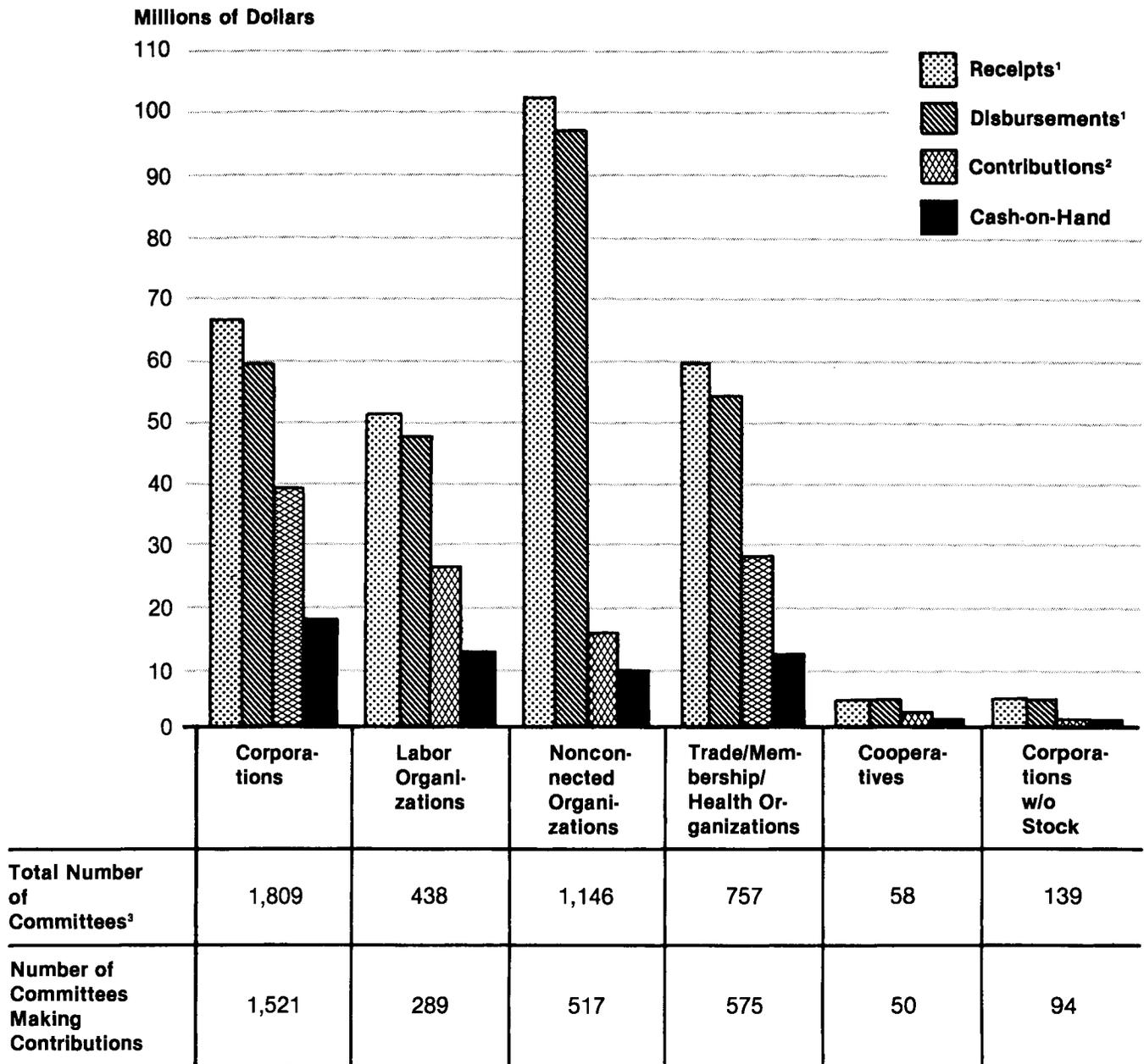
¹Includes total receipts minus transfers between each party's respective committees.

Chart IX
Major Party Support of Federal Candidates, 1983-84



Political Action Committees

Chart X
Financial Activity of PACs, 1983-84



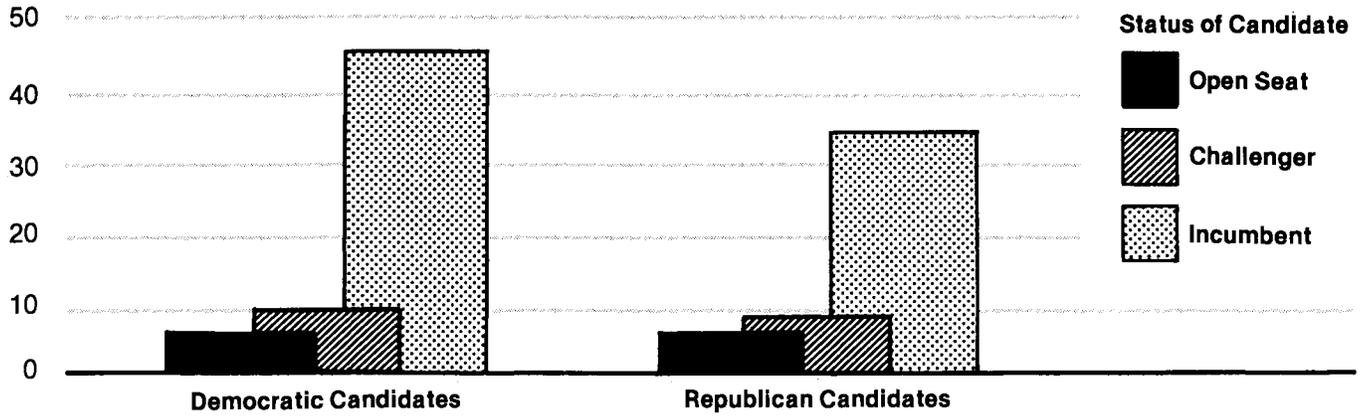
¹Receipts and disbursements do not include funds transferred between affiliated committees.

²Includes contributions to committees of: 1984 House and Senate candidates; and all Federal candidates (for House, Senate and Presidency) campaigning in future elections or retiring debts of former campaigns.

³Includes total number of PACs active in Federal elections at any time between January 1, 1983, and December 31, 1984. Since some committees have terminated, this figure does not represent all committees active as of December 31, 1984.

Chart XI
PAC Contributions to House and Senate Candidates, 1983-84

Millions of Dollars



Chapter 4

The Commission

Commissioners

On August 9, 1985, President Reagan appointed Thomas J. Josefiak to serve as FEC Commissioner during the term ending April 30, 1991.¹ Commissioner Josefiak replaced Commissioner Frank P. Reiche, whose term ended on April 30, 1985, and who continued to serve until Mr. Josefiak was named.

Until his appointment, Commissioner Josefiak served as Special Deputy to the Secretary of the Senate, Jo-Anne L. Coe. (Under the law, the Secretary of the Senate serves as an ex officio member of the Commission.) On September 11, 1985, Secretary Coe named Scott E. Morgan to replace Mr. Josefiak as Special Deputy.

Commission Chairman John Warren McGarry and Vice Chairman Joan D. Aikens served from January through December 1985. On December 18, 1985, the Commission elected Commissioner Aikens as 1986 Chairman and Commissioner McGarry as Vice Chairman. Biographies of all Commissioners appear in Appendix 1.

Administrative Activities

Relocation

On November 25, 1985, the Commission began the first phase of a move to new headquarters—a renovated building located across the street from the FBI. By February 1986, the agency had completed its relocation to its new quarters at 999 E Street, N.W. The Commission decided to move after studying a report by The Cooper-Lecky Partnership, an architectural firm retained by the General Services Administration. The report pointed out numerous fire and safety hazards in the former building and recommended that the agency relocate. The new headquarters provide safe space while expanding areas for the general

¹The President appointed Commissioner Josefiak during a Congressional recess. His nomination is before the Senate for confirmation.

public. The Commission meeting room, the Public Records Office and the library now offer visitors more suitable quarters.

Sunshine Act Regulations

The Commission prescribed revisions to its regulations implementing the Sunshine Act on October 31, 1985, 30 days after their publication in the *Federal Register* (50 *Fed. Reg.* 39968).

Consolidated under 11 CFR Part 2, the revised regulations clarify the distinction between matters that may be exempted from open meeting discussions under the Sunshine Act (discretionary exemptions) and matters that must be exempted under the confidentiality provision of the Federal Election Campaign Act (mandatory exemptions). In keeping with recent court decisions, the revised rules exempt from public meetings any discussion or materials that would reveal FEC enforcement guidelines because such disclosure would risk circumvention of the Act.² Additionally, the rules include a new provision that allows parties to request that a Commission meeting be closed if their interests are directly affected by the discussion. The Commission has discretionary power to close the meeting in such cases.

The revised rules also explain more fully the FEC's procedures for releasing transcripts and recordings of closed meeting discussions once relevant disclosure exemptions cease to apply.

Another provision clarifies that statements made by Commissioners and staff at meetings should not be construed as final FEC determinations or beliefs. The revised rules also make clear that notation voting by Commissioners, a method of expediting consideration of routine matters, is not considered a "meeting."

Employee Conduct Regulations

In an October 21, 1985, *Federal Register* notice, the Commission sought public comment on proposed regulations that would set forth guidelines governing standards of conduct for employees (50 *Fed. Reg.* 42553). The agency's intent in drafting the proposed rules (11 CFR Part 7) was to "facilitate the proper performance of Commission business and encourage citizen confidence in the impartiality and integrity of the Commission."

The proposed rules set out procedures for notifying employees about the standards of conduct and provide for an Ethics Officer to answer their questions. Other provisions specify procedures for reporting and handling alleged violations.

A second subpart describes guidelines governing employee standards, specifying restrictions on employee activities outside the agency. Additionally, this subpart incorporates current FEC procedures that prohibit *ex parte* communications, i.e., informal communications between outside parties and FEC Commissioners and staff concerning pending enforcement matters. The *Federal Register* notice asked for public comment on whether the FEC's current *ex parte* procedures should be expanded to cover communications concerning advisory opinions and regulations.

The final two subparts treat standards of conduct for temporary and former employees.

Reorganization of Information Services

On April 4, 1985, the Commission reorganized the Information Division. Under the new organization, the Press Office and the Clearinghouse on Election Administration, previously part of the Information Division, operate independently. Despite their similarity in providing information, the three offices address distinct audiences with separate demands: the press corps, election administrators and campaign finance practitioners. The reorganization permits the agency to meet their needs more effectively.

²See *Fund for a Conservative Majority v. FEC*, summarized on page 15.

Congressional Oversight

On November 7, 1985, Chairman John Warren McGarry and Vice Chairman Joan D. Aikens appeared at a hearing held by the Subcommittee on Elections of the Committee on House Administration. The hearing provided information to the oversight committee on the agency's implementation of the law. Chairman McGarry presented a written statement summarizing the FEC's recent activities and, with Vice Chairman Aikens, answered the panel's questions. Outside groups and individuals also participated in the hearing, which covered a wide range of topics.

The Commission's Budget

Fiscal Year 1985³

The Commission received a fiscal year (FY) 1985 appropriation of \$12.9 million. This amount, plus \$116,000 in supplemental funds to cover part of the 1985 pay raise, brought the agency's total funding to \$13.016 million. A portion of the funding was earmarked to cover the FEC's one-time relocation expenses. By the end of the fiscal year, the Commission had obligated most of this earmarked money but returned \$340,000 to the Treasury. This amount, which was to cover increased rent at the new facility, was not needed during FY 1985 since the agency's move took place the following fiscal year.

Although it controlled employment levels, averaging 241.8 full-time equivalent positions, the Commission did not sacrifice its output. The FY 1985 workload exceeded that of FY 1984 and agency projections for FY 1985. For example, the agency reviewed 57,463 reports and statements during the fiscal year, an increase of 54.1 percent over FY 1984 and 55.3 percent over the FY 1985 projection.

Fiscal Year 1986

During four congressional hearings held between March and May 1985, Vice Chairman Joan D. Aikens requested a \$12.756 million budget for fiscal year 1986. Accompanied by Chairman John Warren McGarry, Mrs. Aikens testified that the budget request would provide the financial base necessary for "steady-state" maintenance of agency operations through the 1986 elections.

Mrs. Aikens noted that the FEC's current budget represented only a tiny portion of the Federal government's total operating budget, i.e., one one-thousandth of one percent. "Humbling as this reality may be, it does not diminish the critical role the Commission plays in the American political process and the intense scrutiny to which our actions are subjected by the press, the regulated community and the Congress." She noted, for example, that since the FEC had first opened for business 10 years ago, the volume of campaign finance activity monitored by the agency over five election cycles had tripled. Moreover, "the FEC has administered the public funding program for three Presidential elections, assuring proper accountability for more than \$300 million in public money. . . ." The agency has also handled an explosive increase in demand for information from the press and public.

In favorably reporting a \$12.745 million FY 1986 authorization for the FEC in March, the Committee on House Administration noted that the agency had "exercised rigorous control over its budget" and stated that the FEC "should be commended for its excellent efforts in exercising its many responsibilities with a spartan budget and staff." The Senate Committee on Rules and Administration, in May 1985, endorsed an authorization of \$12.605 million for FY 1986. In its report, the Committee expressed its appreciation of "the Commission's straightforward presentation of this year's budget request and of the [FEC's] assurances . . . that it intends to return to the Treasury any funds designated for moving expenses and increased rent that will not be expended for these purposes in the current fiscal year."

³See also Appendix 6.

(As previously mentioned, the Commission returned \$340,000 in FY 1985 funds to the Treasury.)

The House of Representatives failed to pass the Commission's authorization. While the vote was 263 to 160 in favor, a two-thirds majority was required. The Senate did not vote on the authorization bill.

Instead of authorizing funding for the full fiscal year, Congress appropriated \$12.433 million to the agency in a series of continuing resolutions. Because this amount was based on a proposed pay cut that was never enacted, the Commission requested, and the Administration recommended, a supplemental appropriation of \$323,000. That request was still pending at the end of 1985.⁴

Personnel and Labor Relations

During 1985, the Commission continued its third year of on-campus recruitment for entry-level attorneys from a broad spectrum of backgrounds. As a means of implementing affirmative action in its employment practices, the agency sought out minority applicants. For example, FEC staff attended the northeast regional recruitment conference held by the Black Law Students Association.

The agency also took steps to help the career development of FEC employees and began developing seminars designed to inform staff of possible career avenues within the agency.

On the labor relations front, the Commission completed negotiations for two important agreements with Chapter 207 of the National Treasury Employees Union. One consisted of the renegotiation of the master labor agreement between the parties. In a cooperative effort, the agency and the union reached agreement in a few

days, resulting in significant savings in time and money compared with the more typical protracted negotiations.⁵ The other agreement established policies and procedures covering employee working conditions at the agency's new headquarters.

⁴As a result of the Gramm-Rudman-Hollings Act, the President, on February 1, 1986, signed an order that cut the Commission's FY 1986 budget by 4.3 percent (\$535,000) and thus reduced its total funding to \$11.898 million. Because of this measure, the Commission, on March 1, 1986, substantially cut back its disclosure program.

⁵In February 1986, the union ratified the contract, which was approved by the Commission in early March.

Chapter 5 Legislative Recommendations

The Federal Election Campaign Act requires the Commission to transmit each year to the President and Congress “any recommendations for any legislative or other action the Commission considers appropriate. . . .” 2 U.S.C. Section 438(a)(9). The recommendations in this chapter, approved by the Commission in March 1986, reiterate the recommendations submitted in 1985.

Definitions

Draft Committees

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

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

1. *Bring Funds Raised and Spent for Undeclared but Clearly Identified Candidates Within the Act’s Purview.* Section 431(8)(A)(i) should be amended to include in the definition of “contribution” funds contributed by persons “for the purpose of influencing a clearly identified **individual** to seek nomination for election or election to Federal office. . . .” Section 431(9)(A)(i) should be similarly amended to include within the definition of “expenditure” funds expended by persons on behalf of such a “clearly identified **individual**.”

2. *Restrict Corporate and Labor Organization Support for Undeclared but Clearly Identified Candidates.* Section 441b(b) should be revised to expressly state that corporations, labor organizations and national banks are prohibited from making contributions or expenditures “for the purpose of influencing a clearly identified **individual** to seek nomination for election or election . . .” to Federal office.

3. *Limit Contributions to Draft Committees.* The law should include explicit language stating that no person shall make contributions to any com-

mittee (including a draft committee) established to influence the nomination or election of a clearly identified **individual** for any Federal office which, in the aggregate, exceed that person’s contribution limit, per candidate, per election.

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

Volunteer Activity

Section: 2 U.S.C. §431(8)(B)

Recommendation: Congress may wish to consider whether the exemption for volunteer activity, contained in 2 U.S.C. §431(8)(B)(i), was meant to include professional services donated primarily for fundraising purposes rather than for actual campaigning.

Explanation: The Act places no limit on the services that a professional may donate to a candidate. For example, a professional entertainer may participate in a concert for the benefit of a candidate without the proceeds of that concert counting toward the entertainer's contribution limitations. Similarly, an artist may create artwork for a campaign to be used for fundraising or to be disposed of as an asset of the campaign. In both cases, the "volunteer" has thereby donated goods or services the value of which greatly exceeds the amount of the contributions which that individual or any other individual could otherwise make under the law.

Registration and Reporting

Commission as Sole Point of Entry for Disclosure Documents

Section: 2 U.S.C. §432(g)

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

Explanation: A single point of entry for all disclosure documents filed by political committees would eliminate any confusion about where candidates and committees are to file their reports. It would assist committee treasurers by having one office where they would file reports, address correspondence and ask questions. At present, conflicts may arise when more than one

office sends out materials, makes requests for additional information and answers questions relating to the interpretation of the law. A single point of entry would also reduce the costs to the Federal government of maintaining three different offices, especially in the areas of personnel, equipment and data processing.

The Commission has authority to prepare and publish lists of nonfilers. It is extremely difficult to ascertain who has and who has not filed when reports may have been filed at or are in transit between two different offices. Separate points of entry also make it difficult for the Commission to track responses to compliance notices. Many responses and/or amendments may not be received by the Commission in a timely manner, even though they were sent on time by the candidate or committee. The delay in transmittal between two offices sometimes leads the Commission to believe that candidates and committees are not in compliance. A single point of entry would eliminate this confusion. If the Commission received all documents, it would transmit on a daily basis file copies to the Secretary of the Senate and the Clerk of the House, as appropriate. The Commission notes that the report of the Institute of Politics of the John F. Kennedy School of Government at Harvard University, *An Analysis of the Impact of the Federal Election Campaign Act, 1972-78*, prepared for the House Administration Committee, recommends that all reports be filed directly with the Commission (Committee Print, 96th Cong., 1st Sess., at 122 (1979)).

Insolvency of Political Committees

Section: 2 U.S.C. §433(d)

Recommendation: The Commission requests that Congress clarify its intention as to whether the Commission has a role in the determination of insolvency and liquidation of insolvent political committees. 2 U.S.C. §433(d) was amended in 1980 to read: "Nothing in this subsection may be construed to eliminate or limit the authority of the

Commission to establish procedures for—(A) the determination of insolvency with respect to any political committee; (B) the orderly liquidation of an insolvent political committee, and the orderly application of its assets for the reduction of outstanding debts; and (C) the termination of an insolvent political committee after such liquidation and application of assets.” The phrasing of this provision (“Nothing . . . may be construed to . . . limit”) suggests that the Commission has such authority in some other provision of the Act, but the Act contains no such provision. If Congress intended the Commission to have a role in determining the insolvency of political committees and the liquidation of their assets, Congress should clarify the nature and scope of this authority.

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

Prior to 1980, the Commission adopted “Debt Settlement Procedures” under which the Commission reviews proposed debt settlements in order to determine whether the settlement will result in a potential violation of the Act. If it does not appear that such a violation will occur, the Commission permits the committee to cease reporting that debt once the settlement and payment are reported. The Commission believes this authority derives from 2 U.S.C. §434 and from its

authority to correct and prevent violations of the Act, but it does not appear as a grant of authority beyond a review of the specific debt settlement request, to order application of committee assets.

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

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

Waiver Authority

Section: 2 U.S.C. §434

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

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

ly applicable to candidate committees operating under one of the following circumstances:

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

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

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

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

Campaign-Cycle Reporting

Section: 2 U.S.C. §434

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

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

Monthly Reporting for Congressional Candidates

Section: 2 U.S.C. §434(a)(2)

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

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

Principal campaign committees can also have a large volume of receipts and expenditures. This is particularly true with Senatorial campaigns. These committees should be able to choose a more frequent filing schedule so that their reporting covers less activity and is easier to do.

Monthly Reports

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

Recommendation: Congress should consider changing the reporting deadline for monthly filers to some earlier date in the month.

Explanation: Throughout the years, reporters and the public have indicated they would like to see financial data earlier than 20 days after the close of books. In the fast-paced Presidential primary period, in particular, by the time the 20-day report is filed, it is already out of date. In some cases, several primary elections have even passed during this interim. An earlier report would give the public more timely information without unnecessarily burdening the staff of political committees.

Reporting Payments to Persons Providing Goods and Services

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

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

Explanation: The Commission has encountered on several occasions the question of just how detailed a committee’s reporting of disbursements must be. See, e.g., Advisory Opinion 1983-25, 1 *Fed. Election Camp. Fin. Guide* (CCH), para. 5742 (Dec. 22, 1983) (Presidential candidate’s committee not required to disclose the names, addresses, dates or amounts of payments made by a general media consultant retained by the committee); Advisory Opinion 1984-8, 1 *Fed. Election Camp. Fin. Guide* (CCH), para. 5756 (Apr. 20, 1984) (House candidate’s committee only required to itemize payments made to the candidate for travel and subsistence, not the payments made by the candidate to the actual providers of services); *Financial Control and Compliance Manual for General Election Candidates Receiving Public Financing*, Federal Election Commission, pp. IV 39-44 (1984) (Distinguishing committee advances or reimbursements to campaign staff for travel and subsistence from other advances or reimbursements to such staff and re-

quiring itemization of payments made by campaign staff only as to the latter). Congressional intent in this area is not expressly stated, and the Commission believes that statutory clarification would be beneficial. In the area of Presidential public financing, where the Commission is responsible for monitoring whether candidate disbursements are for qualified campaign expenses (see 26 U.S.C. §§9004(c) and 9038(b)(2)), guidance would be particularly useful.

Verifying Multicandidate Committee Status

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

Recommendation: Congress should consider modifying those provisions of the Act relating to multicandidate committees in order to reduce the problems encountered by contributor committees in reporting their multicandidate committee status, and by candidate committees and the Commission in verifying the multicandidate committee status of contributor committees. In this regard, Congress might consider requiring political committees to notify the Commission once they have satisfied the three criteria for becoming a multicandidate committee, namely, once a political committee has been registered for not less than 6 months, has received contributions from more than 50 persons and has contributed to at least 5 candidates for Federal office.

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

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

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

Because candidate committees cannot totally rely on the Commission's Multicandidate Index for current information, they sometimes ask the contributing committee directly whether the committee is a multicandidate committee. Contributing committees, however, are not always clear as to what it means to be a multicandidate committee. Some committees erroneously believe that they qualify as a multicandidate committee merely because they have contributed to more than one Federal candidate. They are not aware that they must have contributed to 5 or more Federal candidates and also have more than 50 contributors and have been registered for at least 6 months.

Local Party Activity

Separate §441a(d) Limit for Local Party Committees in Presidential Elections

Section: 2 U.S.C. §441a(d)

*Recommendation:*¹ Congress should amend the statute to provide a separate limit, under §441a(d),

¹Commissioners McDonald and Harris filed the following dissent: The Commission's legislative recommendation of a separate §441a(d) limit for a local party committee to the Congress would further expand "party building" loopholes already carved by Congress and certain rulings of the Commission. The Commission's recommendation would provide a local party with a small limit of its own in Presidential elections.

This recommendation has nothing to do with the real activities of local parties. We strongly support local parties and will work for any proposal that enhances their efforts to increase participation. This recommendation will only provide a means of circumventing the Presidential expenditure limits.

Presently a local party may make expenditures for get-out-the-vote activities involving volunteers in a Presidential campaign. The recommendation our colleagues have made would in no way build up these local parties and would quite likely make these committees merely another paper entity, existing only in a bank account, for their national party and its Presidential nominee. Section 441a(a)(4) of the FECA allows unlimited transfers between national, State and local committees of a political party. No definition of local party exists in the statute. Each precinct could form as many paper committees to receive national money as the national party desires. If the Commission's recommendation is enacted, an unlimited number of local committees could be formed and the national party could transfer the local limit to each local entity. This process could provide unlimited funds to a Presidential candidate in whatever locale desired, completely undermining the delicate balance constructed by Congress to provide each major party candidate for President with an equal amount of public funds. Under the present system, each party has ample ability to participate in the Presidential campaign through get-out-the-vote activities and the national party §441a(d) limit (which is spent in local communities around the country selected by the national party). Local party headquarters are run on a ticket-wide basis and include the Presidential nominee in their efforts. Already corporate and labor funds are contributed to State and local parties to be used in a ratio of soft and hard money in the get-out-the-vote efforts in areas which are critical to the Federal candidates. Why do we need yet another loophole to give the Presidential campaigns unlimited spending power?

If the Congress enacts this proposal, it will not increase activity at the local level; it will only increase the ability to circumvent the process at the national level. This result will limit participation in Presidential campaigns rather than broaden it.

on expenditures made by local party committees in the Presidential elections.

Explanation: Local party committees share the State party's §441a(d) limit for Congressional elections but have no statutory role under that section for Presidential elections. The 1979 Amendments to the Act did establish certain exemptions for State and local party committees, including a provision for get-out-the-vote activity during the Presidential election. The exemptions, however, are limited to activities involving volunteers. Payments for general public political advertising do not qualify under these provisions. Therefore, under the present statute, a local party which wants to purchase a newspaper ad on behalf of the party's Presidential nominee may make such an expenditure only when authorized to do so under the national party's §441a(d) limit.

Many local committees are unaware of this restriction and make minor expenditures on behalf of the party's Presidential nominee, which are difficult for the national committee to track. It would be preferable for the local committees to have a small Presidential spending limit of their own (in addition to the Presidential spending limit given to the national party committees). This would aid national committees in administering their own §441a(d) limit for Presidential elections and avoid unnecessary compliance actions, while still ensuring that local parties do not introduce significant amounts of unreported (and possibly prohibited) funds into the Presidential election process. (It is assumed that the national committee would delegate its authority with respect to spending by State party committees in Presidential elections.)

If Congress were to consider this recommendation, it would be necessary for Congress to define, with some degree of precision, "local party committee."

Enforcement

Modifying "Reason to Believe" Finding

Section: 2 U.S.C. §437g

Recommendation: Congress should consider modifying the language pertaining to "reason to believe," contained in 2 U.S.C. §437g, in order to reduce the confusion sometimes experienced by respondents, the press and the public. One possible approach would be to change the statutory language from "the Commission finds reason to believe a violation of the Act *has* occurred" to "the Commission finds reason to believe a violation of the Act *may have* occurred." Or Congress may wish to use some other less invidious language.

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

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

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

Seeking Injunctions in Enforcement Cases

Section: 2 U.S.C. §437g(a)(1)

*Recommendation:*² Congress should amend the enforcement procedures set forth in the statute so as to empower the Commission to promptly initiate a civil suit for injunctive relief in order to preserve the status quo when there is clear and convincing evidence that a substantial violation of the Act is about to occur. Under criteria expressly stated, the Commission should be authorized to initiate such civil action in a United States district court without awaiting expiration of the 15 day period for responding to a complaint or the other administrative steps enumerated in the statute. The person against whom the Commission brought the action would enjoy the procedural protections afforded by the courts.

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

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

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

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

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

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

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

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

Public Financing

Fundraising Limitation for Publicly Financed Presidential Primary Campaigns

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

Recommendation: The Commission recommends that the separate fundraising limitation provided to publicly financed Presidential primary campaigns be combined with the overall limit. Thus, instead of a candidate's having a \$10 million (plus COLA³) limit for campaign expenditures and a \$2 million (plus COLA) limit for fundraising (20 percent of overall limit), each candidate would have one \$12 million (plus COLA) limit for all campaign expenditures.

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

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

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

State Expenditure Limits for Publicly Financed Presidential Primary Campaigns

Section: 2 U.S.C. §441a

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

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

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

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

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

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

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

Expenditure Limits

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

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

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

Explanation: In order for the Commission to compute the coordinated party expenditure limits and the State-by-State expenditure limits for Presidential candidates, the Secretary of Commerce certifies the voting age population of the United States and of each State. 2 U.S.C. §441a(e). The certification for each Congressional district, also required under this provision, is not needed.

In addition, under 2 U.S.C. §441a(c), the Secretary of Labor is required to certify the annual adjustment in the cost-of-living index. In both instances, the timely receipt of these figures would enable the Commission to inform political committees of their spending limits early in the campaign cycle. Under present circumstances, where

no deadline exists, the Commission has sometimes been unable to release the spending limit figures before June.

Contributions

Election Period Limitations

Section: 2 U.S.C. §441a

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

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

Application of Contribution Limitations to Family Members

Section: 2 U.S.C. §441a

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

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

sion substantial problems in attempting to implement and enforce the contribution limitations.⁴

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

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

Foreign Nationals

Section: 2 U.S.C. §441e

Recommendation: Congress should examine the §441e prohibition on contributions by foreign nationals in connection with United States elections—Federal, State and local. In particular, Congress should consider three issues:

1. Whether or not an American subsidiary of a foreign corporation should be allowed to make contributions directly (to State and local candidates) or to establish a separate segregated fund (SSF); and, if it does form an SSF, whether the activities of the SSF should be subject to special restrictions;

2. Whether or not the statutory prohibition on contributions by foreign nationals is meant to cover volunteer activity by foreign nationals as well; and

3. Whether or not the Act should continue to prohibit contributions by foreign nationals in connection with State and local elections.

Explanation: These questions have presented problems for the Commission and candidates, particularly since the legislative history is unclear in this area.

Several issues have arisen during the Commission's administration of this provision. First, the law, as interpreted by Commission advisory opinions, permits an American subsidiary of a foreign registered corporation to influence elections either through direct contributions to State and local elections or by forming a separate segregated fund that supports Federal candidates. With regard to SSFs established by American subsidiaries, Commission advisory opinions have stipulated that the foreign corporate parent may not be the direct or indirect source of contributions; nor may it influence the SSF's decisions or exercise any control over the SSF. Further, the opinions have reiterated the law's requirement that only U.S. citizens (and individuals holding green cards) may contribute to the SSF.

In another advisory opinion, the Commission has interpreted the Act to mean that a foreign national may not volunteer his services to a campaign. The standard under Section 441e bars contributions by a foreign national that are "in connection with" (rather than "for the purpose of influencing") a Federal election. It is unclear whether this distinction is intended to create a broader prohibition in the case of foreign nationals than for other activities under the Act.

Finally, the Commission has recognized that it is difficult to enforce this provision with respect to State and local elections. Since only Federal candidates and committees report to the Commission, it is difficult for a Federal agency to monitor campaign financial activity affecting State and local elections.

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

Acceptance of Cash Contributions

Section: 2 U.S.C. §441g

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

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

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

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

Fraudulent Misrepresentation

Fundraising Projects Operated by Unauthorized Committees

Section: 2 U.S.C. §432(e)(4)

*Recommendations:*⁵ Congress may wish to consider amending the statute, at 2 U.S.C. §432(e)(4), to clarify that a political committee that is not an authorized committee of any candidate may not use the name of a candidate in the name of any "project" or other fundraising activity of such committee.

Explanation: The statute now reads that a political committee that is not an authorized committee "shall not include the name of any candidate *in its name* [emphasis added]." In certain situations presented to the Commission the political committee in question has not included

⁵Commissioner Elliott filed the following dissent: I support the policy underlying this legislative recommendation and recognize the seriousness of the problem necessitating such a recommendation. However, the scope of the recommendation is far too broad and inflexible given the traditional fundraising events, especially those held by political parties and some unauthorized political committees. Party committees are not authorized committees and therefore would come under the general prohibitions included in the recommendation, precluding the use of a candidate's name for any activity of a party committee. Oftentimes, however, fundraising events conducted by a party committee incorporate the name of a well-known Member of Congress as a fundraising tool. Typically, the fundraising contributions are made in the form of checks made payable to the name of the event, e.g., "Happy Birthday, Senator Smith"; "Mike's Annual Barbecue"; "Sail With Senator Sanford"; "Roast Roberts." I do not believe Congress intends to preclude the use of the candidates' names in such activities, especially when the candidate is not only aware that his/her name is being used but approves and is actively participating in the event.

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

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

the name of any candidate in its official name as registered with the Commission, but has nonetheless carried out “projects” in support of a particular candidate using the name of the candidate in the letterhead and text of its materials. The likely result has been that recipients of communications from such political committees were led to believe that the committees were in fact authorized by the candidate whose name was used. The requirement that committees include a disclaimer regarding nonauthorization (2 U.S.C. §441d) has not proven adequate under these circumstances.

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

Fraudulent Solicitation of Funds

Section: 2 U.S.C. §441h

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

Explanation: The Commission has received a number of complaints charging that substantial amounts of money were raised fraudulently by persons or committees purporting to act on behalf of candidates. Candidates have complained that contributions which people believed were going for the benefit of the candidate were diverted for other purposes. Both the candidates

and the contributors were harmed by such diversion. The candidates received less money because people desirous of contributing believed they had already done so, and the contributors’ funds had been misused in a manner in which they did not intend. The Commission has been unable to take any action on these matters because the statute gives it no authority in this area.

Honoraria

Technical Amendments

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

Recommendation: The Commission offers two suggestions concerning honoraria.

1. Section 441i should be placed under the Ethics in Government Act.

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

Explanation: Congress eliminated the \$25,000 annual limit on the amount of honoraria that could be accepted, but it did not take out these two sections, which only apply to the \$25,000 limit. This clarification would eliminate confusion for officeholders and thereby help the Commission in its administration of the Act.

Commission Information Services

Budget Reimbursement Fund

Section: 2 U.S.C. §438

Recommendation:

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

2. The Commission recommends that costs be recovered for FEC Clearinghouse seminars, workshops, research materials and other services, and that reimbursements be used to cover some of the costs of these activities, including costs of development, production, overhead and other related expenses.

Explanation: At the present time, copies of reports, microfilm, and computer tapes are sold to the public at the Commission's cost. However, instead of the funds being used to reimburse the

Commission for its expenses in producing the materials, they are credited to the U.S. Treasury. The effect on the Commission of selling materials is thus the same as if the materials had been given away. The Commission absorbs the entire cost. In FY 1984, in return for services and materials it offered the public, the FEC collected and transferred \$86,984 in miscellaneous receipts to the Treasury. In FY 1985, the amount was \$92,018 and during the first three months of FY 1986, \$24,232 was transferred to the Treasury. Establishment of a reimbursement fund, into which fees for such materials would be paid, would permit this money to be applied to further dissemination of information. Note, however, that a reimbursement fund would not be applied to the distribution of FEC informational materials to candidates and registered political committees. They would continue to receive free publications that help them comply with the Federal election laws.

There is also the possibility that the Commission could recover costs of FEC Clearinghouse workshops and seminars, research materials, and reports that are now sold by the Government Printing Office and the National Technical Information Service. Approximately \$15,000 was collected in FY 1981 by GPO and NTIS on account of sales of Clearinghouse documents.

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

Appendix 1 Biographies of Commissioners and Officers

Commissioners

John Warren McGarry, Chairman **April 30, 1989¹**

Mr. McGarry, a native of Massachusetts, graduated cum laude from Holy Cross College in 1952 and attended graduate school at Boston University. In 1956, he obtained a J.D. degree from the Georgetown University Law Center. Mr. McGarry was assistant attorney general of Massachusetts, serving as both trial counsel and appellate advocate, from 1959 to 1962. Following his tenure in office, he combined private law practice with service as chief counsel for the Special Committee to Investigate Campaign Expenditures of the U.S. House of Representatives. This committee was created by special resolution every election year through 1972 in order to oversee House elections. From 1973 until President Carter appointed him to the Commission in October 1978, Mr. McGarry served as special counsel on elections to the Committee on House Administration of the U.S. Congress. He was reappointed as Commissioner for a six-year term in 1983. Mr. McGarry served as Chairman of the Commission in 1981 and 1985. He was elected to serve as the 1986 Vice Chairman.

Joan D. Aikens, Vice Chairman **April 30, 1989**

Mrs. Aikens was formerly vice president of Lew Hodges/Communications, a public relations firm in Valley Forge, Pennsylvania. From 1972 until 1974, she was president of the Pennsylvania Council of Republican Women and served on the board of directors of the National Federation of Republican Women. A native of Delaware County, Pennsylvania, Mrs. Aikens has been active in a variety of volunteer organizations. She received her B.A. and honorary Doctor of Laws degree from Ursinus College, Collegeville, Pennsylvania.

Mrs. Aikens was first appointed to the Commission in 1975 and, upon the FEC's reconstitution in 1976, was reappointed for five years. When that term expired in April 1981, she continued to serve until President Reagan named her to complete the term of former Commissioner Max Friedersdorf, who had resigned in December 1980. In 1983, President Reagan again reappointed Mrs. Aikens, this time for a six-year term. She served as Chairman between May 1978 and May 1979 and was elected 1986 Chairman.

Lee Ann Elliott **April 30, 1987**

Before her appointment to the Commission in December 1981, Mrs. Elliott served as vice president of the Washington firm Bishop, Bryant & Associates, Inc. From 1970 to 1979, she was associate executive director of the American Medical Political Action Committee, having served as assistant director from 1961 to 1970. Mrs. Elliott was on the board of directors of the American Association of Political Consultants and of the Chicago Area Public Affairs Group, of which she is a past president. She was also a member of the Public Affairs Committee of the Chamber of Commerce of the United States. In 1979, she received the Award for Excellence in Serving Corporate Public Affairs from the National Association of Manufacturers. Mrs. Elliott, a native of St. Louis, Missouri, holds a B.A. from the University of Illinois. She also completed the Medical Association Management Executives Program at Northwestern University and is a Certified Association Executive. Mrs. Elliott served as Commission Chairman during 1984.

Thomas E. Harris **April 30, 1985**

Before serving on the Commission, Mr. Harris was associate general counsel to the AFL-CIO in Washington from 1955 to 1975. He had held the same position with the CIO from 1948 until it merged with the AFL in 1955. Before that, he was an attorney in private practice and with various

¹Term expiration date.

government agencies. A native of Little Rock, Arkansas, Mr. Harris is a 1935 graduate of Columbia University Law School. After graduation, he clerked one year for Supreme Court Justice Harlan F. Stone.

Mr. Harris was originally appointed to the Commission for a four-year term and, when the agency was reconstituted in 1976, he received a three-year appointment. In 1979, President Carter reappointed Mr. Harris for a six-year term. He was Commission Chairman from May 1977 to May 1978. Although his term expired in April 1985, he continued to serve as Commissioner.

Thomas J. Josefiak

April 30, 1991

Until his appointment as Commissioner in August 1985, Mr. Josefiak served with the Commission as Special Deputy to the Secretary of the Senate. Before assuming that post in 1981, he was legal counsel to the National Republican Congressional Committee. His past experience also includes positions held at the U.S. House of Representatives. He was minority special counsel for Federal election law to the Committee on House Administration and, before that, served as legislative assistant to Congressman Silvio O. Conte. A native of Massachusetts, Commissioner Josefiak holds a B.A. degree from Fairfield University, Connecticut, and a J.D. degree from Georgetown University Law Center.

Danny L. McDonald

April 30, 1987

Mr. McDonald, as general administrator of the Oklahoma Corporation Commission, was responsible for the management of 10 regulatory divisions from 1979 until his appointment to the Commission in December 1981. He was secretary of the Tulsa County Election Board from 1974 to 1979 and served as chief clerk of the board in 1973. He also served as a member of the Advisory Panel to the FEC's National Clearinghouse on Election Administration. Mr. McDonald, a native of Sand Springs, Oklahoma, holds a B.A. from

Oklahoma State University and attended the John F. Kennedy School of Government at Harvard University. He served as Commission Chairman during 1983.

Frank P. Reiche

April 30, 1985

Before his appointment to the Commission in July 1979, Mr. Reiche served as Chairman of the first New Jersey Election Law Enforcement Commission for six years. He had previously served in a variety of Republican Party positions, including eight years as a Republican County Committeeman. An attorney specializing in tax law, Mr. Reiche graduated from Columbia University Law School in 1959 and received a Master of Laws degree in Taxation from New York University in 1966. He also holds a B.A. degree from Williams College and an M.A. in Foreign Affairs from George Washington University. From 1970 to 1972, Mr. Reiche served as a member of New Jersey Governor William T. Cahill's blue ribbon Tax Policy Committee. He was a partner in the Princeton law firm of Smith, Stratton, Wise and Heher from 1964 until his 1979 appointment to the Commission. He served as Commission Chairman in 1982.

Mr. Reiche continued to serve as Commissioner until August 1985, when he was succeeded by Commissioner Josefiak.

Ex Officio Commissioners

Jo-Anne L. Coe

Ms. Coe was elected Secretary of the Senate on January 3, 1985. From 1976 until her election, she was Senator Robert Dole's administrative director and also served intermittently as administrative director of the Senate Finance Committee during Senator Dole's chairmanship. In 1980, she was deputy campaign manager for the Dole for President committee and later served as an assistant to Elizabeth Hanford Dole, then director of public liaison for the Reagan for President Committee.

From 1976 to 1977, she was administrative assistant to the general counsel of the Commodity Futures Trading Commission. A graduate of William and Mary College in Virginia, Ms. Coe previously worked for Senator Dole from 1967 to 1975.

In September 1985, Ms. Coe appointed Scott E. Morgan, attorney, as the Special Deputy to the Secretary of the Senate. He replaced Thomas J. Josefiak, who had received an appointment as Commissioner in August.

Benjamin J. Guthrie

Mr. Guthrie became Clerk of the House of Representatives in January 1983, after having served as Sergeant at Arms of the House from 1980 to 1982 and as printing clerk and director of the House Legislative Processes Office from 1957 to 1980. He joined the House staff after 11 years with the U.S. Government Printing Office. A World War II veteran, Mr. Guthrie was with the U.S. Signal Corps from 1942 to 1946, after graduating from the Maryland State Teachers College in Salisbury.

Douglas Patton, attorney, continued to serve at the Commission as Special Deputy to the Clerk of the House.

Statutory Officers

John C. Surina, Staff Director

Before joining the Commission in July 1983, Mr. Surina was assistant managing director of the Interstate Commerce Commission (ICC), where he was detailed to the "Reform 88" program at the Office of Management and Budget. In that role, he worked on projects to reform administrative management within the Federal government. From 1973 to 1980, Mr. Surina served the ICC in other capacities. Between 1972 and 1973, he was an expert-consultant to the Office of Control and Operations, EOP-Cost of Living Council-Pay Board. He was previously on the technical staff of the Computer Sciences Corporation. Mr. Surina

joined the U.S. Army in 1966, completing his service in 1970 as executive officer of the Special Security Office. In that position, he supported senior U.S. delegates to NATO's civil headquarters in Brussels, Belgium.

A native of Alexandria, Virginia, Mr. Surina holds a B.S. in Foreign Service from Georgetown University. He also attended East Carolina University in Greenville, North Carolina, and American University in Washington, D.C.

Charles N. Steele, General Counsel

Mr. Steele became General Counsel in December 1979, after serving as acting General Counsel during November of that year and as Associate General Counsel for Enforcement and Litigation between April 1977 and October 1979. He received a B.A. from Harvard College in 1960 and an LL.B. from Harvard Law School in 1965. Before joining the Commission in 1976, Mr. Steele was a staff attorney with the appellate court branch of the National Labor Relations Board.

Appendix 2 Chronology of Events, 1985

January

- 1—Commissioners John Warren McGarry and Joan D. Aikens begin one-year terms as Chairman and Vice Chairman, respectively.
- 4—Commission publishes *Federal Register* notice on Common Causes's rulemaking petition on "soft money" (see also December 18).
- 28—Commission releases statistics on number of PACs.
- 31—1984 year-end report due.

February

- 11—Commission releases audit report on 1984 Presidential primary campaign of George McGovern.¹
- 26—In *Fund for a Conservative Majority v. FEC*, U.S. district court upholds FEC's withholding of documents on internal audit procedures.

March

- 18—U.S. Supreme Court, in *FEC v. NCPAC*, rules 26 U.S.C. §9012(f) unconstitutional.
- 19—Commission testifies on FY 1986 budget request before Senate Appropriations' subcommittee and House Administration's subcommittee.
- 27—Commission testifies on FY 1986 budget request before House Appropriations' subcommittee.
- 30—Louisiana holds special primary election in 8th Congressional District.

April

- 4—Commission reorganizes Information Services Division, dividing it into three independent parts: the Information Services Division, the Press Office and the Clearinghouse.
- 14—Commission's 10th anniversary.
- 16—Commission submits 1985 legislative recommendations to the President and Congress.
- 17—Commission publishes *Federal Register* notice of proposed rulemaking on contribution limits.
- 18—Commission revises internal enforcement procedures.
- 24—Commission hears McGovern campaign's oral presentation disputing FEC determination on the repayment of 1984 matching funds (see also June 13).

May

- 1—Commission publishes *The First Ten Years*, a special report marking its 10th anniversary, and *State Access to FEC Data*, a new brochure.
- 2—Commission testifies on FY 1986 budget request before the Senate Committee on Rules and Administration.
- 7—Commission releases 1983-84 party committee statistics based on interim *Reports on Financial Activity (RFA)*.
- 16—Commission releases 1983-84 Congressional campaign statistics based on interim *RFA*.
- 19—Commission releases 1983-84 PAC statistics based on interim *RFA*.
- 22—Commission publishes *Federal Register* advance notice of proposed rulemaking on enforcement regulations.

¹The Commission released two audit reports on matching fund recipients in 1984: a report on Reubin Askew's campaign on August 2 and a report on Ernest Hollings' campaign on September 10.

June

- 1—Commission publishes *Annual Report 1984*.
- 13—Commission rejects McGovern campaign's argument (see April 24) and makes final repayment determination.
- 20—Commission releases audit report on Dallas host committee of the 1984 Republican Presidential nominating convention.
- 21—Commission publishes *Federal Register* notice announcing effective date (July 1) of revised testing-the-waters rules.
- 25—Commission releases audit report on 1984 Presidential primary campaign of Sonia Johnson.
- 26—Commission prescribes revised rules governing the repayment of public funds.
- 29—Texas holds special election in 1st Congressional District.

July

- 1—Commission's revised testing-the-waters regulations become effective.
 - Commission publishes vote counts in *Federal Elections 84*; Clearinghouse publishes *Election Directory 85* and *Computerizing Election Administration, Vol. 1: Current Applications*.
- 19—Commission releases audit report on 1984 Presidential primary campaign of Jesse Jackson.
- 31—In *FEC v. Massachusetts Citizens for Life*, U.S. appeals court rules 2 U.S.C. §441b unconstitutional as applied to defendant's expenditures.
 - Semiannual report due.

August

- 3—Texas holds special runoff election in 1st Congressional District.
- 5-6—Clearinghouse Advisory Panel and Advisory Committee on Voting System Standards meet in Washington, D.C.
- 9—President Reagan appoints Thomas J. Josefiak to succeed Commissioner Frank P. Reiche.
- 19—Commission releases audit report on 1984 Presidential primary campaign of John Glenn.
 - Commission releases statistics on number of PACs.
- 22—Commission releases audit report on 1984 Presidential primary campaign of Alan Cranston.

September

- 2—Commission begins subscription service providing direct, on-line access to FEC data base.
- 5—Commission releases audit reports on convention and host committees for the San Francisco 1984 Democratic Presidential nominating convention.
- 12-13—Commission cosponsors election law conference in Boston, Massachusetts.

October

- 1—Commission publishes final revisions to Sunshine Act regulations in *Federal Register* and announces October 31 effective date.
- 4—Commission releases statistics based on *FEC 1983-84 Index of Independent Expenditures*.
- 9—Commission holds conference for trade associations and other incorporated membership groups at George Mason University in Virginia.
- 16—Commission holds public hearing on regulations governing contribution limits.
- 18—In *Gramm v. FEC*, U.S. district court upholds FEC audit and subpoena powers.
- 21—Commission publishes *Federal Register* notice of proposed rulemaking on regulations that set standards of conduct for FEC employees.
- 23—In *Common Cause v. FEC*, U.S. district court rules that 60-day limit on court challenges to FEC dismissals of complaints begins when FEC notifies complainant of dismissal.
- 29—Commission releases audit report on 1984 Presidential primary campaign of Lyndon LaRouche.
- 31—Commission's revised Sunshine Act regulations become effective.

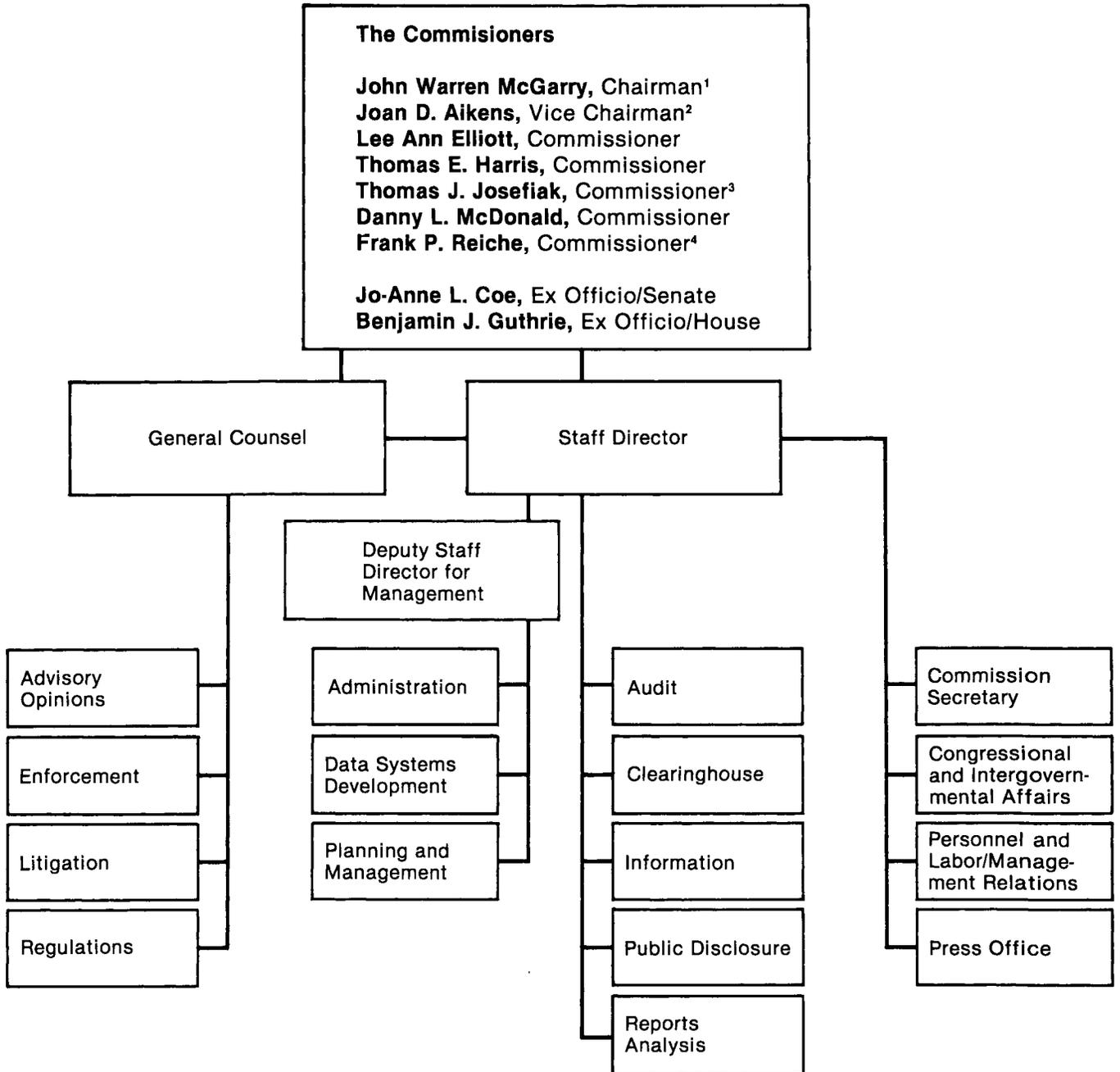
November

- 1—In *Carter/Mondale Presidential Committee v. FEC*, U.S. appeals court upholds FEC decision not to reconsider repayment decision.
- 6—Commission cosponsors election law conference in Denver, Colorado.
- 7—Commission testifies at oversight hearing held by House Administration's subcommittee.
- 23—Commission begins move to new headquarters.

December

- 1—Commission releases 1983-84 PAC statistics based on final *Reports on Financial Activity (RFA)*.
- 5—Commission releases 1983-84 party committee statistics based on final *RFA*.
- 8—Commission releases 1983-84 Congressional campaign statistics based on final *RFA*.
- 17—Commission elects Joan D. Aikens and John Warren McGarry as 1986 Chairman and Vice Chairman, respectively.
- 18—Commission publishes *Federal Register* notice of inquiry on "soft money" and announces hearing date for January 29-30, 1986.

Appendix 3 FEC Organization Chart



¹Commissioner McGarry was elected 1986 Vice Chairman.

²Commissioner Aikens was elected 1986 Chairman.

³Commissioner Josefiak was appointed in August 1985.

⁴Commissioner Reiche's term expired in April 1985; he continued to serve until Commissioner Josefiak's appointment.

Appendix 4 FEC Offices

This appendix briefly describes the offices that make up the Commission. They are listed in alphabetical order. Local telephone numbers are given for offices that have extensive contact with the public. Commission offices can also be reached on the toll-free number, 800/424-9530.

Administration

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

Audit

Many of the Audit Division's responsibilities concern the 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. The division conducts the statutorily mandated audits of all publicly funded candidates and committees.

In addition, the division audits committees when the review of reports indicates possible recordkeeping problems. Audit Division resources are also used in the Commission's investigations of complaints to verify committee accounting and bookkeeping records. Finally, the division conducts reviews of the internal finances of Commission offices.

Clearinghouse

The National Clearinghouse on Election Administration, located on the seventh floor, assists State and local election officials by responding to inquiries, publishing research and conducting workshops on all matters related to Federal election administration. (For a list of Clearinghouse studies, see Appendix 8.) Additionally, the Clear-

inghouse answers questions from the public on the electoral process. Local phone: 376-5670.

Commission Secretary

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

Commissioners

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

The six voting Commissioners serve full time and are responsible for overseeing administration of 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. In addition to preparing testimony, the office is responsible for keeping Members of Congress informed about Commission decisions and, in turn, for informing the agency on legislative developments.

Data Systems Development

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

In the area of campaign finance disclosure, the Data Systems Development Division (DSDD) enters into the computer data base information from all reports filed by political committees and other entities. DSDD is also responsible for the computer programs that sort and organize campaign finance data into indexes (described in Appendix 7). The indexes permit a detailed analysis of campaign finance activity and, additionally, provide a tool for monitoring contribution limitations. DSDD publishes the *Reports on Financial Activity* series of periodic studies on campaign finance and generates statistics for other publications.

The division also provides computer support for the agency's administrative functions. These include management information and document tracking systems, along with personnel and payroll support.

General Counsel

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

Information Services

In an effort to promote voluntary compliance with the law, the Information Division provides technical assistance to candidates and committees and others involved in elections. Staff research and answer questions on the Federal Election Campaign Act and FEC regulations, procedures and advisory opinions; direct workshops on the law; and publish a wide range of materials. Located on the second floor, the division is open to the public. Local phone: 376-3120.

Law Library

The Commission law library, part of the Office of General Counsel, is located on the eighth floor and is open to the public. The collection includes basic legal research tools and materials dealing with political campaign finance, corporate and labor political activity and campaign finance reform. Library staff prepare an *Index to Advisory Opinions* and a *Campaign Finance and Federal Elections Bibliography*, both available for purchase from the Public Records Office. Local phone: 376-5312.

Personnel and Labor/Management Relations

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

Planning and Management

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

Press Office

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

Public Records

Staff from the Public Records Office answer questions and provide information on the campaign finance activities of political committees and can-

didates involved in Federal elections.¹ Located on the first floor, the office is a library facility with ample work space and a knowledgeable staff to help locate documents. The FEC encourages the public to review the many documents available, including committee reports, computer indexes (see Appendix 7), closed compliance cases and advisory opinions. Local phone: 376-3140.

Reports Analysis

Reports analysts assist committee officials in complying with reporting requirements and conduct detailed examinations of the campaign finance reports filed by political committees. If an error, omission or prohibited activity (e.g., an excessive contribution) is discovered in the course of reviewing a report, the analyst sends the committee a letter that explains the mistake and asks for clarification. By sending these letters, 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 number: 376-2480.

Staff Director and Deputy Staff Director

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

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

¹Outside Washington, the public had access to the Commission's computer indexes through terminals located in several State election offices and through a subscription service. See pages 7 and 8.

Appendix 5 Statistics on Commission Operations

Summary of Disclosure Files

	Total Filers Existing in 1985	Filers Terminated as of 12/31/85	Continuing Filers as of 12/31/85	Number of Reports and Statements in 1985	Gross Receipts in 1985	Gross Expenditures in 1985
Presidential	278	24	254	430	\$7,954,756	\$10,445,149
Candidates	131	1	130			
Committees	147	23	124			
Senate	795	141	654	1,027	\$73,129,092	\$41,309,938
Candidates	378	95	283			
Committees	417	46	371			
House	3,482	590	2,892	4,382	\$71,624,287	\$52,685,299
Candidates	1,680	406	1,274			
Committees	1,802	184	1,618			
Party	504	43	461	1,009	\$231,892,354	\$248,772,276
Delegates	77	13	64	81	\$1,362	\$5,040
Nonparty	4,522	530	3,992	12,608	\$146,488,774	\$105,486,536
Labor Committees	444	56	388			
Corporate Committees	1,879	169	1,710			
Membership, Trade & Other Committees	2,199	305	1,894			
Communication Cost Filers	158	N/A	N/A	180	N/A	\$30,224
Independent Expenditures By Persons Other Than Political Committees	61	N/A	N/A	87	N/A	\$75,759

Divisional Statistics for Calendar Year 1985

	Total
Reports Analysis Division	
Documents processed	39,096
Reports reviewed	46,905
Telephone assistance and meetings	6,357
Requests for additional information (RFAs)	5,495
Second RFAs	1,925
Names of candidate committees published for failure to file reports	4
Compliance matters referred to the Office of General Counsel or Audit Division	274
Data Systems Development Division	
Documents receiving Pass I* coding	51,841
Documents receiving Pass III* coding	38,165
Documents receiving Pass I entry	46,353
Documents receiving Pass III entry	38,207
Transactions receiving Pass III entry**	256,538
Public Records Office	
Campaign finance material processed (total pages)	677,513
Requests for campaign finance reports	6,617
Visitors	9,069
Total people served	15,686
Information phone calls	13,707
Computer printouts provided	78,805
Total income (transmitted to U.S. Treasury)	\$74,600
Cumulative total pages of documents available for review	6,034,655
Contacts with State election offices	3,120
Notices of failure to file with State election offices	350
Information Services Division	
Telephone inquiries	50,155
Information letters	100
Distribution of FEC materials	7,651
Prior notices (sent to inform filers of reporting deadlines)	14,091
Other mailings	26,538
Visitors	122
Public appearances by Commissioners and staff	60
State workshops	3
Publications	29

	Total
Press Office	
Press releases	147
Telephone inquiries from press	8,326
Visitors to press office	1,354
Freedom of Information Act (FOIA) requests	135
Fees for materials requested under the FOIA (transmitted to U.S. Treasury)	\$19,865
Clearinghouse on Election Administration	
Telephone inquiries	1,997
Information letters	211
Visitors	65
State workshops	1
Office of General Counsel	
Advisory Opinions	
Requests pending at beginning of 1985	4
Requests received	42
Issued, closed or withdrawn***	40
Pending at end of year	6
Compliance Cases (MURs)****	
Cases pending at beginning of 1985	172
Cases opened	257
Cases closed	292
Cases pending at end of year	137
Litigation	
Cases pending at beginning of 1985	30
Cases opened	37
Cases closed	22
Cases pending at end of year	45
Cases won	15
Cases lost	2
Cases voluntarily dismissed	4
Cases dismissed as moot	1
Law Library	
Telephone inquiries	1,911
Visitors served	803

*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.

**Pass III transactions are itemized transactions including contributions of \$500 or more by individuals, as well as contributions, transfers and expenditures of any amount by various committees and other filers.

***Thirty-six opinions were issued; four opinion requests were withdrawn or closed without issuance of an opinion.

****For an explanation of MURs, see page 12.

**Audits Completed by Audit Division
1975-1985**

	Total
Presidential	52
Presidential Joint Fundraising*	6
Senate	12
House	110
Party (National)	41
Party (Other)	98
Nonparty (PACs)	60
Total	379

*Presidential joint fundraising committees are those established by two or more political committees, including at least one Presidential committee, for the purpose of raising funds jointly.

Appendix 6 The FEC's Budget

In fiscal year (FY) 1984, the Commission's original appropriation of \$10.649 million, plus a supplemental appropriation of \$95,000 to cover part of the 1984 pay raise, brought total funding to \$10.744 million.

The Commission received \$13.016 million in FY 1985 funds, consisting of an appropriation of \$12.9 million plus \$116,000 in supplemental funds to cover part of the 1985 pay raise. The Commission returned to the Treasury \$340,000, a portion of funds specially earmarked for one-time costs associated with the agency's relocation. The returned funds, slated to cover increased rent at the new facility, were not needed during FY 1985 since the agency moved the following fiscal year.

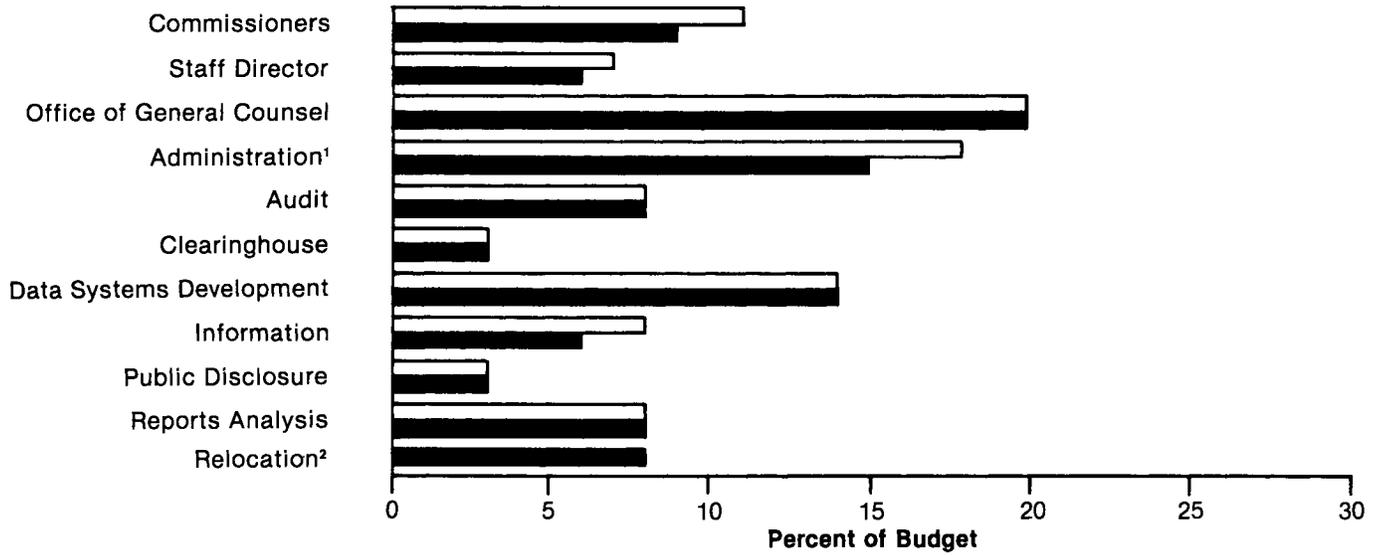
The table below compares functional allocations of budget resources for fiscal years 1984 and 1985. The two charts that follow compare allocations of budget and staff by division for the fiscal year.

FEC Budget Functional Allocation

	FY 1984	FY 1985
Personnel compensation, including benefits	\$ 7,585,752	\$ 8,357,724
Travel	212,960	153,961
Transportation/motor pool	6,599	6,324
Commercial space	14,674	14,085
Equipment rental	194,649	201,505
Printing	281,900	272,300
Contracts	799,085	1,031,919
Administrative expenses	66,437	173,589
Supplies	147,631	145,824
Library materials	60,234	80,161
Telephone, telegraph	307,221	374,482
Postage	125,000	103,057
Space rental	586,627	582,646
Equipment purchases	205,178	809,030
Training	27,330	28,568
GSA, services, other	95,435	340,352
Total	\$10,716,712*	\$12,675,527*

*Unexpended funds were returned to the U.S. Treasury.

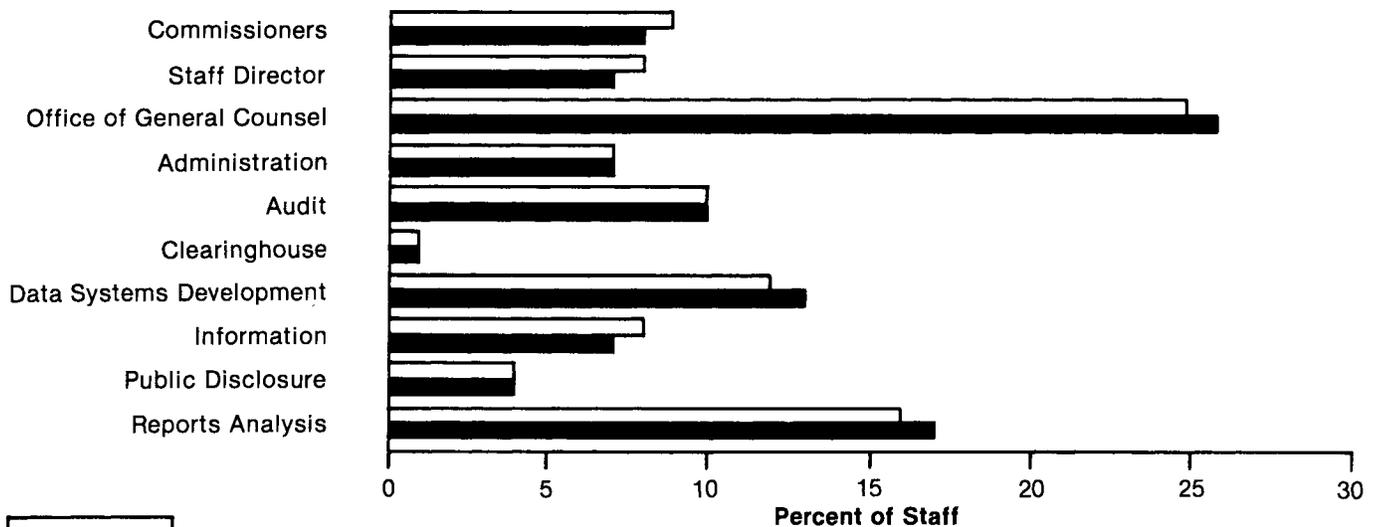
Divisional Allocation of Budget



¹Administration budget includes rent, supplies, services, etc. for the entire Commission.

²This category represents the one-time costs of the agency's relocation.

Divisional Allocation of Staff¹



¹The Commission averaged 228.6 full-time equivalent positions (FTE) in FY 1984 and 241.8 in FY 1985.

Appendix 7 Computer Indexes

The Public Records Office, using the FEC's computer system, produces printouts of the major disclosure indexes described below.

Committee Names and Addresses

The B Index includes the name and address of each committee, the treasurer's name, the committee ID number, the name of the connected organization (if any) and a notation if the committee is a "qualified" multicandidate committee, permitted to give larger contributions to candidates than other committees. There is a separate list for political action committees (PACs) and party committees. Another list arranges these committees by State.

Candidate Names and Addresses

The A Index is sorted by type of office sought (President, U.S. Senator, U.S. Representative) and alphabetically lists all candidates, including those not currently seeking election, whose committees have filed documents in the current election cycle. The printout lists, in addition to the candidate's name, his or her ID number, address, year of election and party affiliation.

Current Election Candidate Names and Addresses

The 415 Index is similar to the A Index (above) but lists only those candidates who have filed statements of candidacy for the current election cycle.

Candidate Committees

The Report 93 alphabetically lists Presidential, Senate and House candidates and includes, for each candidate, the ID number, address and party designation. Also listed are the name, address, ID number and treasurer's name of the principal campaign committee and of any other committees authorized by the candidate.

Key Word in Committee Name

The *TEXT* capability permits the computer to search and list all committee titles that include a word or phrase designated by the user.

Treasurer's Name

The computer searches and lists all committee treasurers with the same last name (designated by the user), the names of their committees and the committee ID numbers.

Multicandidate Committee Index

This index lists political committees that have qualified as multicandidate committees and are thus permitted to contribute larger amounts to candidates than are other committees. Arranged in alphabetical order by name of committee, the list includes each committee's ID number, the date it qualified as a multicandidate committee and the name of its connected organization, if any.

Chronology of New Committee Registrations

The 3Y Index lists in chronological order the names of committees that have registered in the current election cycle. The list includes the date of registration and the committee's name, ID number, address and connected organization, if any.

Recently Registered Committees

The *NULIST*, printed weekly, lists the name, ID number, address and connected organization (if any) of committees that have registered during the previous week.

Names of PACs and Their Sponsors

The 35c Committee/Sponsor Index alphabetically lists the names of PACs along with their ID numbers and the names of their sponsoring or connected organizations.

Names of Organizations and Their PACs

The 35o Sponsor/Committee Index alphabetically lists the names of organizations along with the names and ID numbers of their PACs.

Categories of PACs

The Report 140 lists PACs by the category they selected on their registration statements. Categories include: corporation, labor organization, membership organization, trade association, cooperative and corporation without capital stock. The list includes the PAC's name, ID number and connected organization.

Committee Disclosure Documents¹

The C Index includes, for each committee, its name and ID number; a list of each document filed (name of report, period receipts, period disbursements, coverage dates, number of pages and microfilm location); and total gross receipts and disbursements.

Committee Ranking by Receipts or Expenditures

The Report 933 provides a list of the names of committees ranked in order of the highest total gross receipts. Because committees' reporting schedules differ, however, totals may represent different time periods.

Candidate Campaign Documents¹

The E Index provides the following information on each candidate:²

1. Candidate name, State/district, party affiliation and candidate ID number.
2. List of all documents filed by the candidate (statement of candidacy, etc.).

¹Direct, on-line access to this index was available through subscription and through several State election offices. See pages 7 and 8.

²Information in items 1 through 4 comes from reports and statements filed by the candidate and his or her authorized committees. Sections 5 through 9 are based on data from reports filed by noncandidate committees and persons.

3. List of all documents filed by the principal campaign committee (report type, coverage dates, period receipts and disbursements, number of pages and microfilm locations).

4. List of all documents filed by other authorized committees of the same candidate (if any).

5. List of all PACs and party committees contributing to the candidate's campaign and the aggregate total of all such contributions to date. The list includes the name of the connected organization of a contributing PAC. Also listed are committees making expenditures for or against the candidate, party committees making coordinated party expenditures (Section 441a(d)) and aggregate totals spent to date.

6. List of all persons and unauthorized single candidate committees reporting independent expenditures for or against the candidate.

7. List of all persons and committees filing unauthorized delegate reports.

8. List of all corporations and labor organizations reporting communication costs for or against the candidate.

9. List of all unauthorized single candidate committees supporting or opposing the candidate and each committee's receipts and disbursements for the reporting period.

Presidential Candidates

The H Index on Presidential campaigns is similar to the E Index (above) but lists party and PAC contributions as reported by the Presidential candidates' authorized committees.

Itemized Contributions³

The G Index identifies contributions of \$500 or more received by a committee from individuals, the reports on which the transactions were disclosed and the microfilm locations of the reported entries.

³Direct, on-line access to this index was available through subscription and through several State election offices. See pages 7 and 8.

Individual Contributors

The Name Search capability permits a person to request a computer search for a specific last name in the national alphabetical list of contributors. The printout lists all persons with that last name and includes: the person's full name, address and occupation; the date, amount and recipient of the contribution; and the microfilm location of the reported entry. There is a substantial charge for this index, but the national list of contributors, periodically microfilmed, is available for review in the Public Records Office at no charge.

Committee Contributions to Candidates⁴

The D Index includes, for each committee, its name, ID number, name of connected organization and notation if it is "qualified" as a multicandidate committee. The index also lists all candidates supported or opposed by a committee, together with total aggregate contributions to, or expenditures on behalf of or against, each candidate. In the case of party committees, coordinated party expenditures (Section 441a(d)) are listed in place of independent expenditures.

Dates of Specific Contributions/Expenditures

The Detailed D Index itemizes the information on the D Index (above). It lists in chronological order each contribution and expenditure made on behalf of a candidate, along with the date, amount and microfilm location of the reported entry. The index can also search for specific candidates.

Total Contributions to Candidates by Selected Committees

The Combined D Index permits a person to select a group of committees for research. The computer will add together all of their contributions to candidates and print them in one list identifying the total amount contributed to each candidate by the group of committees.

Other Indexes

In addition to the above indexes, the Commission produces other types of computer indexes on a periodic basis (e.g., an index of corporate/labor communication costs). These periodic indexes are available in the Public Records Office for inspection and copying.

⁴Direct, on-line access to this index was available through subscription and through several State election offices. See pages 7 and 8.

Appendix 8 Clearinghouse Studies

The National Clearinghouse on Election Administration resumed publication of the *FEC Journal of Election Administration* in 1985. Suspended in 1981 due to budget restrictions, the *Journal* again offers a vehicle of communication within the election community.

The Clearinghouse released other new publications in 1985 and continued its work on a number of other projects, described below. The appendix also lists past publications that are still available for purchase.

Reports Completed in 1985

Computerizing Election Administration 1: Current Applications is the first of a three-volume series to assist local election officials in automating their day-to-day activities. The first volume offers initial guidance by helping readers define their needs and also reports the results of a survey on computer applications conducted in 50 election jurisdictions.

Election Directory 85 lists names, addresses and telephone numbers of Federal and State election officials; identifies Federal and State repositories of Federal campaign finance reports; and lists addresses where voter registration officials should forward cancellations of prior registrations of new residents.

Designing Effective Voter Information Programs, the first volume of the *Voter Information and Education Programs* series, suggests inexpensive but effective ways for election officials to convey essential registration and election information to the public.

Reports Under Way in 1985

Voting System Standards, Phase I, Standards for the Hardware Elements of Punchcard and Marksense Voting Systems is the first of a multiphase project to develop voluntary stan-

dards for voting equipment. States or localities may adopt these standards in approving the use of voting equipment within their jurisdictions. The standards are intended to ensure the proper performance of the various voting devices on the market.

Computerizing Election Administration 2: A General Model is the second volume in the computer application series. It builds on information presented in the first volume (see "Reports Completed in 1985," above) and enables readers to design a computerized election management system by selecting modules from a general model.

Campaign Finance Law 86 summarizes each State's campaign finance provisions and provides convenient quick-reference charts on major features.

Training Election Officials discusses economical and effective methods of training election workers and temporary staff, using a step-by-step approach.

Previously Completed Reports

The publications described below remain available.

Campaign Finance Law 84 summarizes each State's campaign finance provisions and provides a convenient chart on State requirements.

Voter Education Programs in the Schools, the second volume in the series *Voter Information and Education Programs*, suggests various ways election officials can develop, in cooperation with educators, good voter education programs in the schools.

Statewide Registration Systems 1 and 2 is a report on computerized voter registration systems. Volume 1 examines problems involved in implementing a statewide system and offers suggestions for overcoming them. Volume 2 describes in detail the forms, procedures, outputs and variations of a basic computerized system.

Mail Registration Systems discusses problems involved in implementing a mail registration system, describing how such systems operate

and offering practical suggestions for overcoming difficulties.

Contested Elections and Recounts is a three-volume analysis of the laws and procedures governing contested elections and recounts for Federal offices. Volume I examines issues and functions within the Federal government's purview and makes recommendations for improving the handling of contested elections at the Federal level. Volume II presents similar material at the State level, and Volume III summarizes State and Federal laws related to contested elections.

Bilingual Election Services is a three-volume report on providing election services in languages other than English. Volume I summarizes such services since 1975. Volume II is a glossary of common election terms in English along with their Spanish and dialectal equivalents, and Volume III is a manual for local election officials that gives practical advice on identifying language problems and providing bilingual registration and balloting services.

Election Administration, a four-volume set, covers planning, management and financial control concepts in local election administration. Volume I provides an overview of election functions and tasks and introduces the notion of a management cycle. Volume II focuses on planning, provides task/activity checklists and flow diagrams and discusses how tasks can be assigned. Volume III offers an accounting chart and shows how budgets can be prepared and costs monitored by applying the chart to each election function. Finally, Volume IV summarizes State code provisions on administrative and budgeting responsibilities.

Federal Elections 82 and *Federal Elections 84* summarize, by State, office and candidate, the results of the elections for U.S. President (1984 edition), U.S. Senate and U.S. House of Representatives.

Appendix 9 FEC Federal Register Notices, 1985

Notice*	Title	Federal Register Publication Date	Citation
1984-21**	Rulemaking Petition: Notice of Availability; Issues Raised by Use of "Soft Money" in Elections	1/4/85	50 Fed. Reg. 477
1984-22**	Filing Dates for Louisiana Special Election	2/6/85	50 Fed. Reg. 5132
1985-1	11 CFR Parts 9007 and 9038: Repayments by Publicly Funded Presidential Candidates; Final Rule; Second Transmittal to Congress	3/8/85	50 Fed. Reg. 9421
1985-2	11 CFR Parts 100 and 101: Payments Received for Testing-the-Waters Activities; Final Rule; Transmittal to Congress	3/13/85	50 Fed. Reg. 9992
1985-3	11 CFR Parts 2 and 3: Sunshine Act Regulations; Scope and Definitions; Meetings; Second Notice of Proposed Rulemaking and Announcement of Hearing Date	3/13/85	50 Fed. Reg. 10066
1985-4	11 CFR Part 110: Contribution and Expenditure Limits and Prohibitions; Contributions by Persons and Multicandidate Political Committees; Notice of Proposed Rulemaking	4/17/85	50 Fed. Reg. 15169

Notice	Title	Federal Register Publication Date	Citation
1985-5	11 CFR Part 111: Compliance Procedures; Advance Notice of Proposed Rulemaking	5/22/85	50 Fed. Reg. 21077
1985-6	Filing Dates for Texas Special Election	6/11/85	50 Fed. Reg. 24577
1985-7	11 CFR Parts 100 and 101: Payments Received for Testing-the-Waters Activities; Final Rule; Announcement of Effective Date	6/21/85	50 Fed. Reg. 25698
1985-8	11 CFR Parts 9007 and 9038: Repayments by Publicly Funded Presidential Candidates; Final Rule; Announcement of Effective Date	6/26/85	50 Fed. Reg. 26354
1985-9	Filing Dates for Texas Special Runoff Election	7/15/85	50 Fed. Reg. 28656
1985-10	11 CFR Part 110: Contribution and Expenditure Limits and Prohibitions; Contributions by Persons and Multicandidate Political Committees; Announcement of Hearing Date	7/18/85	50 Fed. Reg. 29232
1985-11	11 CFR Parts 2 and 3: Sunshine Act Regulations; Scope and Definitions; Meetings; Final Rule; Announcement of Effective Date	10/1/85	50 Fed. Reg. 39968

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

**Notices published in 1985 but assigned 1984 numbers.

Notice	Title	Federal Register Publication Date	Citation
1985-12	11 CFR Part 7: Standards of Conduct for Agency Employees; Notice of Proposed Rulemaking	10/21/85	50 <i>Fed. Reg.</i> 42533
1985-13	11 CFR Chapter I: Technical Amendments to Change Agency's Address; Final Rule	12/12/85	50 <i>Fed. Reg.</i> 50778
1985-14	11 CFR Chapter I: Rulemaking Petition; Use of Funds to Influence Federal Elections; Notice of Inquiry	12/18/85	50 <i>Fed. Reg.</i> 51535