

Federal Election Commission

Annual Report 1987



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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 1, 1988

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

Dear Sirs:

We submit for your consideration the 13th annual report of the Federal Election Commission, as required by the Federal Election Campaign Act of 1971, as amended. The Annual Report 1987 describes the activities performed by the Commission in carrying out its duties under the Act. It also includes a number of legislative recommendations adopted by the Commission in February 1988.

Respectfully,

A handwritten signature in black ink, appearing to read "Thomas J. Josefiak".

Thomas J. Josefiak
Chairman

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Introduction

The Commission spent much of 1987 preparing for the 1988 elections. This report examines these preparations and describes the Commission's ongoing work as the administrator of the Federal Election Campaign Act.

In the area of Presidential elections, the Commission revised both its delegate and public funding regulations, certified thirteen 1988 Presidential candidates eligible for primary matching funds and resolved a number of legal issues pertaining to public funding. These and other developments associated with Presidential elections are reported in Chapter 1. Chapter 2 examines the Commission's administration of the election law. Enhancement of computer services are discussed, as well as regulatory changes and Commission efforts to assist committees and the general public in understanding and complying with the law. The chapter ends with a discussion of the major legal issues that stemmed from advisory opinions, litigation and compliance actions. Campaign finance statistics are contained in Chapter 3. The agency's internal operations are summarized in Chapter 4, and Chapter 5 lists the Commission's recommendations for legislative change. The report concludes with several appendices that supplement material contained in the various chapters.

Chapter 1

Presidential Public Funding

During 1987, Commission efforts focused heavily on the upcoming 1988 Presidential elections. This chapter begins with an overview of the public funding program followed by a discussion of the Commission's preparations for the 1988 elections. The chapter concludes with a summary of several legal issues concerning Presidential elections.

Overview of the Public Funding Program

Public funding of Presidential elections encompasses three phases:

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

Financing for the public funding program comes from the Presidential Election Campaign Fund. This fund consists of dollars voluntarily checked off by taxpayers on their Federal income tax returns. During the year before Presidential elections, the Commission begins to determine whether those requesting Federal funds meet the law's eligibility requirements. For those candidates who meet the qualifications, the agency then certifies payment of the funds. Actual payments are made by the U.S. Treasury in the year of the election. Under the law, the Commission also audits public funding recipients to ensure that Federal funds are spent in accordance with the law's requirements.

Preparing for 1988

Although the major elements of the public financing program have remained largely the same since the first publicly financed Presidential election in 1976, the agency continues to undertake activities that refine the public funding program. In preparing for 1988, the Commission's goal was to ease the burdens on Presidential campaigns requesting public

funds and to streamline internal agency procedures for more efficient operation of the public funding program. As a result of its preparations, the Commission anticipated that its administration of the 1988 program would be the smoothest thus far.

Revised Regulations

Presidential Primary and General. On May 26, 1987, the Commission transmitted to Congress revised regulations governing publicly financed Presidential candidates. Revising the regulations was part of the Commission's effort to clarify and simplify the program for candidates. The new regulations address such issues as extensions of credit, debt settlement, sources of funds for making repayments as well as the definition of what constitutes a qualified campaign expense. Highlights from the regulations follow:

- Funds raised to make repayments are subject to the limitations and prohibitions of the Act and must be aggregated with any contributions previously received from a contributor.
- The new rules require publicly funded candidates to follow the regulations (at sections 110.1 and 110.2) for the redesignation and reattribution of contributions.
- A candidate may not reduce the amount of disbursements counted against the expenditure limit by settling debts. The full amount of debts incurred by a candidate count against the expenditure limit regardless of the amount for which the debts have been settled.
- No payments may be made to candidates from accounts containing public funds except to reimburse them for legitimate campaign expenses, such as travel and subsistence. The new rules make explicit that candidates may not receive a salary for services performed for the campaign; nor may they receive compensation for lost income while campaigning.
- The new rules establish procedures under which candidates may request reconsideration of Commission determinations. Also, for the

first time, the regulations set forth Commission procedures for considering stays of repayment determinations pending a candidate's appeal.

- When determining a primary candidate's eligibility for matching funds, the Commission considers relevant information in its possession, including the candidate's past actions in a previous publicly funded campaign.
- Payment of Federal income taxes is considered a qualified campaign expense but does not count against either the state-by-state limits or the overall national limit.
- Under the new rules, outstanding obligations included on the NOCO statement may not include debts for nonqualified campaign expenses, repayment obligations or amounts paid to secure a surety bond pending an appeal of a Commission repayment determination.
- Charges made on a credit card for which the candidate is liable count against the candidate's personal expenditure limit unless they are paid in full, including any finance charges, by the campaign committee no later than 60 days after the closing date in the billing statement.

The revised regulations became effective on August 18, 1987 (52 *Fed. Reg.* 30904).

Delegate Selection. On November 20, 1987, the Commission prescribed its revised regulations, at 11 CFR 110.14, setting forth the Act's prohibitions, limitations and reporting requirements as they apply to the process of selecting delegates to the Presidential nominating conventions. The revisions were designed to clarify which provisions apply to individual delegates and which apply to delegate committees. The revised rules also provide criteria for determining affiliation between delegate committees and Presidential campaign committees. The final rules, along with an explanation and justification, were published in the September 22, 1987, issue of the *Federal Register* (52 *Fed. Reg.* 35530). A sum-

mary of the new regulations is contained in Appendix 7.

Outreach

During 1987, the Commission continued to help Presidential candidates comply with the election law. The outreach effort relied on two publications developed and revised by the Commission's audit staff. *The Guideline for Presentation in Good Order*, approved by the Commission in 1987, explained the entire matching fund process for primary candidates, providing step-by-step instructions for preparing matching fund submissions. *The Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing*, also approved by the Commission in 1987, offered comprehensive guidelines for accounting, budgetary and reporting systems. The manual also incorporated revisions to the FEC's primary matching fund regulations.

FEC auditors, one assigned to work with each publicly funded campaign, answered telephone inquiries and met with campaign representatives to help them comply with the public financing statutes and regulations. By assisting candidate committees in the early stages of the campaign, the Commission hoped to minimize the number of errors made by committees and to simplify preparations for Commission audits. Field audits are required by statute of all publicly funded campaigns.

Staff

In order to handle the increased workload of the Presidential election cycle and to ensure the smooth operation of the public funding program, the agency supplemented permanent staff with temporary clerks. The Commission also arranged with the General Accounting Office (GAO) to have auditors detailed to the FEC on a nonreimbursable basis, beginning in the spring of 1988. A similar arrangement with GAO during the 1984 Presidential cycle proved very effective.

Certification of Matching Funds

On April 24, 1987, Richard Gephardt became the first Presidential candidate to qualify for Federal matching funds for the 1988 primary elections. The Commission approved his eligibility after auditors had thoroughly reviewed his "threshold submissions." Under the Primary Matching Fund Act, candidates may submit documentation to establish their eligibility for matching funds the year before the primaries are held. 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 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 agreements and certifications in which the candidate agrees to comply with the provisions of the Primary Matching Fund Act including the limits set on campaign spending.

Once their eligibility was established, the candidates continued throughout 1987 to make matching fund submissions for Commission review. Audit staff evaluated the submissions, using statistical sampling techniques to see if the requests contained proper documentation. Candidates used computer tape for their submission information to the Commission. This contributed significantly to the Commission's ability to review and certify requests as quickly as possible.

By year's end, Bruce Babbitt, George Bush, Robert Dole, Michael Dukakis, Pete du Pont, Albert Gore, Alexander Haig, Gary Hart, Jack Kemp, M.G. "Pat" Robertson and Paul Simon had also become eligible for matching funds.¹ The Commission certified a total of \$28,748,261 to these 12 eligible candidates.

Because, under the election law, candidates may not receive actual payment from the U.S. Treasury until after the election year begins, the candidates received their initial payments on January 4, the first working day of 1988. By way of comparison, in 1984, the first matching fund payments totaled \$6,776,289 and went to six candidates.

The table below lists the eligible candidates and the total amount of matching funds certified to each one during 1987.

Candidate	Amount Certified in 1987
Bruce Babbitt	\$ 719,235.39
George Bush	\$5,761,540.76
Robert Dole	\$4,338,141.43
Michael Dukakis	\$3,493,418.61
Pete du Pont	\$1,868,762.25
Richard Gephardt	\$1,737,216.22
Albert Gore	\$1,556,401.22
Alexander Haig	\$ 274,850.61
Gary Hart	\$ 100,000.00
Jack Kemp	\$3,012,949.43
M.G. "Pat" Robertson	\$4,495,607.72
Paul Simon	\$1,390,137.41

Convention Funding

During 1987, the Commission certified public funds for the 1988 Presidential nominating conventions of the major parties. Each of the two major political parties received \$8,892,000 from the U.S. Treasury, but only after the Commission determined that the parties had satisfied all the eligibility requirements for public funds.

Under the Presidential Election Campaign Fund Act, the national committees of major and minor parties may receive public funds to defray the expenses of their nominating conventions any time af-

¹In the early months of 1988, two additional candidates qualified for matching funds: Jesse Jackson and Lenora B. Fulani.

ter July 1 of the year preceding the convention. Each convention committee was entitled to receive \$4 million plus a cost-of-living adjustment (COLA). As of December 31, the figure stood at \$8,892,000, based on the 1986 cost-of-living adjustment. The Commission planned to certify additional funds in 1988, once figures became available for the 1987 cost-of-living adjustment.²

Legal Issues

During 1987, the Commission dealt with several legal issues related to the upcoming 1988 Presidential elections, including eligibility for matching funds, the attachment of matching funds by creditors, and the relationship between campaign committees and delegate committees. Additionally, the Commission resolved three issues stemming from the 1984 elections — repayment determinations, bank loans and election activity conducted by corporate executives.

Eligibility for Matching Funds

On September 24, 1987, the Commission made a final determination that Gary Hart failed to establish eligibility to receive primary matching funds for his 1988 Presidential primary campaign. At issue was whether an individual was eligible for matching fund payments when, by his own declaration, he was not a candidate on the day he submitted his request for a determination of eligibility.

On May 18, 1987, Gary Hart had submitted a letter of candidate and committee agreements along with certifications dated May 4, 1987, and had requested that the Commission determine that he was eligible to receive Presidential primary matching funds. Prior to this submission, however, on May 8, 1987, Mr. Hart had held a news conference in which he stated that he would no longer be a candidate for the nomination of the Democratic Party for President of the United States.

The statutory provisions governing the establishment of eligibility for entitlement to matching funds presuppose that an applicant for such funds is a candidate within the meaning of the Presidential Primary Matching Payment Account Act. Under this law, the term "candidate" is defined as "an individual who seeks nomination for election to be President of the United States." 26 U.S.C. §9032(2). Moreover, the law requires the candidate to certify that he or she is seeking nomination by a political party for election to the Office of President of the United States. 26 U.S.C. §9033(b)(2). The Commission concluded, therefore, that only a candidate as defined under Title 26 was eligible for matching funds. Since Mr. Hart had ceased being a candidate before submitting his application for consideration by the Commission, the agency ruled that he was unable to establish eligibility under 26 U.S.C. §9033.

Creditors' Attachment of Matching Funds

On December 15, 1987, Gary Hart re-entered the 1988 campaign for President. Once again the Commission was asked to consider his eligibility and to respond to several legal attempts by 1984 creditors to attach his 1988 matching funds. The Commission declared him eligible to receive matching funds on December 28, 1987.

On December 30, 1987, and again on January 12, 1988, the Commission was served with writs of attachment for the assets belonging to Americans With Hart, Inc., Senator Hart's principal campaign committee for his 1984 campaign. Because the creditors who served the writs were in litigation with the 1984 Hart committee, the Commission authorized the General Counsel to send letters advising the creditors that no Federal statute authorized diversion of matching funds by the government to any other party.³ Moreover, the letter said that any attempt to execute a creditor's judgment against

²On March 2, 1988, the FEC voted to certify an additional \$328,000 in federal funds to each of the two major political parties.

³The General Counsel was also authorized to seek to have the writs vacated.

funds of the United States government would be barred by sovereign immunity.

In addition, the letters noted that the Commission did not possess any assets which belonged to Americans With Hart, Inc., Hart's 1984 principal campaign committee. The Commission had certified that Hart was eligible to receive matching funds for his 1988 Presidential nomination campaign. The 1988 committee was called Friends of Gary Hart-1988, Inc., not Americans With Hart.

In conclusion, the letters explained that the Commission did not maintain any matching payments that the candidate might be entitled to; nor did it make the actual payment of primary matching funds. Under the Primary Matching Payment Act, the Commission determines the eligibility of candidates to receive matching funds and certifies the amount the candidate is to receive to the Secretary of the Treasury. The Secretary — not the Commission — is responsible for making the actual payment.⁴

Nonmatchable Contributions

On August 18, 1987, the Commission made an initial determination that the Jack Kemp for President Committee (the Committee) was not entitled to primary matching funds for certain contributions made payable to the "Kemp Forum."⁵

The regulations specify that matchable contributions must be written instruments made "to the order of, or specifically endorsed without qualifications to, the presidential candidate, or his or her authorized committee." 11 CFR 9034.2(c). Moreover, the Commission's *Guideline for Presentation in Good Order* provides: "A written instrument made payable to an entity other than the candidate or an authorized committee...is nonmatchable unless the payee

name represents the name of a function sponsored and authorized by the candidate/committee and a copy of the solicitation material to the event is included with the submission." In its review, the Commission found no evidence indicating that the Kemp Forum was a function sponsored and authorized by the committee or by the candidate himself as a Presidential candidate.

Relationship between Campaign and Delegate Committees

In AO 1987-15, the Commission addressed two issues concerning the relationship between the Presidential committee of Representative Jack Kemp and delegate committees comprising individuals seeking selection as delegates to the 1988 Republican national nominating convention.

Regarding the first issue — use of the candidate's name by the delegate committee — the Commission concluded that Mr. Kemp had no legal authority for refusing an "unauthorized" delegate committee the "right" to use his name or for requiring any delegate committee to state that it is "unauthorized," except to the extent the disclaimer provisions may require such statements when public political advertising is used. Under the Commission's regulations, a delegate committee is required to use the word "delegate" in its name and may, whether or not it is authorized to do so, include the name of the Presidential candidate it supports in its committee name. 11 CFR 102.14(b)(1).

Responding to the second issue, which concerned mailing lists, the Commission ruled that, if Jack Kemp's Presidential committee were to provide the delegate committees with mailing lists, those delegate committees would be precluded from making independent expenditures on behalf of Mr. Kemp's Presidential candidacy. In providing such lists, the committee would be coordinating with the delegate committees and assisting their fundraising efforts on Mr. Kemp's behalf.

The Commission was unable to reach a decision, by the requisite four-vote majority, concerning: 1) whether a delegate committee that requests and receives Mr. Kemp's authorization to use his name

⁴As of late March 1988, two court decisions had granted the Commission's motions to vacate the creditors' writ of attachment.

⁵On February 11, 1988, the Commission made a final determination that contributions made payable to the "Kemp Forum" were nonmatchable. The determination was made in accordance with the Commission's regulations at 11 CFR 9036.5(e).

in its committee title could make independent expenditures on Mr. Kemp's behalf or 2) whether Mr. Kemp's approval or certification of favored delegates, in states which require the candidate to approve a list of delegates, would preclude those delegates from forming a delegate committee and making independent expenditures on Mr. Kemp's behalf.

**Final Repayment Determination:
1984 Campaign**

On June 23, 1987, the U.S. Court of Appeals affirmed the FEC's final repayment determination with respect to the John Glenn Presidential Committee, Inc., the principal campaign committee for Senator Glenn's publicly funded 1984 Presidential primary campaign. The Committee had made nonqualified campaign expenses as a result of exceeding its spending limits for the Iowa and New Hampshire primaries and was therefore required by the FEC to repay \$74,956 to the U.S. Treasury.

The Committee had asserted that the state expenditure limits were unconstitutional. In *Glenn Committee v. FEC*, however, the court found no constitutional infirmity in the FEC's actions taken under the Presidential Primary Matching Payment Account Act, which authorizes the recoupment of Federal funds. The court also found that the FEC had applied its regulations rationally and had not abused its authority.

Bank Loans: 1984 Campaign

On May 20, 1987, the United States District Court of Ohio, Eastern Division, approved a consent order between the Commission and defendants, the John Glenn Presidential Committee, Inc. and four national banks. The consent order resolved the case, *FEC v. Bank One*, in which the FEC had claimed that campaign loans made by four banks to the Glenn Committee were not made in the ordinary course of business and represented, therefore, a corporate contribution in violation of 2 U.S.C. §441b(a).

According to the consent order, "2 U.S.C. §441b(b)(2) defines the term 'contribution' to include

any loan by a national bank that is not made in the ordinary course of business to any candidate or campaign committee in connection with any federal election." The order goes on to say that "Section 431(8)(B)(vii)(II) of Title 2 of the United States Code states, among other requirements, that a loan by a national bank is in the ordinary course of business, and not a contribution, if the loan is made on a basis which assures repayment."

According to the order, the "Commission found that the loan...was not made on a basis that assured repayment because...the sources of repayment for the loan were not adequate to assure repayment..."

The consent order stipulated that, for purposes of settlement of this litigation, defendants agreed that, although they did not concede the violations could be proven, they would not contest further the Commission's allegations that the making and acceptance of the loan was in violation of 2 U.S.C. §441b(a). The Glenn Committee agreed to pay a civil penalty of \$4,000 and bear its own costs and fees.

Election Activity by Corporate Executives

In a compliance case closed during 1987, MUR 1690, the Commission determined that three corporations had violated the law's prohibition on corporate contributions in connection with Federal elections. Commission review of a 1984 Presidential committee's threshold submission for matching funds disclosed that many contributors had the same employer and had made their contributions on the same date.

The ensuing Commission investigation revealed that corporate executives had utilized their employees, corporate facilities and resources on behalf of the Presidential candidate. Top executives had solicited contributions by interoffice mail from numerous corporate executives and/or employees, and had sent solicitations on their corporate letterhead to suppliers and customers of their firm. They had collected the contributions and forwarded them to the candidate or presented them to the candidate at fundraising events, two of which were held in a

corporate dining room and in a corporate boardroom. In addition, one corporation had provided transportation without reimbursement.

The corporations had claimed that the executives had acted as individual volunteers, within the exemption for individual volunteer activity at section 114.9 of the Commission's regulations. The Commission found that the activities of the top corporate executives fell beyond the scope of the individual volunteer exemption, and that the corporations had facilitated the making of contributions to the candidate and so provided something of value in violation of 2 U.S.C. §441b.

Chapter 2

Administration of the Law

Disclosure

Responding to over 27,000 information requests through its Public Records Office and Press Office, the Commission continued to facilitate public access to campaign data. By providing computer indexes, copies of reports, press releases and other FEC documents, the Commission educated the public and the press about the campaign practices of campaigns, parties and PACs.

Disclosure activity also included the updating of the Commission's disclosure directory and the publishing of 1986 Federal election results. The *Combined Federal/State Disclosure Directory 1987* lists individuals and organizations on the state and national level who have responsibility for campaign finance disclosure. *Federal Elections 86* summarizes, by state, office and candidate, the results of the 1986 elections for the U.S. Senate and the U.S. House of Representatives.

Finally, the Commission was able to restore many of the disclosure programs that had been cut the previous year as a result of the Gramm-Rudman-Hollings Deficit Reduction Act.

Computerized Disclosure Program

With the increasing number of campaign finance reports flowing into the FEC, the agency relies on the computer to store and organize data taken from the reports. The reports themselves are made available to the public within 48 hours of receipt. During the same period, the Commission codes summary data from the reports and enters it into the FEC's computer system.

In a second step, many of the detailed transactions disclosed on reports are coded and entered into the computerized data base. However, prompted by the mandatory cuts resulting from the Gramm-Rudman-Hollings Act, the Commission was forced in 1986 to cut, among other programs, the computerized disclosure program.

Committed to restoring the program, the Commission specifically allocated fiscal year 1987 funds to recapture much of the itemized information from the 1986 campaign reports and to resume complete

data entry with respect to the 1987-88 election cycle. By the end of 1987, the Commission had succeeded in capturing the itemized information from the 1986 House and Senate campaign reports. From July through December of 1987, over 150,000 transactions were coded and entered from that election. In 1988, the Commission plans to begin recapturing information on individual contributions to PACs from the 1986 campaign reports.

State Access to Computerized Data

During 1987, the Commission reactivated its program to provide states with direct computer access to federal campaign finance information. The program had been curtailed in 1986, again in response to the Gramm-Rudman-Hollings spending reductions.

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

Nine states had been "on-line" in the State Access Program before the program's curtailment in 1986. By December 31, 1987, the number had grown to 13 states. Participating states with operational terminals are: Arizona, Colorado, Georgia, Illinois, Iowa, Massachusetts, Michigan, New Jersey, Ohio, Tennessee, Vermont, Washington and Wisconsin. The following types of data are available under the revived program:

- Indexes providing descriptive information on all registered political committees, such as their sponsoring organization, frequency of filing reports and multicandidate committee status;
- Indexes showing the total receipts and disbursements of committees; and
- A listing of all PAC contributions to federal candidates.

The Commission anticipated that before the 1988 election some 25 states would be taking part in the FEC State Access Program.

Direct Access to Computerized Data

The Commission's Direct Access Program continued to grow during 1987. A total of 84 individuals and organizations were accessing FEC data directly from various locations, around the country. The Commission's new computer contract permitted substantial cost savings for subscribers, whose hourly rate dropped from \$50 to \$25.

Assistance to Committees and the Public

Telephone Assistance

Information about the law may be obtained by using either the toll-free number, 800/424-9530, or the local lines. The public affairs specialists, who staff the phones, answer questions about the law and provide research assistance. The analysts who review reports are also available to assist committee staff with reporting questions. (See "Review of Reports," below.) In 1987, the Commission received over 52,000 calls requesting information.

Advisory Opinions

For more formal, legal guidance, any person may request an advisory opinion by writing a letter asking the Commission's advice on how the law applies to a specific, factual situation.

FEC attorneys draft the opinions, which are then discussed and voted on by the Commissioners in public meetings. In addition to providing advice to requesters, advisory opinions serve as a source of guidance for other persons who encounter similar factual situations. During 1987, the Commission issued 27 advisory opinions, some of which are discussed under "Legal Issues" in Chapters 1 and 2.

Conferences in 1987

In anticipation of the upcoming Presidential election, the Commission held four conferences around the country during 1987. These conferences were co-sponsored with state agencies. One-day conferences were held in St. Louis, Missouri, and Madison, Wisconsin; two-day conferences were held in

Burlington, Vermont, and Austin, Texas. Participants selected workshops targeted to their area of interest — candidate campaigns, PACs or party committees. Also, for the first time, the IRS participated in two of the conferences, presenting a workshop on tax issues relevant to political committees.

Publications

FEC publications, reviewed by attorneys and other agency staff, educate political committees and the public on the requirements of the law. For the first time, the Commission published a brochure designed specifically for the general public. *Supporting Federal Candidates: A Guide for Citizens* explains how citizens can take an active part in the federal election process. Some 40,000 copies were distributed primarily through candidate and party committees, PACs and public interest groups.

Review of Reports

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

When the reports analyst finds errors, the Commission sends the committee an RFAI, a letter requesting additional information. The committee then has an opportunity to amend the report voluntarily.

The agency encourages committees who receive RFAs to respond promptly in writing or, if further information is needed, to call the analyst who signed the letter. Cooperation between a committee and the Commission often results in the settlement of a potential compliance matter without further action. During its deliberations on compliance matters, the Commission considers as a mitigating factor the steps a committee has taken to correct a mistake.

Reports Review Activity

	1983	1984	1985	1986	1987
Number of committees reviewed	5,510	3,906	6,454	5,062	6,158
Number of reports reviewed	39,837	30,154	46,905	34,055	39,312
Number of reports receiving RFAs	5,319	6,292	7,414	6,554	4,314
Presidential	78	246	117	53	57
Senate	392	496	276	528	208
House	1,403	2,302	1,374	2,414	848
Party	413	714	858	702	430
Nonparty (PACs)	2,989	2,494	4,729	2,841	2,754
Other	44	40	60	16	17

Enforcement

The Enforcement Process

Possible violations of the federal campaign finance law are brought to the Commission's attention either internally — through its own monitoring procedures (and referrals from other government agencies) — or externally — through formal complaints originating outside the agency. Potential violations become MURs, Matters Under Review, and receive MUR numbers. For a discussion of legal issues concerning the Commission's enforcement process, see "Legal Issues" on page 15.

All phases of the MUR process must remain confidential according to the law until a case is closed and put on the public record. Respondents (those alleged to have violated the law) are given a reasonable opportunity to demonstrate that no action should be taken against them. The Commission must first decide whether there is "reason to believe" a violation of the law has occurred. A "reason to believe" finding means that the agency will investigate the matter. If, after investigation, the Commis-

sion believes there is sufficient evidence to show that there is "probable cause to believe" a violation has occurred, the agency must try to resolve the matter informally through a conciliation agreement with the respondent. (Conciliation may also be initiated by the respondent before this stage of the enforcement process.) In the event that conciliation fails, the agency may try to enforce the matter through litigation.

The table on the next page compares the MUR caseload over the past several calendar years.

Caseload of MURs

	1983	1984	1985	1986	1987
Cases pending at beginning of year	93	78	172	137	143
Cases opened during year	103	283	257	191	261
External	42	163	51	120	37
Internal	61	120	206	71	224
Cases closed during year	118	189	292	185	233
External	58	103	97	80	66
Internal	60	86	195	105	167
Cases pending at end of year	78	172	137	143	171

Statement of Reasons

On October 23, 1986, the Commission decided to begin issuing a statement of reasons whenever a majority of the Commissioners, in dismissing a complaint-generated matter, rejected the recommendations of the General Counsel's Office. The Commission agreed that it would place a statement of reasons on the public record within 30 days after the corresponding enforcement matter was closed. On February 5, 1987, the Commission adopted internal guidelines for the preparation of such statements.

Extensions of Time in Enforcement Matters

Under the Federal Election Campaign Act, respondents have an opportunity, at several stages during the enforcement process, to submit responses to allegations made against them. Not infrequently, respondents have asked for extensions of time to submit a response, which has often delayed the MUR process.

In order to expedite the processing of MURs, the Commission adopted several new procedures concerning the granting of extensions of time in enforcement matters. In general, the new procedures gave the Office of General Counsel (OGC) greater latitude to grant extensions without first obtaining Commission approval. Specific procedures approved by the Commission included the following:

- The Commission authorized OGC to grant extensions of time of up to 30 days for responses to complaint notifications. Because this is a critical stage in the enforcement process, OGC will limit extensions to no more than 20 days and will grant 30 days only where exceptional good cause is demonstrated.
- OGC was given discretion to grant or deny extension requests of up to 45 days for "reason to believe" and "probable cause" briefs. Extensions beyond 30 days, however, will be granted only in exceptional circumstances.

- Commission approval will no longer be required for additional requests or requests for extensions of time that are submitted later than 5 days prior to the original due date, as long as the requested extension does not exceed 30 days from the original due date for responses to complaints or 45 days from the original due date for responses to “reason to believe” findings and “probable cause” briefs.

Legal Issues

During 1987, a number of legal issues pertaining to the enforcement process and to contributions and expenditures were clarified through litigation and advisory opinions. This section summarizes these legal decisions.

Enforcement Process

Under the Act, a complainant may challenge the Commission’s dismissal of a complaint or its failure to act on a complaint within 120 days by filing a petition with the United States District Court. During 1987, the Commission was involved in several suits where challenges were brought under this provision of the law.

Democratic Congressional Campaign Committee (DCCC) v. FEC. This case arose in July 1986, when the DCCC, a national committee of the Democratic Party, filed suit with the district court. The suit challenged the FEC’s dismissal of an administrative complaint that DCCC had filed against the National Republican Congressional Committee (NRCC) in December 1985. The General Counsel had recommended the Commission find “reason to believe” that NRCC had violated the law. The Commission, however, deadlocked in its vote on “reason to believe.” Subsequently, by a unanimous vote, the Commission closed the file on the complaint.

Initially, the district court concluded that, even though the Commission’s dismissal had resulted from its deadlock on the merits of the complaint, DCCC still had “the right (under 2 U.S.C. §437g(a)(8)) to seek review of an adverse out-

come.” The district court then went on to consider the merits of DCCC’s complaint and concluded that the FEC’s dismissal of the plaintiff’s complaint was contrary to law. The Commission appealed this decision. On October 23, 1987, the U.S. Court of Appeals for the District of Columbia issued an opinion which partially affirmed the district court’s decision. The appeals court upheld the district court’s ruling that the dismissal of a complaint based on a deadlock vote was subject to judicial review. However, since the court lacked a Commission explanation for the dismissal, the appeals court rejected the district court’s finding that the dismissal was contrary to law. Instead, the court remanded the suit to the district court with instructions that the district court, in turn, remand the case to the Commissioners for an explanation of why they voted to dismiss the complaint. The court concluded that “the Commission or the individual Commissioners should first be afforded an opportunity to say why DCCC’s complaint was dismissed in spite of the FEC’s General Counsel’s recommendation.”

FEC v. Congressman Charles E. Rose. On December 2, 1986, the U.S. Court of Appeals for the District of Columbia reversed an earlier decision by the district court that had held the FEC liable for litigation costs and attorney’s fees incurred by Congressman Rose in a suit he had brought against the FEC. In reversing the district court decision, the appeals court concluded that, under the statute governing such fee awards, the Equal Access to Justice Act (EAJA), “the district court (had) erred in holding that the FEC’s position in the case was not ‘substantially justified.’”

Under the 1985 amendments to EAJA, a government agency is not liable for a prevailing party’s litigation costs and attorney’s fees if the agency can show “that both its position in the litigation and its conduct that led to the litigation were substantially justified.” To determine whether a government agency’s actions were substantially justified, the court may not use the standard used to challenge an agency’s action on an administrative complaint (i.e., whether the action was “arbitrary and capri-

cious"). Rather, in applying the EAJA standard, the court "is obliged to reexamine the facts under a different legal standard to determine whether the conduct is slightly more than reasonable."

The appeals court concluded that both the FEC's handling of Congressman Rose's administrative complaint and its litigation position were "substantially justified." In fact, the court found that the FEC's position in the case "was not only substantially justified, it was entirely correct" and that Congressman Rose's arguments, which had been adopted by the district court, "were dead wrong." The appeals court therefore remanded the case to the district court, with orders to dismiss Congressman Rose's application to have the FEC bear his court costs.

Spannaus v. FEC. This suit concerned alleged discriminatory enforcement of the election law by the Commission. The plaintiffs in this suit asked the court to declare the following:

- FEC investigations of the LaRouche Campaign's 1984 campaign activities were "motivated solely by bad faith" and were "an abuse of process," in violation of Federal laws and the U.S. Constitution.
- The FEC was "selectively and discriminatorily enforcing the election laws resulting in violation of the plaintiffs' rights of equal protection."
- The FEC had abridged First Amendment rights by creating a chilling effect on contributors and volunteers to the campaign.

On August 26, 1986, the district court affirmed the FEC's claim that, in initiating investigation against the LaRouche Campaign, the agency had followed procedures established by the Federal Election Campaign Act and FEC Regulations and had undertaken an investigation for legitimate purposes.

With regard to alleged discriminatory enforcement of the election law, the court held that the plaintiffs had not demonstrated unequal treatment under the Act. Similarly, the court found no merit to plaintiffs' claim that their First Amendment rights had been

abridged. On March 3, 1987, the U.S. Court of Appeals for the Second Circuit affirmed the district court's judgment.

Express Advocacy

FEC v. Furgatch. The U.S. Court of Appeals reversed a district court ruling concerning express advocacy. The case involved two political ads which Mr. Furgatch placed in the *New York Times* and the *Boston Globe* shortly before the 1980 election. The ads were directed against President Carter. The FEC claimed that Mr. Furgatch had violated the election law by failing to report his spending on the political ads as independent expenditures.

The district court ruled in December 1984 that the political ads sponsored by Mr. Furgatch did not expressly advocate President Carter's defeat and therefore did not constitute independent expenditures. In reaching this decision, the district court applied a narrow interpretation of the standard contained in the Supreme Court's *Buckley v. Valeo* opinion. In that opinion, the Supreme Court had defined express advocacy as "communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'vote against,' 'defeat.'"

Applying this interpretation of the express advocacy standard to Mr. Furgatch's ads, the district court found that the pivotal question was "whether the phrase 'Don't let him do it' was the equivalent of the expression 'vote against Carter.'" The district court concluded that the phrase "Don't let him do it" did not constitute express advocacy.

In reversing the district court's ruling in the case, the appeals court rejected the "strictly limited" definition of express advocacy relied upon by the district court. Rather, the appeals court found that "context is relevant to a determination of express advocacy." The court concluded that "(political) speech need not include any of the words listed in *Buckley* to be express advocacy under the Act, but 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." The ap-

peals court stated that this standard for determining when political speech constitutes express advocacy would “preserve the efficacy of the Act without treading upon the freedom of political expression.”

Elaborating on this standard, the appeals court held that a political communication constituted express advocacy if:

1. The communication is “unmistakable and unambiguous, suggestive of only one plausible meaning,” even if “not presented in the clearest most explicit language”;
2. The communication “presents a clear plea for action”; and
3. There can be no reasonable doubt about “what action is advocated.”

In applying this express advocacy standard to Mr. Furgatch’s ads, the appeals court held that, given the context of the message, it had “no doubt that the ads ask the public to vote against Carter.” Finally, the court held that Mr. Furgatch’s ads were not the kind of “issue-oriented speech” excepted from the election law. “The ads directly attack a candidate, not because of any stand on the issues of the election, but for his personal qualities and alleged improprieties in the handling of his campaign. It is the type of advertising that the Act was enacted to cover.”

On October 5, 1987, the U.S. Supreme Court denied Mr. Furgatch’s petition for a Writ of Certiorari. For a discussion of regulatory activity concerning express advocacy, see “Regulations” on page 19.

PAC Affiliation

In *FEC v. Sailors’ Union of the Pacific Political Fund*, the Commission claimed that the Sailors’ Union of the Pacific Political Fund, the Marine Firemen’s Union Political Action Fund and the Seafarer’s Political Activity Donation had made excessive contributions by together contributing an aggregate of over \$5,000 to a 1982 Senate primary campaign. The Commission argued that the committees’ respective connected organizations were all part of the Seafarers’ International Union (Seafar-

ers) and that their contributions were therefore subject to a single shared limit. Under the campaign finance law, all separate segregated funds established, financed, maintained or controlled by different parts of one organization are affiliated.

The district court disagreed, ruling that the Seafarers’ International Union was an association of independent unions rather than an international union comprising subordinate units. Accordingly, the court concluded, the unions’ separate segregated funds were not affiliated.

On September 15, 1987, the court of appeals affirmed the district court ruling that the separate segregated funds of the three maritime unions were not affiliated and therefore had not exceeded the Act’s contribution limits. In making its determination, the court cited legislative history for guidance: “Various comments in the records of both the House and Senate suggest that...Congress intended to aggregate campaign contributions of locals of international unions but did not intend to aggregate contributions of member unions of labor federations.”

The court then examined the degree of control the Seafarers exercised over their member unions. It concluded that, although there were some indications of centralized control, on balance Seafarers operated more as a federation with limited power to direct member unions. The separate segregated funds of their members were not, therefore, subject to a common contribution limit.

In another action, AO 1987-21, the Commission concluded that the PAC of a spin-off corporation, Diamond Shamrock R&M, Inc. (R&M), was affiliated with the PAC of its former parent corporation, Diamond Shamrock Corporation (DSC). By examining the indicia for affiliation contained in the FEC regulations, the Commission concluded that both PACs were essentially established, financed, maintained or controlled by DSC. The Commission noted that the factors which established affiliation could diminish over time but, at the time the request was made, there was no indication that enough separation had taken place between the corporations. As affiliated committees, the two PACs were, therefore, subject to a single contribution limit.

PAC Established by National Bank

While a national bank is prohibited from making a contribution or expenditure in connection with an election to any political office — local, state or Federal — a national bank may, nevertheless, establish a separate segregated fund to engage in political activity on a local, state or Federal level. Commission regulations, however, specifically exempt a separate segregated fund from the registration requirements if it is established solely to finance state and local election activity.

In AO 1987-14, the Commission ruled that because the separate segregated fund of the First National Bank of Shreveport was organized solely for financing state and local political activity, the fund would not be subject to the rules concerning registration, recordkeeping, reporting and contribution limits. It was, however, a “separate segregated fund” under the Act, and therefore subject to the solicitable class restrictions, the voluntary contribution requirements and the solicitation notice provisions of the Act.

PAC Contributions Matched with Corporate Charitable Donations

In two advisory opinions, the Commission permitted corporations to match voluntary contributions to their PACs with charitable donations to qualified charitable organizations. In AO 1986-44, issued in 1987, the Commission said the Detroit Edison Company could encourage contributions from their executive and administrative personnel and stockholders to its separate segregated fund, the Detroit Edison Political Action Committee, by matching each individual’s contribution with a corporate donation to a charitable organization designated by the individual. Federal election law permits a corporation to pay for the solicitation costs of its PAC, provided the corporation does not use the solicitation process as a means of exchanging treasury funds for voluntary contributions. The Commission concluded that the plan to encourage employee contributions was not such an attempt because the contributors to the PAC would not receive any financial

benefit from the corporation in return for their contribution.

The Commission addressed a very similar issue in AO 1987-18, which permitted Texas Industries, Inc. (TXI) to encourage contributions to its PAC by matching individual contributions with donations of money and/or commodities to a charity of the contributor’s choice. Here again the Commission stated that TXI’s donations to charities represented a solicitation expense and not a prohibited exchange of treasury monies.

Voting Guides by Nonprofit Corporation

In AO 1987-7, the Commission addressed the issue of corporate expenditures for nonpartisan communications. The United States Defense Committee (USDC), a nonprofit corporation, wanted to use general treasury funds, which included payments from its corporate members, to finance voter guides that described the views of Congressional candidates on defense issues. The guides were to be distributed to the general public.

The Commission said that the voter guides would be governed by FEC rules pertaining to expenditures for such communications by nonprofit, nonpartisan organizations, rather than by the limited exception for such expenditures carved out by the Supreme Court in *FEC v. Massachusetts Citizens for Life (MCFL)*.¹

Under FEC rules, a nonpartisan, nonprofit corporation may spend treasury funds to prepare and distribute voter guides to the general public, provided the guides do not favor one candidate or political party over another. The Commission held that USDC could sponsor a voter guide mailing to the general public because it constituted a “grass roots” lobbying effort to obtain support for its positions on defense-related legislation before Congress. However, the Commission concluded that the

¹To be eligible for the MCFL exception, among other things, a nonprofit corporation must have a policy of not accepting contributions from business corporations or labor organizations. USDC had accepted money from corporations and, therefore, was not eligible for the MCFL exception.

Act prohibited USDC from sponsoring two other mailings, which were to be distributed just prior to the primary elections, because these mailings contained material favoring the election of specific candidates. Such communications would constitute partisan communications. Under 2 U.S.C. §441b, an incorporated organization may direct partisan communications only to individuals associated with the organization (i.e., the organization's restricted class). Partisan communications distributed to the general public, however, result in prohibited corporate expenditures.

With regard to the separate issue of publishing Congressional voting records, the Commission was unable to reach a decision by the requisite four-vote majority.

Transfers from State to Federal Committee

Under the statute and FEC regulations, transfers of funds between committees authorized by the same candidate do not count as contributions and are not limited. During 1987, the Commission addressed the issue of transfers in two advisory opinions.

In AO 1987-12 the Commission allowed the Committee to Elect Jerry Costello (the state committee) to transfer \$155,194 to the Costello for Congress Committee (the Federal committee) for the 1988 election cycle. Because the two committees were controlled by Mr. Costello for campaign-related purposes, they were regarded as being affiliated for purposes of making the proposed transfer. Therefore, the transfer of funds from the state committee to the Federal committee was not subject to the Act's contribution limits. However, the funds transferred had to be permissible under the Act. Also, the Commission noted that, because the funds included in the transfer were contributed to the state committee before the 1986 general election, in which Mr. Costello ran for local office, and before he became a candidate for Federal office in the 1988 election cycle, they would not have to be aggregated with later contributions for the 1988 election cycle from the same donors.

Similarly, in AO 1987-16, the Commission permitted the Dukakis Gubernatorial Committee to trans-

fer, without limit, computer equipment and contributor lists to the Dukakis for President Committee, Inc. Because the computer and contributor lists were things of value, they were considered contributions in kind (or transfers) from the state committee.

The Commission's approval of the asset transfers was conditioned on the understanding that the state committee accepted only funds that were lawful under the Federal Election Campaign Act. Therefore, the transfer of assets was not an indirect corporate or labor contribution, which is prohibited under the Act.

Regulations

During 1987, the Commission continued to clarify the campaign finance law through revised regulations, focusing on public financing and convention delegates, both discussed in Chapter 1; contributions by individuals and multicandidate political committees; and the Freedom of Information Reform Act of 1986. Also, in 1987, the Commission considered rulemaking petitions on "soft money" and "express advocacy."

Contribution Limits

11 CFR 110.1 and 110.2

On April 8, 1987, the Commission prescribed amended regulations which govern the election law's contribution limits. These final rules clarified the scope of the contribution limits and resolved several issues that had arisen since the regulations were first prescribed in 1977. For example, new rules provided ways contributors could "cure" excessive contributions by redesignating or reattributing them or by requesting a refund. The new rules were summarized in the 1986 *Annual Report*.

Freedom of Information Act Rules

11 CFR Part 4

Final revisions to regulations implementing the Freedom of Information Act (FOIA) were approved on October 1, 1987. The regulations were revised to conform with the Freedom of Information Reform

Act of 1986, which expanded the law enforcement exemptions of the FOIA, modified the fees charged for material requested under the FOIA and amended the standards for waiving fees. The Commission also updated certain fees charged for public disclosure documents obtained through the FEC Public Records Office. The final rules became effective on November 21, 1987.

Rulemaking Petition on "Soft Money"

In April 1986, the Commission denied a petition for rulemaking filed by Common Cause. The petition had requested that the Commission amend its regulations to address the alleged improper use of "soft money" in Federal elections. "Soft money" was defined in the petition as funds that are ostensibly raised and spent for state and local elections and are therefore not reportable under the Federal campaign finance law. After reviewing the public comments and testimony and evaluating the implications of the proposed revisions, the Commission concluded that evidence of improper use of "soft money" in Federal elections was insufficient to justify the stringent rules suggested in the Common Cause petition.

In response to the FEC's denial, on June 30, 1986, Common Cause filed suit against the agency. Common Cause asked the court to 1) declare that the Commission's denial of its rulemaking petition was contrary to law and 2) order the Commission to reconsider the petition.

On August 3, 1987, the U.S. District Court for the District of Columbia issued an order which granted the FEC's motion for summary judgment affirming its decision to deny the rulemaking petition. However, the court did direct the agency to pursue one issue: the allocation, between the Federal and non-Federal accounts of state party committees, of certain specified activities (e.g., voter registration, "get out the vote" efforts and campaign materials used in connection with volunteer activities). The court maintained that the Commission's regulations provide "no guidance whatsoever on what allocation methods a state or local party committee may use," and thus found that a revision of

the Commission's regulations in this one area was warranted. The court remanded this one matter to the Commission.

On October 29, 1987, the Commission directed the General Counsel to prepare a draft Notice of Inquiry to seek comments on methods of allocation between Federal and non-Federal accounts.²

Proposed Rulemaking on MCFL Decision and Spending by Nonprofit Corporations

On December 17, 1987, the Commission voted to publish an advance notice of proposed rulemaking examining what regulatory changes might be appropriate in light of the Supreme Court's opinion in *FEC v. Massachusetts Citizens for Life Inc. (MCFL)*. The notice was published in the *Federal Register* on January 7, 1988.

Among several topics, the notice sought further comment on an issue raised earlier in a petition for rulemaking by the National Right to Work Committee (NRWC). The issue was whether the Commission should adopt an "express advocacy" standard for determining whether corporate or union communications are permissible under sections 114.3 and 114.4 of the regulations. In May 1987, the Commission had published a notice of availability inviting comment on NRWC's petition. At that time, one comment was received.

The *MCFL* ruling exempted from the 441b ban on corporate activity, expenditures by certain nonprofit corporations that are similar to MCFL. In this regard, the Commission also solicited comments on the possible ramifications of the exemption. The Court had identified several criteria that a corporation had to meet to qualify for the exemption. The Court had focused, for example, on MCFL's small size and lack of formal organization. Further, the Court had delineated three factors for determining which nonprofit corporations would be exempt from

²On February 11, 1988, the Commission voted to publish in the *Federal Register* a notice of inquiry on allocations between Federal and non-Federal accounts. See 53 *Fed. Reg.* 5277 (February 23, 1988).

the 441b restriction on corporate spending. As stated by the Court, the organization must:

1. Be formed for the express purpose of promoting political ideas, and cannot engage in business activities;
2. Have no shareholders or other persons affiliated who would have a claim on its assets or earnings; and
3. Not be established by a business corporation (or labor organization), or accept contributions from such entities.

The Commission sought comments on how this ruling should impact on Commission regulations. (For a summary of the case and the Court's opinion, see the *Annual Report 1986*, p.18.)

Clearinghouse on Election Administration

Congress charged the Commission with the responsibility to conduct research on the administration of Federal elections. The FEC's National Clearinghouse on Election Administration has assumed this duty, serving as a central exchange point for research and information. The following sections report on work efforts completed by the Clearinghouse during 1987. Several Clearinghouse studies released in 1987 are briefly described in Appendix 9, which includes the status of other publications and several compendia produced by the office.

Voting Accessibility Act

Congress granted the Commission new responsibilities under the Voting Accessibility for the Elderly and Handicapped Act (Public Law 98-435), signed by President Reagan on September 28, 1984. The Act stipulates that polling places and voter registration sites be accessible to handicapped and elderly individuals.

Under this Act, the Commission must gather information on the accessibility of polling places from each state and consolidate the information in periodic reports to Congress. The reports are filed after each two year election cycle from 1986 through

1994. To this end, the Clearinghouse, the FEC office assigned responsibility for this project, surveyed the states and, in April 1987, submitted a report to Congress. The report contained state-by-state statistics on inaccessible polling places and discussed the reasons for the inaccessibility, i.e., physical barriers, inadequate parking, stairs without ramps, and other architectural barriers.

Computerizing Election Administration

Because the vast majority of state election offices either use computers or are considering their use, the Clearinghouse embarked on a three-phase study to guide election officials in applying computer technology to election management and administrative functions.

The third volume, *Implementation Strategies*, was published in 1987. It explains how the general computerized election model can be implemented in a variety of different environments such as shared vs. solely owned data base, shared vs. solely owned equipment and statewide vs. local computerized registry. It also provides a system implementation plan and some guidelines on computer security.

The Clearinghouse published the core volume of the study in 1986: *Volume II, A General Model*. Representing the culmination of 10 years of research, the publication contains a model system for computerizing every phase of election administration.

Volume I, Current Applications, was published in 1985. It provides a brief introduction to using computers—the benefits of automation, some pitfalls to avoid and a guide to help define information needs.

Election Directory 87

An update of the *Election Directory 85*, this volume provides names, titles, addresses and telephone numbers of state chief election officials and other state officials involved in elections. It also contains a directory of Federal officials involved with elections and a listing of state and local offices to forward voter registrations.

Absentee Voting

Analysis of Laws and Procedures Governing Absentee Voting in the United States was issued in November 1987. It explores the history and recent developments in absentee voting, describes the requirements and impact of Federal statutory law on the absentee voting process, and focuses on a series of related policy and procedural issues.

Clearinghouse Advisory Panel Meeting

On December 7-10, 1987, the Advisory Panel met in Washington, D.C. along with the Voting System Standards Committee. Composed of state and local election officials, the Advisory Panel and the Voting System Standards Committee met to discuss Clearinghouse projects, recent court cases on Federal and state elections, new election-related legislation and the Voting Systems Standards Project.

FEC Journal of Election Administration

The spring 1987 *Journal* offered articles on canceling previous voter registration; all-mail ballot elections; expediting election mailings; and the Federal voting assistance program. In addition to reporting on current developments in the field of election administration, the periodical, free to the public, also keeps readers abreast of Clearinghouse activities and provides convenient order forms for the Clearinghouse studies summarized in Appendix 9.

Voting System Standard Project

The Clearinghouse continued to develop voluntary performance and design standards for punchcard and marksense computerized voting systems in terms of their reliability, security and accuracy. The Commission plans to formally issue the standards and associated documents in the summer of 1988.

1. *Voting System Standards for Punchcard and Marksense Systems (Hardware and Software)*. The development of punchcard and marksense equipment is part of the research stemming from a 1982 study mandated by Congress. (See, below, *Voting System Standards for Direct Recording Electronic Systems*.) This publication will

present hardware and software specifications, a description of the quality assurance and documentation required, software and system security, qualification testing and measurement procedures, and acceptance testing.

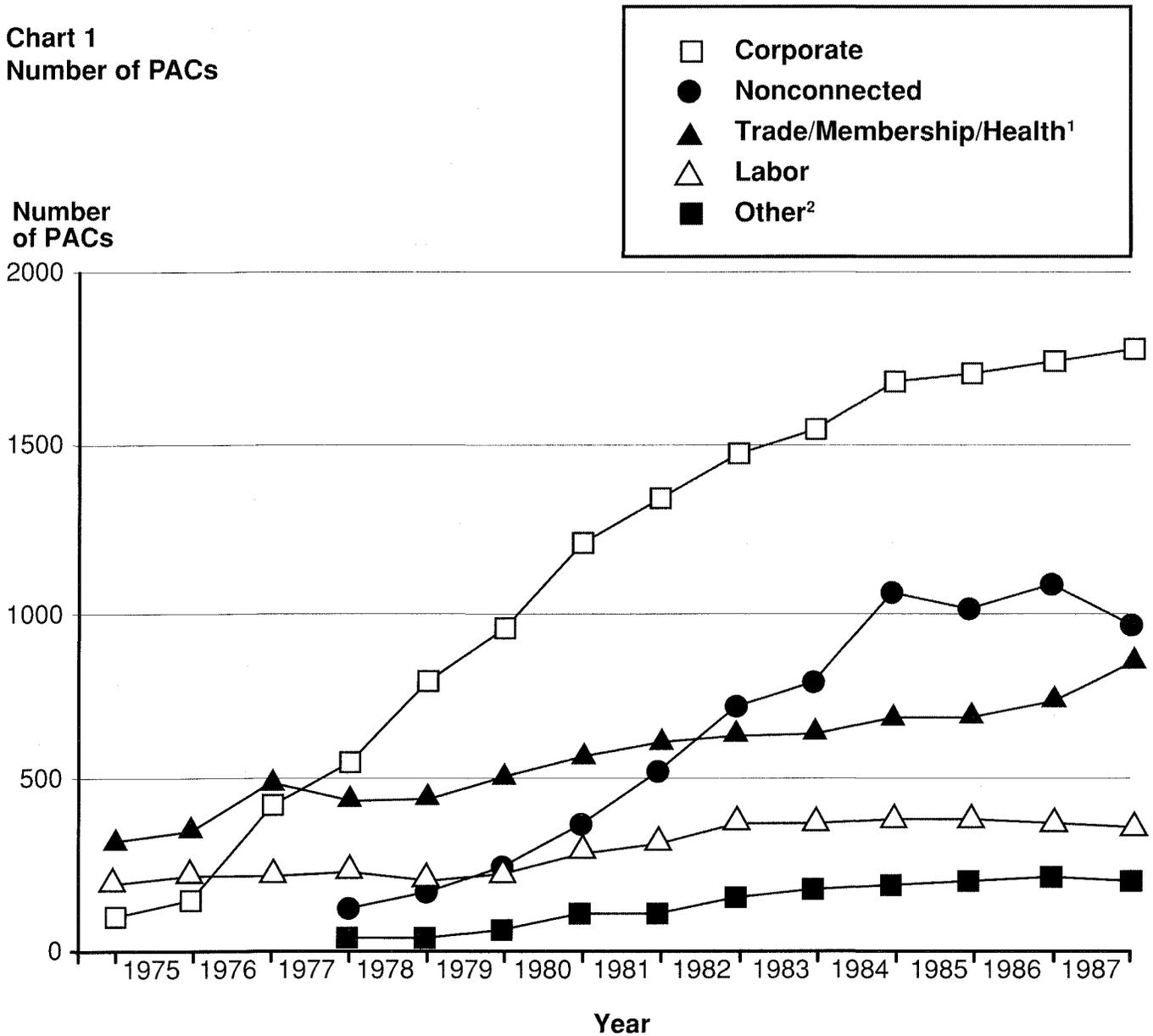
2. *Voting System Standards for Direct Recording Electronic Systems (Hardware and Software)*. The development of voluntary voting system standards for direct recording electronic systems is the final stage of the Voting System Standards Project. (See *Voting System Standards for Punchcard and Marksense Systems*, above.) This segment of the project will emphasize the development of hardware and software standards and appropriate testing procedures for this generic type of system.
3. *Implementation Plan, Software Escrow Plan, and Election Management Guidelines*. This project will complement the hardware and software standards. The implementation plan will explain how the voluntary standards can be best implemented, what systems would be grandfathered, and the use of escrow agreements to safeguard proprietary software and documentation. In separate publications, guidelines relevant to the Voting System Standards will be presented. The management guidelines will summarize accepted practice on pre-election testing, procurement and contracting, and equipment maintenance and storage as they relate to punchcard, marksense, and direct recording electronic voting systems.

Chapter 3 Campaign Finance Statistics

This chapter presents selected graphs that depict different aspects of Federal campaign finance activity.

Political Action Committees

Chart 1
Number of PACs

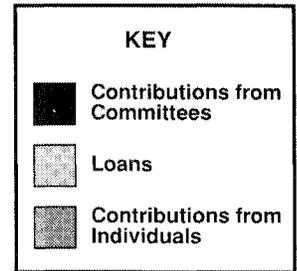


¹For the years 1974 through 1976, the FEC did not identify subcategories of PACs other than corporate and labor PACs. Therefore, for these years, the category "trade/membership/health" represents all other PACs.

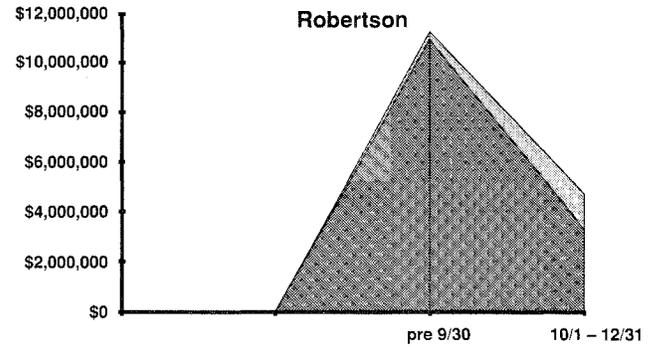
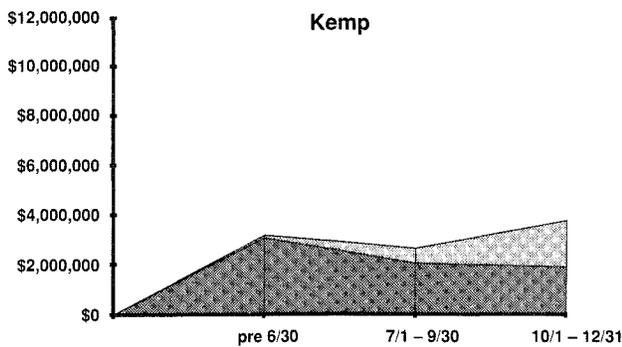
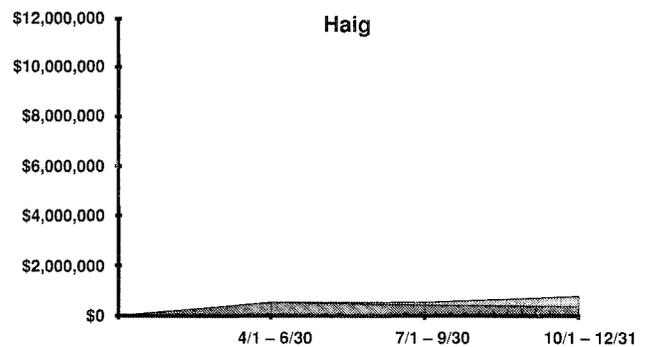
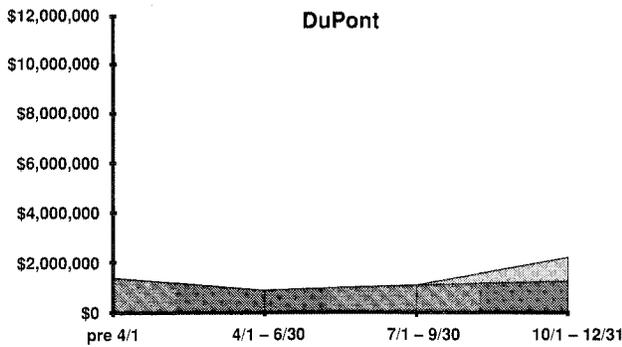
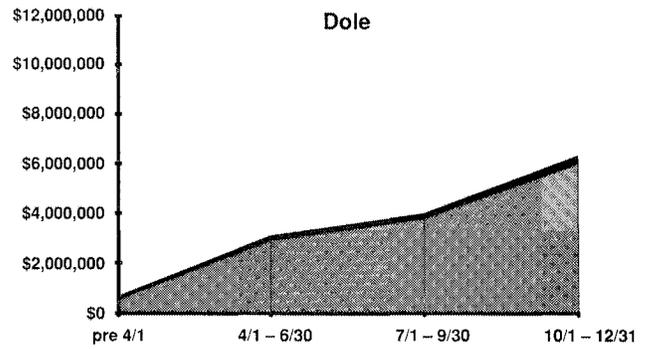
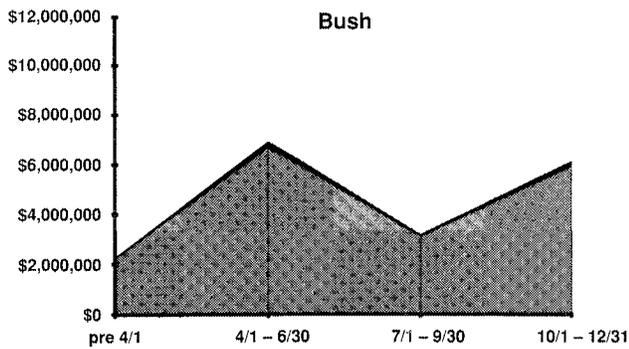
²The "other" category includes PACs formed by corporations without capital stock and cooperatives.

Presidential Candidates

Chart 2
Receipts of Presidential Campaigns
Through 12/31/87³



Republican Candidates



³Note that the figures for the Republican Candidates are plotted on a scale of \$12 million, and the figures for the Democratic Candidates are plotted on a scale of \$5 million. The chart includes only active candidates as of 12/31/87 with receipts over \$1,250,000.

Democratic Candidates

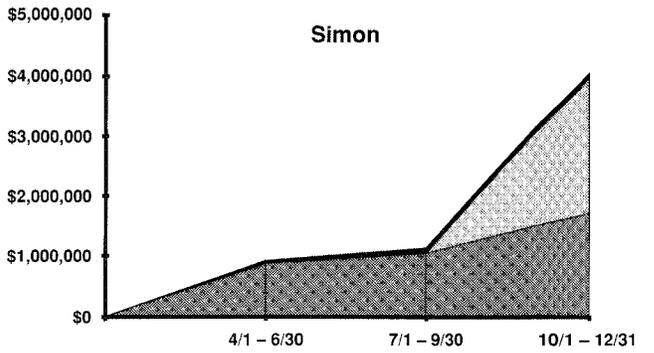
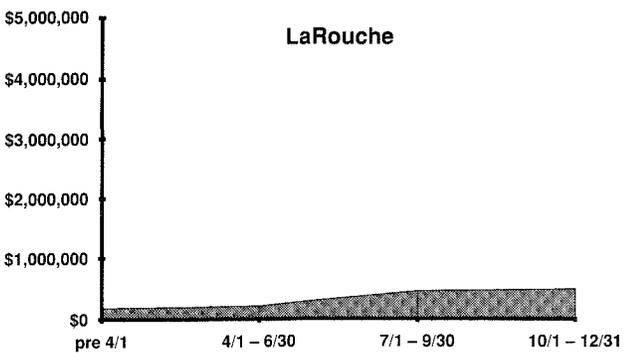
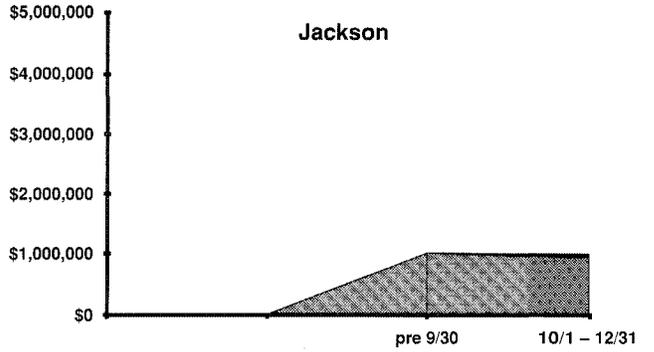
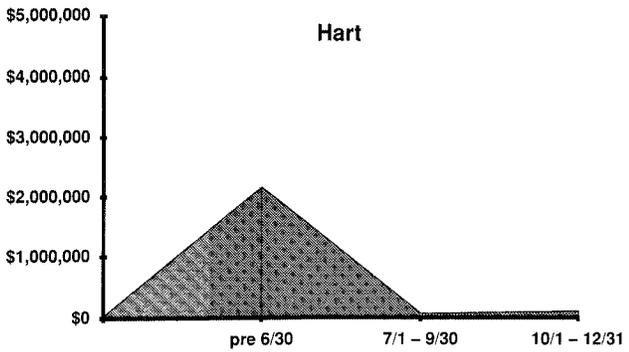
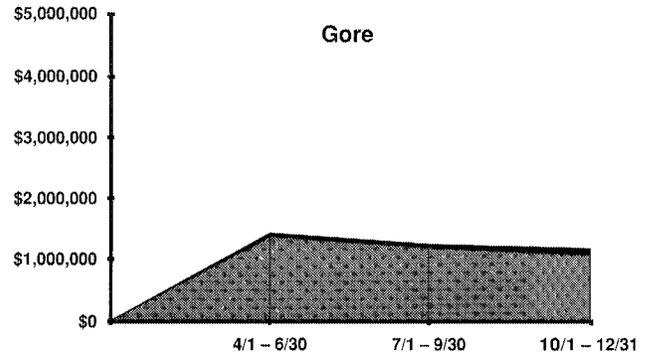
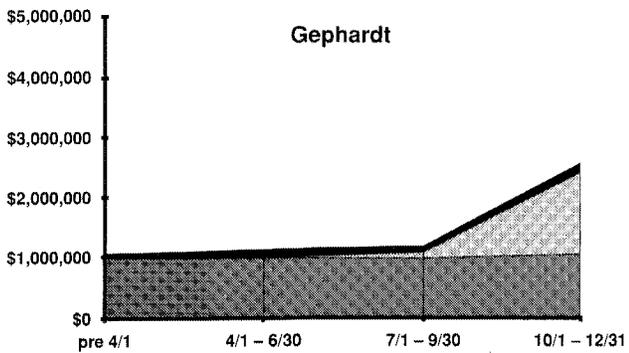
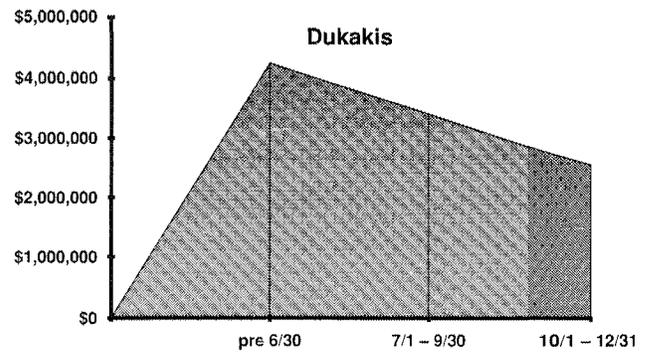
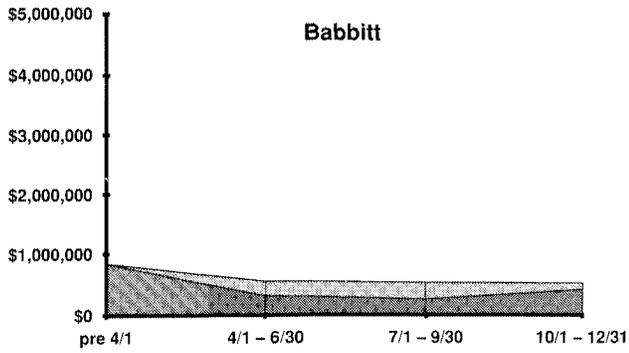
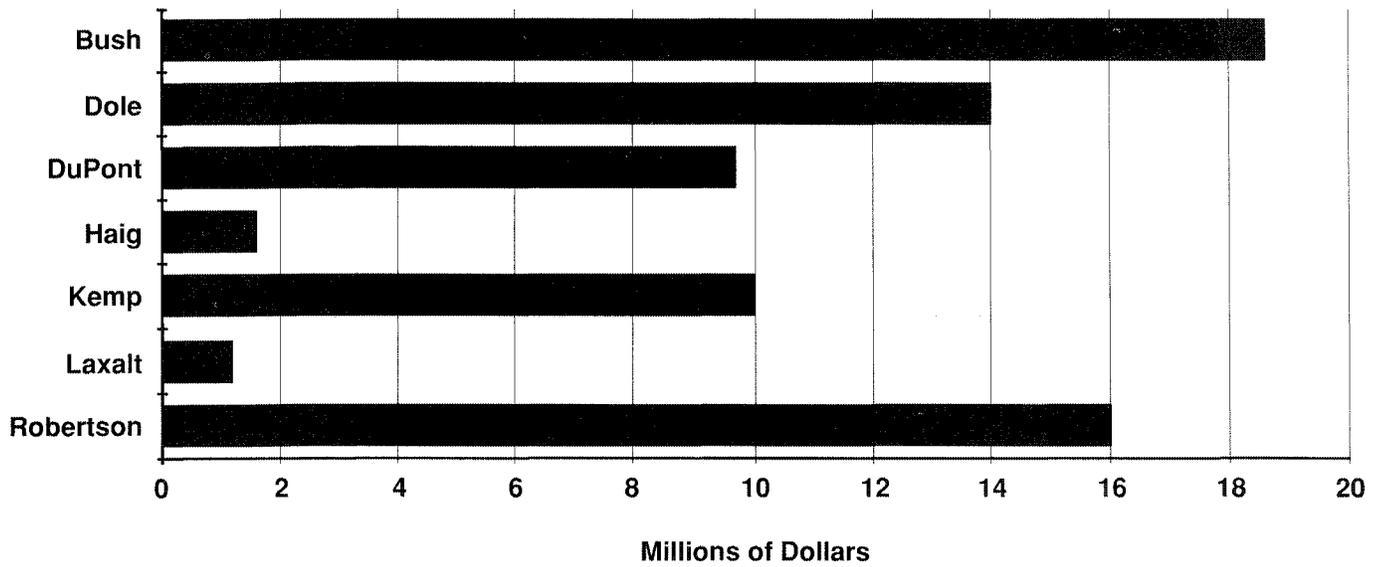
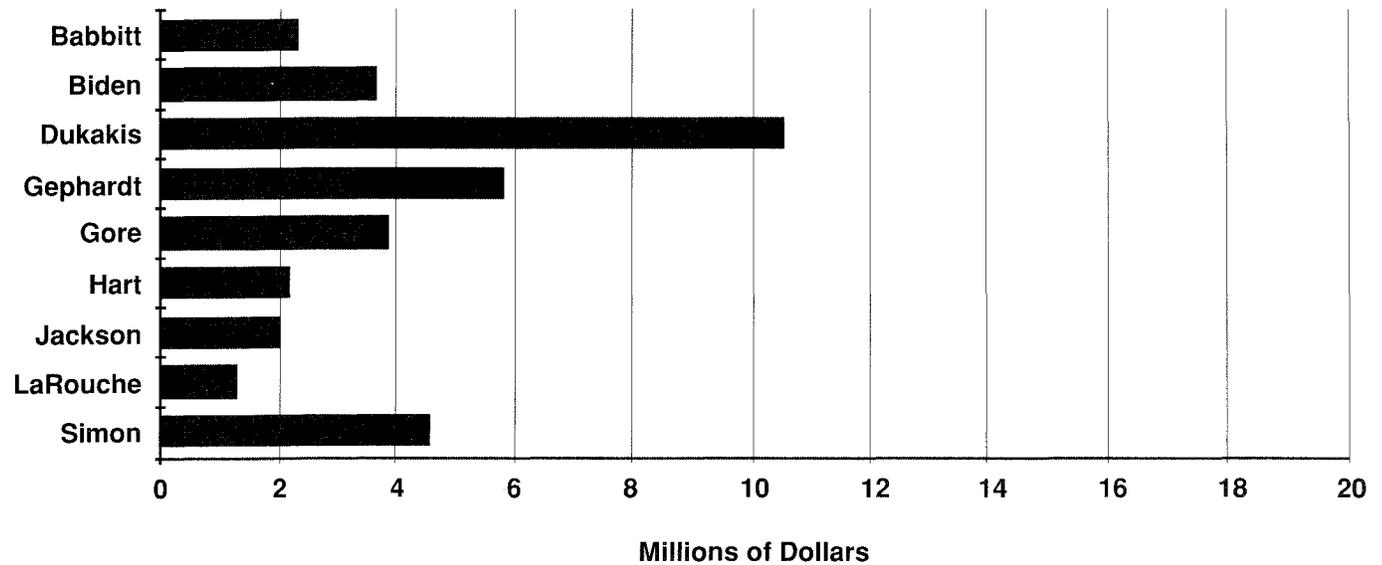


Chart 3
Receipts of
Presidential Primary Candidates⁴
Through 12/31/87

Republican Candidates



Democratic Candidates



⁴Includes all candidates with receipts over \$1,250,000.

Chapter 4

The Commission

Commissioners

On July 24, 1987, the Senate confirmed Lee Ann Elliott and Danny Lee McDonald to serve their second six-year terms (through April 30, 1993) as FEC Commissioners. Both Mrs. Elliott and Mr. McDonald were first appointed to the Commission by President Reagan in December 1981.

Commission Chairman Scott E. Thomas and Vice Chairman Thomas J. Josefiak served as officers during 1987. On December 17, 1987, Commissioner Josefiak was elected 1988 Chairman and Commissioner McDonald, 1988 Vice Chairman. Biographies of all the Commissioners appear in Appendix 1.

Statutory Officers

On October 6, 1987, the Federal Election Commission appointed Lawrence M. Noble as the agency's General Counsel. Mr. Noble had been Acting General Counsel since the March 1987 resignation of Charles N. Steele. He has been with the Commission since 1977, serving first as a litigation attorney and later, as Assistant General Counsel for Litigation and then as Deputy General Counsel since 1983.

Administrative Activities

Reorganization of the Office of General Counsel

In December, the Commission voted to reorganize the Office of General Counsel (OGC) by restructuring its top management and creating new positions to centralize and coordinate operations.

Under the new plan, OGC was divided into three functional areas: enforcement, litigation and policy, with each area headed by an Associate General Counsel. Two new associate general counsels were created under the plan — one for litigation, the other for policy. In addition, three new administrative staff positions were created to strengthen and centralize the management of the office.

Computer Services

A new computer system, inaugurated in 1986, became fully operational in 1987 with the conversion from the old system to the new configuration. This new computer generation enabled the Commission to greatly enhance its data processing capabilities by taking advantage of numerous advances in technology that had occurred over the last several years. Specifically, the new computer service provided the Commission with needed storage for its growing data bases. Under the new system, the Commission has 3.7 billion characters of storage at the main computer site with an additional 445 million characters of storage located at the Commission. In addition, the new system reduces the time required to process indexes and other tasks. These increased capabilities were made available to the Commission at significant cost savings compared with the previous contract.

Personnel and Labor Relations

During 1987, the Commission filled many of the positions left vacant as a result of the FY 1986 Gramm/Rudman/Hollings budget reductions. The Commission resumed on-campus recruitment of law clerks and hired auditors and other personnel needed for the 1988 Presidential election cycle. At year's end, the Commission was developing plans for the 1988 Intern Program.

FEC Budget

Fiscal Year 1987

The Commission received an FY 1987 appropriation of \$12.8 million. This allowed the Commission to begin recovering from the FY 1986 Gramm/Rudman/Hollings reductions. In addition, the Commission received \$83,000 in supplemental funding to cover a portion of the 1987 pay increase of 3 percent and to offset the expenses of the new government retirement program.

The Office of Management and Budget had approved an original request of \$290,000 in supplemental funds, but, after a careful and extensive

review of projected personnel costs, the Commission reduced the request by \$207,000. Although the Commission had increased personnel costs for 1987, the agency had not reached its authorized employee level as quickly as expected. Uncertainty over FY 1987 funding for two months into the fiscal year had prevented the Commission from beginning the process of hiring new personnel. See Appendix 6.

Fiscal Year 1988

In hearings conducted by Congressional appropriation and oversight committees between February and April 1987, FEC Vice Chairman Thomas J. Josefiak requested a \$14.174 million budget for fiscal year (FY) 1988. Mr. Josefiak noted that this budget reflected the Commission's effort to "carefully balance the interests of responsible budget restraint and the mandate of the FECA." Although the FY 1988 budget request represented a 10.7 percent increase over the Commission's FY 1987 budget, Mr. Josefiak said that 76 percent of the budget increase was necessary "just to maintain current levels of agency activity." According to his testimony, only 24 percent of the budget increase (\$329,000) represented an expansion in Commission activity. The increase was in part based on the need for 13 positions above the Commission's normal base of 245 full-time employees. The additional staff was necessary because of the open races in both parties' Presidential primaries. By contrast, in each of the three previous, publicly financed Presidential elections, 1976, 1980 and 1984, only one party had an open primary. Mr. Josefiak explained that, during 1988, Commission staff would have to process a much larger volume of campaign finance data as well as handle an increased workload associated with the 1988 Presidential election. The remainder of the budget increase was needed to complete the computer entry of detailed information on the 1986 Congressional elections. The Commission had not been able to enter this data previously because of the 1986 budget cuts mandated by the Gramm/Rudman/Hollings Act. According to Mr. Josefiak, the completion of this project, begun in

1987, would allow the Commission to restore "computerized research services to their full and complete level of usefulness as we enter the new political season."

Chapter 5

Legislative Recommendations

Definitions

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.

Registration and Reporting

Commission as Sole Point of Entry for Disclosure Documents

Section: 2 U.S.C. §432(g)

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

Explanation: A single point of entry for all disclosure documents filed by political committees would eliminate any confusion about where candidates and committees are to file their reports. It would

assist committee treasurers by having one office where they would file reports, address correspondence and ask questions. At present, conflicts may arise when more than one office sends out materials, makes requests for additional information and answers questions relating to the interpretation of the law. A single point of entry would also reduce the costs to the Federal government of maintaining three different offices, especially in the areas of personnel, equipment and data processing.

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

Insolvency of Political Committees

Section: 2 U.S.C. §433(d)

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

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

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

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

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

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

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

Waiver Authority

Section: 2 U.S.C. §434

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

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

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

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

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

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

Campaign-Cycle Reporting

Section: 2 U.S.C. §434

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

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

Monthly Reporting for Congressional Candidates

Section: 2 U.S.C. §434(a)(2)

Recommendation: The principal campaign committee of a Congressional candidate should have the

option of filing monthly reports in lieu of quarterly reports.

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

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

Monthly Reports

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

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

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

Reporting Payments to Persons Providing Goods and Services

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

Recommendation: The current statute requires reporting "the name and address of each...person to whom an expenditure in an aggregate amount or

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

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

§§9004(c) and 9038(b)(2)), guidance would be particularly useful.

Verifying Multicandidate Committee Status

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

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

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

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

The Commission is statutorily responsible for maintaining an index of committees that have qualified as multicandidate committees. The index enables recipient candidate committees to determine whether a given contributor has in fact qualified as a multicandidate committee and therefore is entitled to contribute up to the higher limit. The Commission's Multicandidate Index, however, is not current

because it depends upon information filed periodically by political committees. Committees inform the Commission that they have qualified as multicandidate committees by checking the appropriate box on their regularly scheduled report. If, however, they qualify shortly after they have filed their report, several months may elapse before they disclose their new status on the next report. With semiannual reporting in a nonelection year, for example, a committee may become a multicandidate committee in August, but the Commission's Index will not reveal this until after the January 31 report has been filed, coded and entered into the Commission's computer.

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

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.

Enforcement

Modifying "Reason to Believe" Finding

Section: 2 U.S.C. §437g

Recommendation: Congress should consider modifying the language pertaining to "reason to believe," contained in 2 U.S.C. §437g, in order to reduce the confusion sometimes experienced by respondents, the press and the public. One possible approach would be to change the statutory language from

'the Commission finds reason to believe a violation of the Act *has* occurred" to "the Commission finds reason to believe a violation of the Act *may have* occurred." Or Congress may wish to use some other less invidious language.

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

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

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

Seeking Injunctions in Enforcement Cases

Section: 2 U.S.C. §437g(a)(1)

*Recommendation:*¹ Congress should amend the enforcement procedures set forth in the statute so as to empower the Commission to promptly initiate a civil suit for injunctive relief in order to preserve the status quo when there is clear and convincing evidence that a substantial violation of the Act is about to occur. Under criteria expressly stated, the Commission should be authorized to initiate such civil action in a United States district court without awaiting expiration of the 15 day period for responding to a complaint or the other administrative steps enumerated in the statute. The person

¹Commissioner Elliott filed the following dissent: The Act presently enables the Commission to seek injunctive relief after the administrative process has been completed and this is more than sufficient. (See 2 U.S.C. §437g(a)(6)(A).)

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

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

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

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

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

against whom the Commission brought the action would enjoy the procedural protections afforded by the courts.

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

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

Public Financing

Adjustment of Presidential Primary Threshold Submission

Section: 2 U.S.C. §9033(b)

Recommendation: Congress should consider raising the threshold amount of matchable contributions required to qualify for Presidential primary matching funds. To reach this higher threshold, Congress could increase the number of States in which the candidate must raise the qualifying amount of matchable contributions; and/or increase the total amount of qualifying matchable contributions that must be raised in each of the States.

Explanation: We are in the midst of the fourth publicly financed Presidential election under the Federal Election Commission's authority. The statute provides for a COLA adjustment on the overall primary spending limitation, which has more than doubled since 1976. There is not, however, a corresponding adjustment made to the threshold requirements. Such an adjustment would ensure that funds continue to be given only to candidates who demonstrate broad national support.

Fundraising Limitation for Publicly Financed Presidential Primary Campaigns

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

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

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

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.

State Expenditure Limits for Publicly Financed Presidential Primary Campaigns

Section: 2 U.S.C. §441a

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

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

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

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

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

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

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

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.

Expenditure Limits

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.

Contributions

Election Period Limitations

Section: 2 U.S.C. §441a

Recommendation: The Commission recommends that limits on contributions to candidates be placed

on an election-cycle basis, rather than the current per-election basis.

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

Application of Contribution Limitations to Family Members

Section: 2 U.S.C. §441a

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

Explanation: Under the current posture of the law, a family member is limited to contributing \$1,000 per election to a candidate. This limitation applies to spouses and parents, as well as other immediate family members. (See S. Conf. Rep. No.93-1237, 93rd Cong., 2nd Sess., 58 (1974) and *Buckley v. Valeo*, 424 U.S. 1, 51 (footnote 57)(1976).) This limitation has caused the Commission substantial problems in attempting to implement and enforce the contribution limitations.³

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.

³While 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.

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

Foreign Nationals

Section: 2 U.S.C. §441e

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

1. Whether or not an American subsidiary of a foreign corporation should be allowed to make contributions directly (to State and local candidates) or to establish a separate segregated fund (SSF); and, if it does form an SSF, whether the activities of the SSF should be subject to special restrictions;
2. Whether or not the statutory prohibition on contributions by foreign nationals is meant to cover volunteer activity by foreign nationals as well; and
3. Whether or not the Act should continue to prohibit contributions by foreign nationals in connection with State and local elections.

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

Several issues have arisen during the Commission's administration of this provision. First, the law, as interpreted by Commission advisory opinions, permits an American subsidiary of a foreign registered corporation to influence elections either through direct contributions to State and local elections or by forming a separate segregated fund that supports Federal candidates. With regard to SSFs established by American subsidiaries, Commission advisory opinions have stipulated that the foreign corporate parent may not be the direct or indirect source of contributions; nor may it influence the

SSF's decisions or exercise any control over the SSF. Further, the opinions have reiterated the law's requirement that only U.S. citizens (and individuals holding green cards) may contribute to the SSF.

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

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

Acceptance of Cash Contributions

Section: 2 U.S.C. §441g

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

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

where primary matching funds are received on the basis of such contributions.

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

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

Fraudulent Misrepresentation

Fundraising Projects Operated by Unauthorized Committees

Section: 2 U.S.C. §432(e)(4)

*Recommendation.*⁴ Congress may wish to consider amending the statute, at 2 U.S.C. §432(e)(4), to clarify that a political committee that is not an au-

⁴Commissioner Elliott filed the following dissent: I support the policy underlying this legislative recommendation and recognize the seriousness of the problem necessitating such a recommendation. However, the scope of the recommendation is far too broad and inflexible given the traditional fundraising events, especially those held by political parties and some unauthorized political committees. Party committees are not authorized committees and therefore would come under the general prohibitions included in the recommendation, precluding the use of a candidate's name for any activity of a party committee. Oftentimes, however, fundraising events conducted by a party committee incorporate the name of a well-known Member of Congress as a fundraising tool. Typically, the fundraising contributions are made in the form of checks made payable to the name of the event, e.g., "Happy Birth-

thorized committee of any candidate may not use the name of a candidate in the name of any "project" or other fundraising activity of such committee.

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

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

day, Senator Smith"; "Mike's Annual Barbecue"; "Sail With Senator Sanford"; "Roast Roberts." I do not believe Congress intends to preclude the use of the candidates' names in such activities, especially when the candidate is not only aware that his/her name is being used but approves and is actively participating in the event.

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

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

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.

Honoraria

Technical Amendments

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

Recommendation: The Commission offers two suggestions concerning honoraria.

1. Section 441i should be placed under the Ethics in Government Act.
2. As technical amendments, Sections 441i(c) and (d), which pertain to the annual limit on receiving

honoraria (now repealed), should be repealed. Additionally, 2 U.S.C. §431(8)(B)(xiv), which refers to the definition of honorarium in Section 441i, should be modified to contain the definition itself.

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

Commission Information Services

Budget Reimbursement Fund

Section: 2 U.S.C. §438

Recommendation:

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

Explanation: At the present time, copies of reports, microfilm, and computer tapes are sold to the pub-

lic 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 1987, in return for services and materials it offered the public, the FEC collected and transferred \$97,754 in miscellaneous receipts to the Treasury. During the first three months of FY 1988, \$26,455 was transferred to the Treasury. Establishment of a reimbursement fund, into which fees for such materials would be paid, would permit this money to be applied to further dissemination of information. Note, however, that a reimbursement fund would not be applied to the distribution of FEC informational materials to candidates and registered political committees. They would continue to receive free publications that help them comply with the Federal election laws.

There is also the possibility that the Commission could recover costs of FEC Clearinghouse workshops and seminars, research materials, and reports that are now sold by the Government Printing Office and the National Technical Information Service.

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

Appendix 1

Biographies of Commissioners and Officers

Commissioners

Scott E. Thomas, Chairman **April 30, 1991¹**

Mr. Thomas, who began serving as Commissioner in October 1986, had been executive assistant to former Commissioner Thomas E. Harris and succeeded him as Commissioner. Commissioner Thomas had also served the agency as Assistant General Counsel for Enforcement after joining the FEC as a legal intern in 1975. A native of Wyoming, Commissioner Thomas holds a B.A. degree from Stanford University and a J.D. degree from Georgetown University Law Center. He is a member of the bars for the District of Columbia, the U.S. Court of Appeals for the Ninth Circuit and the U.S. Supreme Court. He was elected 1987 Chairman.

Thomas J. Josefiak, Vice Chairman **April 30, 1991**

Until his appointment as Commissioner in August 1985, Mr. Josefiak served with the Commission as Special Deputy to the Secretary of the Senate. Before assuming that post in 1981, he was legal counsel to the National Republican Congressional Committee. His past experience also includes positions held at the U.S. House of Representatives. He was minority special counsel for Federal election law to the Committee on House Administration and, before that, served as legislative assistant to Congressman Silvio O. Conte. A native of Massachusetts, Commissioner Josefiak holds a B.A. degree from Fairfield University, Connecticut, and a J.D. degree from Georgetown University Law Center. He was elected 1987 Vice Chairman.

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

Mrs. Aikens was one of the original members of the Federal Election Commission appointed in 1975. Following the *Buckley v. Valeo* decision of the Su-

preme Court and the subsequent reconstitution of the FEC, President Ford reappointed her to a five-year term. In 1981, Mrs. Aikens continued to serve until President Reagan named her to complete an unexpired term due to a resignation. In 1983, President Reagan again reappointed Mrs. Aikens, this time for a six-year term. She served as Chairman between May 1978 and May 1979 and during 1986.

Prior to her appointment to the Commission, Mrs. Aikens was an executive for a Pennsylvania public relations firm. From 1972 to 1974, she was president of the Pennsylvania Council of Republican Women and served on the board of the National Federation of Republican Women. A native of Delaware County, Pennsylvania, Mrs. Aikens has been active in a variety of volunteer organizations and is currently a member of the Commonwealth Board of the Medical College of Pennsylvania. She is also a member of the board of directors of Ursinus College, Collegeville, Pennsylvania, where she received her B.A. and an honorary Doctor of Laws degree.

Lee Ann Elliott **April 30, 1993**

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

¹Term expiration date.

Danny L. McDonald**April 30, 1993**

Mr. McDonald, as general administrator of the Oklahoma Corporation Commission, was responsible for the management of 10 regulatory divisions from 1979 until his appointment to the Commission in December 1981. He was secretary of the Tulsa County Election Board from 1974 to 1979 and served as chief clerk of the board in 1973. He also served as a member of the Advisory Panel to the FEC's National Clearinghouse on Election Administration. Mr. McDonald, a native of Sand Springs, Oklahoma, holds a B.A. from Oklahoma State University and attended the John F. Kennedy School of Government at Harvard University. He served as Commission Chairman during 1983.

John Warren McGarry**April 30, 1989**

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

Ex Officio Commissioners**Donnald K. Anderson**

Mr. Anderson was appointed Clerk of the House of Representatives on January 6, 1987. Prior to his appointment, he served as 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. Later, 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, continues to serve at the Commission as Special Deputy to the Clerk of the House.

Walter J. Stewart

Mr. Stewart was appointed Secretary of the Senate on January 6, 1987. Prior to assuming his position as Secretary of the Senate, Mr. Stewart was Vice President of Government Affairs for Sonat, Inc. 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 between 1963 and 1979 included: 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 Georgia native, Mr. Stewart received his undergraduate degree from George Washington University and an LL.B. from American University. He is a member of the District of Columbia Bar.

David G. Gartner, attorney, serves at the Commission as Special Deputy to the Secretary of the Senate.

Statutory Officers

John C. Surina, Staff Director

Before joining the Commission in July 1983, Mr. Surina was assistant managing director of the Interstate Commerce Commission (ICC), where he was detailed to the "Reform 88" program at the Office of Management and Budget. In that role, he worked on projects to reform administrative management within the Federal government. From 1973 to 1980, Mr. Surina served the ICC in other capacities. Between 1972 and 1973, he was an expert-consultant to the Office of Control and Operations, EOP-Cost of Living Council-Pay Board. He was previously on the technical staff of the Computer Sciences Corporation. Mr. Surina joined the U.S. Army in 1966, completing his service in 1970 as executive officer of the Special Security Office. In that position, he supported senior U.S. delegates to NATO's civil headquarters in Brussels, Belgium.

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

Lawrence M. Noble, General Counsel

Mr. Noble was named General Counsel on October 6, 1987, after serving as Acting General Counsel since March 1987. He has been with the agency since 1977, serving as FEC Deputy General Counsel from November 1983 until his appointment as Acting General Counsel. Prior to that, he was Assistant General Counsel for Litigation and, earlier, a litigation attorney. Before joining the FEC, he was an attorney with the Aviation Consumers Action Project.

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

the District of Columbia Bar. Mr. Noble is also a member of the American and District of Columbia Bar Associations.

Appendix 2 Chronology of Events, 1987

January

- 1 — Chairman Scott E. Thomas and Vice Chairman Thomas J. Josefiak begin one-year terms as Commission officers.
- 6 — Commission transmits to Congress the final rules on contribution limits at 11 CFR 110.1 and 110.2.
 - Donald K. Anderson, appointed Clerk of the House of Representatives, becomes Ex-Officio Commissioner.
 - Walter J. Stewart, appointed Secretary of the Senate, becomes Ex-Officio Commissioner.
- 9 — In *FEC v. Furgatch*, U.S. Court of Appeals rules that defendant's ads contained "express advocacy" and therefore constituted independent expenditures for which reporting was required.
- 12 — Commission releases statistics on number of PACs.
- 31 — 1986 year-end report due.

February

- 5 — Commission adopts internal guidelines for preparation of Commission statements of reasons.
- 19 — Commission testifies before the Subcommittee on Elections of the Committee on House Administration on the agency's FY 1988 budget.
 - Commission calculates spending limits for 1987 special elections.
- 24 — In *FEC v. Ted Haley Congressional Committee*, U.S. district court rules that loan guarantees to former candidate to pay campaign debts were not contributions since guarantees were not intended to influence elections.

March

- 4 — Commission seeks comments on proposed revisions to regulations on contributions and expenditures made in connection with Presidential delegate selection process.
 - Commission transmits legislative recommendations to Congress and President.
- 10 — Commission designates Lawrence M. Noble as Acting General Counsel following resignation of Charles N. Steele as General Counsel.
- 12 — Commission testifies before Subcommittee of House Ways Means Committee on agency's role in regulating activities of tax-exempt groups.
- 17 — Commission testifies before House Committee on Appropriations' Subcommittee on Treasury, Postal Service and General Government on FEC budget for FY 88.
- 31 — Commission publishes *Supporting Federal Candidates: A Guide for Citizens*.

April

- 1 — Commission testifies before Senate Appropriations Committee on agency's FY 88 budget.
- 3 — David G. Gartner designated as the Secretary of the Senate's special deputy to FEC.
- 7 — California Special Election (fifth Congressional district).
- 8 — Commission promulgates revised rules on contribution limits at 11 CFR 110.1 and 110.2.
- 22 — Commission holds hearings on regulations on contributions and expenditures made in connection with Presidential delegate selection process.
- 23 — Commission approves revised edition of its *Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing*.

- 24 — Representative Richard Gephardt becomes first Presidential candidate to qualify for 1988 matching funds.
- 29 — In *FEC v. NCPAC*, U.S. District Court rules that defendants violated law by failing to include disclaimer on solicitation material identifying person who paid for communication.
- 30 — Commission submits report to Congress: *Polling Place Accessibility in the 1986 General Election*.

May

- 1 — Commission cosponsors election law conference in St. Louis, Missouri.
- 4 — Commission publishes NRWC's petition for rulemaking.
- 6 — Bruce Babbitt certified to receive primary matching funds.
- 10 — Commission releases figures on 1986 Congressional spending.
- 21 — Commission releases report on 1985-86 financial activity of PACs.
 - Jack Kemp certified to receive primary matching funds.
- 26 — Commission sends revised public financing regulations to Congress.

June

- 1 — Commission publishes *Annual Report 1986*.
- 4 — Commission makes initial determination that Gary Hart is not eligible for matching funds.
 - Commission adopts new procedures concerning extensions of time in enforcement matters.
 - Commission approves renewal of Clearinghouse Advisory Panel charter.
- 6 — George Bush certified to receive primary matching funds.
- 15 — Robert Dole certified to receive primary matching funds.

- 18 — Commission approves interim rules revising FOIA and Public Disclosure Regulations.

July

- 6 — Commission asks Secretary of Treasury to pay \$8,892,000 to each major party to finance 1988 Presidential nominating conventions.
- 10 — Commission releases statistics on number of PACs.
- 14 — Commission reactivates State Access Program.
 - FEC Chairman Thomas urges elimination of state spending limits for Presidential campaigns in testimony before the Subcommittee on Elections of the Committee on House Administration.
 - Albert Gore certified to receive primary matching funds.
- 24 — Senate confirms Lee Ann Elliott and Danny Lee McDonald to serve second terms as FEC Commissioners.
- 31 — 1987 semiannual report due.

August

- 3 — In *Common Cause v. FEC* (Suit Six), U.S. District Court rules on need for Commission regulations on allocation of expenditures between the Federal and non-Federal accounts of state party committees.
- 18 — Connecticut Special Election (fourth Congressional district).
 - Commission promulgates revised public financing regulations.
- 24 — Pete du Pont certified to receive primary matching funds.

September

- 9 — Michael Dukakis certified to receive primary matching funds.
- 15 — In *FEC v. Sailors' Union of the Pacific Political Fund*, U.S. court of appeals affirms lower court ruling that separate segregated funds of three maritime unions are not affiliated.
- 16-18 — Commission cosponsors election law conference in Burlington, Vermont.
- 17 — Commission sends Congress revised regulations on contributions and expenditures made in connection with the Presidential delegate selection process.
- 22 — Joseph Biden certified to receive primary matching funds.
- 24 — Commission makes final determination that Gary Hart failed to establish eligibility for matching funds.

October

- 1 — Commission approves final revisions to FOIA rules.
- 6 — Commission appoints Lawrence M. Noble FEC General Counsel.
 - Clearinghouse on Election Administration testifies before Congress on accessibility of polling places to the elderly and handicapped.
- 15-16 — Commission cosponsors election law conference in Madison, Wisconsin.
- 23 — In *DCCC v. FEC*, the U.S. court of appeals asks Commissioners for explanation of their reasons for dismissing DCCC's complaint.
 - Commission releases report on contributions and expenditures of 1988 Presidential candidates.
- 28 — Paul Simon certified to receive primary matching funds.
- 29 — M.G. "Pat" Robertson certified to receive primary matching funds.

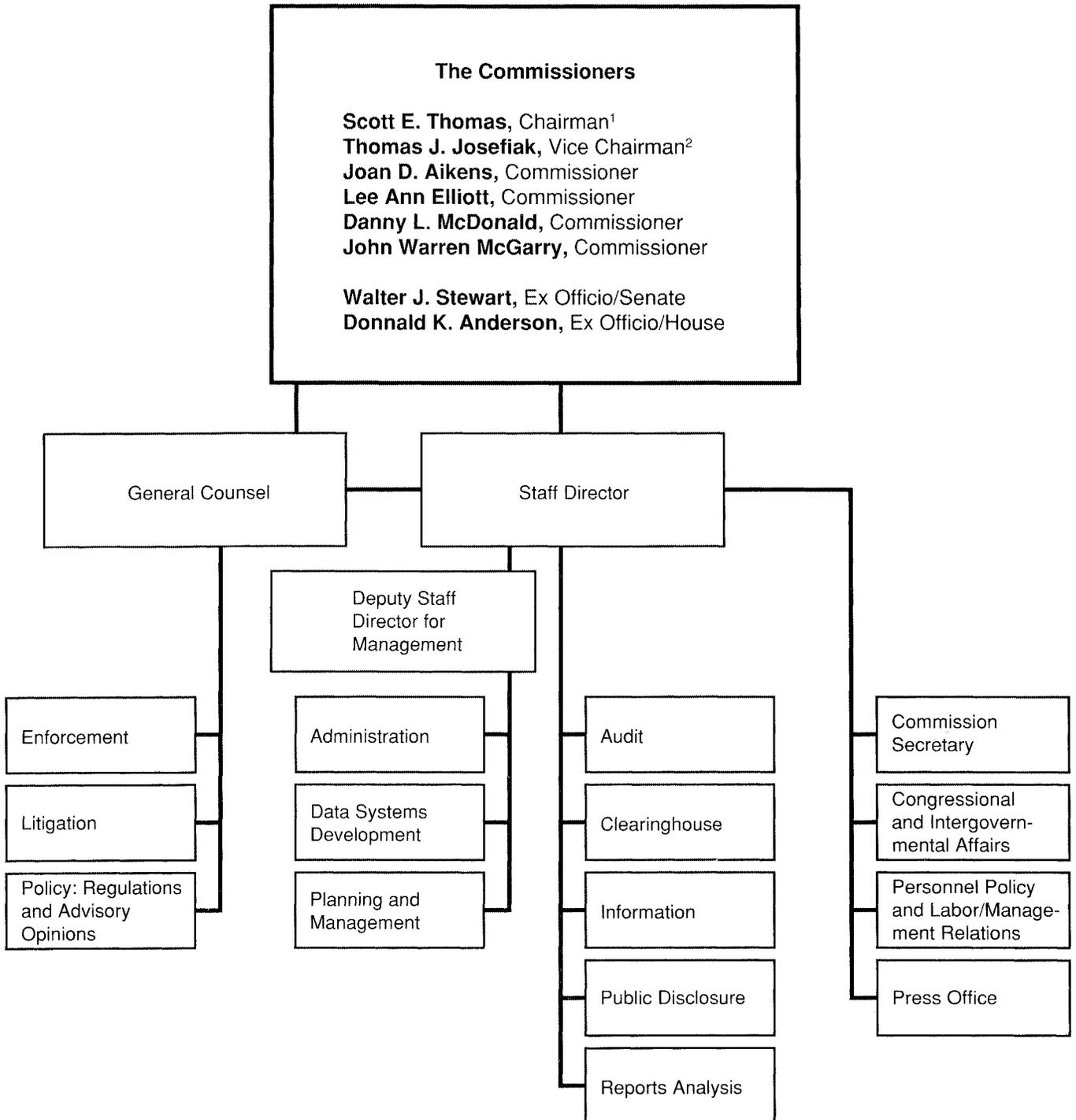
November

- 16-17 — Commission cosponsors election law conference in Austin, Texas.
- 20 — Revised regulations promulgated on contributions and expenditures made in connection with Presidential delegate selection process.
 - Effective date for rules governing FOIA and Access to Public Records.

December

- 3 — Tennessee special election (fifth Congressional district).
- 9-10 — FEC Clearinghouse Advisory Panel meets in Washington, D.C.
- 16 — Alexander Haig certified to receive primary matching funds.
- 17 — FEC elects Thomas J. Josefiak as Chairman and Danny L. McDonald as Vice Chairman for 1988.
- 28 — Gary Hart certified to receive matching funds.
- 30 — Commission certifies \$12,748,261 to 12 Presidential primary candidates.

Appendix 3 FEC Organization Chart



¹Commissioner Josefiak was elected 1988 Chairman.

²Commissioner McDonald was elected 1988 Vice Chairman.

Appendix 4 FEC Offices

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

Administration

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

Audit

Many of the Audit Division's responsibilities concern the public funding program. The division evaluates the matching fund submissions of Presidential primary candidates and determines the amount of contributions that may be matched with Federal funds. The division conducts the statutorily mandated audits of all publicly funded candidates and committees.

In addition, the division audits 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. Finally, the division conducts internal audits of Commission activities.

Clearinghouse

The National Clearinghouse on Election Administration, located on the seventh floor, assists State and local election officials by responding to inquiries, publishing research and conducting workshops on all matters related to Federal election administration. (For a list of Clearinghouse studies, see Appendix 9.) Additionally, the Clearinghouse answers questions from the public on the electoral process. Local phone: 376-5670.

Commission Secretary

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

Commissioners

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

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

Congressional, Legislative and Intergovernmental Affairs

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

Data Systems Development

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

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

data into indexes (described in Appendix 8). The indexes permit a detailed analysis of campaign finance activity and, additionally, provide a tool for monitoring contribution limitations. DSDD publishes the *Reports on Financial Activity* series of periodic studies on campaign finance and generates statistics for other publications.

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

General Counsel

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

Information Services

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

Law Library

The Commission law library, part of the Office of General Counsel, is located on the eighth floor and is open to the public. The collection includes basic legal research tools and materials dealing with political campaign finance, corporate and labor political activity and campaign finance reform. The Library staff prepares indices to Advisory Opinions and Matters Under Review (MURs) as well as a *Campaign Finance and Federal Election Law Bibli-*

ography, all available for purchase from the Public Records Office. Local phone: 376-5312.

Personnel and Labor/Management Relations

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

Planning and Management

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

Press Office

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

Public Records

Staff from the Public Records Office answer questions and provide information on the campaign finance activities of political committees and 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 locate documents. The FEC encourages the public to review the many documents available, including committee reports, computer indexes (see Appendix 8), closed compliance cases and advisory opinions. Local phone: 376-3140.

Reports Analysis

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

Staff Director and Deputy Staff Director

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

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

Appendix 5 Statistics on Commission Operations

Summary of Disclosure Files

	Total Filers Existing in 1987	Filers Terminated as of 12/31/87	Continuing Filers as of 12/31/87	Number of Reports and Statements in 1987	Gross Receipts in 1987	Gross Expenditures in 1987
Presidential	589	43	546	1,412	\$121,244,398	\$112,515,526
Candidates	314	35	279			
Committees	275	8	267			
Senate	861	126	735	1,146	\$74,449,864	39,958,402
Candidates	414	97	317			
Committees	447	29	418			
House	3,804	559	3,245	4,823	\$75,549,829	55,095,162
Candidates	1,846	430	1,416			
Committees	1,958	129	1,829			
Party	462	25	437	1,135	\$204,645,231	\$179,535,563
Delegates	64	0	NA	64	0	0
Nonparty	4,320	155	4,165	15,288	\$165,405,911	\$121,972,404
Labor committees	382	18	364			
Corporate committees	1,835	60	1,775			
Membership, trade and other committees	2,103	77	2,026			
Communication cost filers	170	NA	NA	181	NA	\$20,939
Independent expenditures by persons other than political committees	78	NA	NA	112	NA	\$983,641

Divisional Statistics for Calendar Year 1987

	Total		Total
Reports Analysis Division		Information Services Division	
Documents processed	32,064	Telephone inquiries	52,827
Reports reviewed	39,312	Information letters	102
Telephone assistance and meetings	6,294	Distribution of FEC materials	11,489
Requests for additional information (RFAs)	4,754	Prior notices (sent to inform filers of reporting deadlines)	15,525
Second RFAs	1,654	Other mailings	25,170
Names of candidate committees published for failure to file reports	1	Visitors	171
Compliance matters referred to the Office of General Counsel or Audit Division	218	Public appearances by Commissioners and staff	94
		State workshops	4
Data Systems Development Division		Publications	24
Documents receiving Pass 1 coding ¹	46,463	Video	1
Documents receiving Pass III coding ¹	32,449		
Documents receiving Pass 1 entry	51,349	Press Office	
Documents receiving Pass III entry	35,433	Press releases	139
Transactions receiving Pass III entry		Telephone inquiries from press	10,120
• In-house	169,619	Visitors to press office	2,169
• Contract	17,657	Freedom of Information Act (FOIA) requests	80
		Fees for materials requested under FOIA (transmitted to U.S. Treasury)	\$5,498
Public Records Office		Clearinghouse on Election Administration	
Campaign finance material processed (total pages)	1,009,246	Telephone inquiries	2,228
Requests for campaign finance reports	6,257	Information letters	177
Visitors	9,308	Visitors	86
Total people served	15,565	State workshops	4
Information phone calls	15,402	Publications	5
Computer printouts provided	101,001	Project conferences	6
Total income (transmitted to U.S. Treasury)	\$96,057		
Cumulative total pages of documents available for review	7,302,168		
Contacts with state election offices	3,360		
Notices of failure to file with state election offices	822		

¹Computer coding and entry of campaign finance information occur in two phases. In the first phase, Pass 1, 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 1987	4
Requests received	36
Issued, closed or withdrawn ²	33
Pending at end of year	7
Compliance cases (MURs)	
Cases pending at beginning of 1987	143
Cases opened	261
Cases closed	233
Cases pending at end of year	171
Litigation	
Cases pending at beginning of 1987	54
Cases opened	18
Cases closed	26
Cases pending at end of year	46
Cases won	22
Cases lost	3
Cases voluntarily dismissed	1
Cases dismissed as moot	0
Law Library	
Telephone inquiries	2008
Visitors served	917

²Twenty-seven opinions were issued; six opinion requests were withdrawn or closed without issuance of an opinion.

Audits Completed by Audit Division 1975-1987

Presidential	57
Presidential joint fundraising ³	8
Senate	12
House	118
Party (national)	42
Party (other)	106
Nonparty (PACs)	65
Total	408

³Presidential joint fundraising committees are those established by two or more political committees, including at least one Presidential committee, for the purpose of raising funds jointly.

Appendix 6 The FEC's Budget

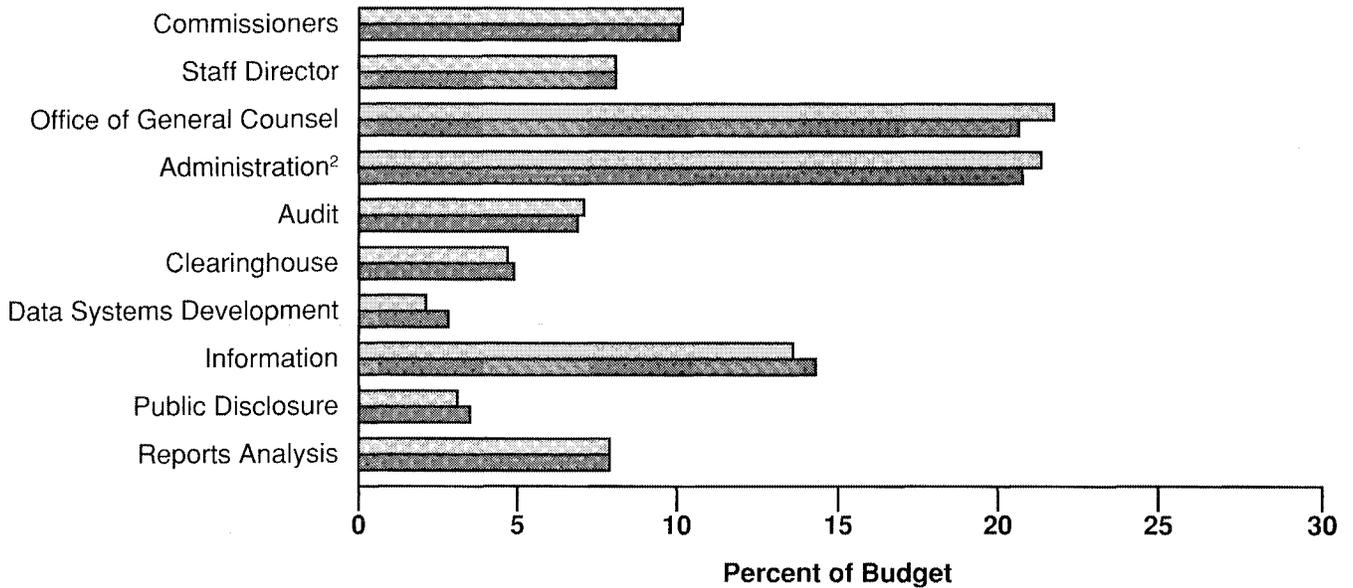
The table below compares functional allocations of budget resources for fiscal years 1986 and 1987. The two graphs that follow compare allocations of budget and staff by division for the fiscal years.

FEC Budget Functional Allocation

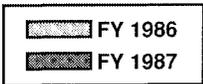
	1986	1987
Personnel compensation, including benefits	\$8,326,544	\$8,775,500
Travel	83,604	101,500
Transportation/motor pool	12,062	8,600
Commercial space	16,558	16,200
Equipment rental	226,774	244,900
Printing	267,055	272,200
Contracts	822,482	1,100,800
Administrative expenses	98,547	83,900
Supplies	157,885	168,800
Library materials	78,609	102,900
Telephone, telegraph	315,110	269,600
Postage	99,998	92,900
Space rental	1,269,500	1,375,200
Equipment purchases	41,881	163,400
Training	12,911	28,500
GSA, services, other	45,221	59,700
Total¹	\$11,874,741	\$12,864,600

¹Totals do not include unexpended funds which were returned to the U.S. Treasury.

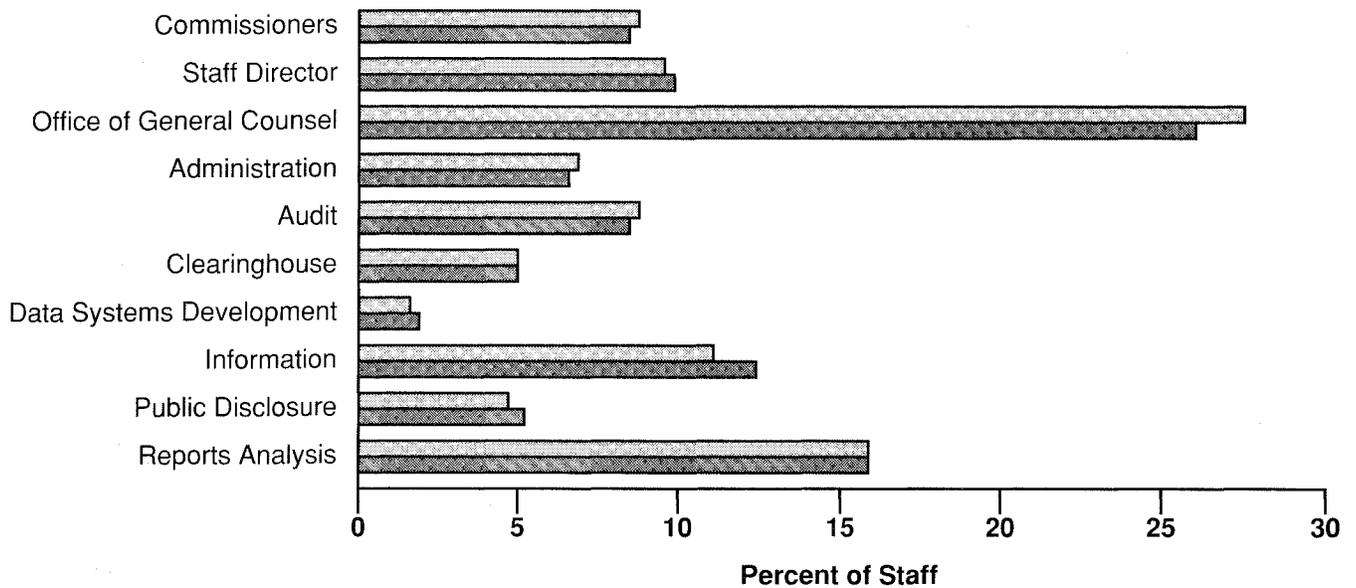
Divisional Allocation of Budget



²Administration budget includes rent, supplies, services, etc. for the entire Commission.



Divisional Allocation of Staff³



³The Commission averaged 229.4 full-time equivalent positions (FTE) in FY 1986 and 235.2 in FY 1987.

Appendix 7

Revised Regulations on Delegate Selection

Definition

Under 11 CFR 110.14(b)(1), “delegate” means an individual who becomes or seeks to become a delegate to a national nominating convention or to a state, district or local convention, caucus or primary held to select delegates to a national nominating convention. This definition is unchanged in the revised regulations. The definition of “delegate committee” in 110.14(b)(2), however, has been revised to clarify that a delegate committee may not necessarily be a political committee under the Act (see 11 CFR 100.5). Only delegate committees which qualify as political committees under 11 CFR 100.5 are required to register with the Commission and file reports of receipts and disbursements.

Funds Received and Expended

All funds received or spent for the purpose of furthering the selection of a delegate to a national nominating convention are contributions or expenditures made for the purpose of influencing a Federal election (see 11 CFR 100.2(c)(3) and (e)) with these two exceptions:

- Ballot access fees paid by a delegate to a state or subordinate party committee are not contributions or expenditures; and
- Any administrative expenses incurred by a state or subordinate party committee in connection with its sponsorship of a convention or caucus to select delegates to a national nominating convention are also exempt from the definitions of contribution and expenditure.

Note, however, that all funds received or spent for any type of delegate selection activity, including ballot access fees and administrative expenses, must be from sources which are permissible under the Act.

Contributions to and Expenditures by Delegates

Delegates are not considered “candidates” under the election law because they are not seeking nomination or election to federal office. (See 2

U.S.C. §431(2) and 11 CFR 100.3(a).) Thus, section 110.14(d) of the revised rules retains the current provision (110.14(c)) under which the contribution limits which apply to candidates and political committees do not apply to contributions to delegates. However, contributions which an individual makes to a delegate are subject to that individual’s \$25,000 annual limit on contributions.

Similarly, section 110.14(e) of the revised rules retains the current provision (110.14(d)) under which expenditures by a delegate to promote his or her selection only are neither limited nor reportable. Moreover, such disbursements are not considered expenditures by Presidential candidates and do not count against the spending limits of publicly funded candidates, regardless of whether the delegate is a committee or pledged to a particular candidate.

Dual-Purpose Expenditures by Delegates

No Public Political Advertising. Under a reorganization of the delegate regulations, section 110.14(f) now governs “dual purpose” expenditures by a delegate—expenditures which advocate the delegate’s selection and which also refer to a candidate for public office (such as a Presidential candidate).

These disbursements are not subject to contribution limits (110.1) or spending limits for Presidential candidates (110.8) provided that:

- The materials are used in connection with volunteer activity; and
- The expenditures are not made for general public communications or political advertising.

This provision is based on the “coattail” exemption from the definition of contribution in 2 U.S.C. §431(8)(B)(xi).

Public Political Advertising. Section 110.14(f)(2) concerns “dual purpose” expenditures by delegates for general public political advertising (e.g., broadcasting, newspapers, magazines, billboards and direct mail). Only slightly revised (see former regulation at 110.14(d)(2)(ii)), the regulation applies the standards under 2 U.S.C. §431(8) and (17) to determine whether such expenditures by individual

delegates are in-kind contributions or independent expenditures on behalf of the Presidential or other candidates mentioned in the communications. As in-kind contributions, the expenditures would be subject to the contribution limits of 110.1 and the Presidential candidate's spending limits under 110.8. Such in-kind contributions would be reported by the recipient candidate's committee. On the other hand, those expenditures which qualified as independent expenditures would not be subject to limitations but would be reported by the delegate under 11 CFR Part 109. Note that, in either case, only the portion of the expenditure allocable to the candidate would be treated as an in-kind contribution or an independent expenditure.

Candidate Materials. Section 110.14(f)(3), concerning delegate expenditures for disseminating, distributing and republishing a candidate's campaign materials, clarifies that such expenditures are in-kind contributions subject to the contribution limits and reportable by the Federal candidate whose material is used. The expenditures would count against a Presidential candidate's spending limits only if the expenditures were made with the cooperation or prior consent of, or in consultation with or at the request or suggestion of, the candidate or the candidate's campaign committee.

Contributions to Delegate Committee

Under 110.14(g), contributions received by a delegate committee from a Presidential candidate's campaign committee would count against the candidate's spending limits under 11 CFR 110.8. The contribution limits apply to all contributions made to and received by delegate committees. Registered delegate committees must report such transactions.

Expenditures by Delegate Committee

Under the revised section 110.14(h), delegate committee expenditures which advocate only the selection of one or more delegates are not contributions to any candidate, and are not subject to the 110.1

contribution limits. Similarly, they are not chargeable to the expenditure limitations of any Presidential candidate under 110.8(a). Delegate committees that have qualified as political committees must, however, report these expenditures in accordance with 11 CFR Part 104.

A new section, 110.14(i), has been added to the regulations concerning "dual purpose" expenditures made by delegate committees. The provision parallels 110.14(f), concerning "dual purpose" expenditures by individual delegates (see above). Under these revised rules, "dual purpose" expenditures by delegate committees are not treated as contributions to Federal candidates when certain types of campaign materials are used in connection with volunteer activity and public political advertising is not used. 11 CFR 110.14(i)(1). **Note, however, that registered delegate committees must report such expenditures (although individual delegates need not do so).**

By contrast, under 110.14(i)(2), "dual purpose" expenditures by delegate committees for general public communications and political advertising are considered either independent expenditures; or contributions in kind, which may count against Presidential spending limits. The provision follows 110.14(f)(2), summarized above. In allocating "dual purpose" expenditures under this section, delegate committees should follow the general principles in 11 CFR Part 106, attributing to each delegate or candidate an amount reflecting the benefit reasonably expected to be derived from the expenditure. 11 CFR 106.1(a).

Under 110.14(i)(3), a delegate committee's expenditure to disseminate, distribute or republish a candidate's campaign materials constitutes an in-kind contribution to the candidate.

Affiliation of Delegate Committee with Presidential Candidate's Authorized Committee

The Commission added a new section, 110.14(j), to provide guidance concerning when a delegate committee is considered affiliated with an authorized committee of a Presidential candidate. Under 110.14(j)(1), the two committees would be affiliated

if they were established, maintained, financed or controlled by the same person (e.g., the Presidential candidate) or the same group of persons.

Section 110.14(j)(2) states that the Commission may consider a number of factors in determining whether a delegate committee is affiliated with an authorized Presidential committee under 110.14(J)(1). The Commission will consider, among other factors, whether or not:

- The Presidential candidate or another person associated with the authorized Presidential committee played a significant role in the delegate committee's formation;
- Any delegate associated with a delegate committee has been or is a staff member of the authorized Presidential committee;
- The committees have common or overlapping officers or employees;
- The authorized Presidential committee provides goods or funds in a significant amount or on an ongoing basis to the delegate committee, other than through the transfer to a committee of its allocated share of joint fundraising proceeds (pursuant to 11 CFR 102.17 or 9034.8);
- The Presidential candidate or any person associated with the authorized Presidential committee suggests, recommends or arranges for contributions to be made to the delegate committee;
- The committees receive contributions from the same sources;
- One committee provides a mailing list to the other committee;
- The authorized Presidential committee or a person associated with it provides ongoing administrative support to the delegate committee;
- The authorized Presidential committee or a person associated with it directs or organizes the campaign activities of the delegate committee; and
- The authorized Presidential committee or a

person associated with it files statements or reports on behalf of the delegate committee.

Affiliation Between Delegate Committees

Under a new provision, 110.14(k), delegate committees will be considered affiliated with each other if they meet the criteria for affiliation set forth in section 100.5(g) of the regulations.

Appendix 8

Computer Indexes

The Public Records Office, using the FEC's computer system, produces printouts of the major disclosure indexes described below. Note that headings followed by an asterisk (*) indicate that the index is also available through the Commission's Direct Access Program.

Committee Names and Addresses

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

Candidate Names and Addresses

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

Current Election Candidate Names and Addresses

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

Candidate Committees

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

Key Word in Committee Name*

The *TEXT* capability permits the computer to

search and list all committee titles that include a word or phrase designated by the user.

Treasurer's Name

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

Multicandidate Committee Index

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

Chronology of New Committee Registrations

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

Recently Registered Committees

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

Names of PACs and Their Sponsors

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

Names of Organizations and Their PACs

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

Categories of PACs

The Report 140 lists PACs by the category they

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

Committee Disclosure Documents*

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

Committee Ranking by Receipts or Expenditures

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

Candidate Campaign Documents*

The E Index provides the following information on each candidate:¹

1. Candidate name, State/district, party affiliation and candidate ID number, along with a list of all documents filed by the candidate (statement of candidacy, etc.).
2. List of all documents filed by the principal campaign committee (report type, coverage dates, period receipts and disbursements, number of pages and microfilm locations).
3. List of all documents filed by other authorized committees of the same candidate (if any).
4. List of joint fundraising committees authorized by the campaign.
5. List of all PACs and other nonparty committees (e.g., other candidate committees) contributing

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

to the candidate's campaign and the aggregate total of all such contributions to date. The list includes the name of the connected organization of a contributing PAC. Also listed are committees and individuals making expenditures for or against the candidate (including independent expenditures) and aggregate totals spent to date.

6. List of all party committee contributions to the candidate along with coordinated party expenditures made on the candidate's behalf (2 U.S.C. §441a(d)).

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

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

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

Presidential Candidates

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

Summary Data on Noncandidate Committees*

The K Index permits the user to select a group of noncandidate committees using several criteria, such as type of committee (party, nonparty) and type of sponsoring organization (e.g., corporation, labor organization, trade association). For each committee in the group selected, the index lists election cycle totals to date from the summary pages of the committee's reports. The index also includes the closing date and microfilm location of the latest report filed.

Summary Data on Selected Candidates*

The L Index, similar to the K Index (above), allows the user to select a group of candidates based on several criteria (e.g., type of election; incumbent/challenger status; party affiliation; State/district). For each candidate in the group selected, the index

lists the election cycle totals to date for selected categories of receipts and disbursements taken from the detailed summary pages of reports filed by all committees authorized by the campaign (with the exception of joint fundraising committees). The index also lists the names of these authorized committees and the closing dates of their last reports.

Itemized Contributions

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

Individual Contributors

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

Committee Contributions to Candidates*

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

Dates of Specific Contributions/Expenditures

The Detailed D Index itemizes the information on the D Index (above). It lists in chronological order each contribution and expenditure made on behalf of a candidate, along with the date, amount and

microfilm location of the reported entry. The index can also search for specific candidates.

Total Contributions to Candidates by Selected Committees

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

Other Indexes

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

Appendix 9

Clearinghouse Studies

The National Clearinghouse on Election Administration released several new research projects in 1987 and continued work on a number of other studies. These projects are described below along with previously released publications still available for purchase. The Clearinghouse also continued publishing its free periodical, *The FEC Journal of Election Administration*, which contains forms for ordering Clearinghouse studies.

Reports Completed in 1987

Voting System Standards for Software and Hardware Elements of Punchcard and Marksense Voting Systems, Final Draft is the second of a multiphase project to develop voluntary standards for computerized voting equipment. States and localities may adopt these standards in certifying the use of voting equipment within their jurisdictions. The standards are intended to ensure the proper performance of generic types of voting systems on the market.

Computerizing Election Administration 3: Implementation Strategies summarizes criteria, policy-making decisions and strategies for systematic implementation of a computerized election management system.

Absentee Voting: Issues and Options contains information on Federal absentee laws; explores the history of, and recent developments in, absentee voting; and focuses on a series of related policy and procedural issues concerning the application, receipt, issuance and tabulation of absentee votes.

Election Directory 87 contains a listing of Secretaries of State, chief election officials, Federal officials and local addresses for forwarding canceled voter registrations.

Projects Under Way

Voting System Standards for Direct Recording Electronic Systems is a successive phase of the project to provide voluntary standards for voting equipment. This volume will provide performance standards and test plans that can be adopted by States and local jurisdictions.

Ballot Access will be a five-volume publication which summarizes State access requirements for

Presidential and Congressional contests in primary and general elections. It will also document filing procedures for major, minor and independent candidates. Publication is scheduled for fall 1988.

Election Case Law, Phase I will trace trends and developments over the last 20 years in Federal and State Supreme Courts decisions on absentee balloting and voter registration. Publication is expected in summer 1989.

Election Contests and Recounts will be an update of a 1977 study which examined State procedures for conducting recounts and for resolving litigation, and the interaction of States with the Congress in disputed contests.

Previously Completed Reports

The publications below remain available.

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

Computerizing Election Administration 2: A General Model is the second volume in the computer application series. It defines various modules, their data elements and file interrelationships to better enable election officials to design a modular election management system.

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

Mail Registration Systems discusses problems involved in implementing a mail registration system, describing how such systems operate and offering practical suggestions for overcoming difficulties.

Contested Elections and Recounts, published in 1978, is a three-volume analysis of the laws and procedures governing contested elections and recounts for Federal offices. Volume I examines is-

sues and functions within the Federal government's purview and makes recommendations for improving the handling of contested elections at the Federal level. Volume II presents similar material at the State level, and Volume III summarizes State and Federal laws related to contested elections.

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

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

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

The following publications also remain available:

- *Campaign Finance Law* (1984, 1979 and 1978)
- *Election Case Law* (1981, 1979 and 1978)
- *Voting System Vendors and Voting System Users* (1981)
- *Reducing Voter Waiting Time* (1976)
- *Analysis of Laws and Procedures Governing Absentee Registration and Absentee Voting in the United States*, Volumes I and II (1975).

Appendix 10

FEC Federal Register Notices, 1987

Notice ¹	Title	Federal Register Publication Date	Citation
1987-1	11 CFR Parts 100, 102, 103 104 and 110: Contribution and Expenditure Limitations and Prohibitions; Final Rules	1/9/87	52 Fed. Reg. 760
1987-2	11 CFR Part 100: Bank Loans to Candidates and Political Committees; Notice of Public Hearing	1/22/87	52 Fed. Reg. 2416
1987-3	Filing Dates for California Special Elections	2/19/87	52 Fed. Reg. 5189
1987-4	11 CFR Part 110: Contributions to and Expenditures by Delegates to National Nominating Conventions; Notice of Proposed Rulemaking	3/4/87	52 Fed. Reg. 6580
1987-5	11 CFR Parts 100, 102, 103, 104 and 110: Contribution and Expenditure Limitations and Prohibitions; Final Rules: Announcement of Effective Date	4/8/87	52 Fed. Reg. 11187
1987-6	Rulemaking Petition: Regulations on Partisan and Nonpartisan Communications; Notice of Availability	5/4/87	52 Fed. Reg. 16275
1987-7	Public Financing of Presidential Primary and General Election Candidates; Final Rules to Congress	6/3/87	52 Fed. Reg. 20864
1987-8	Filing Dates for Connecticut Special Election	6/4/87	52 Fed. Reg. 21118

Notice ¹	Title	Federal Register Publication Date	Citation
1987-9	Public Records and the Freedom of Information Act: Interim Rules and Request for Comments	6/24/87	52 Fed. Reg. 23636
1987-10	11 CFR Parts 106, 9001 through 9007, 9012 & 9031 through 9039: Public Financing of Presidential Primary and General Election Candidates; Final Rule: Announcement of Effective Date	8/18/87	52 Fed. Reg. 30904
1987-11	11 CFR Parts 100 and 110: Contributions to and Expenditures by Delegates to Nominating Conventions; Final Rules to Congress	9/22/87	52 Fed. Reg. 35530
1987-12	Public Records and Freedom of Information Act; Final Rules	10/21/87	52 Fed. Reg. 39210
1987-13	Filing Dates for Tennessee Special Elections	10/19/87	52 Fed. Reg. 38814
1987-14	11 CFR Parts 100 and 110: Contributions and Expenditures by Delegates to National Nominating Conventions; Effective Date	11/20/87	52 Fed. Reg. 44594

¹This appendix does not include *Federal Register* notices of Commission meetings published under the Government in the Sunshine Act.