

Federal Election Commission

Annual Report 1992



Federal Election Commission
Washington, DC 20463

Commissioners

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

Ex Officio Commissioners

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

Statutory Officers

John C. Surina, Staff Director
Lawrence M. Noble, General Counsel
Lynne A. McFarland, Inspector General

The Annual Report is prepared by the
Information Services Division.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 1, 1993

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

Dear Mr. President, Senators and Representatives:

We are pleased to submit for your information the 18th annual report of the Federal Election Commission, as required by the Federal Election Campaign Act of 1971, as amended. The Annual Report 1992 describes the activities performed by the Commission in carrying out its duties under the Act. The report also outlines the legislative recommendations the Commission adopted and transmitted to the President and the Congress for consideration in January 1993. We are hopeful that you will find this annual report a useful summary of the Commission's efforts to implement the Federal Election Campaign Act.

Respectfully,

A handwritten signature in black ink, appearing to read "Scott E. Thomas".

Scott E. Thomas
Chairman

Table of Contents

Introduction	1	Inspector General	46
		The FEC's Budget	46
Chapter 1			
Presidential Activity	3	Chapter 6	
Presidential Election Campaign Fund	3	Legislative	
Primary Elections—1992	4	Recommendations	49
“Non-major” Party Candidates	5	Public Financing	49
Nominating Conventions—1992	7	Registration and Reporting	54
General Election—1992	7	Use of Campaign Funds	60
Enhancing Timeliness of Audits—1992	8	Contributions and Expenditures	60
Repayments—1988	11	Compliance	68
		Litigation	71
Chapter 2		Disclaimers	72
Administration of the Law	19	Public Disclosure	74
Public Disclosure	19	Agency Funding	76
Press Office	20	Miscellaneous	77
Regulations	20		
Advisory Opinions	21	Appendices	
Assistance and Outreach	21	1. Biographies of Commissioners	
Review of Reports	22	and Officers	79
Enforcement	23	2. Chronology of Events, 1992	83
Clearinghouse on Election Administration	24	3. FEC Organization Chart	87
		4. FEC Offices	89
Chapter 3		5. Statistics on Commission Operations	93
Legal Issues	25	6. 1992 Federal Register Notices	97
“Soft Money”	25	7. Revisions to Allocation Regulations	99
Corporate/Labor Communications	26	8. Rules on Bank Loans to	
Other Corporate and Labor Issues	29	Political Committees	101
Candidate Issues	29		
Contribution Issues	31		
Disclosure	33		
FEC Jurisdiction	34		
Chapter 4			
Campaign Finance			
Statistics	37		
Chapter 5			
The Commission	45		
Commissioners	45		
International Delegations	45		
Ethics	45		
Total Quality Management	45		
Equal Employment Opportunity Program	46		

Introduction

For the Federal Election Commission, the 1992 election year brought with it an extraordinary increase in activity. During October alone, for example, the Commission's Information Office received over 12,000 telephone calls, compared with 8,069 calls received in October 1988. The offices of the Commission which respond to inquiries about the law (Information, the Reports Analysis Division, the Press Office and the Clearinghouse on Election Administration) fielded unprecedented numbers of requests for information. Offices involved in processing disclosure information and making it available to the public, including Data Systems, Reports Analysis and Public Disclosure, experienced a similar record increase in workload.

Several factors contributed to the high volume of activity. It was, of course, a Presidential election year, and interest in the Presidential race was substantial. In addition to the interest engendered by contests for the nominations of both major parties, the year found Ross Perot becoming the first independent candidate in years to fund a competitive campaign in the general election. After Mr. Perot's first appearance on CNN's Larry King program, the Commission began receiving calls from people throughout the country who were interested in mounting efforts to place Mr. Perot's name on the ballot in their states. Although Mr. Perot's campaign did not participate in the public funding program, it generated questions from the public throughout the year.

Nineteen ninety-two also witnessed a sharp increase in the number of candidates seeking office in the U.S. House of Representatives. In part, this was due to the 1990 census, and the resultant impact of redistricting on Congressional races. An unusually high number of retiring Members served to swell contested House races in which no incumbent was seeking re-election. In the 1992 general election, for example, 232 candidates ran for 91 open seats in the U.S. House of Representatives.

Another factor contributing to the increased activity at the Commission was the fact that the 1992 election was the first held under the Commission's revised regulations concerning the allocation of expenditures that benefit both federal and nonfederal races (i.e., the "soft money" regulations). Consequently, many affected committees, particularly party committees, sought FEC guidance in applying the new regulations, and considerably more staff time was needed to review the new reports filed by committees disclosing allocated expenses, and to enter this data into the computer.

While meeting the demands associated with this unusual election year, the Commission continued to carry out its administrative and enforcement responsibilities. The material that follows describes and illustrates the Commission's activities during 1992.

Back in January 1991, at the beginning of the Presidential election cycle, many predicted an uneventful campaign season, with few participants. How wrong they were. Despite a slow warm up, the primary campaign season witnessed a heated contest among seven Democrats, two Republicans and two candidates seeking the nominations of other parties.¹ Even more striking was the entrance of a serious independent candidate in the general election. Against this background of late, but intense, campaign activity, the Commission pledged to speed up the 1992 Presidential audits and continued to certify the eligibility of competing candidates and their entitlements. In the end, the Presidential Fund remained solvent, but the agency recognized that, without a legislative change, 1992 would stand as the last year in which the Presidential public funding program functioned fully.

Presidential Election Campaign Fund

How the Fund Works

Public funding has been part of our Presidential election system since 1976. Using a fund consisting of the dollars checked off by taxpayers on their federal income tax returns, the federal government provides grants to the Presidential nominees for their general election campaigns and to the major parties for their Presidential nominating conventions. Additionally, matching funds are given to qualified Presidential primary candidates.

If the Fund is insufficient to cover all entitlements, current law requires the U.S. Department of Treasury to allocate remaining funds, giving first priority to the conventions, second priority to the general election and third priority to the primaries.

Shortfall

Since 1988, the Commission has predicted a shortfall in the Presidential Election Campaign Fund. Initially, Commission staff projected a deficit for 1996. Then, in early 1990, the Commission warned that the Fund balance might not even be sufficient to cover all 1992 primary matching fund payments. By the end of 1991, however, the situation had changed. Submissions in December and January by eight Presidential candidates were considerably smaller than had been expected. In addition, the rate of inflation (which governs the size of the payouts) was well below expectations; and tax checkoff receipts (which fund the program) declined much less than had been anticipated.² Consequently, the FEC announced at a press conference on January 3, 1992, that a shortfall in 1992 was unlikely. Nevertheless, the agency continued to project a substantial deficit for 1996.

Three months later, Commission Chairman Joan Aikens announced that, although the Fund had narrowly avoided a shortfall in 1992, the Fund would experience a shortfall of between \$75 and \$100 million by 1996, unless Congress took action.

The Chairman said that a shortfall was inevitable because of a "fatal flaw" in the public funding program: Payments from the Fund are indexed to inflation, but the \$1 tax checkoff that finances the system is not. Therefore, as the consumer price index increases, the Fund needs more and more taxpayers to designate dollars in order to keep pace with the increasing payments to qualified committees. Internal Revenue Service (IRS) statistics, however, indicate that citizen participation has declined. After peaking at 28 percent in 1980, the percentage of tax forms on which the taxpayer checked yes fell to a low of 17.7 percent in 1992.

¹The eleven candidates (Agran, Brown, Buchanan, Bush, Clinton, Fulani, Hagelin, Harkin, Kerrey, Tsongas and Wilder) were those Presidential candidates eligible to receive federal primary matching funds.

²The FEC had originally projected a \$2 million decrease, based on an anticipated decline in checkoff receipts in the year preceding the Presidential year (a pattern that had occurred in every other election cycle under the public funding program). In fact, the receipts only declined by approximately \$140,000—from \$32,462,979 in 1990 to \$32,322,336 in 1991. However, checkoff receipts for 1992 declined approximately \$2.7 million compared to 1991 receipts.

Public Education Program

The Commission's 1992 nationwide public information program expanded an effort that was launched last year. The purpose of the program was to provide the public with straight information about the Presidential financing system, so that taxpayers could make "an informed choice." The program stressed three key areas:

- The purpose of the Presidential public funding program;
- How much money is collected and spent on the program; and
- How the public funds are allocated and spent.

This year's education campaign, which relied primarily on the generation of press attention, and on free public service announcements, featured:

- Implementation of a new toll-free number to invite taxpayers to request a free brochure explaining the checkoff;
- New radio and television public service spots in both English and Spanish;
- Similar materials for print publications, for public service placement in newspapers and magazines;
- Distribution of hundreds of information packets throughout the country to reporters and editors who cover Presidential campaigns or tax issues; and
- Distribution of information to tax preparers and software companies that produce software on income tax filing.

The media announcements, which aired during the height of the tax-filing season, urged taxpayers to make "an informed choice" when deciding whether to designate one dollar of their taxes for the Presidential public funding program. People read, saw or heard about the checkoff an estimated 145 million times.

In another outreach effort, FEC Chairman Joan Aikens was a featured guest on several nationwide radio and television broadcasts, including "The Larry King Show" on the Mutual Radio Network and "Road to the White House" on C-SPAN. On both shows, the Chairman was interviewed, and she fielded questions from listeners throughout the country.

Among the most significant of the Commission's

legislative recommendations this year are those dealing with the public financing of Presidential elections. The Commission noted, "If Congress wishes to preserve the Presidential public funding system, a legislative remedy is essential." For more information, see the Public Financing recommendations beginning on p. 49.

Primary Elections—1992

The maximum amount a primary candidate may receive in public funds is half of the statutory spending limit (\$10 million, adjusted for inflation). The 1991 cost-of-living adjustment (COLA) brought the 1992 spending limit to \$27,620,000. A candidate could have received half that amount, or \$13,810,000, in matching funds.

Certification of Matching Funds

Under the Presidential Primary Matching Payment Account Act, candidates may submit documentation to establish their eligibility for matching funds the year before the primaries are held. By the end of the pre-nomination period, the Commission had declared 11 candidates eligible to receive primary matching funds.

To be eligible to receive matching funds, a candidate must first raise in excess of \$5,000 in each of 20 states (i.e., over \$100,000 in matchable contributions). Only contributions from individuals apply toward this threshold. Although an individual may contribute up to \$1,000 to a candidate, only a maximum of \$250 counts as a matchable contribution, applicable to the \$5,000 threshold.

To be eligible for matching funds, the candidate must also submit a letter of agreement and certification in which the candidate agrees to comply with the provisions of the Federal Election Campaign Act and the Presidential Primary Matching Payment Account Act, including the limits set on campaign spending.

Once certified eligible, candidates may submit additional matching fund requests for Commission

review. The Audit staff evaluates the submissions to see if the requests contain proper documentation. Reflecting the Treasury Department's decision to make payments on a monthly basis, the Commission adopted conforming regulations for certifying payment once a month.³

By the beginning of 1992, Edmund G. Brown, Jr., George Bush, Bill Clinton, Lenora Fulani, Tom Harkin, Bob Kerrey, Paul Tsongas and Douglas Wilder had become eligible for matching funds. The Commission certified a total of \$6.4 million to these eight eligible candidates with the first certification in January 1992. Later in 1992, the Commission also declared Patrick Buchanan, Larry Agran⁴ and John Hagelin eligible. By December 31, 1992, all of these

candidates had been certified to receive a total of \$42,208,155.45 in federal matching funds.

The chart below lists the eligible candidates and the total amount of matching funds certified to each through the end of February 1993.

1992 Matching Fund History

Candidate	Contributors*	Contributions†	Amount Certified
Agran	4,230	5,274	\$ 269,692
Brown	83,904	84,565	4,239,405
Buchanan	144,875	175,541	5,199,987
Bush	108,891	139,480	10,557,743
Clinton	152,085	175,600	12,536,135
Fulani	95,589	103,443	2,013,323
Hagelin	3,368	4,668	349,322
Harkin	33,922	46,572	2,103,362
Kerrey	29,680	44,135	2,195,530
Tsongas	37,059	39,889	2,989,289
Wilder	2,303	2,341	289,027
TOTAL	695,906	821,508	\$42,742,815

*Total number of contributors contained on the matching fund submissions.

†Total number of contributions submitted for matching.

³On May 10, 1991, the Department of Treasury, Internal Revenue Service, published new rules that, among other things, changed the payment schedule for primary matching funds. Under the new rule (which the Commission had opposed), Treasury made matching fund payments to primary campaigns only once a month, at the end of the month. Previously, Treasury had made payments soon after the Commission certified them, which was usually every two weeks. Treasury said that it made the change to ensure that, in case of a shortfall in the Fund, there would be sufficient funds to cover the entitlements of general election candidates. See discussion in *Annual Report 1991*, p. 6.

⁴Mr. Agran attempted to establish his eligibility for matching funds after failing to receive more than 10 percent of the vote in two consecutive primaries. The Commission certified his eligibility because the "10 percent rule" applies only to elections held after a candidate becomes eligible for matching funds.

"Non-major" Party Candidates

A Commission press release in the fall of 1992 reported that 23 Presidential candidates appeared on the ballot in at least one state. Four candidates were on the ballot in all 50 states plus the District of Columbia: George Bush, Bill Clinton, Ross Perot and Libertarian Party candidate Andre Marrou. Lenora Fulani, who received federal matching funds for her primary campaign, was on the ballot in 40 states; in most states, she was identified as the nominee of the New Alliance Party. John Hagelin of the Natural Law Party qualified for the ballot in 29 states.

John Hagelin and the Natural Law Party

On October 15, the Commission found that John Hagelin, Presidential nominee of the Natural Law Party, was eligible to receive federal matching funds to pay primary debts and winding-down expenses.⁵

Previously the Commission had determined, in AO 1992-30, that the Natural Law Party of the United States qualified as the national committee of a political party and could therefore make coordinated party expenditures on behalf of its candidates under 2 U.S.C. §441a(d).

The Party qualified as a "national committee" of a political party, defined under 2 U.S.C. §431(14), because it demonstrated sufficient activity at the national level. Among other things, the Party had: (1) placed candidates on the ballots in 22 states; (2) nominated candidates for the Presidential ticket and for the House and Senate; and (3) held voter registration drives in various regions of the country

LaRouche Denied Matching Funds: Final Determination

In a final determination made February 27, the Commission denied matching funds to Lyndon H. LaRouche, Jr., for his 1992 Presidential campaign. The Commission based its decision on Mr. LaRouche's record: (1) his 1988 criminal conviction and imprisonment for fraudulent fundraising practices, including those related to a previous publicly funded Presidential campaign; (2) his 15-year pattern of abuse of the matching fund program, including submitting false information, fraudulently inducing individuals to contribute and submitting contributions that lacked the requisite donor intent to make a campaign contribution; and (3) his past repudiation of promises made in letters of candidate agreements and certifications filed with the FEC. The Commission

⁵The Commission certified Dr. Hagelin's eligibility for matching funds, even though he had become ineligible prior to the Commission's certification date. Since he had made his threshold submission several weeks before his party had nominated him (the date of his ineligibility), the Commission concluded that he had been eligible at the time of his submission.

also considered Mr. LaRouche's 1988 criminal conviction for conspiring to defraud the Internal Revenue Service.⁶

Denial of Petition to Withhold Public Funding from Clinton Campaign

On June 25, 1992, the Commission denied a petition submitted by the Republican National Committee (RNC), which challenged Governor Bill Clinton's eligibility for federal matching funds and federal funding in the general election.

The RNC's petition arose from a televised "Town Meeting" on June 12, 1992, during which Governor Clinton answered questions from the television audience. During the broadcast, an 800 telephone number was flashed on the screen. One of the options available to callers was to make a contribution. The Democratic National Committee (DNC) paid for the broadcast (about \$400,000).

The RNC claimed that the program was a primary election event because it was used to raise funds for the primary election. Therefore, the RNC alleged, the DNC had exceeded its \$5,000 contribution limit for the primary election, and the Clinton Committee had accepted an unlawful contribution. In the alternative, the RNC asserted, if the DNC's spending constituted coordinated party expenditures on behalf of its general election nominee, under 2 U.S.C. §441a(d), then the Clinton Committee could not use its primary funds to pay for expenses related to the program (e.g., staff salaries, travel costs).

As explained in the Statement of Reasons supporting its decision, the Commission denied the RNC's petition because the facts and circumstances presented did not on their face constitute fraud, which is the standard for justifying the suspension of public funding. This standard is based on FEC regulations and an opinion of the U.S. Court of Appeals for the District of Columbia Circuit, *In re Carter Mondale Reelection Committee, Inc.*, 642 F.2d (1980).

⁶In *LaRouche v. FEC*, No. 92-1100 (D.C. Cir. March 3, 1992), petitioners ask the court to review the Commission's denial of matching funds to Mr. LaRouche's campaign.

As to specific claims made in the RNC petition, the Commission had previously concluded (in AO 1984-15) that a party committee could make coordinated party expenditures prior to the nomination of the candidate. Although it was not clear whether the precedent would apply to the DNC's expenditures for the Town Meeting, the allegations raised in the petition did not appear to constitute fraud.

The Commission also noted that candidates may make general election expenditures for limited purposes during the primary period without precluding their ability to make subsequent primary expenditures and without rendering them ineligible to receive further matching funds.

In addition, the Commission determined that the RNC's challenge to Governor Clinton's general election funding was not ripe for agency review, since the Democratic party had not then selected its Presidential nominee and Governor Clinton had not yet applied for general election funding.

Nominating Conventions—1992

Under the public funding law, national party committees of major parties may become eligible to receive public funds to pay the official costs of their Presidential nominating conventions. Eligible committees receive \$4 million plus an adjustment for inflation, provided they agree to certain requirements, including the filing of periodic disclosure reports and detailed audits. A party receiving public funding for the convention may not spend more than the public funding grant, although host cities and committees may provide certain facilities and expend additional funds.

Certification of Convention Funds

In 1991, the Commission certified that the 1992 Democratic National Convention Committee and the Committee on Arrangements for the 1992 Republican National Convention were eligible to receive \$10.6 million each in public funds. Under the terms of the Act, these are the earliest funds paid out by the Treasury in each cycle. The Department of Treasury made the payments in July 1991, and in 1992 made an additional cost-of-living payment (\$448,000), thus

bringing to \$11,048,000 the total certified to each convention committee.

General Election—1992

The \$20 million statutory entitlement for major party nominees, when adjusted by the 1991 cost-of-living adjustment (COLA), increased to \$55.24 million for the 1992 nominees.

On July 17, 1992, the Commission certified a \$55.24 million payment to the campaign of the Democratic Presidential nominee, Governor Bill Clinton, and his Vice Presidential running mate, Senator Al Gore. The same amount was certified on August 21 to the Republican ticket, President George Bush and Vice President Dan Quayle. The U.S. Treasury paid the funds shortly after their certifications. The Democratic and Republican parties filed reports disclosing \$10.2 million each in coordinated expenditures made on behalf of their respective nominees.⁷

Ross Perot, running as an independent in all 50 states and the District of Columbia, filed reports disclosing \$64.7 million in general election expenditures.⁸

⁷Not included in these figures is an additional \$67.8 million in "soft money" received by the two major national party committees. Although soft money is not considered to be a contribution or expenditure to influence federal elections, it is reported by the national party committees to the Federal Election Commission. (For more information about soft money, see Chapter Three, Legal Issues.)

⁸Ross Perot did not ask for any public funds; nor would he have qualified for them, because he spent more than \$50,000 in personal funds on expenditures for his campaign. To be eligible for public funds in the general election, a candidate must, among other things, pledge not to spend more than \$50,000 in personal funds.

Special Use of Compliance Fund by Clinton/Gore '92 Campaign Committee

In Advisory Opinion 1992-38, the Commission found that, after the general election, the Clinton/Gore '92 Campaign Committee could accept a temporary \$1 million loan from its general election legal and compliance fund (GELAC fund) to cover amounts not yet reimbursed by the U.S. Secret Service. However, the loan could be used only to defray qualified campaign expenses, and the committee had to repay the loan immediately upon receiving reimbursement payments from the U.S. Secret Service.

The campaign was experiencing a cash flow problem after the general election and was waiting to receive about \$1.2 million in anticipated reimbursements from the Secret Service for transportation and related services provided to Secret Service staff. The temporary loan would permit the campaign to pay urgent expenses before it received the Secret Service reimbursements.

Under the public funding laws, a campaign that received full public funding for the general election, as the Clinton/Gore campaign did, must limit campaign spending to the amount of the grant and may not accept any contributions to pay for qualified campaign expenses. 2 U.S.C. §441A(B)(1) and 26 U.S.C. §9003(b)(1) and (2). A campaign's compliance fund may, however, accept private contributions to pay for costs associated with complying with the law. 11 CFR 9002.11(b)(5). The Commission's regulations also permit the use of such funds to pay for unreimbursed costs of providing transportation to the Secret Service. 11 CFR 9003.3(a)(2)(i)(H).

In AO 1992-38, issued November 11, 1992, the Commission noted that, if the reimbursements received were less than anticipated, any shortfall in the loan repayment would result in an improper use of contributions "and have repayment or other consequences under the Act and Commission regulations."

In a dissenting opinion, Commissioner Aikens noted that, instead of transferring money from the compliance fund, the Committee might have used a bank loan or line of credit to alleviate reported cash flow problems. She believed that the Commission should have maintained the position "that the Gen-

eral Election Legal and Accounting Compliance Fund is for a limited purpose and may not be commingled with public funds, and that private contributions may not be used to pay qualified campaign expenses to which the limits apply."

Commissioner Potter, in a concurring opinion, said he voted for AO 1992-38 because its conclusion was consistent with previous Commission decisions in the area. However, he said, the Commission "should revisit the Presidential legal and accounting compliance fund exemption and review both the existence and scope of this exemption." He believes that the fund "has grown far beyond its intended bounds" and "provides the spectacle of private fundraising by Presidential campaigns which have signed an agreement to forgo such activity."

Enhancing Timeliness of Audits—1992

The Commission is required by law to audit all Presidential candidates and convention committees receiving federal funds to ensure that the funds are not misused and that committees maintain proper records and file accurate reports. In the past, these audits often took two to four years to complete, for several reasons. Each cycle raised new, and often complex, issues, and the Commission's audit resources were severely taxed. In addition, the administrative processes associated with the audits frequently took substantial time (when, for example, a committee presented new information at a Commission hearing late in the process or sought several extensions of time to prepare responses to Commission findings). Recognizing the importance of concluding the audits speedily, the Commission has taken several measures to ensure more timely audits of the 1992 campaigns. The agency changed its audit procedures, modified certain regulations, updated the technology used to conduct the audits and increased its audit staff.

By the end of 1992, fieldwork was already complete on audits of five of the eleven 1992 Presidential primary committees: Agran, Harkin, Kerrey, Tsongas and Wilder.

Changes in Audit Procedures

On January 31, 1992, the Commission approved the 1992 edition of the *Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing*. The Manual suggested an overall plan to control and manage campaign accounting, reporting and recordkeeping and included, as an appendix, the revised computerized magnetic media requirements discussed below. Moreover, the Commission revised its audit procedures to streamline the process and to overcome problems that had delayed audits in past election cycles. These new procedures are summarized below.

• Full Disclosure of All Findings in Final Audit

Report. In the past, if an audit revealed the possibility of substantial violations of the law, the final audit report was issued only after the violations had undergone legal review and the Commission had decided whether to open an enforcement case (Matter Under Review or MUR) against the committee. Moreover, if certain types of violations of the election law were pursued in a MUR, mention of the related audit findings was purged from the public audit report. Under the new procedures, the final audit report will be placed on the public record in its entirety, disclosing all findings, including any that may later be referred for enforcement action. This new procedure is expected to result in fuller and more timely public disclosure of audit findings.

• **Limit on Extension of Time.** Under the public funding rules, a committee has 30 days from its receipt of the interim audit report to submit comments on audit findings. During the 1988 Presidential audits, however, some committees received up to three extensions of time. In some instances, a committee had up to 6 months to respond to the interim audit report alone. Under the new procedures, each committee will be given only one 45-day extension of time to the 30-day response period. The Commission has also limited extensions of time for responses to the final audit report; committees will be given only one 45-day extension.

• **Records Inventory Before Fieldwork.** When fieldwork was begun in past election cycles, Audit Division staff sometimes found that committee records were incomplete or unorganized. Missing records

were sometimes not available until the audit was nearly complete. These deficiencies made the audit task more difficult and time consuming.

Audit staff will now conduct a thorough inventory of committee records before starting fieldwork. If records are not satisfactory, Audit staff will notify the committee, in writing, that it has 30 days to correct listed deficiencies or the Commission will issue subpoenas to vendors, financial institutions and other appropriate parties (including the committee) to obtain the records in question. This procedure will also apply to the computerized records submitted before fieldwork. Under the new system for 1992, auditors are more likely to find complete and organized documents, and when documents are not in good order, the agency will have a clear record showing why some audits were not completed in a timely way.

• **Requests for Records During Fieldwork.** If, during fieldwork, a committee does not respond to an informal request for records, auditors will make a written request with a specific due date. The request will warn the committee that the Commission will subpoena the records if the committee does not produce them by the due date.

• **Pre-Audit Use of Computerized Data.** For 1992 audits, the Audit Division for the first time will have records of a committee's receipts and disbursements in a usable computerized format prior to the beginning of fieldwork. Generally, this information is very useful in identifying possible problem areas early, and in designing effective procedures for use during fieldwork.

• **Audit Testing Using Sampling Technique.** Most of the audit testing of contributions and supporting documentation will now be performed using a sampling technique widely accepted in the audit profession. (The agency has used sampling techniques since 1980 to determine the amount of a committee's matching funds.) The Commission decided to implement this approach in an effort to save time and money for all concerned in the audit process without sacrificing the essential accuracy of audit findings. In the past, auditors often reviewed voluminous contribution records to compile lists of potentially prohibited or excessive contributions.

Using the sampling technique, the Commission will evaluate a committee's compliance with the contribution limits and prohibitions and with the recordkeeping and reporting rules on contributions. The agency will then project, for example, the dollar value of contribution violations in each category, based on apparent violations identified in the sample. This would then be used as the basis of audit findings, in addition to other apparent violations discovered in other reviews of the committee's records. Committees will have the opportunity to demonstrate that any of the identified sample exceptions were not errors. A new projection would then be made based on a reduced number of violations in the sample. The committee would make payments to the U.S. Treasury to resolve the matter.

First Election Under Revised Rules on State Limits

The 1992 primary election was the first conducted under the Commission's new rules on state spending limits. In past elections, these limits had proven difficult to audit and enforce. Iowa and New Hampshire, the first two primary states, have relatively low spending limits (because their voting age population is relatively small) but they have traditionally been important tests for Presidential campaigns. As a result, campaigns often devised complex systems to reduce the amounts allocated to the Iowa and New Hampshire limits. The Commission, in turn, spent considerable resources to determine whether campaigns were exceeding state limits and to enforce any violations discovered. In some cases, this effort contributed to lengthy audits. (For more information, see the Commission's legislative recommendation on eliminating the state expenditure limits, p. 50.)

In 1990 and 1991, the Commission revised its rules to simplify the process of allocating expenses to the state spending limits, a requirement for primary candidates receiving matching funds. Beginning with the 1992 Presidential election cycle, expenses are allocable only if they fall within one of five specified categories: media expenses, mass mailings, overhead expenses, special telephone programs and

public opinion polls. Expenses falling outside those five categories are not allocable to the state spending limits but do count against the national spending limit. The regulations also set out specific recordkeeping requirements associated with these expenses.

Revised Regulations on Submissions on Magnetic Media

During the 1988 election cycle, the Commission devoted considerable time and resources to reformatting computerized information submitted during the audit process. Reformatting the data to permit efficient processing utilizing the capabilities of the Commission's computer system involved, in many cases, significant effort and expense by both the Commission and the campaigns. New regulations were adopted as part of the agency's effort to reduce the cost of audits.

For the 1992 cycle, the new rules require committees that have computerized their receipt and/or expenditure processing to submit that information on computer tapes or diskettes in a format compatible with the FEC's computer processing capability. The rules also clarify that the committee (and not the Commission) must pay any cost for producing the materials in the required format.⁹ The volume of material processed by the Commission in administering the public funding program is significant. For example, during the 1992 Presidential cycle, the Commission expects to audit over one million transactions reported by recipients of public funding.

Other Improvements

Other changes have also been undertaken to accelerate audits. The Audit Division has added six auditors and enhanced its use of computer resources, expanding the system used by the division in its offices. In addition, new laptop computers now facilitate fieldwork and subsequent processing of the data from field audits.

⁹A standardized format for matching fund submissions has been in place since 1986.

Repayments—1988

The Process

After a candidate's date of ineligibility, the Commission begins to audit every committee that received public funds. For each committee, an audit report documenting the committee's financial activity is prepared by the Audit Division for Commission consideration.

The final audit report, approved by the Commission and released to the public, may include an initial determination by the Commission that the committee repay public funds.¹⁰ A repayment is required when the Commission determines that a primary or general election committee:

- Received public funds in excess of the amount to which it was entitled; or
- Incurred nonqualified campaign expenses by spending in excess of the limits, by using public funds for expenses not related to the campaign or by insufficiently documenting the expenditure of public funds.

There are other bases for repayment as well (e.g., stale-dated checks).

Additionally, a general election candidate is required to make repayments if the committee received interest on the investment of payments from the Fund. Primary campaigns are also required to make repayments if they have surplus funds remaining on the date of ineligibility.

If a committee wishes to dispute the Commission's initial repayment determination, the committee may submit a written response to support its view. The committee may also request an oral presentation before the Commission.

The basis for the Commission's final repayment determination is set forth in a statement of reasons prepared by the Office of General Counsel. A committee that disputes the initial repayment determina-

tion must nevertheless repay the amount specified in the final determination within the payment deadline unless the committee obtains a stay from the Commission pending an appeal of its decision.

The paragraphs below summarize repayment findings with respect to 1988 Presidential committees. The findings were contained in the final audit reports released in 1992.¹¹

George Bush for President, Inc. On February 24, the Commission released the final audit report on President Bush's 1988 primary campaign committee, which had received \$8.393 million in matching funds. The final audit report found that the Committee had to repay \$113,080 in matching funds to the Treasury. The repayment amount included: (1) the pro rata portion of amounts spent in excess of the state spending limits for Iowa and New Hampshire; and (2) the total of stale-dated checks that were never cashed by payees. The committee made its repayment in March 1992.

Americans for Robertson, Inc. On March 26, 1992, the Commission approved the final audit report for the Rev. Pat Robertson's 1988 Presidential campaign committee. Based on audit findings, the Commission made an initial determination that the Committee repay \$388,544 in public funds to the Treasury. The committee had received \$10.4 million in matching funds. The repayment amount included: (1) the pro rata portion of expenditures exceeding the Iowa and New Hampshire state limits and (2) the pro rata portion of nonqualified campaign expenses (such as tax penalties and undocumented transfers). Auditors also found that the Committee had apparently received excess reimbursements from media organizations for press travel and had to repay the firms \$105,635.

At a December 2, 1992, hearing the campaign argued that the FEC should reduce the repayment amount.

¹⁰The Interim Audit Report, however, constitutes notification of a repayment determination under 11 CFR 9007.2(a)(2) and 9038.2(a)(2).

¹¹For other audit reports pertaining to 1988 candidates, see *Annual Report 1989*, pp. 14-15; *Annual Report 1990*, pp. 7-9 and *Annual Report 1991*, pp. 8-10.

Jesse Jackson 1988 Campaign. On April 9, 1992, the Commission approved the final audit report on the Jesse Jackson for President '88 Committee and two other committees the candidate authorized for his 1988 primary (the California and New York Committees). The Commission made initial determinations that the Committees repay \$310,906 in public funds to the U.S. Treasury. The Jackson campaign had received over \$8 million in matching funds for the 1988 campaign.

The repayment amount included: (1) the pro rata portions of nonqualified campaign expenses (such as tax penalties, insufficiently documented disbursements and apparent overpayments to a vendor); (2) matching funds the committee received to which it was not entitled; and (3) stale-dated checks written by the New York committee.

In a hearing on October 28, 1992, counsel for the committee urged the Commission to reduce the repayment.

Dole Committee. On February 6, the Commission made a final determination that the Dole for President Committee, Inc., repay \$235,822 in matching funds to the U.S. Treasury. The repayment amount represented: (1) a pro rata portion of undocumented disbursements by delegate committees affiliated with the Dole campaign; (2) the pro rata portion of amounts spent in excess of the expenditure limits in Iowa and New Hampshire; and (3) the total of stale-dated committee checks never cashed by the payee. The Committee made the full repayment to the U.S. Treasury in March.

Gephardt Committee. On May 21, the Commission made a final determination that the Gephardt for President Committee, Inc., repay \$118,944 in primary matching funds to the U.S. Treasury. The repayment amount reflected the pro rata portion of amounts spent in excess of the Iowa expenditure limits. An additional repayment of \$2,628 was included as an addendum to the final audit report on August 4, 1992.

The Commission received payment of the entire amount (\$121,572) on November 9, 1992.¹²

Jack Kemp for President. On July 31, the Commission made a final determination that the Kemp for President Committee repay \$103,555 in public funds. The amount consisted of a pro rata portion of expenditures in excess of limits in New Hampshire and Iowa, and the full amount of stale-dated committee checks never cashed by the recipients. The U.S. Treasury received the committee's repayment on November 5, 1992.

Bush-Quayle '88. The Commission made a final determination that the Bush-Quayle Committee repay \$134,834.71 to the Treasury. The repayment included: (1) amounts spent by the Committee for non-qualified campaign expenses; (2) excessive travel reimbursements received from media organizations; and (3) stale-dated committee checks.

The committee was also ordered to refund over \$195,000 to media organizations for travel overpayments and unused payments.

The committee made its final repayment on August 3, 1992.

LaRouche Democratic Campaign. On September 17, the Commission made a final determination that the LaRouche Campaign repay \$151,260 in matching funds to the U. S. Treasury. The Campaign had received over \$825,500 in matching funds for Lyndon LaRouche's 1988 Presidential primary campaign.

The final repayment consisted of: (1) the pro rata portion of expenditures made after the candidate's date of ineligibility; (2) stale-dated committee checks never cashed by the payees; and (3) over \$100,000 in matching funds received in excess of the candidate's entitlement.

On October 22, 1992, Lyndon LaRouche and the LaRouche Democratic Campaign '88 filed an appeal of the FEC's final repayment determination in the

¹²For more information, see the December 1992 *Record*, p. 2.

U.S. Court of Appeals for the District of Columbia Circuit. In *Lyndon H. LaRouche, Jr. v. FEC*,¹³ the petitioners asked the court to rule on whether the FEC's repayment determination and the methods it used to determine the repayment amount were arbitrary, capricious and not in accordance with the law. They also asked the court to consider whether the FEC waived its rights to require repayment of matching funds the Campaign received after the candidate's date of ineligibility because the FEC had certified the funds based on debt statements submitted in good faith by the Campaign.






Hearing on Simon Repayment Determination

In a hearing on August 5, 1992, counsel for Senator Paul Simon's 1988 Presidential committee urged the Commission to reduce the amount the committee had to repay to the U.S. Treasury. The Commission had made an initial determination that the Paul Simon for President Committee repay \$430,465 in federal matching funds.¹⁴ Before making a final repayment determination, the Commission will consider the committee's oral and written responses.

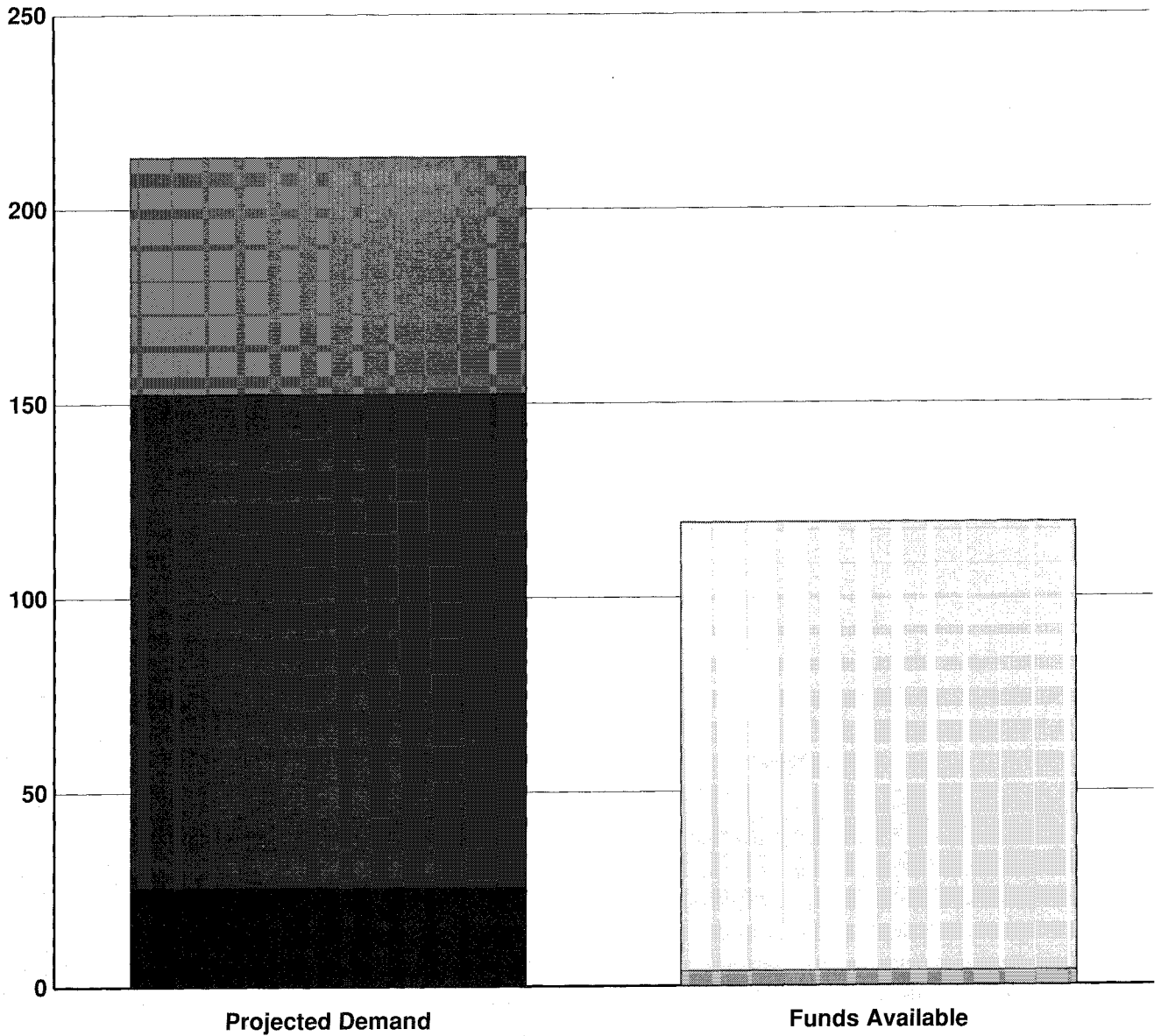
¹³No. 92-1555.

¹⁴See *Annual Report 1991*, p. 9. For more information about the hearing, see the October 1992 *Record*, p. 4.



Presidential Election Campaign Fund: Projections for 1996 Payments and Funds Available

-  1993-96 Receipts
-  1992 Balance
-  Primary Matching
-  General Election Grants
-  Convention Grants

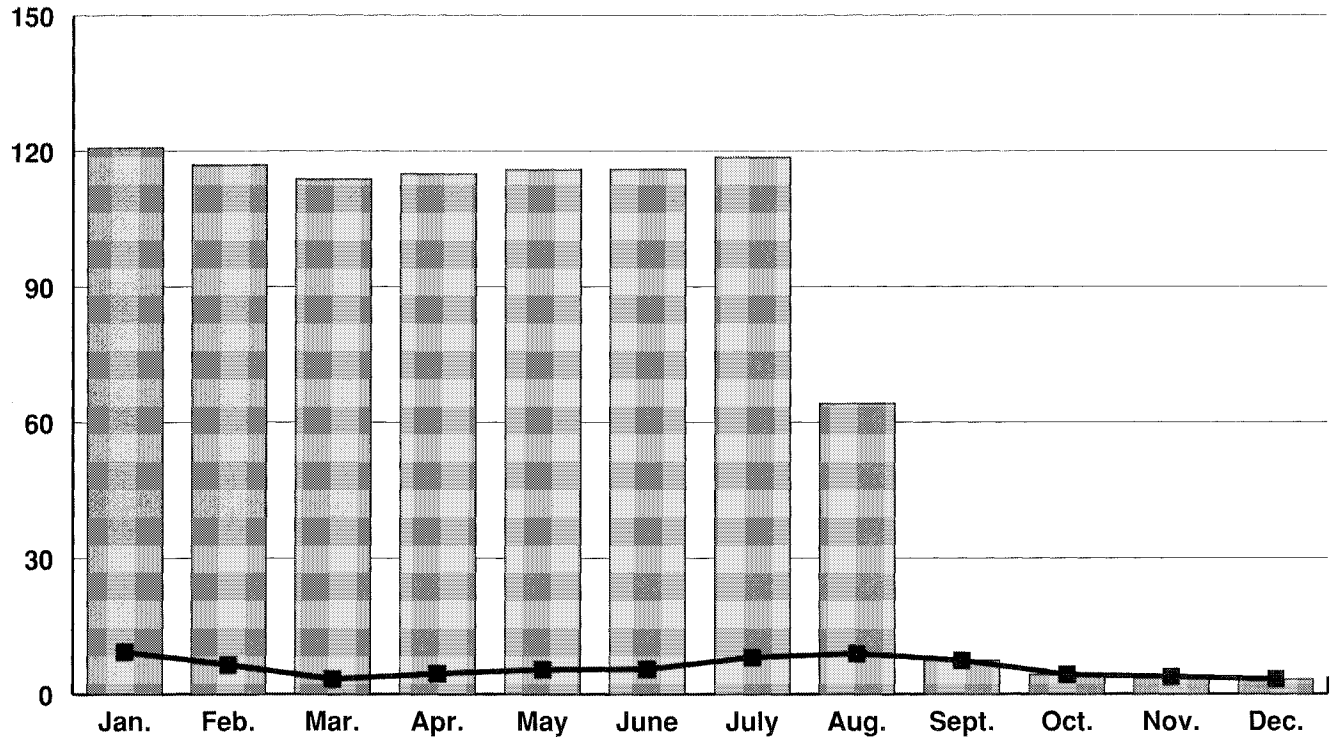
Millions of Dollars







**Presidential Election Campaign Fund
1992 Balance by Month—
Total and Available for Primary Matching**

 Total
 Available for Matching

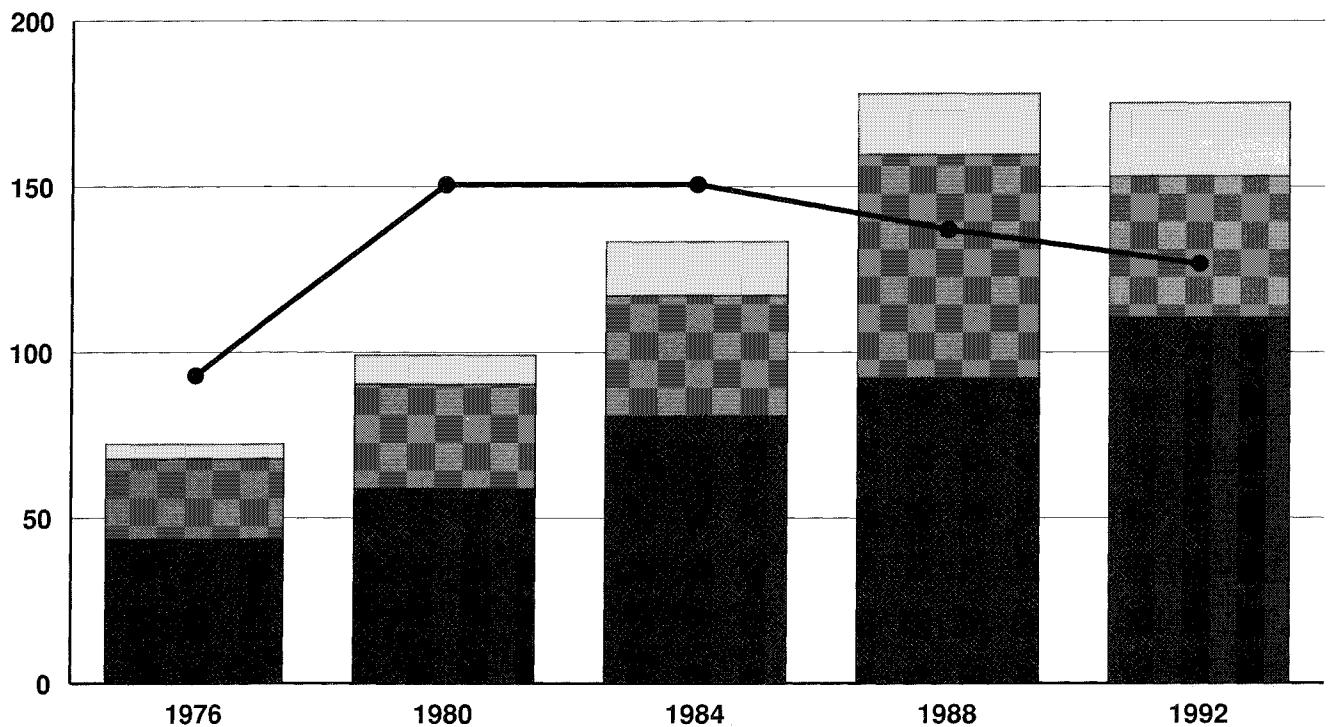
Millions of Dollars



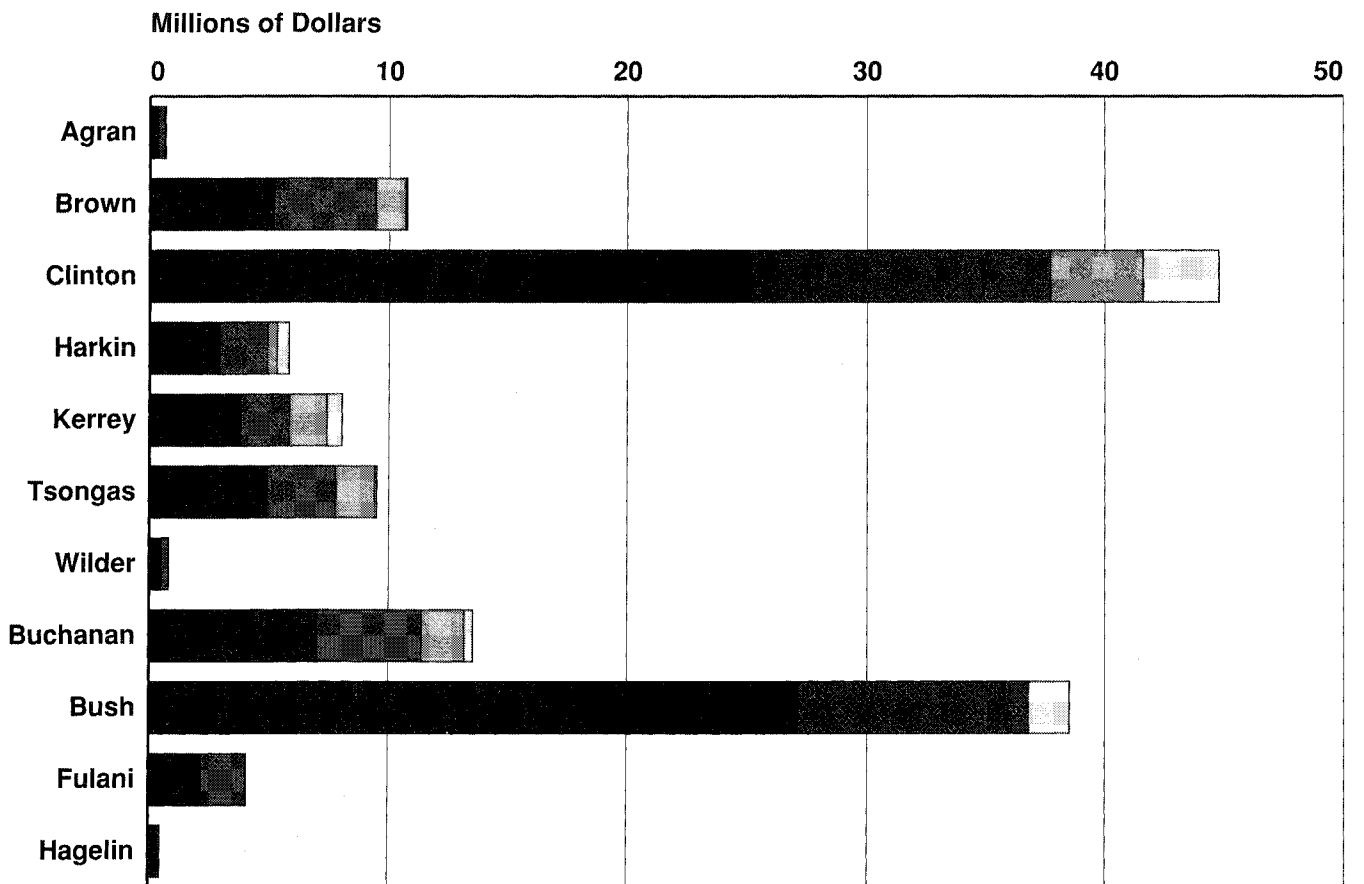
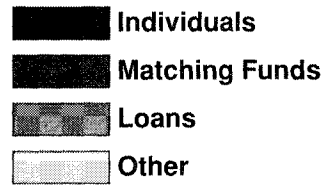
**Revenue and Payments from the
Presidential Election Campaign Fund**

 Convention
 Primary
 General
 Receipts

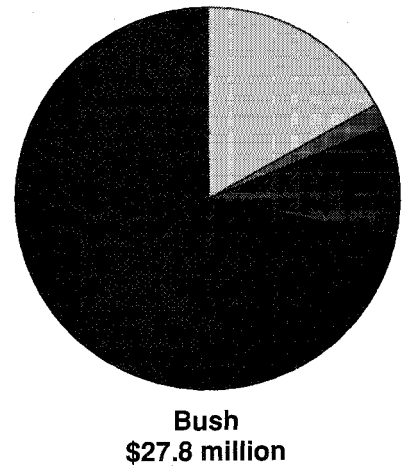
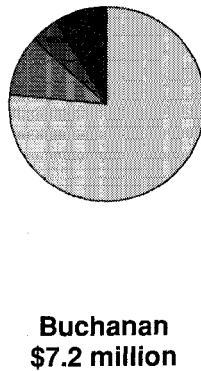
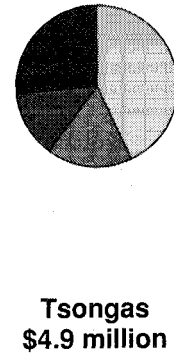
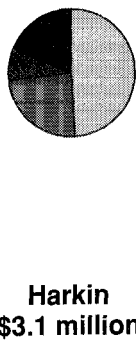
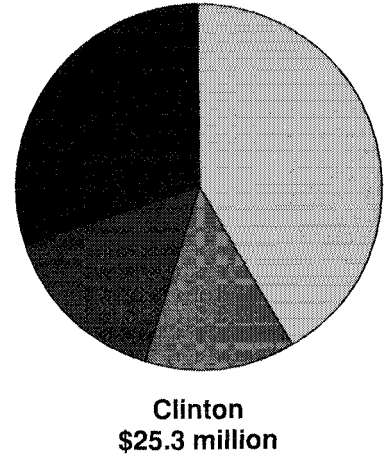
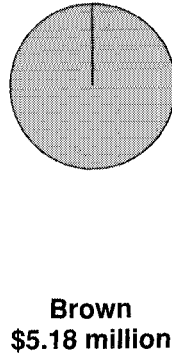
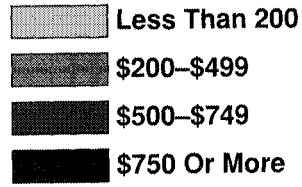
Millions of Dollars



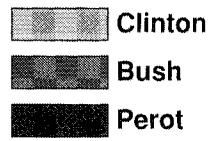
Receipts of Presidential Primary Campaigns by Source



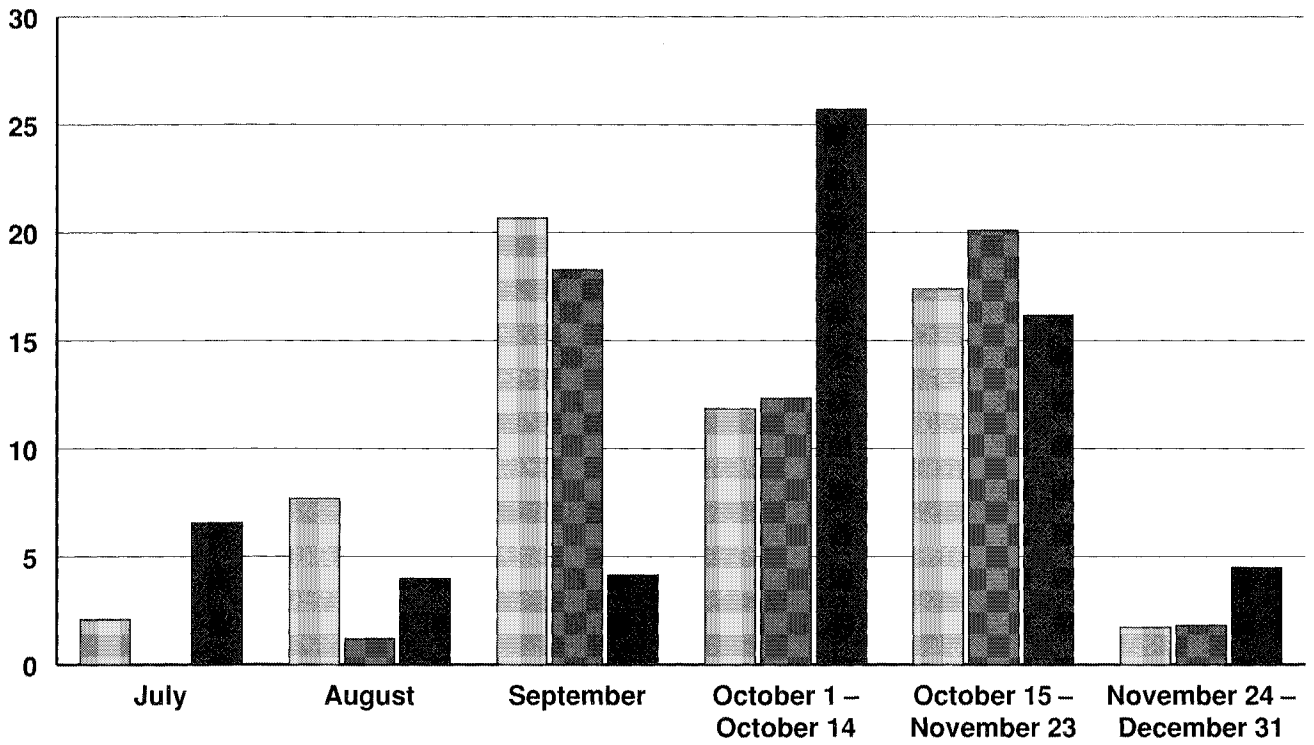
Individual Contributions To Presidential Primary Campaigns By Size of Contribution



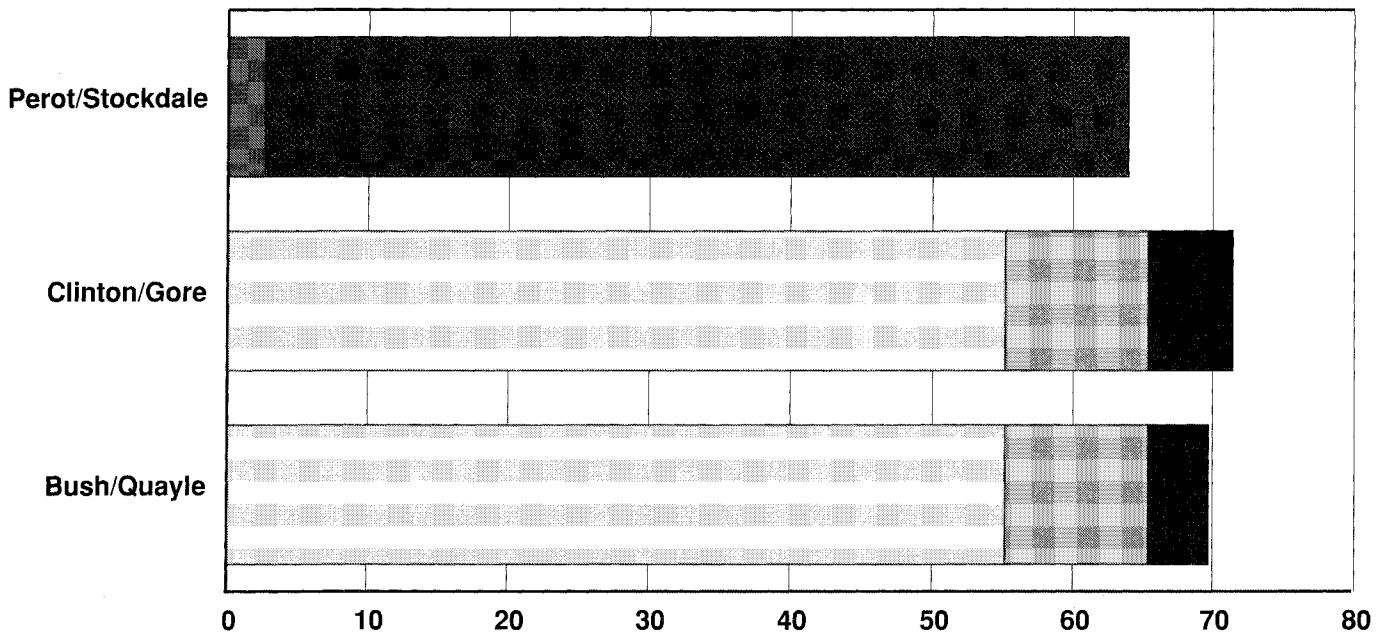
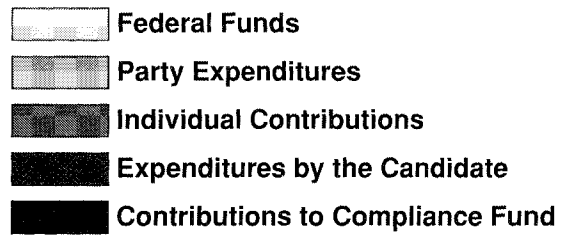
**Presidential Spending by 1992
General Election Campaign**



Millions of Dollars



**1992 General Election:
Funding Sources**



Chapter 2

Administration of the Law

The Federal Election Commission is the independent regulatory agency with sole authority over the administration and civil enforcement of the Federal Election Campaign Act (the Act) and the Presidential public financing statutes. This chapter summarizes the agency's efforts to fulfill its mission during the unprecedented activity level of the 1992 election year.

Public Disclosure

With the extraordinary increase in filings made under the campaign finance laws in 1992, great demands were made upon the offices of the Commission that are charged with processing the information from those filings and making it available to the public. The material below describes the activities of these offices.

Public Records

Disclosing campaign finance information is an essential part of the FEC's mission. Under the Act, all campaign reports filed by federal committees must be available for inspection in the agency's Public Records Office within 48 hours of receipt. Reporters, committees and other interested persons visit the Public Records Office to review these reports and computer printouts, monitoring the sources of funds and spending patterns or looking for possible errors and violations of the law.

This year, the Commission sought to improve the technology that enables the public to access and review reports. Using a prototype image processing program developed by the Data Systems Division, the agency scanned all major Presidential filings in 1992, totaling approximately 30,000 pages. Previously, the public could review microfilm copies of reports filed by committees and could access summary information through computer indexes. The new approach permits the public to review both the summary data and the actual forms through the computer. The Commission anticipates that eventually the reports and data of other political committees will be available to the public through this new image processing system.

Public Records staff are trained to offer personal-

ized assistance to visitors, helping them identify and locate the documents and research tools they need. Visitors have access to numerous materials in the Public Records Office, including: reports and statements filed by the regulated community; standard computer indexes, updated daily; *FEC Reports on Financial Activity*, the final statistical studies of each election cycle; advisory opinions; enforcement files (closed MURs); audit reports; and the agenda documents prepared for discussion in open Commission meetings. Public Records visitors are also afforded access to research space and photocopying equipment to facilitate their work. Requests for materials are also handled over the phone. Callers ordering documents on a regular basis set up running accounts, a convenient way to pay the fees for copying and using computer services.

Data Processing

The amount of information processed by the Commission during 1992 was exceptional. Twice as many House candidates filed with the Commission during 1992 than had done so in any previous year. During the month of October alone, the Commission received over 10,000 financial reports and nearly 4,000 48-hour notices (notices filed by authorized committees showing receipt of a contribution of \$1,000 or more during the period between 20 days and 2 days before the election). Each report and notice was processed, coded and entered in the Commission's data base.

More data was coded and made available to the public than ever before. On October 20, 1992, for example, the agency received 26,000 pages of information. Forty-eight hours later, a summary was ready for 1,500 news organizations, and the information was also available to the public on-line (see below).

The Commission continued to enhance its computer capabilities in 1992, expanding public access to on-line campaign finance information. The Direct Access Program (DAP), which permits subscribers to review disclosure information on-line on their own computers, continued to gain acceptance, with more subscribers than ever before. The DAP averaged about 240 hours of "user-time" per month. The range

of information available through the DAP also increased in 1992, as Advisory Opinions issued since 1975 and court case summaries from *Selected Court Case Abstracts* were added to the system. Reporters and political committees were the primary users of the program.

For those who did not subscribe to DAP, the FEC's state access program provided on-line access to campaign finance data. The general public could request printouts of FEC indexes in 24 state offices around the country.¹

The Data Division continued to explore how best to apply new technologies to internal Commission operations. Working closely with the Audit Division and the Office of General Counsel, Data developed computer strategies to enhance productivity in those offices.

Press Office

In 1992 the Press Office continued to brief the media on a variety of election-related topics—from campaign finance reports to Commission rulemakings. With the advent of the 1992 Presidential campaign, however, the number of inquiries handled by the press office skyrocketed. By the end of October 1992, the Press Office had taken 20,000 phone calls (3,000 more than during the same period in 1988) and had met with 3,000 reporters.

The Press Office conducted briefings, seminars and workshops for numerous media bureaus and journalism graduate groups. Also, in one-on-one briefings with reporters, the Press Office explained provisions of the election law, agency procedures and the Commission's discussions of issues.

Increasingly, the Press Office has been fielding calls from reporters outside the Washington area. Smaller local and even weekly newspapers have turned to the Press Office for information, especially about House races. This year also saw a dramatic increase in inquiries from reporters with foreign me-

dia, including reporters from Japan, Germany, Bulgaria, Spain, Great Britain, France, Italy and India.

The Press Officer also serves as the Commission's Freedom of Information Officer. In that capacity he responded to a record number of FOIA requests in 1992. Items processed under the FOIA include requests for computer tapes and access to the Commission's Direct Access Program.

Regulations

The Commission's regulations interpret and explain the statute's requirements in detail. The Commission prescribed its first regulations in 1977 and has continued over the years to amend its rules to give increased guidance to committees. In 1992, the Commission prescribed new regulations regarding:

- Application of rules on the allocation of federal and nonfederal expenses;
- Use of candidates' names by unauthorized committees;
- Bank loans;
- Interim ex parte rules; and
- Rulemaking petitions.

The first three items are discussed under "Legal Issues" in Chapter 3, and summaries of the last two are provided in this chapter, below.

During 1992, the Commission also sought comments on proposed rules concerning transfers of funds between the authorized committees of a federal candidate; transfers of funds and assets from a candidate's nonfederal campaign to his or her federal campaign (see p. 31), proposed changes to the definition of "member"; the impact of the *MCFL* court decision on election-related activities of corporations and labor organizations; and the "best efforts" requirements. In addition, the Commission repealed all FEC regulations on honoraria to reflect the legislative repeal of 2 U.S.C. §441i.

Ex Parte Communications: Interim Rules

The Commission amended its regulations to add a new Part 201 setting out interim rules on ex parte communications, effective December 9, 1992. The Commission also solicited comments on the interim

¹Participating states include: AK, AZ, CA, CO, CT, GA, HI, IL, IA, LA, MD, MA, MI, NE, NV, NJ, NM, OH, TN, TX, UT, VT, WA and WI.

rules and will evaluate them in light of comments received.

The interim rules prohibit ex parte communications made in connection with ongoing Commission audits and litigation. They supplement an existing ban on ex parte communications pertaining to compliance matters. The explanation accompanying the interim rule said that such a ban is necessary “to avoid the possibility of prejudice, real or apparent, to the public interest in these activities.”

Ex parte communications are permitted in the case of rulemaking proceedings and advisory opinions, but any such comments must be made part of the public record.

The new rules apply to Commissioners, Special Deputies of ex officio Commissioners, and all individuals serving under their personal supervision. The Commission noted that it planned to consider recommendations for internal guidelines in this area for other Commission employees as well.

Final Regulations on Rulemaking Petition Procedures

The Commission approved final rules that establish procedures for filing petitions for rulemaking for the agency’s consideration. The new rules became effective on September 4, 1992. Based on the agency’s previous procedures, the new regulations provide the public with easy access to the information.

In newly created 11 CFR Part 200, the new rules:

- Describe what information is required in a rulemaking petition;
- Explain the steps the agency takes in responding to a petition;
- List the factors the Commission may consider in deciding whether to initiate a rulemaking;
- Provide for the reconsideration of petitions that are denied; and
- Define the administrative record (i.e., the documents upon which the agency will base its decision on the petition) for purposes of judicial review. A “Statement of Basis and Purpose” accompanied the rules, as required by the Administrative Procedures Act.

Advisory Opinions

Advisory opinions, which the Commission discusses and votes on in public meetings, clarify the election law for the requester and anyone else in the same situation as the requester. The Commission issued 39 advisory opinions in 1992. Requests for advisory opinions sometimes bring to light areas of the law that need further clarification, leading eventually to revised regulations.

Selected advisory opinions issued in 1992 are discussed in Chapter 3, Legal Issues.

Assistance and Outreach

From its earliest days, the Commission has fostered voluntary compliance with the law by offering information, advice and clarification to those seeking help. Some of the specific activities undertaken by the agency during 1992 are discussed below. (See also Appendix 4, which describes the activities of each of the FEC offices.)

Telephone Assistance

Central to the Commission’s strong outreach program to help those who must comply with the campaign finance law is the agency’s toll-free information line (800-424-9530). Public affairs specialists answer thousands of questions on the toll-free and local lines each year, often researching relevant advisory opinions and litigation for callers. In 1992, the number of calls taken on the toll-free lines increased dramatically. In her December 14 news conference, Chairman Joan Aikens noted that the agency “handled more than twice the usual number of inquiries” during 1992.

Reporting Assistance

Reports analysts, knowledgeable about the complexities of reporting and related compliance matters, are available to discuss reporting problems or questions with political committees. Any committee with reporting questions is encouraged to call the Commission and speak directly to the analyst assigned to review the committee’s reports. (See also Review of Reports, below.)

The FEC recognizes the need to inform committees about reporting rules and upcoming reporting dates. The agency sends each committee treasurer a reminder of upcoming deadlines three weeks before the due date of a report. The FEC's monthly newsletter, the *Record*, also publishes reporting schedules and requirements.

Publications

The *Record*, published monthly, is essential reading for those who wish to follow Commission decisions and activity. In addition to detailing the reporting requirements, it includes summaries of new advisory opinions, regulations and litigation. The *Record* also includes longer articles focusing on specific subjects of interest. All treasurers automatically receive the *Record*, but anyone may order a free subscription.

In January 1992, the Commission published the *Legal History of the Presidential Election Campaign Fund Act*, compiled and edited by the FEC's library staff. The *Legal History* traces the development of the public funding law from 1966, when the first public funding legislation was enacted, through 1980, when the current law was amended to increase the public funding entitlement for major party conventions. It reprints the bills, accompanying reports and floor debates from which the present law was derived, and also includes the body of a 1957 report on campaign finance activity in the 1956 general election (the Gore Report).

The Public Records Office released *PACRONYMS*, an alphabetical list of acronyms, abbreviations and common names of political action committees (PACs), and *1992 Presidential Primary Election Results*. The FEC also distributed, as a courtesy to political committees, an Internal Revenue Service document, "Election Year Issues," which discusses the taxation of political committees and the restrictions on campaign activities of 501(c) organizations.

In 1992 the agency published a completely revised edition of the *Campaign Guide for Corporations and Labor Organizations* reflecting advisory opinions and regulations issued since the previous *Guide* was published in 1986. Additionally, the agency published

a totally revised Information brochure—in both English and Spanish. The Commission also published updated editions of *Selected Court Case Abstracts*, the FEC regulations (11 CFR), a brochure on overlapping federal and state law, a brochure on the sale and use of campaign finance information, and the *Combined Federal/State Disclosure Directory*.

During 1992, Commissioners and staff published articles on the election law in a variety of journals, newsletters and other publications.

Conferences

Each year, the agency sponsors conferences in which Commissioners and staff conduct a variety of technical workshops on the law and have the opportunity to respond to questions from those who attend. At the 1992 conferences, held in Washington, D.C., Orlando and Los Angeles, Internal Revenue Service staff were also available to discuss tax-related issues. Attendees at these conferences include treasurers and representatives of candidate and party committees, as well as individuals representing corporate and labor separate segregated funds and nonconnected committees.

Media Appearances

As noted above, 1992 saw increased public interest in the Commission's activities in general and in the public funding of Presidential elections in particular. Chairman Joan Aikens represented the Commission at several press conferences and media appearances, including interview call-in programs on the Larry King radio show and on C-SPAN and the Cable News Network (CNN).

Review of Reports

Reports analysts examine each report filed with the Commission to ensure full disclosure of campaign finance information and compliance with the statute and regulations. If a report suggests that a committee may be in violation of the law, the reports analyst sends the committee a letter (called a request for additional information or RFAI). The letter gives filers an opportunity to correct errors and omissions on

their report or to explain the possible violation. Serious violations are referred to the Office of General Counsel or the Audit Division for appropriate action.

There was not only a significant increase in the number of reports received this year but also an increase in the length (20 percent longer compared with 1990 reports) and complexity of the reports. Reports were longer because there was more financial activity and because new schedules were added to the form: Schedules H1–H4 (allocation expense schedules) and Schedules C-1 and C-P-1 (bank loans and lines of credit). As a result, reports analysts notified more committees of potential problems than in any previous year. Analysts continued to work closely with filers, and met or spoke with committee representatives several thousand times throughout the year.

Enforcement

Possible violations of the law are brought to the Commission's attention through its internal monitoring procedures, through externally generated complaints and by referrals from other law enforcement officials. Potential violations are known as Matters Under Review (MURs) and are assigned case numbers. Under the Act, all phases of the enforcement process remain confidential until the Commission closes a case and places it on the public record (although the respondent may give written consent to waive confidentiality at any time). Respondents are

given an opportunity to demonstrate that no action should be taken against them. If the Commission decides there is "reason to believe" a violation of the law has occurred, it investigates the matter. The Commission may issue orders and subpoenas requiring individuals to answer written questions, produce documents or provide testimony. When necessary, the agency may ask a federal district court to enforce the Commission's orders and subpoenas. Following an investigation, the General Counsel prepares a brief on the issues, and the respondents are given an opportunity to file a response brief. If, after reviewing these briefs, the Commission determines there is "probable cause to believe" the respondent violated the law, the agency must try to resolve the matter through a conciliation agreement. If conciliation attempts fail, however, the agency may file suit against the respondent in a federal district court. The accompanying table shows the Commission's caseload of MURs from 1986 through 1992.

The Commission's Office of General Counsel has developed and is refining a method to prioritize its caseload of MURs to ensure that it will focus the office's resources on the most important cases and better assist the Commission in exercising its prosecutorial discretion.

Among the Commission's recent legislative recommendations, several significant proposals addressed enforcement issues, including: the enhancement of criminal provisions; expedited enforcement procedures and injunctive authority; protection for those who file complaints or give testimony; and ensuring the independent authority of the agency in all litigation. See Chapter 6.

Caseloads of MURs

	1986	1987	1988	1989	1990	1991	1992
Pending at Beginning of Year	137	143	171	220	201	237	198
Opened During Year	191	261	236	218	195	256	260
Closed During Year	185	233	187	237	159	295	129
Pending at End of Year	143	171	220	201	237	198	329

Clearinghouse on Election Administration

The Commission's National Clearinghouse on Election Administration serves as a central exchange for research and information on the administration of elections. This section covers Clearinghouse activities during 1992.

Advisory Panel

During 1992, the Clearinghouse planned the next meeting of its Advisory Panel. The Panel, composed of election officials drawn from all over the country, was scheduled to meet in Savannah, Georgia, March 24-26, 1993. Topics for discussion, arising from the 1992 elections, were to include disaster recovery planning, privacy issues in voter registration, crisis communications, and independent testing of voting equipment. These topics reflected the concerns of state election officials. In conjunction with this meeting, the Clearinghouse planned to publish the *Advisory Panel Pictorial*, containing the names, addresses, pictures and biographies of each panel member.

Publications

Campaign Finance Law '92. This biennial publication summarizes the campaign finance laws of each state, and includes quick reference charts showing campaign finance law requirements in each state; contribution and solicitation limits expenditure limitations; and states with special tax or public financing provisions.

Innovations in Election Administration. This new series of monographs describes recent technological and administrative innovations in state and local election offices. The various publications discuss topics such as the use of the Voting Authority Card, optical scanning technology, election signature retrieval systems, the use of the national change of address card to verify voter registration lists, and agency and motor voter registration programs.

Essays in Elections 1: The Electoral College. This document provides a detailed view of the origins and development of the electoral college, its current workings, and a review of arguments both for and against the college. The participation of Ross Perot as an independent Presidential candidate in the general election heightened public interest in the electoral college. During 1992, the Commission distributed over 13,000 copies of this discussion of the electoral college; state and local election offices also reproduced and distributed the document. Future essays will be published on an irregular basis.

Education

The Clearinghouse began an analysis of the educational needs of local election officials prior to developing, over the next decade, a series of training videos and handbooks, each focusing on a particular aspect of election administration. These materials will provide state and local officials with a vehicle for conducting short, issue-specific training or, once the series is completed, longer and more comprehensive training seminars.

Chapter 3

Legal Issues

As the independent regulatory agency responsible for administering and enforcing federal campaign finance laws, the Federal Election Commission promulgates regulations explaining the requirements of the Federal Election Campaign Act (the Act), and also issues advisory opinions applying these provisions to specific situations. The Commission has primary jurisdiction over the civil enforcement of the Act. This chapter examines the major campaign finance issues confronting the Commission during 1992 as it deliberated on regulations, advisory opinions and enforcement actions.

“Soft Money”

The 1992 election was the first election cycle under the Commission’s “soft money” regulations that went into effect January 1, 1991. Those regulations require political committees that maintain separate accounts for federal and nonfederal activity to allocate shared expenses between the two accounts according to set formulas. The allocation regulations were designed to ensure that committees would not use nonfederal “soft money” to subsidize federal election activities.

In 1992, the Commission further clarified the allocation rules through advisory opinions (AOs) and regulatory amendments. It also disclosed new data on soft money.

Advisory Opinions

Since the allocation regulations became effective in 1991, the Commission has received a number of requests for advisory opinions applying the allocation rules to specific situations.

Among the requests received in 1992, one pertained to funds which, under state law, party committees must use to administer elections. In Texas, state law mandates that the Democratic and Republican state and county executive committees administer primary elections (including runoffs), using state funds, ballot access fees and privately raised donations. In Advisory Opinion 1991–33,¹ issued to the Republican Party of Texas and the Texas Democratic

Party, the Commission clarified that these payments are not subject to federal/nonfederal allocation under 11 CFR 106.5(a)(2) and are not reportable under FEC rules.

Other AOs asked about reallocation of expenses. The Democratic National Committee (DNC) treated all of its 1991 salary expenses as administrative expenses for purposes of allocating them between its federal and nonfederal accounts. In AO 1992–2, the Commission said that the DNC could reallocate, as fundraising expenses, the staff salaries and benefits of employees who worked full time on fundraising activities, provided that the reallocation was made within 30 days of the issuance of the advisory opinion.

Similarly, in AO 1992–27, the Commission found that the National Republican Senatorial Committee (NRSC) could retroactively reallocate certain disbursements for fundraising programs that collected funds for both federal and nonfederal candidates.

Another area of the allocation regulations to receive clarification involved in-kind donations. In AO 1992–33, the Commission said that, if one of two specified conditions were met, the Democratic and Republican National Party Committees could accept in-kind donations of goods and services from corporations and other prohibited sources in connection with two categories of allocable expenses: administrative activities and fundraising programs that collect both federal and nonfederal funds. The Commission stressed that, to ensure that the prohibited funds represented by such a donation were not used to pay for the federal share of the expenses, the federal account had to transfer the federal share of the value of the goods or services to the nonfederal account in advance of the donation or on the day the donation was received. Alternatively, the committee had to prepay or escrow the federal portion of anticipated in-kind donations by making an advance bulk transfer in that amount from the federal account to the nonfederal account.

Revisions to Regulations

Revised regulations on the allocation of federal and nonfederal expenses became effective on June 18, 1992. The amended regulations, issued in response

¹Although AO 1991–33 applied to the administration of a 1992 primary election, the opinion was issued during 1991.

sponse to a petition for rulemaking requested by the Association of State Democratic Chairs, eased certain requirements for state and local party committees.² (See Appendix 7.)

Revised Record Supplement

In a continued effort to help committees understand the allocation rules, the Commission published a revised supplement to its monthly newsletter, the *Record*, summarizing the provisions of the allocation regulations as amended. The revised supplement explained and illustrated the reporting requirements.

Enhanced Disclosure of Nonfederal Activity

For the first time, the comprehensive disclosure of nonfederal funds received by national party committees was required by the FEC in the 1992 election cycle. Chapter 4, Campaign Finance Statistics, shows the "soft money" activity reported by the two major national party committees.

In this year's legislative recommendations, the Commission noted that Congress may wish to consider whether new legislation is required to regulate "soft money." Such changes, the Commission said, could include: (1) more disclosure of nonfederal account receipts; (2) limits on nonfederal account donations coupled with tighter affiliation rules regarding party committees; (3) prohibiting nonfederal accounts for certain types of committees; (4) prohibiting the use of a federal candidate's name or appearance to raise soft money; (5) confining soft money fundraising to nonfederal election years; (6) requiring all party committees to disclose all nonfederal activity that is not exclusively related to nonfederal candidate support; (7) requiring that all party activity which is not exclusively on behalf of nonfederal candidates be paid for with federally permissible funds; and (8) limiting the use of soft money to nonfederal election year activity.

²On March 21, 1991, the Association of State Democratic Chairs (ASDC) had submitted a rulemaking petition asking the Commission to consider changing some of the allocation formulas and payment procedures set out in the regulations that became effective January 1, 1991. See *Annual Report 1991*, pp. 19-20.

Corporate/Labor Communications

Numerous matters involving communications by corporations and labor organizations have been before the Commission in recent years. In 1992 the Commission considered corporate and labor communications in a rulemaking proceeding and in several advisory opinions and court cases as well.

Background

The subjects addressed in these matters spring from the U.S. Supreme Court decision in *FEC v. Massachusetts Citizens for Life (MCFL)*, 479 U.S. 239 (1986), and subsequent cases.

In *MCFL*, the Court ruled on December 15, 1986, that the Act's prohibition on corporate expenditures at 2 U.S.C. §441b was unconstitutional as applied to independent expenditures made by a narrowly defined type of nonprofit corporation. Three features of *MCFL* qualified it for an exception to the general ban on corporate expenditures:

- It was a nonprofit corporation established to promote political ideas and did not engage in business activities;
- It had no shareholders or other persons with a claim on its assets or earnings, and persons associated with the organization would have no economic disincentive for disassociating with it; and
- It was not set up by a corporation or union and had an established policy of not accepting corporate or union donations.

The Court also stated that "an expenditure must constitute 'express advocacy' in order to be subject to the prohibition of §441b."

In another case, *Faucher v. FEC* (No. 90-0112-B), the U.S. District Court for the District of Maine ruled, as unconstitutional, a Commission regulation governing the public distribution of voter guides by corporations. In its opinion, later upheld by the U.S. Court of Appeals, the district court said, "...issue advocacy by a corporation *cannot* constitutionally be prohibited... only express advocacy...is constitutionally within the statute's prohibition." The Supreme Court subsequently denied the FEC's petition asking for a review of the appeals court decision and reconsideration of the Court's "express advocacy" construction in *MCFL*.

Rulemaking

In an effort to clarify the meaning of “express advocacy” and other aspects of corporate and labor activities affected by these decisions, the Commission published a Notice of Proposed Rulemaking in the Federal Register on July 29, 1992. Under the proposed rules, included in the draft notice, only public communications containing “express advocacy” would be subject to the prohibition on corporate and labor expenditures. The draft rules would not, however, change the prohibition against contributions made by corporations and labor organizations, and new provisions in the rules would indicate when corporate or labor organization activities would result in a prohibited in-kind contribution.

The Commission also sought comments on two proposed definitions of “express advocacy” at 11 CFR Part 109, and asked whether a different definition of “express advocacy” should be incorporated at 11 CFR Part 114 to govern corporate and labor communications.

The proposed rules also presented two alternative sets of requirements for qualifying as an MCFL-type corporation (i.e., the type that would be allowed to use its treasury funds to make independent expenditures). The notice included proposed rules on the reporting requirements for MCFL-type corporations and on the level of independent expenditure activity that would cause such corporations to become political committees (i.e., the “major purpose” test).

The notice also sought comments about candidate appearances (under 114.3 and 114.4) and candidate debates, voter drives, voter guides and voting records (under 114.4).

The proposed rules further sought comments about several matters not now addressed in the Commission’s regulations, including:

- The use of corporate or labor letterhead or logos by individuals and candidates;
- The identification of an individual as a representative of a corporation or labor organization when the individual makes express advocacy statements or solicits contributions;
- The facilitation of contributions by corporations and labor organizations; and

- The endorsement of candidates by corporations and labor organizations.

On October 14 and 15, 1992, the Commission held a public hearing on the *MCFL* rulemaking. The Commission received 31 written comments on the proposed rules and heard testimony from representatives of 25 organizations and representatives of third-party Presidential campaigns.

Court Decision: MCFL Standards Do Not Apply to NRA

In a November 15, 1991, order (modified on December 11), the U.S. District Court for the District of Columbia found that the National Rifle Association (NRA) was not an MCFL-type corporation because the NRA received corporate funds.³

At issue was a \$415,745 payment made by the National Rifle Association—Institute for Legislative Action (ILA) to NRA’s separate segregated fund (SSF). The payment was a corporate contribution in violation of 2 U.S.C. §441b(a), the court said.

The payment had originated from two solicitations that ILA had paid for in March and July of 1988. The SSF had reimbursed ILA for the full cost of the mailings on August 1, but ILA then returned the \$415,745 to the SSF on October 20, 81 days after the August payment. Regulations require that such reimbursements be made within 30 days. 11 CFR 114.5(b)(3).

³*FEC v. NRA Political Victory Fund*, No. 90-3090.

The defendants had argued that the October 20 payment was permissible under the Supreme Court's decision in *MCFL*.⁴

Advisory Opinion: Ads Sponsored by Membership Organization

The Commission encountered the issue of "express advocacy" again in its consideration of AO 1992–23, requested by the National Rifle Association (NRA). The Commission concluded that the NRA, an incorporated membership organization, could not pay for ads similar to newspaper and radio ads financed by its PAC because those ads contained express advocacy.

The Commission based its decision on court rulings in *MCFL* (supra) and *FEC v. Furgatch*. In *MCFL*, the Supreme Court stated that an express advocacy message need not necessarily include the *Buckley*⁵ catch phrases (e.g., "vote for," "support," etc.) if the message "went beyond issue discussion to express electoral advocacy." The court of appeals in *FEC v. Furgatch*, interpreting express advocacy, said that the communication "must, when read as a whole, and with limited reference to external events, be susceptible of no other reasonable interpretation but as an

exhortation to vote for or against a specific candidate."⁶

In AO 1992–23, the Commission found that each of the ads paid for by NRA-PVF constituted such an exhortation and not simply issue discussion. The ads satirized the record of Congressman Beryl Anthony on a number of issues but did not encourage any action in connection with the issues (such as urging the Congressman to vote for or against specific bills). Based on their content and timing (close to the Congressman's primary election), the Commission found, the ads constituted express advocacy.

Advisory Opinion: Candidate Appearance at University

In the Notice of Proposed Rulemaking mentioned earlier, the Commission solicited comments on a proposal that would allow incorporated 501(c)(3) educational institutions to permit candidates to speak on school premises under specified circumstances. The same issue was addressed in an advisory opinion requested by a Presidential candidate.

In AO 1992–6, the Commission found that Vanderbilt University's payment of an honorarium and travel expenses to David Duke for a speech would not result in a contribution to his Presidential campaign. Among the factors considered by the Commission were the following:

- Mr. Duke would receive the payment as personal income (not as a campaign contribution);
- The staging of the speech would not afford Mr. Duke an opportunity to solicit or collect contributions from attendees;
- He would not mention his own or anyone else's candidacy;
- The University, and not Mr. Duke, would control the event and who was admitted;
- Neither Mr. Duke nor his staff would conduct or participate in collateral campaign events (e.g., rallies, press conferences, luncheons); and
- The invitation to speak and the proposed appearance were based not only on Mr. Duke's status as

⁴The defendants had also asserted that the FEC lacked authority to bring suit because the FEC is a constitutionally flawed agency, claiming that the Act's designation of the Clerk of the House and the Secretary of the Senate as nonvoting members violated the separation of powers. Finding no showing that the nonvoting members participated in any decisions involving this case, the court said there was "no need to concern itself" with this argument. Defendants next claimed that the appointment of Commission members impermissibly restricts the appointment power granted the President under Article II because the President may not appoint more than three Commissioners from the same political party. Moreover, they said, because the President cannot control or remove Commissioners, the execution of the law does not rest with the President, an infringement of the President's sole executive power. The court ruled that the defendants did not have standing to raise these claims. The decision in this case is pending on appeal in D.C. Circuit.

⁵*Buckley v. Valeo*, 424 U.S. 1 (1976).

⁶807 F.2d 857, 864 (9th Cir.), cert. denied, 484 U.S. 850 (1987).

Presidential candidate, but also on his reputation as a college speaker.

Other Corporate and Labor Issues

While the Act prohibits corporations and labor organizations from making contributions or expenditures in connection with federal elections, it does permit them to use their general treasury funds to establish and administer separate segregated funds. In several advisory opinions issued in 1992 the Commission helped clarify these provisions.

Administrative Costs of SSF

In Advisory Opinion (AO) 1991-36, the Commission found that the Boeing Company, whose PAC was making a contribution to a fundraiser sponsored by the Democratic Congressional Campaign Committee, could use its general treasury funds to pay travel and lodging costs for a corporate representative to attend the event. Such costs, the Commission said, could be viewed as administrative expenses arising from Boeing PAC's participation in the fundraiser.

The Commission addressed another aspect of the payment of an SSF's administrative costs in AO 1992-20, requested by the American Speech-Language-Hearing Association (ASHA). ASHA is an incorporated membership organization whose members are individual professionals. The Commission said that when ASHA received PAC contributions drawn on the incorporated private practices of its members, ASHA could use the checks to pay the PAC's administrative and solicitation expenses after the checks were endorsed to ASHA, deposited in the ASHA general treasury fund and recorded in a separate book account used to defray such expenses.

Payment of Employee/Candidate's Benefits

Under the regulations at 11 CFR 114.12(c)(1), a corporation may not pay fringe benefits (such as health or life insurance or retirement) for an employee on leave without pay to participate in a federal campaign. In AO 1992-3, however, the Commission permitted Reynolds Metal Company to pay fringe benefits on behalf of an employee on unpaid leave to

pursue a federal candidacy because the benefits would be paid under a pre-existing company policy that applied to all employees and because the period covered would be relatively brief—31 days. The Commission distinguished this situation from that considered in AO 1976-70, in which the corporation did not have a pre-existing policy equally applicable to all employees regardless of the purpose of the leave of absence.

Corporate Structure/Affiliation

Corporate structure and issues of affiliation have been the subject of numerous AOs over the years. In AO 1992-7, the Commission found that major and satellite franchisees of H & R Block, Inc., were considered affiliates by virtue of the company's control over their operations. Because the franchisees were considered affiliated organizations, the H & R Block Political Action Committee could solicit contributions from their executive and administrative personnel and their families.

In AO 1992-17, the Commission concluded that the PAC of DuPont Merck, a partnership owned by two corporations, was affiliated with the PACs of each of the corporations.⁷ By virtue of this affiliation, the two corporations could pay the administrative and solicitation costs of the partnership's PAC. The partnership itself could also pay the costs, and such payments would not be considered a contribution to the PAC, because DuPont Merck is a partnership owned entirely by corporations with which it is affiliated.

Candidate Issues

Ban on Use of Candidate's Name in Fundraising Projects by Unauthorized Committees

New regulations, effective November 4, 1992, prohibit party committees, PACs and other unauthorized committees from using candidate names in the titles of special fundraising projects and other activities. Unauthorized committees have long been prohibited

⁷Previously, in AO 1989-8, the Commission said that when a partnership is affiliated with a corporation that has an SSF, the partnership's PAC is subject to the same solicitation restrictions as those of the SSF.

from using a candidate's name in their registered committee name. Under revised 11 CFR 102.14(a), unauthorized committees are further prohibited from using the name of any candidate "in any name under which a committee conducts activities, such as solicitations or other communications, including a special project name or other designation."

In recent years, unauthorized committees had often used a candidate's name in the title of a special project. This practice had the potential for confusing the public and diverting funds from authorized candidate committees. Candidates had objected to the use of their name in special projects when they received none of the fundraising proceeds or disagreed with the views expressed in the communication. When the Commission sought comments on proposed changes to the regulations, one Presidential campaign stated that an unauthorized project had raised over \$10 million despite the candidate's disavowal of the project's activities. Additionally, a television documentary (which was placed in the rulemaking record) reported that a PAC had raised \$9 million in numerous projects whose titles included candidates' names; none of the funds went to the named candidates.

Bank Loans

The Act and the Commission's regulations prohibit corporations, including banks, from making contributions or expenditures in connection with a federal election. As an exception to this rule, a bank may loan money to a federal committee provided that certain conditions are met. Among them is a requirement that the loan be "made on a basis which assures repayment." New Commission regulations designed to clarify this standard became effective April 2, 1992. The Commission also adopted new loan reporting forms, Schedule C-1 and, for Presidential committees, Schedule C-P-1. The new regulations are summarized in Appendix 8.

Use of Campaign Funds

In two advisory opinion requests, the Commission grappled with questions involving payments by a principal campaign committee of the candidate's

personal living expenses. In both instances, the Commission failed to reach a majority decision on whether such payments would fall within a committee's wide discretion in making expenditures or whether they would constitute the candidate's personal use of excess campaign funds, which is prohibited under 2 U.S.C. §439a.

In AO 1992-1, Roger Faulkner, a 1992 Senate candidate, proposed receiving a salary from his campaign committee to pay for his personal living expenses during the campaign. Although the Commission was unable to reach a decision on that part of Mr. Faulkner's request, the Commission did agree that the "wide discretion" principle mentioned above would permit the committee to reimburse the candidate for travel, subsistence and other campaign-related expenses he paid from his personal funds.

In AO 1992-4, John Michael Cortese, another 1992 Senate candidate, proposed using campaign contributions to pay his own living expenses and those of his wife, who would assist in the campaign. Although again the Commission failed to reach a majority decision on whether the payments to the candidate were permissible, it found that the committee's wide discretion did extend to paying Mrs. Cortese a salary for her campaign services.

Contributions Received by Committees

Two authorized committees this year sought the Commission's guidance on how to treat certain contributions. The Russo for Congress Committee, the principal campaign committee of Congressman Martin A. Russo, received contributions designated for the 1992 general election before the Congressman lost his Illinois primary on March 17, 1992. In AO 1992-15, the Commission said that Russo's committee had 60 days from the primary to either obtain redesignations of the contributions to another election or to refund them.

The Liz Holtzman for Senate Committee also asked for guidance concerning contributions it had received. In AO 1992-29, the Commission said that the committee had to refund contribution checks that had been lying in a desk drawer for approximately six months, without having ever been deposited. The

Commission noted that 11 CFR 103.3(a) requires that all receipts be deposited within 10 days of the treasurer's receipt, and that previous opinions (AOs 1989-21 and 1980-42) have recognized that the receipt of contributions by a committee's agent may be viewed as the equivalent of the treasurer's receipt.

Candidates' Media Appearances

The Commission has frequently considered whether activities involving the participation of a candidate, or communications referring to a candidate, result in a contribution to or an expenditure on behalf of the candidate under the election law. In 1992 the Commission issued two advisory opinions concerning media appearances by candidates for federal office.

In AO 1992-5, the Commission said that Congressman James P. Moran could appear in two public affairs forums televised on local cable stations in his district, and that the programs would not result in a contribution to his campaign because their content would be restricted to a discussion of public issues, with no mention of the campaign. Neither of the series featuring the Congressman would include any solicitations, express advocacy or campaign promotion.

In another AO, 1992-37, the Commission said that Randall A. Terry, host of a daily radio talk show, could continue to serve as host of the program while running as a House candidate in New York. His radio employment would not result in prohibited corporate contributions to his campaign from the production company, or from the radio stations or network, the Commission said, because the program would not air in the 23rd District; he would not use the program to promote or raise funds for his candidacy or against his opponent; and his campaign ads (or ads against his opponent) would not be run during the show.

Transfer of Funds from State to Federal Campaign Committees

On August 6, 1992, the Commission approved a final

rule to prohibit transfers of funds and assets from a candidate's nonfederal campaign to his or her federal campaign, but the rule did not go into effect in 1992 because Congress adjourned before the rule had been before it for the required 30 legislative days. On December 3, 1992, the Commission voted to resubmit the regulation to the 103rd Congress.⁸

The new regulation at 11 CFR 110.3(d) would replace the current regulation at 110.3(c)(6), which permits candidates to transfer funds from their non-federal to federal campaigns as long as the transfers do not contain any contributions that are impermissible under the Act. The new rule grants a petition for rulemaking filed by Congressman William Thomas, who alleged that the current regulation fails to prevent nonfederal campaigns from using impermissible funds to raise permissible contributions that are then transferred to federal campaigns.

Contribution Issues

Earmarked Contributions

An earmarked contribution is a contribution that the contributor directs to a clearly identified candidate or candidate's committee through an intermediary or conduit. An earmarked contribution counts against the contributor's contribution limit for the recipient candidate. The limit of the conduit is affected only when the conduit exercises direction or control over the choice of the recipient candidate. 11 CFR 110.6(d)(2). Determining whether an intermediary has exercised "direction or control" has often involved complex analysis by the Commission and the courts.

In *FEC v. National Republican Senatorial Committee*,⁹ the U.S. Court of Appeals for the District of Columbia Circuit reversed the district court's judgment in a case involving earmarked contributions. The district court had ruled that, in the 1988 election, the National Republican Senatorial Committee (NRSC) had exceeded the contribution limits through its exercise of "direction or control" over earmarked contributions. (In a previous case reversing the Commission's initial dismissal of the same MUR on a

⁸On March 11, 1993, the Commission voted to revise its plan for implementing the rule and to delay the rule's effective date until July 1, 1993.

⁹No. 91-5176.

3 to 3 vote, *Common Cause v. FEC*, the district court had ordered the FEC to conform to the court's own interpretation of "direction or control.") The court of appeals, however, in its decision of June 12, 1992, found that the district court had erred in that decision.¹⁰

In addressing the central issue—the interpretation of direction or control—the appeals court cited its decision in *Democratic Congressional Campaign Committee (DCCC) v. FEC*. In that opinion, the court had held that, when the FEC dismisses a complaint due to a 3-3 deadlock, the action is subject to judicial review, and the three Commissioners who voted to dismiss must provide a statement of reasons for their vote. The court noted that the *DCCC* opinion also "strongly suggests that, if the meaning of the statute is not clear, a reviewing court should accord deference to the Commission's rationale."

In the case of *FEC v. NRSC*, the appeals court pointed out that the three Commissioners who had voted against probable cause in the original compliance case, MUR 2282, had voted in favor of reopening the enforcement proceedings only because they felt they "were obligated to follow the [district] court's order." The court of appeals analyzed Commissioner Thomas J. Josefiak's¹¹ Statement of Reasons explaining the three initial votes to dismiss MUR 2282. The court observed that Commissioner Josefiak's statement "identified the two main factors the Commission's General Counsel, and later the district court, invoked to support a finding of direction or control, and pointed out the present inadequacy of each." The court concluded that the Josefiak statement was a reasoned justification for not finding a violation.

Contributions in the Name of Another

At 2 U.S.C. §441f, the Act prohibits contributions made by one person in the name of another person. Friends of Senator D'Amato asked the Commission how to proceed when the committee was unable to determine the original source of contributions sus-

pected of having been made in the names of others. In AO 1991-39, the Commission said that, in such unusual circumstances, the funds should be disbursed for a purpose unrelated to federal elections (e.g., to the federal government, to a state or local government, or to a charity described under 26 U.S.C. §170(c)).

Foreign Nationals

Under 2 U.S.C. §441e, foreign nationals are prohibited from making contributions, directly or through any other person, in connection with any election in this country. Over the years, the Commission has received numerous advisory opinion requests concerning U.S. corporations owned by foreign nationals.

In 1992, the Commission considered the situation of Nansay Hawaii, Inc., a domestic corporation that is wholly owned by a foreign national corporation, Nansay Corporation (Japan). Nansay Hawaii receives funds from its foreign national parent and has one foreign national member on its four-member Board of Directors.

In AO 1992-16, the Commission found that the U.S. corporation could make contributions to nonfederal candidates without violating the prohibition on contributions from foreign nationals, provided that the following requirements were met:

- The U.S. corporation had to be able to demonstrate through a reasonable accounting method that it had sufficient funds in its account—other than funds given or loaned by the foreign national parent—to make the nonfederal contributions.
- The U.S. corporation could not use funds received from the foreign national parent to replenish any portion of the contributions the subsidiary had made since the preceding payment.
- Only those board members of the U.S. corporation who were not foreign nationals could participate in the decision-making process for election activities.

¹⁰For a summary of the issues and the district court's decision, see *Annual Report 1991*, pp. 22-23.

¹¹Commissioner Josefiak has since left the Commission.

Disclosure

Sale and Use Restriction

On July 10, 1992, the U.S. Court of Appeals for the District of Columbia Circuit, sitting *en banc*, upheld the constitutionality of 2 U.S.C. §438(a)(4) in *FEC v. International Funding Institute* (No. 91-5013). That provision of the Act prohibits anyone from using or selling, for solicitation or commercial purposes, the information on individual contributors listed in political committee reports filed with the FEC.

International Funding Institute (IFI), using a data base containing information on individual contributors compiled from FEC reports, had developed and marketed a mailing list. The list was rented to a number of customers, including a political committee operated by IFI's president, which used the list for several solicitations.

In an enforcement matter, the FEC had found probable cause to believe that IFI had knowingly and willfully violated the law. Unable to reach a conciliation agreement, the FEC had filed suit in the U.S. District Court for the District of Columbia. Defendants had asked the district court to dismiss the case, arguing that §438(a)(4) violated the First Amendment. The FEC then had moved to certify the constitutional question to the court of appeals.

The appeals court held that, under an intermediate level of scrutiny, section 438(a)(4) was constitutional as applied to the defendants' conduct because it "advances an important governmental interest" (preserving the value of a political committee's contributor list) and "is no broader than is necessary to that task." On November 30, 1992, the U.S. Supreme Court denied certiorari in this case.

In another case involving the "sale or use" restriction, *FEC v. Political Contributions Data (PCD)*,¹² the U.S. District Court for the Southern District of New

York said that the FEC was "substantially justified" in bringing suit against PCD. Noting that the FEC's position had a "reasonable basis both in law and fact" and "could satisfy a reasonable person," the court denied defendant's request for attorney's fees under the Equal Access to Justice Act, which would have been payable by the FEC. This case is now pending on appeal in the 2nd Circuit Court of Appeals.

"Best Efforts"

In a letter sent to Presidential candidates and their treasurers, Chairman Joan D. Aikens underlined the need for committees to obtain the required information about individual contributors—name, address, occupation and employer—and to disclose that information in FEC reports. This information is required for each individual whose aggregate contributions to a political committee exceed \$200 in a calendar year.

Under FEC rules, a treasurer must make "at least one effort per solicitation" to obtain the required information. The request must inform the contributor that "the reporting of such information is required by law." 11 CFR 104.7(b). The Chairman's letter provided examples of acceptable requests as well as an example of a request that would not meet the "best efforts" standard.

The Chairman pointed out that, if a committee's solicitation did not contain a satisfactory "best efforts" request, the committee would have to make further efforts to obtain the information. If information became available after a report had been filed, amended reporting would be required.

On September 24, the Commission published a Notice of Proposed Rulemaking seeking comments on proposed changes to the "best efforts" regulation at 104.7(b). The changes were designed to strengthen the rule and to emphasize the importance of disclosing contributor information.

In its 1992 recommendations to Congress, the Commission suggested that Congress might wish to amend the law to address "the recurring problem of committees' inability to provide full disclosure about their contributors." (See p. 58.)

¹²The U.S. Court of Appeals for the Second Circuit had previously held, in August 1991, that PCD's sale of specialized contributor lists was permissible because they did not contain addresses or phone numbers, but did include a warning against the use of the information for solicitation or commercial purposes, and there was no evidence that PCD's customers had actually used PCD's lists for political or commercial solicitation.

Computer-Generated Forms

In AO 1992–11, the Commission said that, in preparing FEC reports for political committees, Coopers & Lybrand may use a computer-generated Form 3X Summary Page as long as the pages are in the exact format of the original FEC forms. In the AO, Coopers & Lybrand was directed to modify its computer-produced forms to correct certain deviations from the original form. The changes would ensure that reports filed on the reproduced forms would be uniformly easy to read and review.

FEC Jurisdiction

“Speech or Debate” and “Self-Discipline” Clauses; Enforcement of Repealed Provisions (FEC v. Wright)

The U.S. District Court for the Northern District of Texas, Fort Worth Division, ordered James C. Wright, Jr., former Speaker of the U.S. House of Representatives, to answer the FEC’s questions in connection with an administrative complaint filed against him (No. 4-91-0454-A). The court rejected Mr. Wright’s arguments that the FEC lacked the authority to investigate his activities. The former Speaker had based several of his arguments on the “speech or debate” and “self-discipline” clauses in the Constitution. He had also claimed that the FEC lacked authority because the alleged violation fell under a statutory provision that had since been repealed.

In July 1988, Citizens for Reagan had filed a complaint alleging that Speaker Wright had violated 2 U.S.C. §441i. That provision, since repealed, prohibited a federal officeholder from accepting more than a \$2,000 honorarium for a speech, appearance or article. The complaint alleged that Speaker Wright, during 1985 and 1986, accepted excessive honoraria disguised as proceeds from the sale of his book, *Reflections of a Public Man*. In January 1990, the Commission opened an investigation. When Mr. Wright refused to comply with an FEC order seeking answers to questions about his appearances and the sale of his book, the agency asked the district court to enforce the order.

In its judgment of November 12, 1991,¹³ the court concluded that the FEC’s order complied with a three-pronged test for validity: the investigation was for a lawful purpose; the information sought was relevant; and the agency’s demand was reasonable.

The speech or debate clause cited by Mr. Wright states that “for any Speech or Debate in either House they [Senators or Representatives] shall not be questioned in any other Place.” Art. I, §6. Mr. Wright contended that the clause nullified the FEC’s authority to seek answers to questions on activities that took place when he was a House Member. The court, however, found that the clause did not apply to the FEC’s questions, which concerned activities occurring “outside, and away from, the House” and which were “totally unrelated to anything done in the course of the legislative process....”

Mr. Wright further argued that the Constitution’s self-discipline clause, when read with the speech or debate clause, effectively allocated to the House the sole authority to enforce violations of the honorarium limit by Members. The self-discipline clause states, in part: “Each House may determine the Rules of its Proceedings [and] punish its Members for disorderly Behavior....” Art. I, §5. The court rejected this argument for two reasons. First, it “is tantamount to a contention that the relevant provisions of the Act [Federal Election Campaign Act] are unconstitutional.” Second, it “fails to recognize that the standards of conduct and rules of enforcement found in the Act are, indeed, self-disciplinary rules—the combined votes of the two Houses created the statutory provisions in question.”

Mr. Wright also claimed that the FEC no longer had authority to investigate or enforce §441i because of recent legislation: the Ethics Reform Act of 1989 (effective January 1, 1991) prohibited House Members from accepting honoraria and amended §441i to remove House Members from its scope; §441i itself was repealed on August 14, 1991.

¹³The former Speaker appealed the judgment on January 9, 1992, but later agreed to a settlement with the FEC on the administrative complaint. On May 1, 1992, the U.S. Court of Appeals for the Fifth Circuit dismissed the appeal.

The court noted that, if Congress had intended to eliminate the FEC's authority to enforce §441i violations occurring before the repeal, the legislation would have expressed that intent. "Thus, to this day," the court said, "§441i is deemed to be in full force and effect as to any conduct of Wright occurring before the date of its repeal."

In its current legislative recommendations, the Commission asks Congress to clarify that Title VI does not apply to the public financing of campaigns and conventions receiving payments from the Presidential Election Campaign Fund. (For more information, see p. 52.)

Civil Rights Act

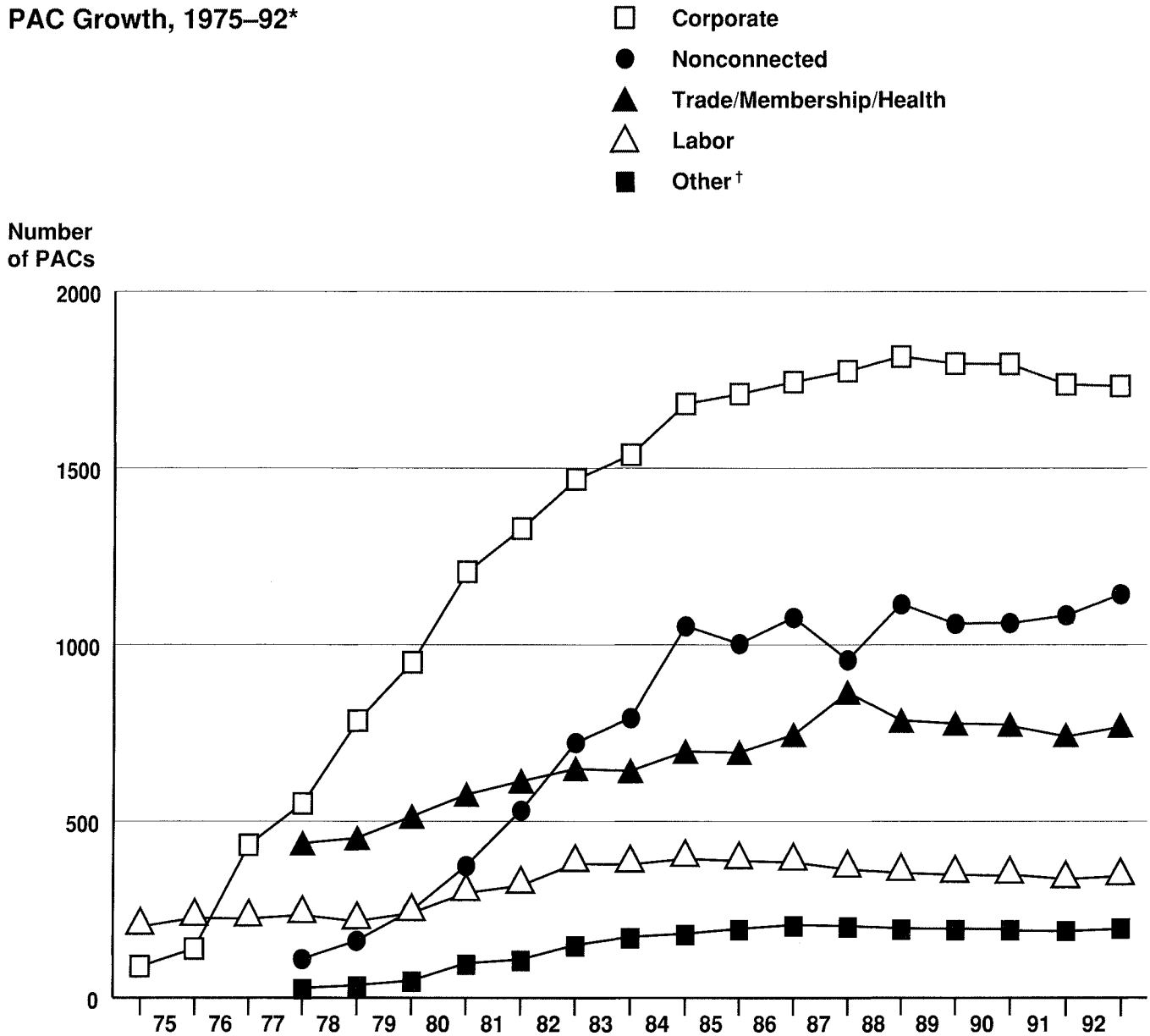
The Freedom Republicans, Inc., and its president, Lugenia Gordon, alleged that the Republican Party's delegate selection process for its 1992 convention discriminated against African Americans in violation of Title VI of the Civil Rights Act of 1986, 42 U.S.C. §2000d, which bars racial and ethnic discrimination in any program receiving federal funding. Plaintiffs also claimed that the FEC, as the agency responsible for certifying public funds, was responsible for ensuring that the convention funding program complied with Title VI. Plaintiffs had included these allegations in an administrative complaint that was dismissed by the FEC for lack of jurisdiction. On January 17, 1992, the Freedom Republicans filed suit against the Commission, asking the court (among other things) to order the FEC to: (1) accept jurisdiction over the administrative complaint and (2) adopt regulations to implement Title VI with respect to convention funding.

On April 7, 1992, in No. 92-0153, the U.S. District Court for the District of Columbia remanded *The Freedom Republicans, Inc., v. FEC* to the FEC, ordering the agency "with all deliberate speed...[to] begin rulemaking proceedings designed to consider the means through which the FEC will ensure compliance with Title VI of the Civil Rights Act...." Title VI bars racial discrimination in any program receiving federal funds which, the court found, includes the financing of national party conventions provided under 26 U.S.C. §9008. The court revised its order on May 4 to clarify that the order referred to a rulemaking governing the delegate selection process of federally funded national party conventions. The amended order also made clear that the court was not imposing a deadline for promulgating the rules.

This decision is pending on the FEC's appeal to the D.C. Circuit.

Chapter 4 Campaign Finance Statistics

PAC Growth, 1975–92*



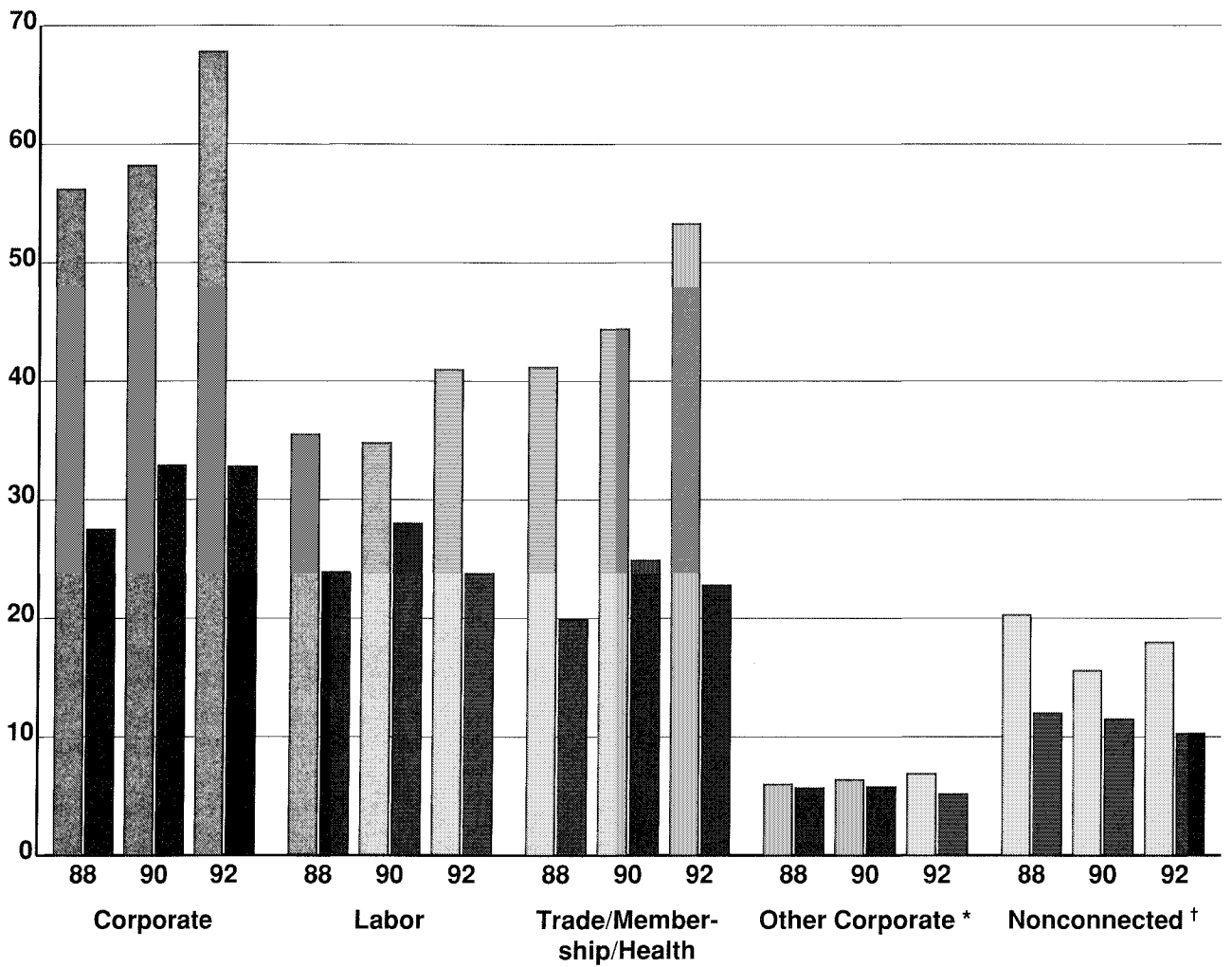
* For the years 1974 through 1976, numbers are not available for Nonconnected PACs, Trade/Membership/Health PACs and PACs in the "Other" category.

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

PAC Contributions to Candidates and Closing Cash on Hand As of December 31 of Election Year

Contributions to Candidates
 Cash on Hand

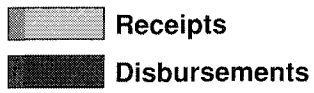
Millions of Dollars



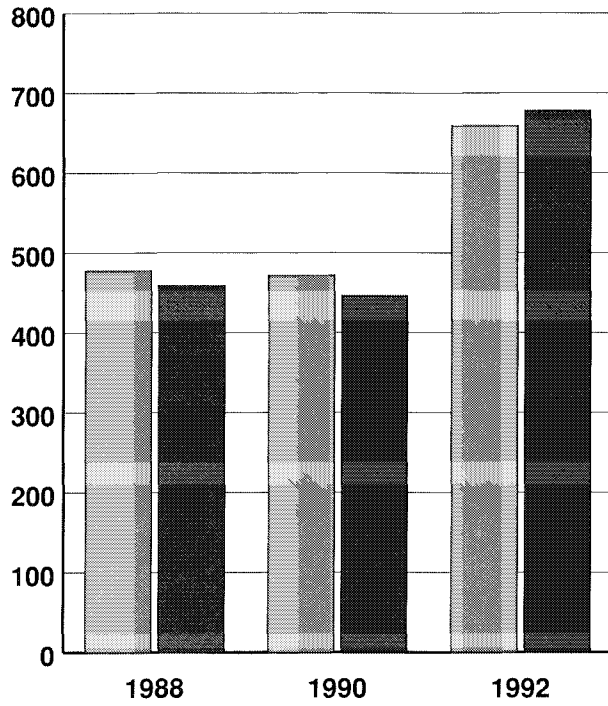
* Other Corporate category consists of separate segregated funds whose connected organizations are cooperatives or corporations without capital stock.

† Unlike separate segregated funds, nonconnected PACs do not have connected organizations. See 11 CFR 100.6.

House and Senate Activity Through December 31 of Election Year



Millions of Dollars

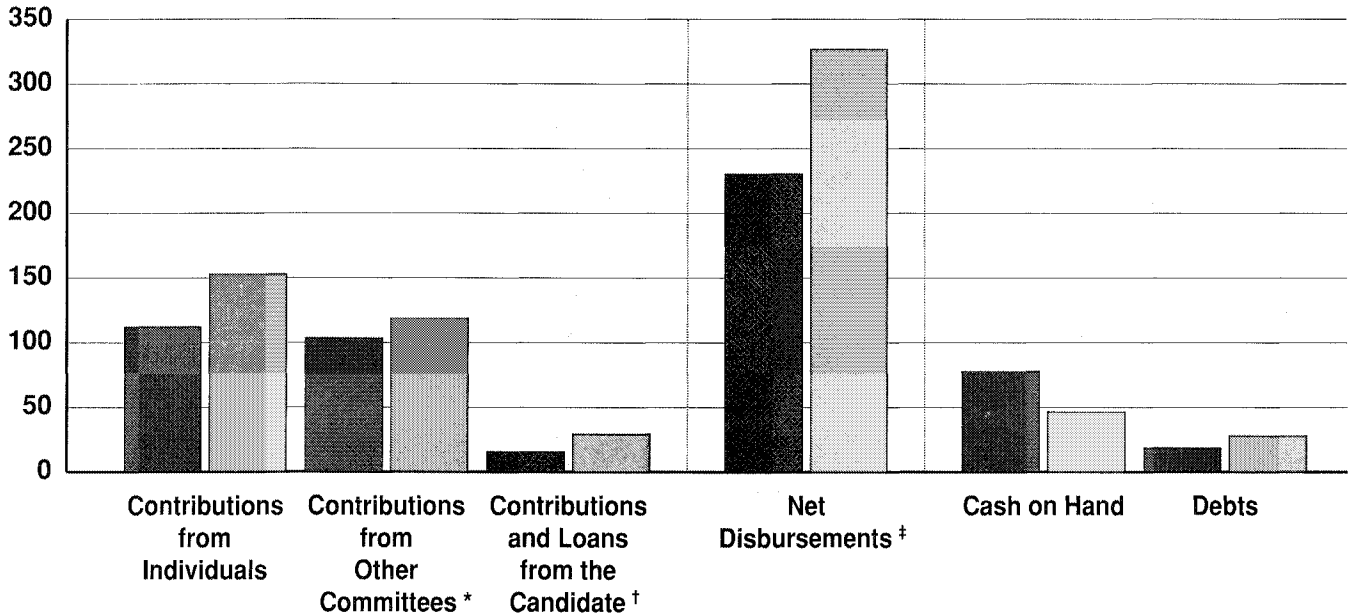


House Campaigns of Major Party Candidates in the General Election Through December 31 of the Election Year

Contributions, Disbursements, Cash on Hand
and Debts

1990 Cycle (804 candidates)
1992 Cycle (843 candidates)

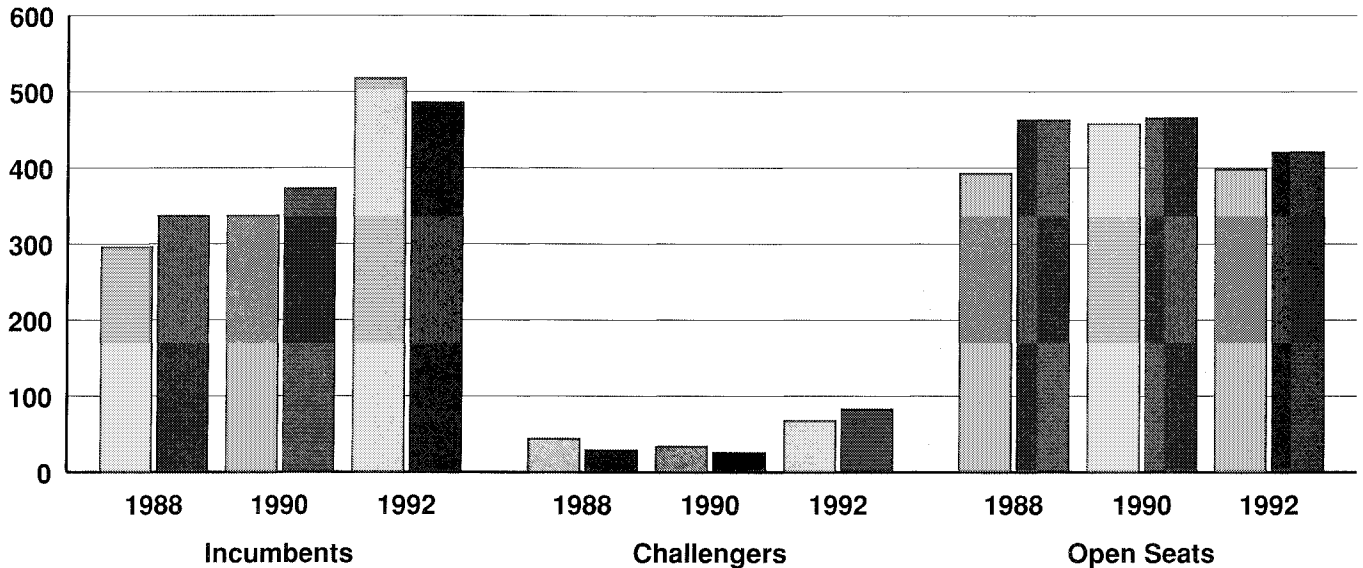
Millions of Dollars



Median Disbursements§

Democrats
Republicans

Thousands of Dollars



* "Other Committees" include PACs and all other committees that are not party committees.

† Candidates in the 1990 election cycle contributed \$2.49 million and loaned \$12.17 million to their own campaigns from their personal funds. The figures for the 1992 cycle are: contributions, \$6.61 million; loans, \$19.90 million.

‡ Net disbursements means total disbursements minus transfers from other committees authorized by the candidate.

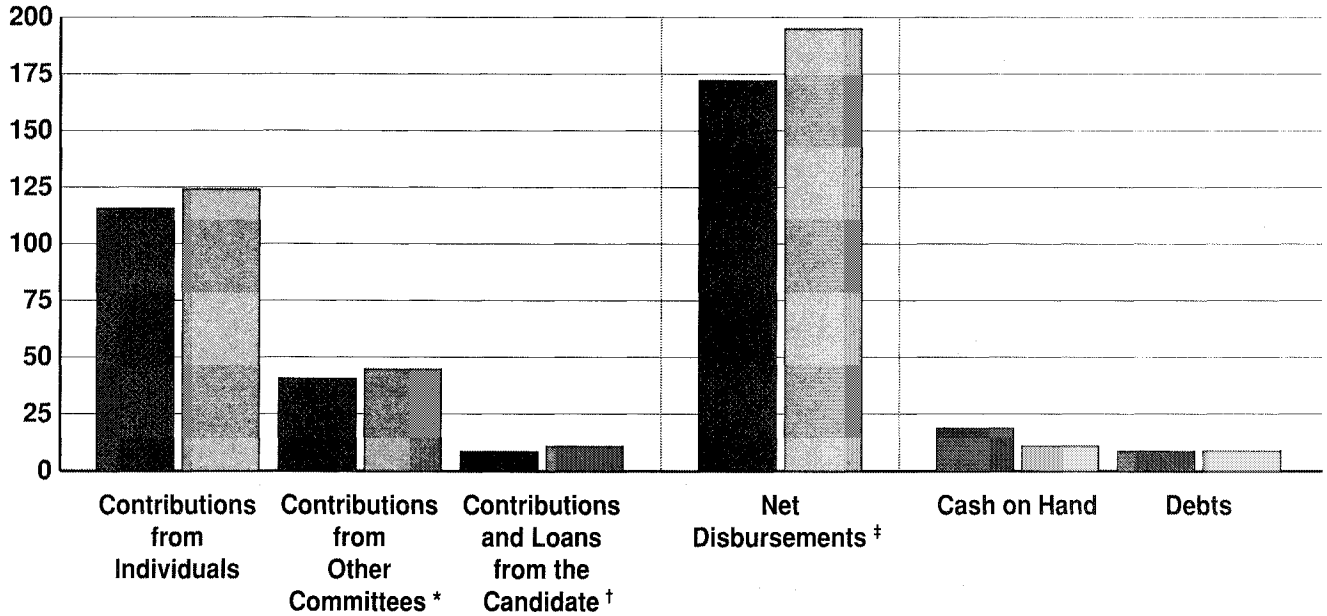
§ Median disbursements means that an equal number of candidates had activity below and above the amount shown in each bar.

Senate Campaigns of Major Party Candidates in the General Election Through December 31 of the Election Year

Contributions, Disbursements, Cash on Hand and Debts

1990 Cycle
1992 Cycle

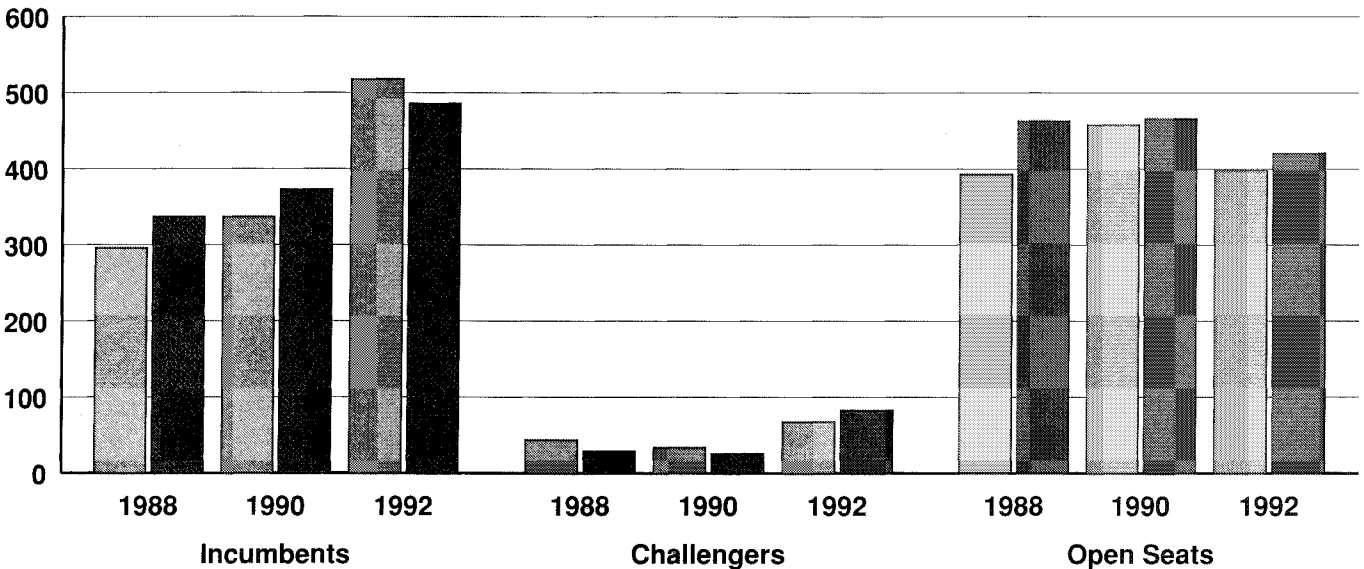
Millions of Dollars



Median Disbursements §

Democrats
Republicans

Thousands of Dollars



* "Other Committees" include PACs and all other committees that are not party committees.

† Candidates in the 1990 election cycle contributed \$2.49 million and loaned \$12.17 million to their own campaigns from their personal funds. The figures for the 1992 cycle are: contributions, \$6.61 million; loans, \$19.90 million.

‡ Net disbursements means total disbursements minus transfers from other committees authorized by the candidate.

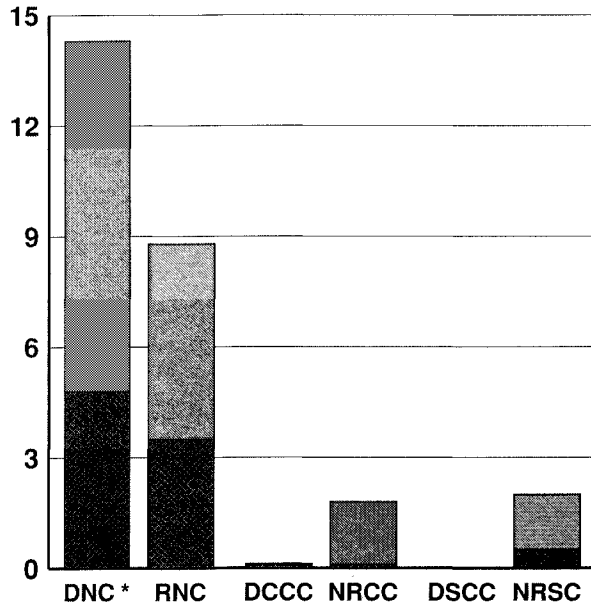
§ Median disbursements means that an equal number of candidates had activity below and above the amount shown in each bar.

National Party Committees: Transfers to State Party Committees

January 1991 Through December 31, 1992

Transfers from Nonfederal Accounts
 Transfers from Federal Accounts

Millions of Dollars



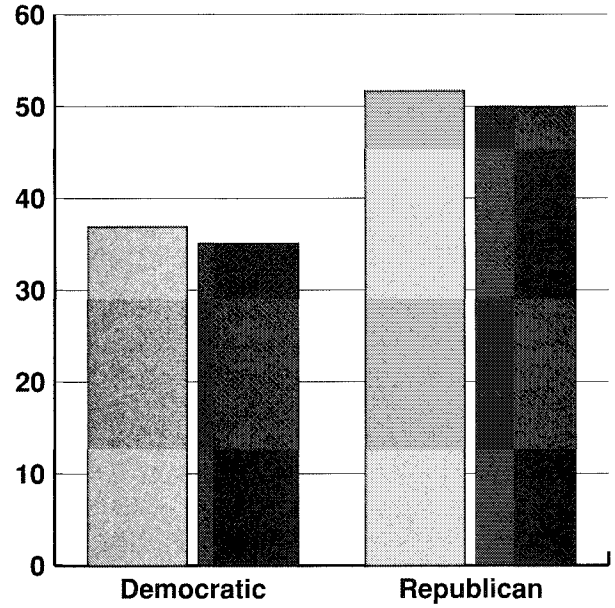
* Abbreviations are as follows:
 DNC—Democratic National Committee
 RNC—Republican National Committee
 DCCC—Democratic Congressional Campaign Committee
 NRCC—National Republican Congressional Committee
 DSCC—Democratic Senatorial Campaign Committee
 NRSC—National Republican Senatorial Committee

National Party Committees:* Nonfederal Account Receipts and Disbursements

January 1991 Through December 31, 1992

Nonfederal Receipts
 Nonfederal Disbursements

Millions of Dollars



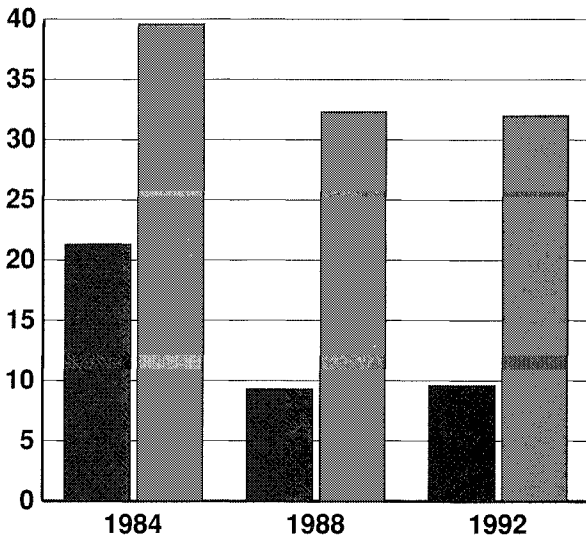
* Graph shows the aggregate activity of each party's three national-level committees (the national committee, and the House and Senate campaign committees).

Federal Account Receipts of DNC and RNC:* Comparison of Presidential Election Cycles

■ DNC Federal Receipts
■ RNC Federal Receipts

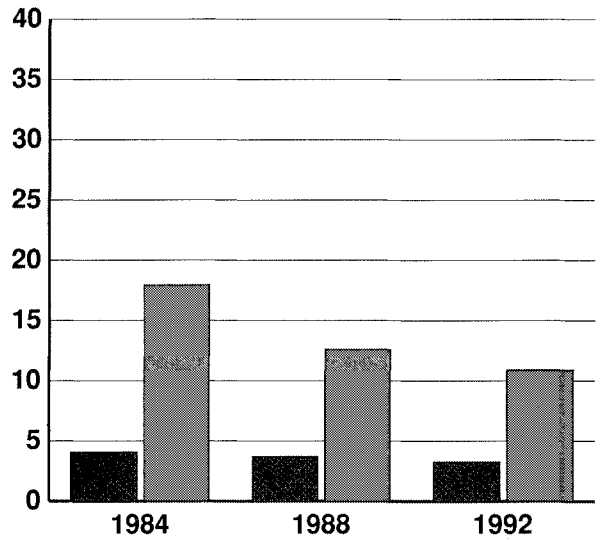
Year Before Election Year

Millions of Dollars



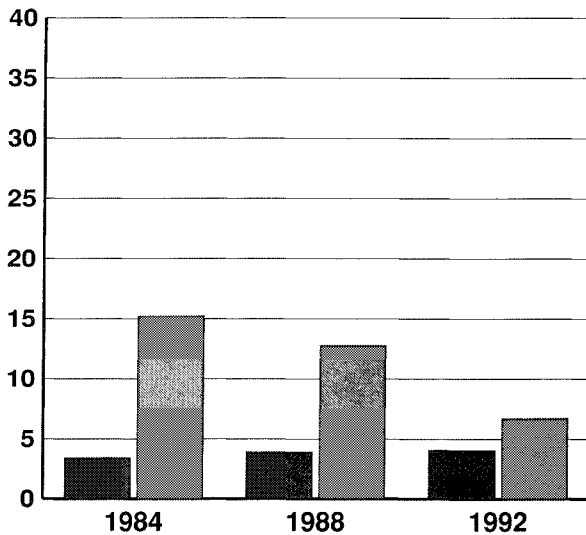
January Through March of Election Year

Millions of Dollars



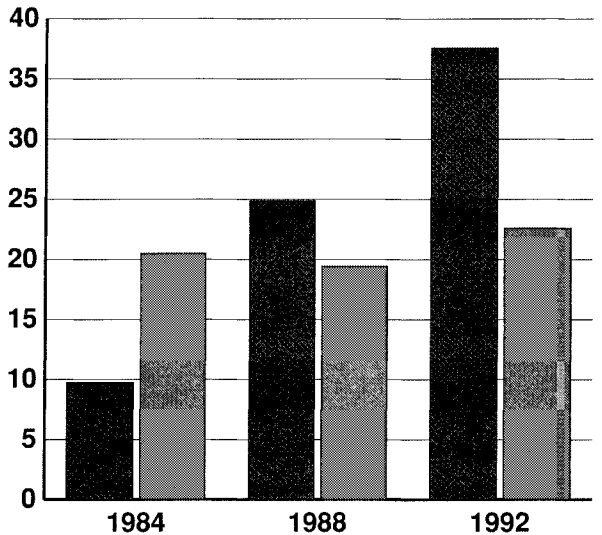
April Through June of Election Year

Millions of Dollars



July Through 20 Days Before Election Day

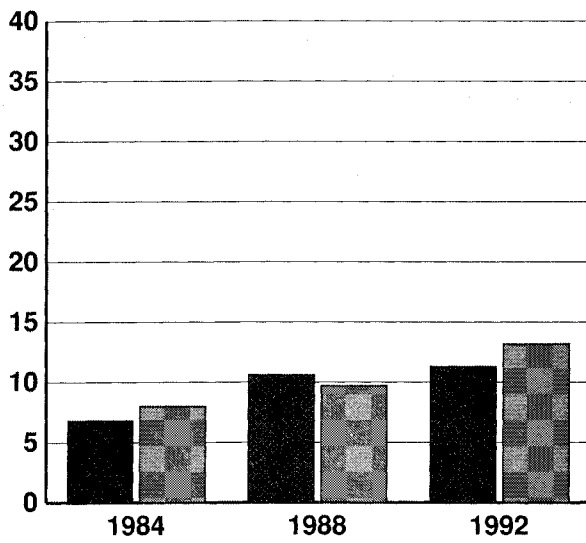
Millions of Dollars



* DNC is the Democratic National Committee; RNC is the Republican National Committee.

Nineteen Days Before Election Through December

Millions of Dollars



Chapter 5

The Commission

Commissioners

During 1992, Joan D. Aikens served as Chairman of the Commission, and Scott Thomas was the Commission's Vice Chairman. In December 1992, the Commission elected Scott Thomas to be its 1993 Chairman and Trevor Potter to be Vice Chairman for 1993.

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

International Delegations

In recent years, the Federal Election Commission has shared information and experience concerning electoral systems with representatives of many foreign nations. During 1992, more than 400 journalists, party leaders and election officials from 60 countries visited the agency, learning first-hand about the American election process and the Commission's role in that process.¹

Ethics

During 1992, the ethics staff carried out the Commission's responsibilities with respect to personal financial disclosure reports filed by Presidential candidates.

The Office of Government Ethics issued new rules on confidential disclosure reports filed by staff, and government-wide standards of conduct which became effective February 3, 1993. The Commission's ethics staff worked on implementation of these new requirements.

The FEC's General Counsel, who serves as Designated Agency Ethics Official, also directed his staff to continue its ethics training sessions for new employees. These sessions briefed new staff members on the Ethics Reform Act of 1989, the Hatch Act

and the FEC Standards of Conduct. The ethics staff published an intra-agency newsletter to further advise the staff on conflict of interest matters and participated in the agency's supervisor training sessions.

The Ethics Official took on new responsibilities with the Commission's adoption of interim rules on ex parte communications. Under the interim rules, which became effective December 9, 1992, a Commissioner or member of a Commissioner's staff who is unable to avoid receiving a prohibited communication must file a report on any such communication with the Designated Agency Ethics Official within 48 hours.

Total Quality Management

The Commission's Office of General Counsel began implementation of a Total Quality Management (TQM) program during 1992. The program is designed to ensure that the office provides quality legal services to the Commission and to the public. Training of staff began early in January.

Management and the National Treasury Employees Union (NTEU) reached an agreement concerning the TQM program. The first Quality Improvement Team (QIT), composed of the General Counsel, the four Associate General Counsels, and a member selected by NTEU, guided the office's TQM efforts. The QIT formed five subcommittees: Education, to educate staff in OGC and other divisions on TQM; Corrective Action, to identify problems with procedures or processes, try to correct them and monitor the effectiveness of corrections; Cost of Quality, to evaluate the savings achieved from specific solutions; Awareness and Recognition, to promote quality awareness and employee recognition; and Measurement, to measure staff perception of quality throughout OGC and to survey the rest of the agency as well.

Activities undertaken during TQM's first year in the Counsel's office included publication of the newsletter "Quality News," presentations of TQM awareness sessions for other offices of the Commission, implementation of a Team Mentoring Program to help staff integrate TQM in their everyday work, and the design

¹The visits were sponsored by the United States Information Agency (USIA).

and testing of a system to prioritize enforcement cases.

Equal Employment Opportunity Program

During 1992, the EEO Director developed and wrote an updated EEO Program and Affirmative Employment Plan (AEP) for Minorities and Women for 1993.

The EEO Director manages the EEO Program, which also encompasses the Federal Women's Program and special emphasis programs for minorities. Each year the Director submits, to the Equal Employment Opportunity Commission, statistical reports on discrimination complaint processing and the Commission's workforce.

In addition, the Director files, with the Office of Personnel Management, status reports on the Disabled Veterans Affirmative Action Plan.

The Office of Equal Employment Opportunity Programs (OEEOP) undertook a variety of activities in 1992. It created an EEO Advisory Committee, made recommendations on recruitment, sponsored a one-day education seminar, participated in the Commission's orientation program and cosponsored, with the Personnel Office, the Commission's comprehensive in-house training course for supervisors. The OEEOP also published a bimonthly newsletter, *EEO Focus*, for Commission staff, provided counseling for those with equal employment concerns and sponsored a workshop on sexual harassment prevention for new employees.

Inspector General

Under the Inspector General Act, the Commission's Office of Inspector General (OIG) is authorized to conduct audits and investigations to detect waste, fraud and abuse. The OIG audited several facets of Commission operations in 1992. In addition, the OIG participated in the supervisory training sessions conducted by the Personnel Office, and in the orientation program for new employees, to familiarize staff with the duties and responsibilities of the OIG.

The FEC's Budget

Fiscal Year 1992

The final appropriation for FY 1992 was \$18.808 million and 266 FTE. That amount was reduced by \$13,000, however, as part of a \$15.8 million government-wide travel reduction. Minor spending cuts were expected for training, publications and printing.

Fiscal Year 1993

The Commission received an appropriation of \$21,031,000 and 276 FTE for FY 1993. Items contained in the FY 1993 Management Plan include:

- The replacement of Public Disclosure microfilm processing and retrieval equipment with new technology;
- Enhanced ADP support for the Audit and Reports Analysis Divisions; and
- Sufficient space and basic support funds to ensure adequate support for a full time staff of 276 FTE and for the operations of the Commission as it continues to meet the demands associated with the 1992 Presidential and Congressional elections.

A comparison of the allocation of budget resources for FYs 1992 and 1993 appears in the table and graphs below.

Request for Fiscal Year 1994

On September 1, 1992, the Commission sent a \$23.9 million budget request for FY 1994 to Congress and to the Office of Management and Budget. The request was based primarily on the desire to have the necessary staff level to support the public disclosure and information programs, as well as the enforcement and Presidential public funding programs.

"There is recent evidence of increased public distrust of the political process in general," FEC Chairman Joan Aikens wrote in the budget request. "It would be tragic to add to this trend by failing to fund adequately the agency most responsible for public disclosure of the campaign finance portion of the political process."

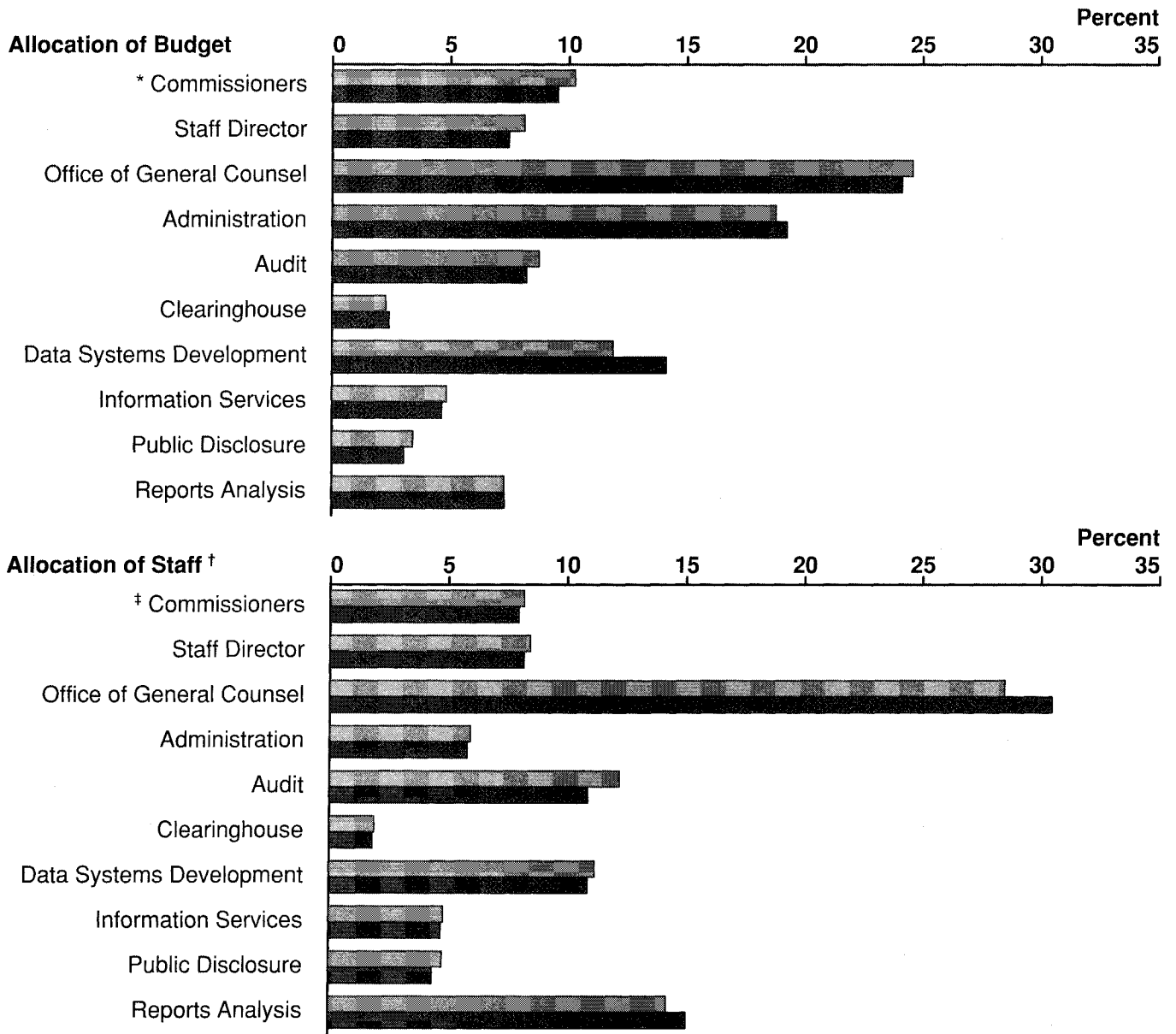
The FY 1994 request calls for a full time Commission staff of 319. In FY 1992, the Commission's budget of \$18.8 million provided for 266 full time employees; the FY 1993 budget provides for \$21 million and a full time staff of 276.

Functional Allocation of Budget

	FY 1992	FY 1993
Personnel	\$13,692,175	\$14,674,000
Travel	211,794	273,000
Motor Pool	7,085	8,000
Commercial Space	20,708	24,000
GSA Space	1,905,422	2,253,000
Equipment Rental	324,015	333,500
Equipment Purchase	218,762	916,000
Printing	304,519	361,000
Support Contracts	764,759	730,000
Administrative Expenses	209,814	232,546
Supplies and Materials	243,395	239,389
Publications	199,326	212,000
Telephone/Telegraph	277,935	290,000
Postage	221,000	190,000
Training	76,240	100,425
GSA Services, Other	107,457	188,140
Total	\$18,797,406	\$21,031,000

Divisional Allocation

 FY 1993
 FY 1992



* Includes Inspector General's Office and Representational Fund.

† The Commission averaged 266 full-time equivalent positions (FTE) in FY 1992 and projected 276 FTE for FY 1993.

‡ Includes Inspector General's Office.

Chapter 6 Legislative Recommendations

In anticipation of Congressional interest in campaign finance legislation, the Commission expedited preparation of its legislative recommendations and on January 26, 1993, sent the President and Congress a comprehensive set of 63 recommendations. This was the largest package it has ever submitted. The complete set of recommendations follows. Parenthetical references to 1993 indicate new recommendations or recommendations that were newly revised this year.

Public Financing

Presidential Election Campaign Fund (revised 1993)

Section: 26 U.S.C. §6096

Recommendation: Without Congressional action, there will be a shortfall in the Presidential Election Campaign Fund in 1996. There will be no money available for primary candidates and less than a full entitlement for the general election candidates. If Congress wishes to preserve the Presidential public funding system, a legislative remedy is essential.

In addition, Congress may want to examine the priorities for distributing public funds among the party nominating conventions, the general election nominees and the primary election candidates.

Explanation: Although the Fund did not experience a shortfall during the 1992 Presidential year,¹ the Commission has informed Congress that a serious public funding shortage is assured in 1996. One of the rea-

sons for this is a structural flaw in the checkoff program. The payout to candidates and parties (for their conventions) is indexed to inflation, but the dollar checkoff is not. Spending limits are increased each election cycle to reflect the change in the cost-of-living index. In 1974, the statutory spending limit for the general election was established at \$20 million. In 1992, each major party nominee received \$55.2 million, representing over two and one half times the amount received by the nominees in 1976 (\$21.8 million). Thus, as the consumer price index increases, the Fund needs more and more checkoff dollars to make the appropriate payments to qualified candidates and parties. If the checkoff amount had been increased at the same rate as the payments, there would be no shortfall in 1996.

Another reason for the shortfall is the shrinking participation of taxpayers in the checkoff program. After peaking at 28 percent in 1980, the percentage of tax forms on which the taxpayer checked yes has fallen to approximately 19 percent.

Without a legislative remedy, the FEC predicts that the shortfall in 1996 will be a serious problem. The law requires that priority be given first to party nominating conventions, then to general election nominees and last to primary election candidates. There will not be enough money in the Fund to cover all phases. We estimate that \$124 million will have accumulated in the fund through 1996. This amount will only fully fund the two major party conventions, at about \$12 million each. The two general election nominees, who will be entitled to more than \$60 million each, will not be fully funded. There will be no money for the primary candidates. Consequently, the shortfall will force candidates to become more dependent on large contributions from individuals and groups and, ultimately, defeat the purpose of the public funding process.

¹The Commission's projection that a shortfall would occur in 1992 did not materialize because the assumptions on which that projection was based changed. First, matching fund requests were considerably smaller than had been expected, based on the experience of previous years. Second, total checkoff receipts deposited into the Fund in 1991 declined much less than had been anticipated. The FEC had expected a decline of \$2 million. In fact, the checkoff dollars to the Fund declined by approximately \$140,000. Third, the inflation rate was lower than had been expected, which decreased the expected demand on the Fund.

Primary Election Audits (1993)

Section: 26 U.S.C. §§9032, 9033, 9035, 9038, 9039(a)(1)

Recommendation: Congress may want to eliminate the requirement under the Presidential Primary Matching Payment Account Act that matching funds be used only for “qualified campaign expenses” and substitute instead specific criteria to be used in Commission audits of publicly funded primary candidates.

Explanation: To carry out the current requirement contained in 26 U.S.C. §9038(a), the Commission has had to determine, through audits, whether campaigns were using public funds to make qualified campaign expenses or unqualified campaign expenses. That determination has required considerable government resources. Additionally, the effort has resulted in prolonged audits, whose results have often not been published until 4 years after the election was over. One way of reducing the time and expense of these complex audits would be to eliminate the requirement that the Commission determine which disbursements were “qualified campaign expenses” and which were not. The test for whether or not a candidate used his or her public funds for legitimate campaign purposes would be based, instead, on the public’s judgment. In order to make that judgment, full disclosure of campaign finance operations would be required. All disbursements, including their purpose, would be disclosed in full. With that information, the public would express its judgment, through the ballot box, on whether the candidate had spent the funds wisely and fairly.

The Commission would continue, however, to audit campaigns to ensure that they complied with the Federal Election Campaign Act and the Presidential Primary Matching Payment Account Act, including provisions on expenditure limits² and the limits and prohibitions on contributions. Additionally, the audits would be conducted to ensure that campaigns did not use

funds for any illegal purpose, that campaigns did not convert excess campaign funds to personal use, that matching funds were used only for expenses incurred during the candidate’s period of eligibility, and that all contributions were properly matched. Any surplus funds would have to be repaid to the U.S. Treasury, as now required under the law. Similarly, campaigns would be required to make repayments if the Commission determined that they had not complied with the campaign laws or had used funds for illegal purposes.

Supplemental Funding for Publicly Funded Candidates (1993)

Section: 26 U.S.C. §§9003 and 9004

Recommendation: Congress may wish to consider whether publicly funded candidates should receive additional public funds when a nonpublicly funded candidate exceeds the spending limit.

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

State Expenditure Limits for Publicly Financed Presidential Primary Campaigns (revised 1993)

Section: 2 U.S.C. §441a

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

Explanation: The Commission has now administered the public funding program in five Presidential elections. Based on our experience, we believe that the limitations could be removed with no material impact on the process.

²This proposal assumes that Congress would also repeal the state-by-state expenditure limits, leaving only a national expenditure limit for the Commission to enforce.

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

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

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

In addition, experience has shown that one of the Congressional concerns motivating the adoption of state expenditure limits is no longer an issue. Congress adopted the state limits, in part, as a way of discouraging candidates from relying heavily on the outcome of big state primaries. The concern was that candidates might wish to spend heavily in such states as a way of securing their party's nomination. In fact, however, under the public funding system, this has not proven to be an issue. Rather than spending heavily in large states, candidates have spent large amounts in the early primaries, for example, in Iowa and New Hampshire.

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

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

Compliance Fund (1993)

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

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

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

Applicability of Title VI to Recipients of Payments from the Presidential Election Campaign Fund (1993)

Section: 26 U.S.C. §§9006(b), 9008(b)(3) and 9037.

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

Explanation: This proposed amendment was prompted by the decision of the U.S. District Court for the District of Columbia in *Freedom Republicans, Inc., and Lugenia Gordon v. Federal Election Commission*, No. 92-153 (CRR) (D.D.C. April 7, 1992), *appeal pending*, No. 92-5214 (D.C. Cir.). The Freedom Republicans' complaint asked the district court to declare that the Commission has jurisdiction to regulate the national parties' delegate selection process under Title VI. It also requested the court to order the Commission to adopt such regulations, direct the Republican Party to spend no more of the funds already received for its 1992 national nominating convention, and seek refunds of moneys already disbursed if the Republican Party did not amend its delegate selection and apportionment process to comply with Title VI. The court found that the Commission "does have an obligation to promulgate rules and regulations to insure the enforcement of Title VI. The language of Title VI is necessarily broad, and applies on its face to the FEC as well as to both major political parties and other recipients of federal funds." Slip op. at 6. The court gave the Freedom Republicans the opportunity to reassert their other claims after the Commission promulgates rules. Slip op. at 10.

The Commission appealed this ruling on a number of procedural and substantive grounds, including that Title VI does not apply to the political parties' apportionment and selection of delegates to their conventions. However, the court of appeals might overrule the district court decision on one of the non-substantive grounds leaving the door open for other lawsuits involving the national nominating conventions or other recipients of federal funds certified by the Commission.

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

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

Deposit of Repayments

Section: 26 U.S.C. §9007(d)

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

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

Enforcement of Nonwillful Violations

Section: 26 U.S.C. §§9012 and 9042

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

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

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

Eligibility Requirements for Public Financing (revised 1993)

Section: 26 U.S.C. §§9002, 9003, 9032 and 9033

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

Explanation: Neither of the Presidential public financing statutes expressly restricts eligibility for funding because of a candidate’s prior violations of law, no matter how severe. And yet public confidence in the integrity of the public financing system would risk serious erosion if the U.S. Government were to provide public funds to candidates who had been convicted of felonies related to the public funding pro-

cess. Congress should therefore amend the eligibility requirements to ensure that such candidates do not receive public financing for their Presidential campaigns. The amendments should make clear that a candidate would be ineligible for public funds if he or she had been convicted of fraud with respect to raising funds for a campaign that was publicly financed, or if he or she had failed to make repayments in connection with a past publicly funded campaign or had willfully disregarded the statute or regulations. In addition, Congress should make it clear that eligibility to serve in the office sought is a prerequisite for eligibility for public funding.

Eligibility Threshold for Public Financing

Section: 26 U.S.C. §§9003 and 9033

Recommendation: Congress should raise the eligibility threshold for publicly funded Presidential candidates.

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

Contributions to Presidential Nominees Who Receive Public Funds in the General Election (revised 1993)

Section: 26 U.S.C. §9003

Recommendation: Congress may wish to clarify that the public financing statutes prohibit the making and acceptance of contributions (either direct or in-kind) to Presidential candidates who receive full public funding in the general election.

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

Fundraising Limitation for Publicly Financed Presidential Primary Campaigns

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

Recommendation: The Commission recommends that the separate fundraising limitation provided to publicly financed Presidential primary campaigns be combined with the overall limit. Thus, instead of a candidate's having a \$10 million (plus 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. For example, the Commission would no longer have to ensure compliance with the 28-day rule, i.e., the rule prohibiting committees from allocating expenditures as exempt fundraising expenditures within 28 days of the primary held within the state where the expenditure was made.

Registration and Reporting

Candidates and Principal Campaign Committees (1993)

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

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

Explanation: An individual becomes a candidate under the FECA once he or she crosses the \$5,000 threshold in raising contributions or making expenditures. The candidate has 15 days to file a statement designating the principal campaign committee, which will subsequently disclose all of the campaign's financial activity. This committee, in turn, has 10 days from the candidate's designation to register. This schedule allows 25 days to pass before the committee's reporting requirements are triggered. Consequently, the financial activity that occurred prior to the registration is not disclosed until the committee's next upcoming report. This period is too long during an election year. For example, should a report be due 20 days after an individual becomes a candidate, the unregistered

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

committee would not have to file a report on that date and disclosure would be delayed. The next report might not be filed for 3 more months. By requiring simultaneous registration, the public would be assured of more timely disclosure of the campaign's activity.

Candidate Leadership PACs (1993)

Section: 2 U.S.C. §441a(a)

Recommendation: Congress should consider whether leadership PACs should be deemed affiliated with the candidate's principal campaign committee.

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

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

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

Campaign-Cycle Reporting

Section: 2 U.S.C. §434

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

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

Monthly Reporting for Congressional Candidates

Section: 2 U.S.C. §434(a)(2)

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

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

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

Reporting Deadlines for Semiannual, Year-End and Monthly Filers (revised 1993)

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

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

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

Require Monthly Filing for Certain Multicandidate Committees (1993)

Section: 2 U.S.C. §434(a)(4)

Recommendation: Multicandidate committees which have raised or spent, or which anticipate raising or spending, over \$100,000 should be required to file on a monthly basis during an election year.

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

Presidential candidates who anticipate receiving contributions or making expenditures aggregating \$100,000 or more must file on a monthly basis. Congress should consider applying this same reporting requirement to multicandidate committees which have raised or spent, or which anticipate raising or

spending, in excess of \$100,000 during an election year. The requirement would simplify the filing schedule, eliminating the need to calculate the primary filing periods and dates. Filing would be standardized—once a month. This change would also benefit disclosure; the public would know when a committee's report was due and would be able to monitor the larger, more influential committees' reports. Although the total number of reports filed would increase, most reports would be smaller, making it easier for the Commission to enter the data into the computer and to make the disclosure more timely.

Reporting Last-Minute Contributions by Party Committees (1993)

Section: 2 U.S.C. §434(a)(6)

Recommendation: Congress should require party committees to file 48-hour notices, as now required of principal campaign committees at 2 U.S.C. §434(a)(6)(A), for the receipt of contributions of \$1,000 or more received shortly before an election.

Explanation: Contributions made to political parties at the last minute often make the difference in close races and should be subject to the same public scrutiny as is applied to contributions to candidates.

Reporting of Last-Minute Independent Expenditures (1993)

Section: 2 U.S.C. §434(c)

Recommendation: Congress should clarify when last-minute independent expenditures must be reported.

Explanation: The statute requires that independent expenditures aggregating \$1,000 or more and made after the 20th day, but more than 24 hours, before an election be *reported* within 24 hours after they are made. This provision is in contrast to other reporting provisions of the statute, which use the words "shall be filed." Must the report be received by the filing office within 24 hours after the independent expenditure is made, or may it be sent certified/registered mail and postmarked within 24 hours of when the

expenditure is made? Should Congress decide that committees must report the expenditure within 24 hours after it is made, committees should be able to file via facsimile (fax) machine. (See Legislative Recommendation titled "Facsimile Machines.") Clarification by Congress would be very helpful.

Facsimile Machines (1993)

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

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

Explanation: Independent expenditures that are made between 20 days and 24 hours before an election must be reported within 24 hours. The Act requires that a last-minute independent expenditure report must include a certification, under penalty of perjury, stating whether the expenditure was made "in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee." This requirement appears to foreclose the option of using a facsimile machine to file the report.

The next report the committee files, however, which covers the reporting period when the expenditure was made, must also include the certification, stating the same information. Given the time constraint for filing the report, the requirement to include the certification on the subsequent report, and the availability of modern technology that would facilitate such a filing, Congress should consider allowing such filings via telephonically transmitted facsimiles ("fax" machines). This could be accomplished by allowing the committee to fax a copy of the schedule disclosing the independent expenditure and the certification. The original schedule would be filed with the next report.

Acceptance of such a filing method would facilitate timely disclosure and simplify the process for the filer.

Waiver Authority (revised 1993)

Section: 2 U.S.C. §434

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

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

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

Unauthorized committees also face unnecessary reporting requirements. For example, the 1992 October Monthly report was due 2 days before the 12-Day Pre-General Election Report; however the Pre-General Election Report had to be mailed first. A waiver authority would have enabled the Commission to eliminate the requirement to file the monthly report, as long as the committee included the activity in the Pre-General Election Report and filed the report on time. The same disclosure would have been available before the election, but the committee would have only had to file one report.

In other situations, disclosure would be served if the Commission had the authority to adjust the filing requirements, as is currently allowed for special elections. For example, runoff elections are often scheduled shortly after the primary election. In many instances, the close of books for the runoff pre-election report is the day after the primary—the same day that candidates find out if there is to be a runoff and who will participate. When this occurs, the 12-day pre-

election report discloses almost no runoff activity. In such a situation, the Commission should have the authority to adjust the filing requirements to allow for a 7-day pre-election report (as opposed to a 12-day report), which would provide more relevant disclosure to the public.

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

Reporting and Recordkeeping of Payments to Persons Providing Goods and Services (revised 1993)

Section: 2 U.S.C. §§432(c), 434(b)(5)(A), (6)(A) and (6)(B)

Recommendation: The current statute requires reporting "the name and address of each...person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure." 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 additional reporting is required, in some instances, when a payment is made to an intermediary contractor or consultant who, in turn, acts as the committee's agent by making expenditures to other payees. If Congress determines that disclosure of secondary payees is required, the Act should require that committees maintain the name, address, amount and purpose of the disbursement made to the secondary payees in their records and disclose it to the public on their reports. Congress should limit such disclosure to secondary payments above a certain dollar threshold or to payments made to independent subcontractors.

Explanation: The Commission has encountered on several occasions the question of just how detailed a committee's reporting of disbursements must be. See, e.g., Advisory Opinion 1983-25, 1 Fed. Election Camp. Fin. Guide (CCH), ¶ 5742 (Dec. 22, 1983)

(Presidential candidate's committee not required to disclose the names, addresses, dates or amounts of payments made by a general media consultant retained by the committee); Advisory Opinion 1984-8, 1 Fed. Election Camp. Fin. Guide (CCH), ¶ 5756 (Apr. 20, 1984) (House candidate's committee only required to itemize payments made to the candidate for travel and subsistence, not the payments made by the candidate to the actual providers of services); *Financial Control and Compliance Manual for Presidential Primary Election Candidates Receiving Public Financing*, Federal Election Commission, pp. 123-130 (1992) (distinguishing committee advances or reimbursements to campaign staff for travel and subsistence from other advances or reimbursements to such staff and requiring itemization of payments made by campaign staff only as to the latter). Congressional intent in the area is not expressly stated, and the Commission believes that statutory clarification would be beneficial. In the area of Presidential public financing, where the Commission is responsible for monitoring whether candidate disbursements are for qualified campaign expenses (see 26 U.S.C. §§9004(c) and 9038(b)(2)), guidance would be particularly useful.

Incomplete or False Contributor Information (revised 1993)

Section: 2 U.S.C. §434

Recommendation: Congress may wish to amend the Act to address the recurring problem of committees' inability to provide full disclosure about their contributors. First, Congress might want to adopt a provision that would require political committees, when they fail to receive required contributor information (2 U.S.C. §434), to send one written request for contributor information or make one oral contact with the contributor *after* the contribution is received. Second, Congress might wish to prohibit the acceptance of contributions until the contributor information is obtained and recorded in the committee's records. Third, Congress might wish to amend the law to make contributors or the committee liable for submitting information known by the contributor or the committee to be false.

Explanation: There has recently been heightened concern expressed by the Commission, the public, and the press about the failure of candidates and political committees to report the addresses and occupations of many of their contributors. Some press reports have suggested that this requirement sometimes is deliberately evaded in order to obfuscate the special-interest origins of contributions.

The prospect of post-election enforcement action will not ensure that this information is obtained and disclosed to the public in a timely fashion. In those cases where contributor information is inadequate, the law states that committees will be in compliance if they make “best efforts” to obtain the information. Current Commission regulations interpret this as a requirement to make one oral or written request for the information. Legislative history indicates that a single request for the information (which can be made in the original solicitation) may suffice. In the Commission’s experience, however, a single request has been inadequate. In addition, determining what efforts were made to obtain this information and demonstrating that a campaign failed to make its “best efforts” to obtain it are difficult at best.

In those cases where committees fail to receive complete information from their contributors, committees should be required to make an additional request *after* the contribution is received, either orally or in writing. The Commission recently published a Notice of Proposed Rulemaking seeking comment on proposals to require such additional requests and to provide to the Commission all information in the possession of the treasurer.

An inducement to campaigns and political committees to fulfill this responsibility would be to prohibit the acceptance and/or expenditure of contributions until the contributor information is obtained and recorded in the committee’s records. This would have an immediate effect upon a committee’s ability to effectively campaign before the election, which would be a powerful inducement to campaigns and political committees to obtain the information promptly. Moreover, violations would be relatively easy to detect and prove by reviewing the committee’s disclosure reports.

Finally, Congress may wish to add other mechanisms for improving disclosure. Congress should make clear that the contributor or committee is liable for submitting information known by the provider of the information to be false. Taken together, these measures should improve efforts to achieve full disclosure.

Excluding Political Committees from Protection of the Bankruptcy Code (revised 1993)

Section: 2 U.S.C. §433(d)

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

Explanation: In 2 U.S.C. §433(d), the Commission is given authority to establish procedures for “the determination of insolvency” of any political committee, the “orderly liquidation of an insolvent political committee,” the “application of its assets for the reduction of outstanding debts,” and the “termination of an insolvent political committee after such liquidation. . . .” However, the Bankruptcy Code, 11 U.S.C. §101 *et seq.*, generally grants jurisdiction over such matters to the bankruptcy courts, and at least one bankruptcy court has exercised its jurisdiction under Chapter 11 of the Bankruptcy Code to permit an ongoing political committee to compromise its debts with the intent thereafter to resume its fundraising and contribution and expenditure activities. *In re Fund for a Conservative Majority*, 100 B.R. 307 (Bankr. E.D.Va. 1989). Not only does the exercise of such jurisdiction by the bankruptcy court conflict with the evident intent in 2 U.S.C. §433(d) to empower the Commission to regulate such matters with respect to political committees, but permitting a political committee to compromise debts and then resume its political activities can result in corporate creditors effectively subsidizing the committee’s contributions and expenditures, contrary to the intent of 2 U.S.C. §441b(a). The Commission

has recently promulgated a regulation generally prohibiting ongoing political committees from compromising outstanding debts, 11 CFR 116.2(b), but the continuing potential jurisdiction of the bankruptcy courts over such matters could undermine the Commission's ability to enforce it. Accordingly, Congress may want to clarify the distribution of authority between the Commission and the bankruptcy courts in this area. In addition, Congress should specify whether political committees are entitled to seek Chapter 11 reorganization under the Bankruptcy Code.

Use of Campaign Funds

Disposition of Excess Campaign Funds (1993)

Section: 2 U.S.C. §439a

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

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

Candidate's Use of Campaign Funds (1993)

Section: 2 U.S.C. §439a

Recommendation: Congress may wish to re-examine the appropriate use of campaign funds during or after the course of a campaign, specifically the ban on the personal use of excess campaign funds. Congress should define what would constitute "personal use" of those funds and what is meant by excess campaign funds.

Explanation: Under section 439a of the Act, excess campaign funds cannot be converted by any person to personal use. If Congress intends to restrict the use of campaign funds by banning personal use of the funds, some guidance as to what constitutes "personal use" is necessary. In the past, some have argued before the Commission, to cite a few examples, that campaign expenditures rightfully include candidate salaries, automobiles, meals, per diems and mortgage payments.

If Congress does not intend to restrict the use of funds during the campaign, but wishes to restrict only the use of leftover campaign funds, then it should so specify.

Contributions and Expenditures

Contributions and Expenditures to Influence Federal and Nonfederal Elections (revised 1993)

Section: 2 U.S.C. §§441 and 434

Recommendation: Congress may wish to consider whether new legislation is needed to regulate the use of "soft money" in federal elections.

Explanation: The law requires that all funds spent to influence federal elections come from sources that are permissible under the limitations and prohibitions of the Act. Problems arise with the application of this provision to committees that engage in activities that support both federal and nonfederal candidates. The Commission attempted to deal with this problem by promulgating regulations that required such committees to allocate disbursements between federal and nonfederal election activity. The focus of these regulations was on how the funds were spent. The public, however, has been equally concerned about the source of money that directly or indirectly influences federal politics. Much discussion has centered on the perception that soft money is being used to gain access to federal candidates. ("Soft money" is generally understood to mean funds that do not comply with the federal prohibitions and limits on contributions.) Even if soft money is technically used to pay for the nonfederal portion of shared activities (federal and nonfed-

eral), the public may perceive that the contributors of soft money have undue influence on federal candidates and federally elected officials. In light of this public concern, Congress should consider amending the law in this area as it affects the *raising* of soft money. Such changes could include any or all of the following: (1) more disclosure of non-federal account receipts (as well as “building fund” proceeds exempted under 2 U.S.C. §431(8)(B)(viii)); (2) limits on non-federal account donations coupled with tighter affiliation rules regarding party committees; (3) prohibiting non-federal accounts for certain types of committees; (4) prohibiting the use of a federal candidate’s name or appearance to raise soft money; and (5) confining soft money fundraising to non-federal election years.

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

Broader Prohibition Against Force and Reprisals (1993)

Section: 2 U.S.C. §441b(b)(3)(A)

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

Explanation: Current section 441b(b)(3)(A) could be interpreted to narrowly apply to the making of contributions or expenditures by a separate segregated fund which were obtained through the use of force, job discrimination, financial reprisals and threats. Thus, Congress should clarify that corporations and

labor organizations are prohibited from using such tactics in the solicitation of contributions for the separate segregated fund. In addition, Congress should include language to cover situations where the funds are solicited on behalf of and given directly to candidates.

Use of Free Air Time (1993)

Section: 2 U.S.C. §§431(9)(B)(i) and 441b

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

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

Distinguishing Official Travel from Campaign Travel (1993)

Section: 2 U.S.C. §431(9)

Recommendation: The FECA should be amended to clarify the distinctions between campaign travel and official travel.

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

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

Coordinated Party Expenditures (1993)

Section: 2 U.S.C. §441a(d)

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

Explanation: Section 441a(d) provides that national and state party committees may make expenditures in connection with the general election campaigns of the party's nominees for House and Senate, and that these expenditures are in addition to the normal party contributions permissible under the FECA. The national party committees may also make such ex-

penditures on behalf of the party's general election Presidential and Vice Presidential nominees. The Commission has interpreted these provisions to permit party committees to make nearly any type of expenditure they deem helpful to their nominees short of donating the funds directly to the candidates. Expenditures made under §441a(d) are subject to a special limit, separate from contribution limits.

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

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

Volunteer Participation in Exempt Activity (1993)

Section: 2 U.S.C. §§431(8)(x) and (xii)

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

Explanation: Under the Act, certain activities conducted by state and local party committees on behalf of the party's candidates are exempt from the contribution limitations if they meet specific conditions. Among these conditions is the requirement that the activity be conducted by volunteers. However, the actual level of volunteer involvement in these activities has varied substantially.

Congress may want to clarify the extent to which volunteers must be involved in an activity in order for

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

Colleges and Universities (1993)

Section: 2 U.S.C. §§441a and 441b

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

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

Direction or Control (1993)

Section: 2 U.S.C. §441a(a)(8)

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

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

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

Nonprofit Corporations (revised 1993)

Section: 2 U.S.C. §441b

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

Explanation: In the Court's decision of December 15, 1986, the Court held that the Act's prohibition on corporate political expenditures was unconstitutional as applied to independent expenditures made by a narrowly defined type of nonprofit corporation. The Court also indicated that the prohibition on corporate expenditures for communications is limited to communications expenditures containing express advocacy. Since that time, the Commission has published an Advance Notice of Proposed Rulemaking, and has conducted hearings on whether regulatory changes are needed as a result of the Court's decision. The Commission sought a second round of public comment following the Court's related decision in *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990). More recently, the Commission published a Notice of Proposed Rulemaking and held a second hearing on these issues.

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

The Court found that certain nonprofit corporations were not subject to the independent expenditure prohibitions of 2 U.S.C. §441b. The Court determined, however, that these nonprofit corporations had to disclose some aspect of their financial activity—in particular, independent expenditures exceeding \$250 and identification of persons who contribute over \$200 to help fund these expenditures. The Court

further ruled that spending for political activity could, at some point, become the major purpose of the corporation, and the organization would then become a political committee.

Transfer of Campaign Funds from One Committee to Another (1993)

Section: 2 U.S.C. §441a(a)(1) and (5)(C)

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

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

Contributions from Minors (1993)

Section: 2 U.S.C. §441a(a)(1)

Recommendation: Congress should establish a minimum age for contributors.

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

Application of Contribution Limitations to Family Members

Section: 2 U.S.C. §441a

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

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

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

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

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

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.

Lines of Credit and Other Loans Obtained by Candidates (1993)

Section: 2 U.S.C. §431(8)(B)(vii)

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

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

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

Honorarium

Section: 2 U.S.C. §431(8)(B)(xiv)

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

Explanation: The 1976 amendments to the Federal Election Campaign Act gave the Commission jurisdiction over the acceptance of honoraria by all federal officeholders and employees. 2 U.S.C. §441i. In 1991, the Legislative Branch Appropriations Act repealed section 441i. As a result, the Commission has no jurisdiction over honorarium transactions taking place after August 14, 1991, the effective date of the law.

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

Application of \$25,000 Annual Limit

Section: 2 U.S.C. §441a(a)(3)

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

Explanation: Section 441a(a)(3) now provides that a contribution to a candidate made in a nonelection year counts against the individual donor's limit for the year in which the candidate's election is held. This provision has led to some confusion among contributors. For example, a contributor wishing to support Candidate Smith in an election year contributes to her in November of the year before the election. The contributor assumes that the contribution counts against his limit for the year in which he contributed. Unaware that the contribution actually counts against the year in which Candidate Smith's election is held,

the contributor makes other contributions during the election year and inadvertently exceeds his \$25,000 limit. By requiring contributions to count against the limit of the calendar year in which the donor contributes, confusion would be eliminated and fewer contributors would inadvertently violate the law. The change would offer the added advantage of enabling the Commission to better monitor the annual limit. Through the use of our data base, we could more easily monitor contributions made by one individual regardless of whether they were given to retire the debt of a candidate's previous campaign, to support an upcoming election (two, four or six years in the future) or to support a PAC or party committee. Such an amendment would not alter the per candidate, per election limits. Nor would it affect the total amount that any individual could contribute in connection with federal elections.

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.

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.

Independent Expenditures by Principal Campaign Committees

Section: 2 U.S.C. §432(e)(3)

Recommendation: Congress should consider amending the definition of principal campaign committee to clarify whether these committees may make indepen-

dent expenditures on behalf of other principal campaign committees.

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

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

Section: 2 U.S.C. §§441a(c) and (e)

Recommendation: 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.

Compliance

Persons Who Can Be Named As Respondents (1993)

Section: 2 U.S.C. §§434(a)(1), 441a(f), 441b and 441f

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

Explanation: Many sections of the Act specifically list the parties that can be found in violation of those sections. See, e.g., 2 U.S.C. §§434(a)(1), 441a(f), 441b, 441f. Oftentimes, however, parties other than those listed are actively involved in committing the violations. For example, section 441b makes it illegal for an officer or director of a corporation, national bank or labor union to consent to the making of a contribution prohibited under that section. The Commission has seen many instances where these types of organizations have made prohibited contributions which were consented to by individuals who have the authority to approve the making of the contributions, even though those individuals did not hold the titles listed in the statute.

This issue has also been addressed on a limited basis in the context of 2 U.S.C. §441f. That section prohibits anyone from making or knowingly accepting a contribution made in the name of another, or from knowingly allowing his/her name to be used to effect such a contribution. In many situations involving this section, there are additional parties, not specified in the statute, who are actively involved in carrying out the violation. Without an “assisting” standard, those active participants cannot be found to have violated that section. The court has recognized such a stan-

dard with regard to section 441f, *FEC v. Rodriguez*, No. 86-687 Civ-T-10(B) (M.D. Fla. May 5, 1987)(unpublished order denying motion for summary judgment), and the Commission has reflected that decision in its regulations at 11 CFR 110.4.

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

Enhancement of Criminal Provisions (1993)

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

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

Explanation: The Commission has noted an upsurge of section 441f contribution reimbursement schemes, that may merit heavy criminal sanction. Although there is no prohibition preventing the Department of Justice from initiating criminal FECA prosecutions on its own, the vehicle for the Commission to bring such matters to the Department’s attention is found at section 437g(a)(5)(C), which provides for referral only after the Commission has found probable cause to believe that a criminal violation of the Act has taken place.⁵ Thus, even if it is apparent at an early stage that a case merits criminal referral, the Commission must pursue the matter to the probable cause stage before referring it to the Department for criminal prosecution. To conserve the Commission’s resources, and to allow the Commission to bring potentially criminal FECA violations to the Department’s atten-

⁵The Commission has the general authority to report apparent violations to the appropriate law enforcement authority (see 2 U.S.C. §437d(a)(9)), but read together with section 437g, section 437d(a)(9) has been interpreted by the Commission to refer to violations of law unrelated to the Commission’s FECA jurisdiction.

tion at the earliest possible time, the Commission recommends that consideration be given to explicitly empowering the Commission to refer apparent criminal FECA violations to the Department at any stage in the enforcement process.

Audits for Cause (1993)

Section: 2 U.S.C. §438(b)

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

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

Random Audits (revised 1993)

Section: 2 U.S.C. §438(b)

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

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

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

Another approach would be to randomly select several Congressional districts and audit all political committees in those districts (with the exception of certain candidates whose popular vote fell below a certain threshold) for a given election cycle. This system might result in concentrating audits in fewer geographical areas.

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

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

Modifying Standard of “Reason to Believe” Finding (revised 1993)

Section: 2 U.S.C. §437g

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

Explanation: Under the present statute, the Commission is required to make a finding that there is “reason to believe a violation has occurred” before it may investigate. Only then may the Commission request specific information from a respondent to determine whether, in fact, a violation has occurred. The statutory phrase “reason to believe” is misleading and does a disservice to both the Commission and the

respondent. It implies that the Commission has evaluated the evidence and concluded that the respondent has violated the Act. In fact, however, a “reason to believe” finding simply means that the Commission believes a violation may have occurred if the facts as described in the complaint are true. An investigation permits the Commission to evaluate the validity of the facts as alleged.

It would therefore be helpful to substitute words that sound less accusatory and that more accurately reflect what, in fact, the Commission is doing at this early phase of enforcement.

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

Expedited Enforcement Procedures and Injunctive Authority (revised 1993)

Section: 2 U.S.C. §437g

Recommendation: Congress should consider whether the FECA should provide for expedited enforcement of complaints filed shortly before an election, permit injunctive relief in certain cases, and allow the Commission to adopt expedited procedures in such instances.⁶

⁶Commissioner Elliott filed the following dissent:

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

I am unaware of any complaint filed with the Commission which, in my opinion, would meet the four standards set forth in the legislative 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.

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

Even when the evidence of a violation has been clear and the potential impact on a campaign has been substantial, without the authority to initiate a civil suit for injunctive relief, the Commission has been unable to act swiftly and effectively in order to prevent a violation. The Commission has felt constrained from seeking immediate judicial action by the requirement of the statute that conciliation be attempted before court action is initiated, and the courts have indicated that the Commission has little if

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

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

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

any discretion to deviate from the administrative procedures of the statute. *In re Carter-Mondale Reelection Committee, Inc.*, 642 F.2d 538 (D.C. Cir. 1980); *Common Cause v. Schmitt*, 512 F. Supp. 489 (D.D.C. 1980), *aff'd by an equally divided court*, 455 U.S. 129 (1982); *Durkin for U.S. Senate v. FEC*, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 9147 (D.N.H. 1980). If Congress allows for expedited handling of compliance matters, it should authorize the Commission to implement changes in such circumstances to expedite its enforcement procedures. As part of this effort, Congress should consider whether the Commission should be empowered to promptly initiate a civil suit for injunctive relief in order to preserve the status quo when there is clear and convincing evidence that a substantial violation of the Act is about to occur. Congress should consider whether the Commission should be authorized to initiate such civil action in a United States district court, under expressly stated criteria, without awaiting expiration of the 15-day period for responding to a complaint or the other administrative steps enumerated in the statute. The person against whom the Commission brings the action would enjoy the procedural protections afforded by the courts.

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

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

Protection for Those Who File Complaints or Give Testimony

Section: 2 U.S.C. §437g

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

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

Litigation

Ensuring Independent Authority of FEC in All Litigation (revised 1993)

Section: 2 U.S.C. §§437c(f)(4) and 437g

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

1. Congress should amend the Act to specify that local counsel rules (requiring district court litigants to be represented by counsel located within the district) cannot be applied to the Commission.
2. Congress should give the Commission explicit authorization to appear as an *amicus curiae* in cases that affect the administration of the Act, but do not arise under it.

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

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

Disclaimers

Fundraising Projects Operated by Unauthorized Committees (revised 1993)

Section: 2 U.S.C §432(e)

Recommendation: When unauthorized committees (those not authorized by candidates) raise funds through special fundraising projects that name specific candidates, contributors are sometimes confused or misled, believing that they are contributing to a candidate’s authorized committee when, in fact, they are giving to the nonauthorized committee that sponsors the project. To preclude this situation, Congress may wish to amend the statute. Several op-

tions are available. (1) Congress could specifically require that contributions solicited by an unauthorized committee (i.e., a committee that has not been authorized by a candidate as his/her campaign committee) be made payable to the registered name of the committee and that unauthorized committees be prohibited from accepting checks payable to any other name. (2) Congress could prohibit an unauthorized committee from using the name of a candidate in the name of any “project” or in the name of any other fundraising activity conducted by the committee. (3) Congress might combine these two solutions.

Explanation: Unauthorized committees are not permitted to use the name of a federal candidate in their name. 2 U.S.C. §432(e)(4). Unauthorized committees, however, frequently feature the name of candidates in their fundraising *projects*, such as “Citizens for Smith.” Contributors may be confused, believing that they are contributing to the candidate’s authorized committee when they make checks payable to these project names. This confusion sometimes leads to requests for refunds, allegations of coordination and inadequate disclaimers, and inability to monitor contributor limits. Contributor awareness might be enhanced if Congress were to modify the statute, for example, by requiring that all checks intended for an unauthorized committee be made payable to the registered name of the unauthorized committee and prohibiting unauthorized committees from accepting checks payable to these project names. Alternatively, Congress might consider amending the statute to prohibit an unauthorized committee from using the name of any candidate in the name of a “project” or other fundraising activity. Or, Congress might combine these two alternatives. The Commission recently promulgated new rules that prohibit an unauthorized committee from using a candidate’s name in the name of a special project or other committee activity. However, changes to the law would give the Commission broader authority to address this ongoing problem.

Disclaimer Notices (revised 1993)

Section: 2 U.S.C. §441d

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

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

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

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

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

Most of these problems would be eliminated if the language of 2 U.S.C. §441d were simplified to require a registered committee to display a disclaimer notice whenever it communicated to the public, regardless of the purpose of the communication and the means of preparing and distributing it. The Com-

mission would no longer have to examine the content of communications or the manner in which they were disseminated to determine whether a disclaimer was required.

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

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

Fraudulent Solicitation of Funds

Section: 2 U.S.C. §441h

Recommendation: The current §441h prohibits fraudulent misrepresentation such as speaking, writing or acting on behalf of a candidate or committee on a matter which is damaging to such candidate or committee. It does not, however, prohibit persons from fraudulently soliciting contributions. 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 that substantial amounts of money were raised fraudulently by persons or committees purporting to act on behalf of candidates. Candidates have

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

Public Disclosure

Computer Filing of Reports (1993)

Section: 2 U.S.C. §432(g)

Recommendation: Congress may want to consider developing guidelines for when committees should file reports via computer technology. For example, Congress could require that committees maintaining their records on computer make them available to the Commission on suitable computer disk, tape or other appropriate electronic form.

Explanation: While some small committees do not maintain computerized reporting due to the expense, the vast majority facilitate their reporting obligations with computers. Direct transfer of these reports to the Commission would provide a financial savings to the Commission because less staff time would be needed to input the campaign finance information. At the same time, it would ensure full disclosure.

Congress should consider, however, that the Clerk of the House and the Secretary of the Senate are the points of entry for House and Senate reports. Currently, none of the entry points are capable of accepting electronic filings. Should this recommendation be adopted, the Clerk of the House and the Secretary of the Senate, in addition to the Commission, would be required to purchase this technology. Alternatively, the Commission would have to be made the point of entry for such filers.

Commission as Sole Point of Entry for Disclosure Documents (revised 1993)

Section: 2 U.S.C. §432(g)

Recommendation: The Commission recommends that it be the sole point of entry for all disclosure documents filed by federal candidates and political committees. This would affect the House and Senate candidate committees only. Under current law, those committees alone file their reports with the Clerk of the House and the Secretary of the Senate, respectively, who then forward microfilmed copies to the FEC.

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

Moreover, if the FEC received the original report, it could use it directly for data entry, as it now uses the reports filed by PACs, party committees and Presidential committees.

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

We also reiterate here the statement we have made in previous years because it remains valid. A single point of entry for all disclosure documents filed by political committees would eliminate any confusion about where candidates and committees are to file their reports. It would assist committee treasurers by having one office where they would file reports, ad-

dress correspondence and ask questions. At present, conflicts may arise when more than one office sends out materials, makes requests for additional information and answers questions relating to the interpretation of the law. A single point of entry would also reduce the costs to the federal government of maintaining three different offices, especially in the areas of personnel, equipment and data processing.

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

Finally, the Commission notes that the report of the Institute of Politics of the John F. Kennedy School of Government at Harvard University, *An Analysis of the Impact of the Federal Election Campaign Act, 1972-78*, prepared for the House Administration Committee, recommended that all reports be filed directly with the Commission (Committee Print, 96th Cong., 1st Sess., at 122 (1979)).

Public Disclosure at State Level

Section: 2 U.S.C. §439

Recommendation: Congress should consider relieving both political committees (other than candidate committees) and state election offices of the burdens inherent in the current requirement that political committees file copies of their reports with the Secretaries of State. One way this could be accomplished is by providing a system whereby the Secretary of State (or equivalent state officer) would tie into the Federal Election Commission's computerized disclosure data base.

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

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

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

State Filing for Presidential Candidate Committees

Section: 2 U.S.C. §439

Recommendation: Congress should consider clarifying the state filing provisions for Presidential candidate committees to specify which particular parts of the reports filed by such committees with the FEC should also be filed with states in which the committees make expenditures. Consideration should be given to both the benefits and the costs of state disclosure.

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

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

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

Agency Funding

Budget Reimbursement Fund (revised 1993)

Section: 2 U.S.C. §438

Recommendation: The Commission recommends that Congress establish a reimbursement account for the Commission so that expenses incurred in preparing copies of documents, publications and computer tapes sold to the public are recovered by the Commission. Similarly, costs awarded to the Commission in litigation (e.g., printing, but not civil penalties) and

payments for Commission expenses incurred in responding to Freedom of Information Act requests should be payable to the reimbursement fund. The Commission should be able to use such reimbursements to cover its costs for these services, without fiscal year limitation, and without a reduction in the Commission's appropriation.

Explanation: At the present time, copies of reports, microfilm, and computer tapes are sold to the public at the Commission's cost. However, instead of the funds being used to reimburse the Commission for its expenses in producing the materials, they are credited to the U.S. Treasury. The effect on the Commission of selling materials is thus the same as if the materials had been given away. The Commission absorbs the entire cost. In FY 1992, in return for services and materials it offered the public, the FEC collected and transferred \$143,306 in miscellaneous receipts to the Treasury. During the first two months of FY 1993, \$31,177 was transferred to the Treasury. Establishment of a reimbursement fund, into which fees for such materials would be paid, would permit this money to be applied to further dissemination of information. Note, however, that a reimbursement fund would not be applied to the distribution of FEC informational materials to candidates and registered political committees. They would continue to receive free publications that help them comply with the federal election laws.

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

Statutory Gift Acceptance Authority

Section: 2 U.S.C. §437c

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

Explanation: The Commission has been very restricted in the sources of private funds it may accept

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

Miscellaneous

Draft Committees

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

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

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

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

3. *Limit Contributions to Draft Committees.* The law should include explicit language stating that no person shall make contributions to any committee (including a draft committee) established to influence the nomination or election of a clearly identified individual for any federal office which, in the aggregate, exceed that person's contribution limit, per candidate, per election.

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

Appendix 1

Biographies of Commissioners and Officers

Commissioners

Joan D. Aikens, Chairman

April 30, 1995

One of the original members of the Commission, Chairman Aikens was first appointed in 1975. Following the reconstitution of the FEC that resulted from the Supreme Court's *Buckley v. Valeo* decision, President Ford reappointed her to a five-year term. In 1981, President Reagan named Chairman Aikens to complete a term left open because of a resignation and, in 1983, once again reappointed her to a full six-year term. Most recently, Chairman Aikens was reappointed by President Bush in 1989. She previously served as FEC Chairman in 1978 and 1986.

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

Scott E. Thomas, Vice Chairman

April 30, 1997

Mr. Thomas was appointed to the Commission in 1986 and reappointed in 1991. He was elected Vice Chairman for 1992 and Chairman for 1993, having earlier been Chairman in 1987. He previously served as executive assistant to former Commissioner Thomas E. Harris and succeeded him as Commissioner. Joining the FEC as a legal intern in 1975, Mr. Thomas eventually became an Assistant General Counsel for Enforcement.

A Wyoming native, Mr. Thomas graduated from Stanford University and holds a J.D. degree from Georgetown University Law Center. He is a member of the District of Columbia bar.

Lee Ann Elliott

April 30, 1993

President Reagan reappointed Mrs. Elliott to her second term as Commissioner in 1987. She served as chairman in 1984 and 1990. Before her first appointment in 1981, Commissioner Elliott was vice president of a political consulting firm in Washington, D.C., Bishop, Bryant & Associates, Inc. She spent several years as associate executive director of the American Medical Political Action Committee, having previously served as assistant director. Commissioner Elliott was also on the board of directors of the American Association of Political Consultants and on the board of the Chicago Area Public Affairs Group, of which she is a past president. She was also a member of the Public Affairs Committee of the U.S. Chamber of Commerce. In 1979, she received the Award for Excellence in Serving Corporate Public Affairs from the National Association of Manufacturers.

A native of St. Louis, Commissioner Elliott graduated from the University of Illinois. She also completed Northwestern University's Medical Association Management Executive Program and is a Certified Association Executive.

Danny L. McDonald

April 30, 1993

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

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

Trevor Potter**April 30, 1997**

Mr. Potter was confirmed by the Senate as a Commissioner in November of 1991. He served as Vice Chairman of the Commission's Finance Committee and Chairman of its Regulations Task Force during 1992. He was elected Commission Vice Chairman for 1993. Before his appointment, Mr. Potter specialized in campaign and election law, as a partner, in a Washington, D.C. law firm. His previous experience in government includes serving as Assistant General Counsel at the Federal Communications Commission from 1984 to 1985, and as a Department of Justice attorney from 1982 to 1984.

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

John Warren McGarry**April 30, 1995**

First appointed to the Commission in 1978, Commissioner McGarry was reappointed in 1983 and 1989. He served as FEC Chairman in 1991, 1985 and 1981. Before his 1978 Commission appointment, Commissioner McGarry served as special counsel on elections to the House Administration Committee. He previously combined private law practice with service as chief counsel to the House Special Committee to Investigate Campaign Expenditures, a special committee established by Congress every election year through 1972. Before his work with Congress, Commissioner McGarry was the Massachusetts assistant attorney general.

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

Ex Officio Commissioners**Donald K. Anderson**

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

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

Walter J. Stewart

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

David G. Gartner, attorney and Special Deputy to the Secretary of the Senate, represented Mr. Stewart at the Commission in 1992.¹

¹On January 5, 1993, Wyche Fowler was appointed Special Deputy to the Secretary of the Senate.

Statutory Officers

John C. Surina, Staff Director

Before joining the Commission in 1983, Mr. Surina was assistant managing director of the Interstate Commerce Commission, where he was detailed to the "Reform 88" program at the Office of Management and Budget. In that role, he worked on projects to reform administrative management within the federal government. He was also an expert-consultant to the Office of Control and Operations, EOP-Cost of Living Council-Pay Board and on the technical staff of the Computer Sciences Corporation. During his Army service, Mr. Surina was executive officer of the Special Security Office, where he supported senior U.S. delegates to NATO's civil headquarters in Brussels. Mr. Surina served as 1991 chairman of the Council on Government and Ethics Laws (COGEL).

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

Lawrence M. Noble, General Counsel

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

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

Lynne McFarland, Inspector General

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

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

Appendix 2

Chronology of Events, 1992

January

- 1— Chairman Joan D. Aikens and Vice Chairman Scott E. Thomas begin one-year terms as officers.
- 3— In Press Conference, Chairman Aikens makes announcement about shortfall in Presidential Election Campaign Fund.
 - FEC introduces checkoff education ads and special checkoff 800-number.
- 15— FEC's repeal of regulations on honoraria (reflecting Congressional repeal of 2 U.S.C. §441i) becomes effective.
- 20— FEC releases 1991 year-end PAC statistics.
- 27— FEC declares Patrick J. Buchanan eligible to receive matching funds.
 - FEC holds nonconnected committee conference in Washington, DC.
 - FEC publishes *Legal History of the Presidential Election Campaign Fund Act*.
- 31— 1991 year-end report due.
 - FEC approves 1992 edition of the *Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing*.

February

- 5— FEC announces changes to "Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding."
- 6— FEC makes final repayment determination on Dole for President Committee, Inc. (1988 primary committee).
- 12— FEC announces 1992 Presidential spending limits.
- 24— FEC releases final audit report on George Bush for President, Inc. (1988 primary committee).
- 26— Vice Chairman Thomas testifies on FEC's FY 1993 budget request before the House Subcommittee on Elections, Committee on House Administration.
- 27— FEC makes final determination denying matching funds to Lyndon H. LaRouche, Jr., for his 1992 Presidential campaign.

March

- 1— FEC publishes 1992 coordinated party expenditure limits.
 - FEC announces computer access to advisory opinions and court cases through Direct Access Program.
 - FEC publishes *Combined Federal/State Disclosure Directory*.
- 23-24— FEC conducts Regional Conference in Los Angeles.
- 26— FEC approves final audit report on Americans for Robertson, Inc. (1988 primary committee).

April

- 1— FEC announces new procedures for auditing 1992 Presidential elections.
- 2— FEC's new regulations on bank loans and lines of credit become effective.
- 3— In a press conference, FEC Chairman Joan Aikens predicts 1996 shortfall in Presidential Election Campaign Fund unless Congress acts.
 - Chairman Aikens discusses tax checkoff on Larry King's radio program.
 - FEC sends legislative recommendations to Congress.
- 7— In *Freedom Republicans v. FEC*, U.S. District Court for DC remands case to the FEC to begin rulemaking proceedings.
- 9— FEC approves final audit report on Jesse Jackson for President '88 Committee.
- 15— Quarterly report due.
- 24— FEC's National Clearinghouse on Election Administration publishes *Campaign Finance Law '92*, a compilation of state campaign finance laws.
- 30— FEC 2-day Regional Conference begins in Orlando, FL.

May

- 1— National Clearinghouse on Election Administration publishes *Essays in Elections 1: The Electoral College*.
- 10— FEC releases campaign finance statistics on 1992 candidates.

- 14— FEC declares Larry Agran eligible for matching funds.
- 15— FEC publishes completely revised edition of *Campaign Guide for Corporations and Labor Organizations*.
- 17— FEC releases campaign finance statistics on national party committees.
- 21— FEC approves final repayment determination for Gephardt for President Committee, Inc. (1988 primary).
- 21-22— FEC holds Corporate/Labor Conference in Washington, DC.

June

- 1— FEC publishes *Annual Report 1991*.
- 7— FEC issues press release detailing PAC contributions to Congressional candidates through March 31, 1992.
- 12— In *FEC v. National Republican Senatorial Committee*, U.S. Court of Appeals for the District of Columbia reverses the district court's judgment.
- 18— Revised allocation regulations become effective.
- 25— FEC denies petition to withhold public funding from Clinton campaign.

July

- 10— U.S. Court of Appeals for the District of Columbia, sitting *en banc*, upholds constitutionality of 2 U.S.C. §438(a)(4) ("sale or use" provision) in *FEC v. International Funding Institute*.
 - FEC releases "PACRONYMS" (guide to names of federal PACs).
- 13-16— Democratic National Convention meets in New York, NY.
- 15— Quarterly report due.
- 17— FEC certifies \$55.24 million payment of public funds to the Clinton/Gore campaign.
- 23— FEC releases mid-year 1992 PAC count.
- 29— FEC publishes Notice of Proposed Rulemaking on draft regulations governing communications by corporations and labor organizations (*MCFL* rulemaking).
- 31— FEC issues final repayment determination for

Jack Kemp for President Committee, Inc. (1988 primary).

August

- 1— Chairman Aikens sends letters to Presidential campaigns emphasizing the need to obtain and disclose contributor information.
 - Chairman Aikens writes the recipients of public funding to explain two new policy decisions: (1) Committees will be required to pay excessive and prohibited contributions to the U.S. Treasury, and (2) the FEC will expand its use of statistical sampling in FEC audits.
- 5— FEC releases statistical summaries of political party activity, including disclosure of non-federal accounts of national party committees.
 - In open hearing, Sen. Paul Simon's 1988 Presidential Campaign urges FEC to reduce repayment due U.S. Treasury.
- 17-20— Republican National Convention meets in Houston, TX.
- 21— FEC certifies \$55.24 million payment of public funds to Bush/Quayle campaign.

September

- 4— New rules on rulemaking petition procedures become effective.
- 15— FEC issues press release on PAC activity for first 18 months of cycle.
- 17— FEC makes final determination that the LaRouche Democratic Campaign repay \$151,260 in federal funds for 1988 campaign.
- 21— FEC finds that the Natural Law Party of the U.S. qualifies as a national party committee.

October

- 1— FEC publishes 1992 Presidential Primary Results.
- 14-15— FEC holds public hearing on *MCFL* rulemaking.
- 15— Quarterly report due.
 - FEC declares John Hagelin of the Natural Law Party eligible for matching funds.

- 22— Pre-general election report due.
 - FEC denies extension of time for repayment by Gephardt 1988 Committee.
- 27— FEC issues data on national party committee activity through mid-October.
- 28— In open hearing, Jesse Jackson's 1988 Presidential Campaign urges FEC to reduce repayment due U.S. Treasury.

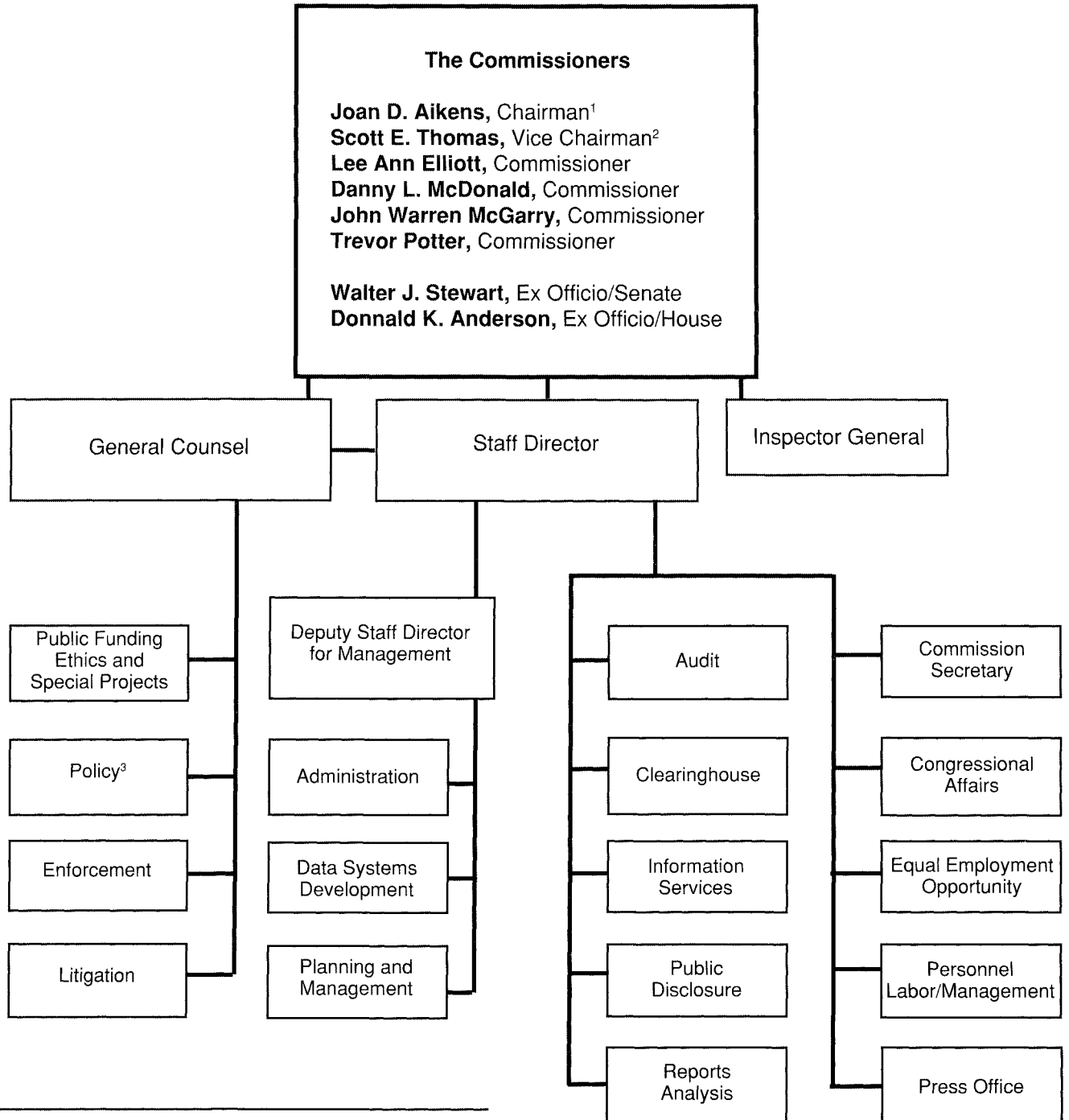
November

- 3— General Election.
 - NY holds Special General Election to fill vacancy in 8th CD.
 - NC holds Special General Election to fill vacancy in 1st CD.
- 4— Revised regulations on use of candidate's name become effective.
- 17— FEC finds that Clinton/Gore Campaign Committee may accept temporary \$1 million loan from its compliance fund, subject to certain conditions.
- 24— GA holds Senate Runoff Election.
- 30— U.S. Supreme Court refuses to review court of appeals decision upholding the constitutionality of the "sale or use" restriction.

December

- 1— FEC publishes *Revised Record Supplement on Allocation*.
- 2— In open hearing, Pat Robertson's 1988 Presidential campaign urges the FEC to reduce its repayments to the U.S. Treasury.
- 3— Post-general election report due.
- 4— ND holds Special Senate Election.
- 9— Commission establishes interim rules on ex parte communications.
 - FEC holds public hearing on proposed revisions to definition of "member."
- 10— FEC decides to take no further action on rule-making procedure on transfers between federal campaigns.
- 14— At press briefing, Chairman Joan D. Aikens and FEC staff present statistics on 1992 Presidential race.
- 15— FEC elects Scott E. Thomas and Trevor Potter as 1993 Chairman and Vice Chairman.

Appendix 3 FEC Organization Chart



¹Scott E. Thomas was elected 1993 Chairman.

²Trevor Potter was elected 1993 Vice Chairman.

³Policy covers regulations, advisory opinions, legal review and administrative law.

Appendix 4 FEC Offices

This appendix briefly describes the offices within the Commission, located at 999 E Street, NW, Washington, D.C. 20463. The offices are listed alphabetically, with local telephone numbers given for offices that provide services to the public. Commission offices can also be reached toll-free on 800-424-9530 and locally on 202-219-3440.

Administration

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

Audit

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

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

Clearinghouse

The National Clearinghouse on Election Administration, located on the seventh floor, assists state and local election officials by responding to inquiries, publishing research and conducting workshops on all matters related to election administration. Additionally, the Clearinghouse answers questions from the public and briefs foreign delegations on the U.S. election process. Local phone: 202-219-3670.

Commission Secretary

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

Commissioners

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

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

Congressional, Legislative and Intergovernmental Affairs

This office serves as primary liaison with Congress and Executive Branch agencies. The office is responsible for keeping Members of Congress informed about Commission decisions and, in turn, for keeping the agency up to date on legislative developments. Local phone: 219-4136.

Data Systems Development

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

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

These indexes permit a detailed analysis of campaign finance activity and, additionally, provide a tool for monitoring contribution limitations. The division publishes the *Reports on Financial Activity* series of periodic studies on campaign finance and generates statistics for other publications. Finally, the division administers the Commission's Direct Access Program, which provides on-line access to FEC information to people and organizations throughout the U.S.

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

Equal Employment Opportunity Program (EEOP)

The EEOP office advises the Commission on the prevention of discriminatory practices. The EEO Officer manages the Commission's Equal Employment Opportunity Program and develops plans to improve the Commission's equal employment opportunities. The office is also responsible for administering the discrimination complaint system; overseeing the Special Emphasis Program; training Commission staff on the EEO Program; and reporting on the status of Commission's EEO Program.

General Counsel

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

Information Services

In an effort to promote voluntary compliance with the law, the Information Services Division provides technical assistance to candidates, committees and others involved in elections. Responding to phone and written inquiries, members of the staff conduct research

based on the statute, FEC regulations, advisory opinions and court cases. Staff also direct workshops on the law and produce guides, pamphlets and videos on how to comply with the law. Located on the second floor, the division is open to the public. Local phone: 219-3420; toll-free phone: 800-424-9530.

Inspector General

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

Law Library

The Commission law library, part of the Office of General Counsel, is located on the eighth floor and is open to the public. The collection includes basic legal research tools and materials dealing with political campaign finance, corporate and labor political activity and campaign finance reform. The library staff prepares indices to advisory opinions and Matters Under Review (MURs) as well as a *Campaign Finance and Federal Election Law Bibliography*, all available for purchase in the Public Records Office. Local phone: 219-3312.

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: 219-4155.

Public Records

Staff from the Public Records Office provide information on the campaign finance activities of political committees and candidates involved in federal elections. Located on the first floor, the office is a library facility with ample work space and a knowledgeable staff to help researchers locate documents and computer data. The FEC encourages the public to review the many resources available, including committee reports, computer indexes, advisory opinions and closed MURs. Local phone: 219-4140.

Reports Analysis

Reports analysts assist committee officials in complying with reporting requirements and conduct detailed examinations of the campaign finance reports filed by political committees. If an error, omission or prohibited activity (e.g., an excessive contribution) is discovered in the course of reviewing a report, the analyst sends the committee a letter which requests that the committee either amend its reports or provide further information concerning a particular problem. By sending these letters (requests for additional information, or RFAs), the Commission seeks to ensure full disclosure and to encourage the committee's voluntary compliance with the law. Analysts also provide frequent telephone assistance to committee officials and encourage them to call the division with reporting questions or compliance problems. Local phone: 219-3580.

Staff Director and Deputy Staff Director

The Staff Director appoints staff, with the approval of the Commission, and implements Commission policy. The Staff Director oversees the

Commission's public disclosure activities, outreach efforts, review of reports and the audit program, as well as the administration of the agency.

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

Appendix 5 Statistics on Commission Operations

Summary of Disclosure Files

	Total Filers Existing in 1992	Filers Terminated as of 12/31/92	Continuing Filers as of 12/31/92	Number of Reports and Statements in 1992	Gross Receipts in 1992	Gross Expenditures in 1992
Presidential Candidate Committees	460	43	417	1,207	\$327,843,470	\$326,068,405
Senate Candidate Committees	708	97	611	2,554	\$201,881,181	\$250,037,642
House Candidate Committees	3,836	854	2,982	16,380	\$322,278,928	\$366,097,514
Party Committees	628	83	545	3,802	\$432,668,685	\$558,634,461
Federal Party Committees	591		508	3,486	\$311,078,086	\$319,332,697
Reported Nonfederal Party Activity	37		37	316	\$121,590,599	\$119,650,882
Delegate Committees	81	1	80	12	\$265,466	\$265,464
Nonparty Committees	4,781	586	4,195	31,761	\$218,655,715	\$261,861,285
Labor committees	376	29	347	2,913	\$46,420,860	\$61,423,900
Corporate committees	1,956	221	1,735	14,911	\$57,407,893	\$69,486,272
Membership, trade and other committees	2,449	336	2,113	13,937	\$114,826,962	\$130,951,113
Communication Cost Filers	201	0	201	122	N/A	\$7,749,308
Independent Expenditures by Persons Other Than Political Committees	308	29	279	308	N/A	\$1,096,115

*Figure includes: (1) the disclosed activity of nonfederal national party committees and (2) transfers of nonfederal funds to the federal accounts of state and local party committees for allocated expenses.

Divisional Statistics for Calendar Year 1992

	Total
Reports Analysis Division	
Documents processed	76,788
Reports reviewed	35,614
Telephone assistance and meetings	10,078
Requests for additional information (RFAs)	6,638
Second RFAs	3,453
Data coding and entry of RFAs and miscellaneous documents	14,913
Compliance matters referred to Office of General Counsel or Audit Division	69
Data Systems Development Division	
Documents receiving Pass I coding*	68,909
Documents receiving Pass III coding	42,167
Documents receiving Pass I entry	71,073
Documents receiving Pass III entry	41,927
Transactions receiving Pass III entry	
• In-house	68,139
• Contract	782,044
Public Records Office	
Campaign finance material processed (total pages)	1,893,887
Requests for campaign finance reports	12,771
Visitors	15,360
Total people served	28,131
Information telephone calls	20,393
Computer printouts provided	82,234
Total income (transmitted to U.S. Treasury)	\$128,144
Cumulative total pages of documents available for review	10,839,245
Contacts with state election offices	2,928
Notices of failure to file with state election offices	538

	Total
Administrative Division	
Contracting and procurement transactions	2,700
Pieces of outgoing mail processed	94,459
Publications prepared for print	42
Pages of photocopying	10,656,198
Information Services Division	
Telephone inquiries	118,050
Information letters	135
Distribution of FEC materials	15,609
Prior notices (sent to inform filers of reporting deadlines)	50,668
Other mailings	22,156
Visitors	174
Public appearances by Commissioners and staff	116
State workshops	4
Publications	29
Press Office	
Press releases	190
Telephone inquiries from press	22,464
Visitors to Press Office	3,554
Freedom of Information Act (FOIA) requests	641
Fees for materials requested under FOIA	\$106,283
Clearinghouse on Election Administration	
Telephone inquiries	8,025
Information letters	85
Visitors	83
Publications	8
Foreign Briefings	62

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

	Total
Office of General Counsel	
Advisory opinions	
Requests pending at beginning of 1992	7
Requests received	44
Issued	39
Requests closed or withdrawn	8
Pending at end of 1992	4
Compliance cases (MURs)	
Pending at beginning of 1992	198
Opened	260
Closed	129
Pending at end of 1992	329
Litigation	
Cases pending at beginning of 1992	46
Cases opened	20
Cases closed	26
Cases pending at end of 1992	40
Cases won	17
Cases lost	1
Cases voluntarily dismissed	6
Cases dismissed as moot	2
Law Library	
Telephone inquiries	1,871
Visitors served	896

Audits Completed by Audit Division, 1975–1992

Presidential	75
Presidential Joint Fundraising	10
Senate	15
House	127
Party (National)	46
Party (Other)	111
Nonparty (PACs)	73
Total	457

Appendix 6

1992 Federal Register Notices

1992-1

11 CFR Parts 100, 110, 114: Honoraria; Final Rule and Technical Amendments (57 FR 1640, January 15, 1992)

1992-2

Computerized Magnetic Media Requirements for Presidential Primary and General Election Committees; Announcement of Changes (57 FR 4453, February 5, 1992)

1992-3

11 CFR Parts 9034, 9036 and 9037: Matching Fund Submission and Certification Procedures for Presidential Primary Candidates; Final Rules; Correction to Announcement of Effective Date (from November 6 to November 7, 1991) (57 FR 6665, February 27, 1992)

1992-4

11 CFR Part 106: Allocation of Federal and Nonfederal Expenses; Final Rule; Transmittal to Congress (57 FR 8990, March 13, 1992; Corrections, 57 FR 11137, April 1, 1992)

1992-5

11 CFR Parts 100 and 104: Loans From Lending Institutions to Candidates and Political Committees; Final Rule; Announcement of April 2 Effective Date (57 FR 11262, April 2, 1992)

1992-6

11 CFR Parts 102 and 110: Special Fundraising Projects by Political Committees: Notice of Proposed Rulemaking (57 FR 13056, April 15, 1992)

1992-7

11 CFR Part 110: Transfers of Funds from State to Federal Campaigns: Notice of Proposed Rulemaking (57 FR 13054, April 15, 1992)

1992-8

11 CFR Part 200: Administrative Regulations (Petitions for Rulemaking): Notice of Proposed Rulemaking (57 FR 20430, May 13, 1992)

1992-9

11 CFR Part 106: Allocation of Joint Federal and Nonfederal Expenses; Final Rule: Announcement of Effective Date (57 FR 27146, June 18, 1992)

1992-10

11 CFR Part 102: Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees: Final Rule; Transmittal of Regulations to Congress (57 FR 31424, July 15, 1992)

1992-11

11 CFR Parts 109, 110 and 114: Independent Expenditures; Corporate and Labor Organization Expenditures: Notice of Proposed Rulemaking (57 FR 33548, July 29, 1992)

1992-12

11 CFR Part 200: Administrative Regulations (Rulemaking Petitions): Final Rule (57 FR 34508, August 5, 1992)

1992-13

11 CFR Part 110: Transfers of Funds from State to Federal Campaigns: Final Rules and Transmittal of Regulations to Congress (57 FR 36344, August 12, 1992)

1992-14

11 CFR Part 110: Transfers of Funds Between Federal Campaign Committees: Notice of Proposed Rulemaking (57 FR 36023, August 12, 1992)

1992-15

11 CFR Part 104: Recordkeeping and Reporting by Political Committees: Best Efforts; Notice of Proposed Rulemaking (57 FR 44137, September 24, 1992)

1992-16

11 CFR Parts 109, 110 and 114: Change in MCFL Public Hearing Time (57 FR 45009, September 30, 1992)

1992-17

Filing Dates for the New York Special Election (57 FR 45793, October 5, 1992)

1992-18: Filing Dates for the North Carolina Special Election (57 FR 45792, October 5, 1992)

1992-19

11 CFR Parts 100 and 114: Definition of "Member" of a Membership Organization; Notice of Proposed Rulemaking (57 FR 46346, October 8, 1992)

1992-20

11 CFR Part 102: Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees; Announcement of Effective Date (57 FR 47258, October 15, 1992)

1992-21

Filing Dates for the North Dakota Special Election (57 FR 47661, October 19, 1992)

1992-22

11 CFR Parts 100 and 114: Definition of "Member" of Membership Association: Change of Public Hearing Time (57 FR 56867, December 1, 1992)

1992-23

11 CFR Part 201: Ex Parte Communications; Interim Rules with Request for Comments (57 FR 58133, December 9, 1992)

Appendix 7

Revisions to Allocation Regulations

Revisions to the Commission's regulations on the allocation of federal and nonfederal expenses became effective on June 18, 1992. The revisions and their explanation and justification appeared in the March 13, 1992 Federal Register (57 FR 8990).

The changes are summarized below. Although the ballot ratio section applies only to state and local party committees, the other sections apply to all committees subject to the allocation rules, including separate segregated funds and nonconnected committees. For more information about allocation issues, see the *Revised Supplement on Allocation*, published in December 1992.

Changes to Ballot Composition Ratios of State and Local Party Committees¹

New Nonfederal Point

Under the revised regulations, all state and local party committees were permitted to include an additional nonfederal point in their ballot composition ratios. 11 CFR 106.5(d)(1)(ii).

Point for Partisan Local Office

A second change applies only to state and local party committees located in states where statewide officers are elected in even years while local officers are elected only in odd years. Under the former rules, party committees in this situation could not include any points for partisan local offices. The new rules, based on Advisory Opinion 1991-25, now authorize committees to include nonfederal point(s) in their ratios if partisan local candidates are expected on the ballot "in any regularly scheduled election during the two-year Congressional cycle." 11 CFR 106.5(d)

(1)(ii). (Note that state party committees may add only one nonfederal point for local offices on the ballot, while local party committees may add a maximum of two points.)

Changes That Apply to All Committees

Window for Transfers from Nonfederal Account

Committees now have a 70-day window (expanded from 40 days) to transfer funds from the nonfederal account to the federal account to pay for the nonfederal share of a joint expense. (The window begins 10 days before the federal account pays the vendor and ends 60 days after the payment.) 11 CFR 106.5(g)(2)(ii)(B) and 106.6(e)(2)(ii)(B). In addition, committees now have a 60-day period following a fundraising program or event to adjust the fundraising ratio and to transfer funds between the federal and nonfederal accounts to reflect the revised allocation. (When reporting these adjustment transfers, committees must enter the date of the event, a new requirement.) 11 CFR 106.5(f) and 106.6(d).

¹Using a revised ballot composition ratio based on the new rules, state and local party committees had the opportunity to reallocate their administrative and generic voter drive expenses paid since January 1, 1991. However, committees had only until July 12, 1992, to make the retroactive reallocations and the corresponding transfers from their nonfederal accounts to their federal accounts.

Appendix 8

Rules on Bank Loans to Political Committees

New regulations on bank loans and lines of credit became effective April 2, 1992. The rules apply to all lines of credit established on or after the effective date and to all loans whose proceeds were disbursed by the bank on or after that date. The loans and lines of credit must be reported on new loan forms: Schedule C-1 and, for Presidential committees, Schedule C-P-1.

The revisions provide guidance on when a loan from a lending institution is made “on a basis which assures repayment.” They additionally clarify that lines of credit are subject to the same requirements as other bank loans. Moreover, the revised rules focus on the restructuring, rather than the settlement, of bank loans and consider each restructuring a new loan.

The final rules and their explanation and justification were published in the Federal Register on December 27, 1991 (56 FR 67118).

Regulations That Remain Unchanged

The regulations at 11 CFR 100.7(b)(11) and 100.8(b)(12) apply to loans from lending institutions such as state or federally chartered banks, federally insured savings and loan associations and federally insured credit unions.

Under those rules, which are based on 2 U.S.C. §431(8)(B)(vii), a loan from a lending institution is permissible if it is made in accordance with applicable banking laws and in the ordinary course of business. The regulations define when a loan is made in the ordinary course of business: (1) the loan bears the usual and customary interest rate of the lending institution for the category of loan involved; (2) it is evidenced by a written instrument; (3) it is subject to a due date or amortization schedule; and (4) it is made on a basis which assures repayment.

The revised rules clarify this fourth condition.

New Rules: Methods of Assuring Repayment

Under sections 100.7(b)(11)(i) and (ii) and 100.8(b)(12)(i) and (ii), a loan is made on a basis which assures repayment if it is obtained under either of two authorized methods or a combination of the two.

Method 1: Traditional Collateral, Cosigners

A loan is made on a basis which assures repayment if it is obtained using traditional types of collateral and/or secondary sources of repayment such as guarantors or cosigners. 11 CFR 100.7(b)(11)(i)(A) and 100.8(b)(12)(i)(A).

Examples of traditional sources of collateral include: ownership in real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable and cash on deposit. For a loan to be made on a basis which assures repayment, the recipient candidate or political committee must document that the lending institution has a perfected security interest in the collateral. (This means that the lender has taken the legal steps necessary to protect its interest in the collateral.) Moreover, the fair market value of the collateral on the date of the loan must equal or exceed the amount of the loan *and* any senior liens.

With respect to secondary sources, an endorsement or guarantee of a loan is considered a contribution by the endorser or guarantor and is thus subject to the law’s prohibitions and limits on contributions.

Method 2: Future Receipts

Under 11 CFR 100.7(b)(11)(i)(B) and 100.8(b)(12)(i)(B), a loan is also considered to be made on a basis which assures repayment if it is obtained using future receipts as collateral, such as anticipated contributions, interest income and, in the case of Presidential candidates, public financing payments. The loan may not exceed a reasonable estimate of anticipated receipts based on documentation provided by the borrower candidate or committee to the lender (e.g., cash flow charts, financial plans).

The borrower must also provide the lender with a written agreement in which the borrower pledges future funds as collateral and promises to deposit pledged funds in a separate account for the repayments. If public financing payments are pledged, the candidate or committee must authorize the U.S. Secretary of the Treasury to deposit the payments directly into the account. The account may be established at the lending institution or at another institution that meets the campaign depository requirements of 11 CFR 103.2. In the latter case, the lender must have access to the account, and the other institution must be notified of this assignment. The lender and borrower are free to structure the account in any manner consistent with the repayment terms.

For example, under a loan agreement, the borrower may agree to repay \$50,000 of a \$100,000 loan using future receipts at a rate of \$10,000 a month for five months. The borrower must demonstrate that \$10,000 will be available in the account at the time each payment falls due. Any additional funds deposited in the account for any reason (e.g., public funding payments) may be withdrawn and used for other purposes. Moreover, if any part of the loan is repaid from another source, that amount may be withdrawn from the repayment account.

Assurance Criteria Not Met

When a loan is not obtained under the authorized methods discussed above, the Commission will consider the totality of the circumstances in determining whether the loan was made on a basis which assures repayment. 11 CFR 100.7(b)(11)(iii) and 100.8(b)(12)(iii).

New Reporting Rules and Forms

New reporting rules at 11 CFR 104.3(d)(1) through (d)(3) require additional information on bank loans to show whether or not a loan or line of credit was made on a basis which assures repayment. The committee discloses this information on new Schedule C-1 or C-P-1, which supplements Schedules C and Schedule C-P. (The “P” indicates that the form is used by Presidential committees.) A Schedule C-1 or C-P-1 must

be filed with the next due report for each bank loan obtained or line of credit established during the reporting period. A committee must additionally file a new schedule each time the terms of a loan or line of credit are restructured and each time a draw is made on a line of credit.

The new schedule requires a committee to provide the following:

- A copy of the lending agreement (either the original agreement or the restructured agreement);
- Information as to the basis on which the loan was obtained or line of credit was established, and, if it was not obtained or established under one of the authorized methods, a statement demonstrating that it was nevertheless made on a basis which assures repayment; and
- Certification from the lender that the information reported by the committee is correct; that the terms of the loan or line of credit do not favor the committee over other borrowers; and that the bank is aware of, and has complied with, FEC regulations on bank loans.