

# **Federal Election Commission**

## **Annual Report 1990**



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**Joan D. Aikens**, Vice Chairman  
**Lee Ann Elliott**, Commissioner  
**Thomas J. Josefiak**, Commissioner  
**Danny L. McDonald**, Commissioner  
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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 1, 1991

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

Dear Sirs:

We are pleased to submit for your information the 16th annual report of the Federal Election Commission, as required by the Federal Election Campaign Act of 1971, as amended. The Annual Report 1990 describes the activities performed by the Commission in carrying out its duties under the Act. The report also outlines the legislative recommendations the Commission adopted and transmitted to the Congress for consideration in March 1991. We are hopeful that you will find this annual report a useful summary of the Commission's efforts to implement the Federal Election Campaign Act.

Respectfully,

A handwritten signature in dark ink, reading "John Warren McGarry". The signature is fluid and cursive, with the first name "John" being particularly prominent.

John Warren McGarry  
Chairman

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The Commission marked its fifteenth year with the promulgation of major new regulations and the expansion of its on-line computer service to the public. New regulations pertaining to the allocation of federal and nonfederal expenses and to debt settlement resolved issues that had been pending for several years.

In the area of public funding of Presidential elections, the Commission addressed problems stemming from the anticipated shortfall in the Presidential Campaign Fund. As the agency responsible for administering the public funding program, the Commission alerted the President, the Congress and the public to the probable funding shortfall in 1992. The Commission also undertook a study on citizen understanding of how the Presidential public funding program works and of the \$1 tax checkoff, which is the sole funding source of that program. Based on this research, which revealed that Americans may not understand the program, the Commission formulated a national public education effort to be launched in Spring 1991. Further, the Commission conferred with the Department of the Treasury concerning the development of Treasury's regulations on the allocation of public matching funds to primary election candidates in anticipation of the shortfall expected in 1992.

Against this backdrop, the Commission continued to carry out its administrative and enforcement responsibilities, as described in the succeeding chapters.

The Presidential Election Campaign Fund has been the sole source of federal money for every Presidential primary, party convention and general election since 1976. The Commission projects, however, that the fund will not be sufficient to fully finance the next Presidential election.

### Shortfall in Fund by 1992

The Commission began to express concern about the status of the fund in 1988, when projections indicated a potential shortfall for the 1996 election. In 1989, the Commission sent two letters to the President and Congress warning of the projected shortfall for 1996. Further, it adopted a formal legislative recommendation urging Congress to enact legislation that would ensure the financial viability of the public funding program.<sup>1</sup> In February 1990, the Commission sent a third letter, alerting the President, Congress and the public to the fact that the Presidential Election Campaign Fund might not have sufficient funds to cover the 1992 primary matching funds unless Congress intervened. In July, the agency notified the Treasury of the pending shortfall and urged that agency to initiate a rulemaking on how to allocate limited funds in the event of a shortfall.

In November 1990, Commission staff projected that the Fund's deficit could occur in the first three months of 1992—a critical time for campaigns. Primary candidates could be shortchanged by as much as \$15 million, depending on how the U.S. Department of Treasury handled disbursements from the Fund.

The increasing inflation rate and decreasing taxpayer participation in the checkoff were the main factors in the November projections. While payouts from the Fund are adjusted for inflation, the one dollar tax checkoff is not. Therefore, as the consumer price index increases, the Fund needs more taxpayers to designate dollars in order to keep pace with the increasing payments to qualified committees. Internal Revenue Service (IRS) statistics, however, indicate that citizen participation has declined. The percentage

of tax forms on which the taxpayer checked yes has fallen in recent years from a high of 28 percent in 1980 to 20 percent on 1989 tax returns.

**Research and Public Education Programs.** Recognizing that low taxpayer participation might be due to a lack of understanding about the tax checkoff, the Commission embarked on a research project to learn why taxpayers do or do not choose to participate in the program. Information gained from this research would indicate whether there was a need for a public education program explaining the 1040 checkoff and the public funding system.

In the first phase of its research, the Commission obtained statistical information about the checkoff from an IRS sample survey showing that taxpayers left the checkoff box blank on 15 percent of the 1989 tax returns; they checked yes on 25 percent of the returns; and checked no on 60 percent of the returns.<sup>2</sup> Results of focus groups conducted by the IRS showed that many taxpayers did not fully understand the program.

During November and December, the Commission conducted its own focus groups around the country to further assess public understanding of the checkoff program.<sup>3</sup> The results of these meetings confirmed that citizens may not know why the public funding program was implemented or how it works. The study also revealed, however, that taxpayers would like to know more. The report summarizing the focus group findings recommended that a public education program address three key points:

- The purpose of the Presidential public funding program;

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<sup>2</sup> These figures differ somewhat from the taxpayer participation statistics discussed earlier. This may be explained by the fact that sample surveys are subject to a certain margin of error.

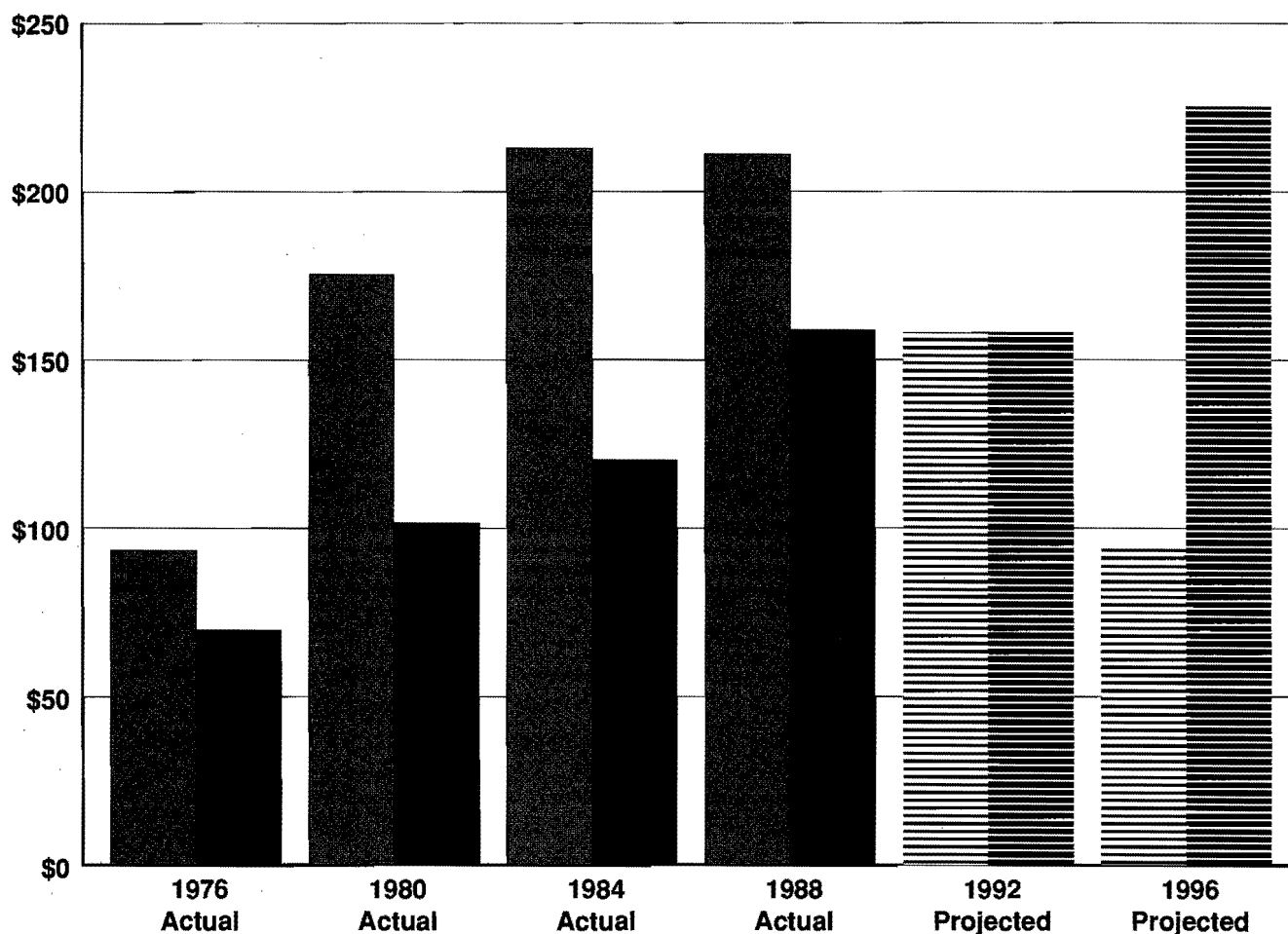
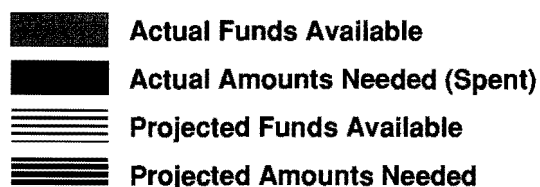
<sup>3</sup> Market Decisions Corporation of Portland, Oregon, conducted the focus groups in three cities: Portland, Oregon; Fort Lee, New Jersey; and Chattanooga, Tennessee.

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<sup>1</sup> See Annual Report 1989.

# **Presidential Campaign Fund: Funds Available and Needed \***

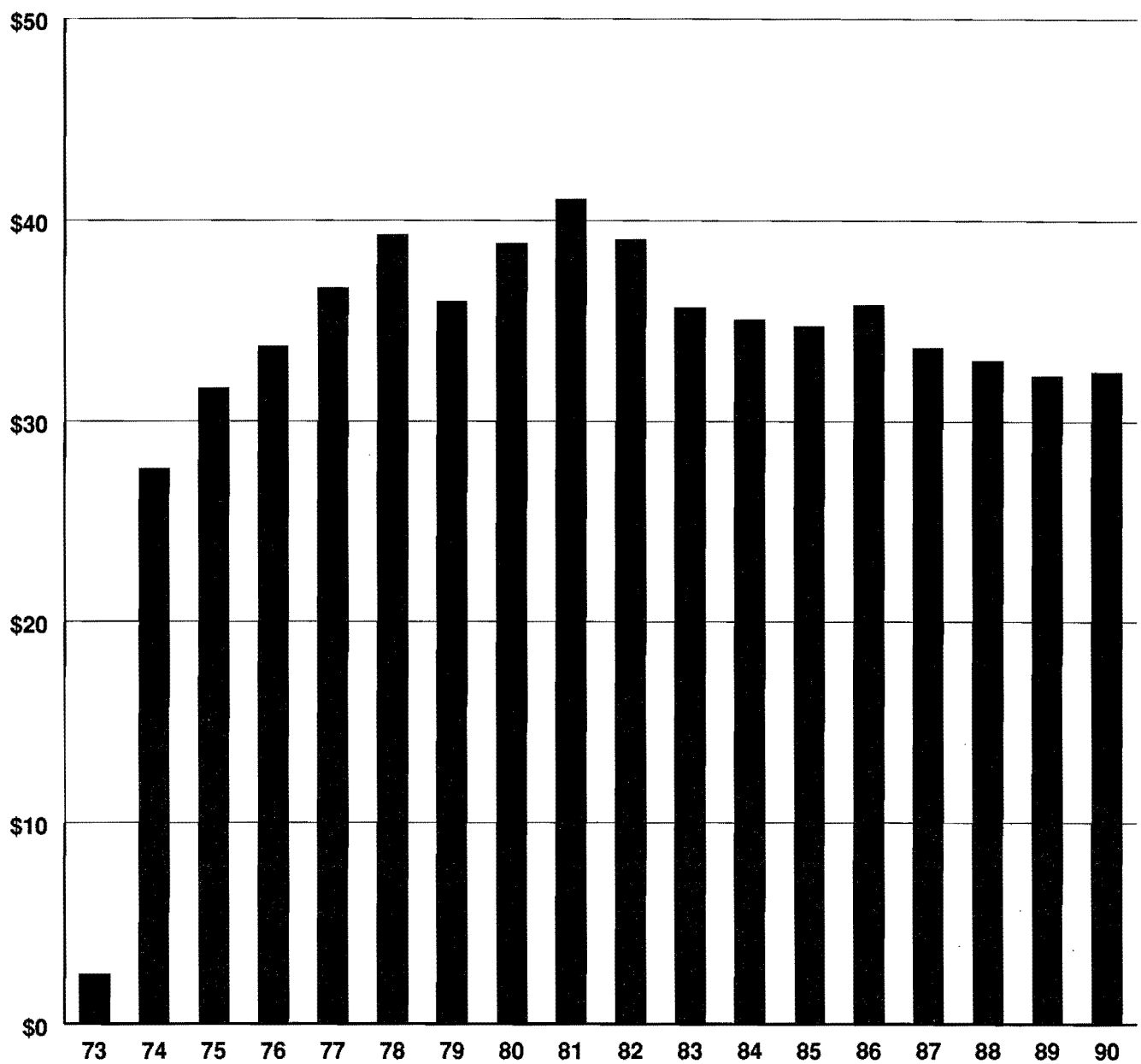
Millions of Dollars



\* The Commission used the following assumptions and estimates in making its projections: (1) a 4.5 percent inflation rate for calendar years 1990-1996; (2) a \$450,000 decline per year in checkoff receipts beginning in 1990; (3) estimated 1992 election cycle payouts to primary candidates based on 1984 figures adjusted for inflation; (4) in 1992, incumbent will not face serious challenge from within party; (5) estimated 1996 election cycle payouts to primary candidates based on 1988 figures adjusted for inflation; (6) in 1996, no incumbent candidate (wide-open field); (7) in 1992 and 1996, no payouts to independent or third party candidates or conventions; (8) repayment estimates based on historical ratio of repayments to payouts (1976-1984 cycles).

**Presidential Campaign Fund:  
Income Tax Checkoff Amounts by Year \***

Millions of Dollars



\* Data provided by U.S. Department of Treasury. Figures for 1973 through 1976 are not verified.



- How much money is collected and spent on the program; and
- How the public funds are allocated and spent.

At year's end the Commission was developing plans for a media program that would implement these recommendations—educating citizens about public funding without advocating an affirmative or negative vote on the tax checkoff.

**Legislative Remedies.** Even with an education program, however, the Commission recognized that a 1996 shortfall was inevitable unless legislative action were taken. In a November meeting, the Commission discussed several legislative recommendations that could alleviate the projected 1996 shortfall, but conceded that only an emergency appropriation of funds could avert a deficit in 1992. Among the recommendations discussed were:

- The elimination of the Presidential convention committee entitlements, thereby freeing approximately \$22.6 million that could be used to finance the primaries;
- The adjustment of the checkoff amount by the inflation factor, thereby increasing the total amount checked off; and
- The replacement of the checkoff with an entitlement approach.

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

In the event of a shortfall in 1992, the Treasury will have to decide how to disburse matching fund payments to primary candidates. In a Notice of Proposed Rulemaking issued December 13, 1990 (55 Fed. Reg. 51303), the Treasury Department proposed a system under which the projected amount needed for the conventions and the general election—\$112.4 million in 1992—would be set aside by January 1 of the

Presidential election year. The remaining amount in the Fund—and additional monthly deposits of check-off dollars—would then be used for matching payments to primary candidates.

If a shortfall were to occur—i.e., if the amount of matching funds certified by the Commission in one month exceeded the total dollars in the Primary Account as of the last day of that month—the amount paid to each candidate would be reduced.<sup>4</sup> The difference between the amount certified and the amount actually paid to the candidate would be carried over to the next month and added to any amounts certified to the candidate during that month.<sup>5</sup>

## Audits and Repayments

### The Audit Process

The Commission is required by law to audit all Presidential candidates and convention committees receiving federal funds to ensure that the funds are not misused and that committees have maintained proper records and filed accurate reports. In 1990 the agency's Audit Division continued to process audit reports of several 1988 committees.

At the conclusion of a fieldwork audit—an on-site examination of the committee's financial records—auditors hold an exit conference to discuss preliminary findings with the committee. Later, these findings are incorporated into an interim audit report. (Follow-up fieldwork may be necessary depending on factors

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<sup>4</sup> The candidate would receive a payment equal to the amount certified to the candidate during that month multiplied by the following fraction:

$$\frac{\text{amount in primary account on last day of month}}{\text{total certified that month, for all candidates}}$$

<sup>5</sup> In early 1991, the Commission submitted written comments and gave oral testimony before the Internal Revenue Service on Treasury's proposed rulemaking. The Commission's written testimony offered a "partial set-aside" alternative to Treasury's proposal. The Commission's plan would factor anticipated 1992 receipts into the equation, thus affording more funds for the early primary campaigns.

spelled out in FEC rules.) The committee may dispute the findings contained in the interim audit report.

The Commission releases a final audit report to the public after legal review and Commission approval. The report may include adjustments to the interim report prompted by the committee's response. Moreover, the Commission may add information based on subpoenaed documents and responses from third parties. The final report may also include an initial determination by the Commission that the committee repay public funds. (Repayment determinations are discussed in the section below.)

The Commission issues addenda to final audit reports based on follow-up fieldwork. Addenda may contain additional findings and repayment determinations.

### **Repayment Process**

When the Commission issues a final audit report, the candidate or convention committee involved may be required to repay federal funds to the U.S. Treasury. For example, a repayment is required when an audit determines that the committee:

- Received public funds in excess of the amount to which it was entitled (e.g., received matching funds for contributions that were later determined to be nonmatchable);
- Had surplus funds remaining on the date of ineligibility;
- Earned interest on invested funds;
- Had stale-dated checks (committee checks that were never cashed by the payees); or
- Incurred nonqualified campaign expenses by spending in excess of the limits, by using public funds for expenses not related to the campaign or by insufficiently documenting the expenditure of public funds.

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

Unless a committee disputes the Commission's initial repayment determination (contained in the final audit report), the determination becomes final, and the committee must make the repayment to the U.S. Treasury. The repayment date is suspended if the committee disputes the initial determination, but the committee must submit written arguments to support its view. The committee may also request to make an oral presentation as part of its response to the final audit report. The LaRouche committee made such a presentation in 1990 (see below).

When making its final repayment determination, the Commission may take into account the committee's written response and its oral presentation. The basis for the Commission's final determination is set forth in a statement of reasons prepared by the Office of the General Counsel. A committee that disputes the initial repayment determination must repay the amount specified in the final determination. Candidate committees may file a petition for a rehearing by the Commission for the purpose of introducing new questions or issues that could not be raised earlier. The deadline for repayment is suspended until the Commission makes a decision on the petition. Finally, a committee may petition the U.S. Court of Appeals for the District of Columbia to review a final repayment determination. The committee must nevertheless make the repayment to the Treasury within the deadline unless the committee obtains a stay from the Commission pending the appeal.

### **1988 Presidential Audits<sup>6</sup>**

The paragraphs below summarize the final audit reports released in 1990 and include the Commission's repayment determinations made through December 1990 with respect to the audited committees. Not included in the summaries are findings concerning committee reporting errors that were corrected through amended reports.

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<sup>6</sup> Audit reports were summarized in the Commission's monthly newsletter, the *Record*. Full audit reports are available to the public at the FEC.

- **Friends of Gary Hart.** The Commission made an initial determination that the Hart campaign had to repay nearly \$35,800 to the U.S. Treasury, representing:

- A prorated portion of surplus campaign funds that the committee had on hand when Mr. Hart withdrew from the Presidential race;
- Interest earned on surplus funds; and
- Matching funds received in excess of the candidate's entitlement.

The Committee made the required repayment prior to the Commission's adoption of the final audit report.

- **Quayle for Vice President and Bentsen for Vice President.** The Commission approved final audit reports for these committees on February 2, 1990, and March 1, 1990, respectively. No repayments were required.
- **LaRouche Democratic Campaign.** On May 17, 1990, the Commission approved the final audit report on the LaRouche Democratic Campaign, the publicly funded committee of Lyndon LaRouche, a 1988 Presidential primary candidate. Based on the results of the audit, the Commission made an initial determination that the campaign repay a total of \$154,894 in public funds to the U.S. Treasury. The campaign requested and received an opportunity to make an oral presentation before the Commission contesting the results of the audit.<sup>7</sup>
- **The Arrangements Committee of the Republican National Committee for the 1988 Republican Nominating Convention.** The Commission made an initial determination that the committee repay \$25,066 in interest earned on invested public funds. This amount represented total

## 1988 Committee Audits

Committee	Date Report Released
duPont	March 9, 1989
Babbitt	May 25, 1989
Haig	June 22, 1989
Gore	July 13, 1989
RNC Convention	October 25, 1989
Fulani	November 2, 1989
DNC Convention	November 21, 1989
Hart	January 25, 1990
Quayle for Vice President	February 20, 1990
Bentsen for Vice President	March 1, 1990
LaRouche	May 17, 1990
Louisiana Host Committee	September 4, 1990
The Atlanta 88 Committee	September 28, 1990
Robertson	Final Report Pending
Kemp	Final Report Pending
Gephardt	Final Report Pending
Dole	Final Report Pending
Dukakis	Final Report Pending
Dukakis-Bentsen	Awaiting Response to Interim Report
Simon	Awaiting Response to Interim Report
Bush	Awaiting Response to Interim Report
Bush/Quayle	Awaiting Response to Interim Report
Gephardt Committee (Joint Fundraiser)	Interim Report Pending
Jackson	Interim Report Pending

interest earned less income tax paid. The final report noted that the committee had already made this repayment. The Commission also initially determined that the committee must repay \$93,056 to the Treasury, the amount by which the committee exceeded the \$9.220 million convention spending limit. Based upon the committee's response, the Commission made a final repayment determination, and reduced the repayment amount to \$7,440. The committee made the repayment May 30.

- **1988 Democratic National Convention Committee.** The Commission initially determined that the committee must repay the estimated \$64,390 it had left over after all expenses had been paid.

<sup>7</sup> A statement of reasons supporting a final repayment determination by the Commission will be issued in 1991.

However, after replacing estimated figures with actual amounts and conducting fieldwork, the final repayment was reduced to \$57,294.

## **Rules on Computer Formats for Presidential Audits**

In October, the Commission prescribed rules on the production of computerized records maintained by publicly funded Presidential candidates. Previously, FEC regulations required publicly funded campaigns that maintained computerized financial records to provide data to the FEC when the agency conducted the mandatory audit of the campaign committee. During the 1988 election cycle, the Commission expended considerable resources reformatting computer tapes that had been submitted during the audit process but which were not compatible with the FEC system. Reformatting the records delayed the completion of certain audits and entailed additional agency expense.

To smooth the process for the 1992 Presidential election cycle, the revised rules on computer formats require that computerized materials be submitted in a format compatible with the FEC's computer processing capability. The rules also list the types of information which, if already computerized, must be made available by an audited committee. Finally, the rules clarify that the committee, not the Commission, must pay for the cost of producing the materials in the required format. Production costs, however, may be treated as exempt compliance costs.

In connection with the rulemaking, the Commission prepared a document, "Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding," which sets forth the technical standards for computerized records submitted to the agency on magnetic tapes or diskettes.

## **Presidential Nominating Conventions**

In August, the Commission asked for comments on proposed changes in the rules governing publicly funded Presidential nominating conventions.

The proposed rules would reorder the regulations to track the progression of convention activity from registration to audits and repayments. The draft rules would also reorganize the current rules by dividing them into Subpart A (11 CFR 9008.1-9008.16), focusing on convention committees, and Subpart B (11 CFR 9008.50-9008.54), governing activity by host committees and local governments in convention cities. Finally, several proposed changes were made to conform with recent revisions to the regulations on publicly funded Presidential candidates, outlined above.

## **Primary and General Election Candidates**

On December 18, 1990, the Commission approved a Notice of Proposed Rulemaking seeking comments on proposed changes to the public financing rules for Presidential primary and general election candidates.<sup>8</sup> The rulemaking notice proposed significant changes in two areas that affect primary election candidates:

- The allocation of expenditures to the state spending limits; and
- The fundraising exemption from the state spending limits.

Other changes were proposed in the following areas:

- Candidate agreements;
- Projected deficiency in the Presidential Election Campaign Fund;

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<sup>8</sup> The Notice appeared in the Federal Register January 2, 1991. (56 Fed. Reg. 106)

- High error rates in matching fund submissions;
- Inclusion of computer tapes or diskettes in matching fund submissions, if the committee has computerized its contributor records;
- Matching of redesignated and reattributed contributions;
- Application of the 10 percent rule in determining a primary candidate's date of ineligibility;
- Contributions received by a candidate who continues to campaign after his or her date of ineligibility;
- Documentation of qualified campaign expenses allocated to particular states;
- Transfers and loans from a candidate's publicly funded committee to a committee authorized by the candidate for a different election;
- Reimbursements by media personnel and the Secret Service for travel costs;
- Joint fundraising;
- Subpoenas issued during Commission audits;
- Double counting of repayable amounts;
- Repayment for exceeding both the state and the overall spending limits; and
- Notification of repayment determinations and failure to provide needed records.

As mandated by Congress, the FEC administers public funding of presidential elections,<sup>1</sup> oversees campaign finance disclosure, promulgates regulations based on the Act, interprets the law through advisory opinions, encourages compliance through assistance and outreach, reviews reports filed by political committees, enforces the law, and serves as a resource for election information.

### Public Disclosure

#### Public Records

The FEC Public Records Office is the hub of the agency's disclosure program. More than 15,000 people visited the office in 1990.

All campaign reports filed by federal committees are available for inspection in the Public Records Office within 48 hours of receipt. Reporters, interest groups and other interested persons visit the office to scrutinize these reports and the computer printouts, looking for possible errors and violations of the law.

Public Records staff offer personalized assistance to visitors, helping them locate the documents and research tools they need. Using the office's research space and copying equipment, visitors have access to numerous materials, including: reports and statements filed by the regulated community; standard computer indexes, updated daily; *FEC Reports on Financial Activity*, the final statistical studies of an election cycle; advisory opinions; enforcement files (closed MURs); audit reports; and Commission meeting agenda documents. Requests for materials are also handled over the phone. Callers ordering documents on a regular basis set up running accounts, a convenient way to pay the fees for copying and computer services.

#### Press Office

During 1990, the Press Office continued to be the key link with the media, responding to more media requests for information and assistance than in any

other non-Presidential election year. Foreign media interest in U.S. election activities continued to grow with more than 17,000 telephone queries and personal visits from reporters representing print and broadcast media worldwide.

Immediately following each quarterly report and the 12-day pre-general election report, the Commission issued press releases providing timely and detailed statistics on campaign finance activities of candidates, parties and PACs. This extensive disclosure effort replaced the expensive interim reports previously produced by the Commission.

The Press Officer is also the Commission's Freedom of Information Officer. Because most of the agency's records are readily available for public review, FOI requests have generally become more complex. Requests for computer tapes and access to the Commission's Direct Access Program are processed under the Freedom of Information Act.

#### Data Processing

The Commission serves the public interest by providing computer access to campaign finance information. In 1990, more people used the computer system, and obtained information faster than ever before.

The Direct Access Program (DAP), which permits subscribers to review disclosure information on their own computers, gained further acceptance in 1990. Subscribers increased from 200 to 225, and they used the system for longer periods of time.

This increased interest, the Commission believes, stemmed from improvements in the system. The Data Systems Development Division simplified the program, eliminating the need for subscribers to have prior technical knowledge and cutting out unnecessary information. At the same time, data programmers added new inquiry reports and adjusted the format to a standard size to make the reports easier to read. Another refinement enabled users with a focused area of interest (e.g., general election candidates in a specific state or states) to store their research categories in the FEC's computer. The redesigned DAP became available in March. Then, in September, the Individual Contributor Search came on-line. This

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<sup>1</sup> See Chapter 1.

search program allows subscribers to trace the election activity of individual contributors.

For those who did not subscribe to DAP, the FEC's state access program provided on-line access to campaign finance data. The general public could request printouts of FEC indexes in 22 state offices around the country.

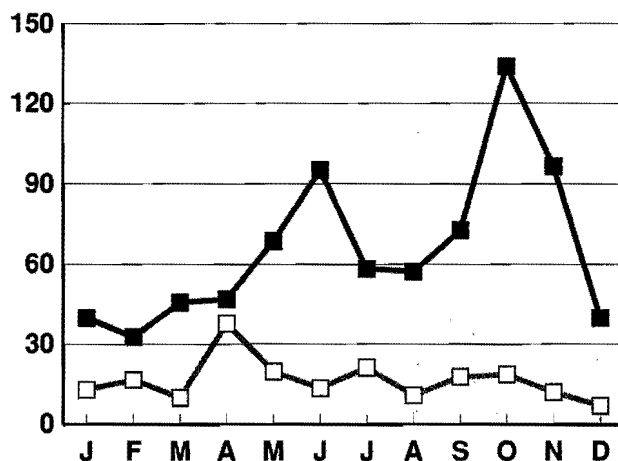
Software improvements also led to faster processing of reports filed at the Commission. For example, information from the October 25 pre-general election reports was released to the press on November 1, earlier than ever before.

The Commission coded contributor information for all contributions of more than \$200. In previous election cycles, the threshold had been \$500, but increased funding and improvements to the system permitted expanded coding.

### Direct Access Usage by Month in 1990

■ DAP  
□ States

Hours per Month



## Regulations

FEC regulations explain the statute's requirements in detail. The Commission revises its rules to give increased guidance to committees. In 1990, the agency prescribed a comprehensive set of revised regulations on allocation of federal and nonfederal expenses ("soft money"), debt settlement, foreign nationals and computerized magnetic media. The Commission also continued to work on revisions in other areas, including election activity of nonprofit and foreign-owned corporations. (See Chapter 3)

### Allocation of Federal and Nonfederal Expenses: The Soft Money Issue

Activity that influences federal elections must be financed with funds subject to the limits, prohibitions and reporting requirements of federal law. When activities influence both federal and nonfederal elections, committees may finance a portion of the expenses from a nonfederal account, which may contain funds not permissible under federal law—so called "soft money." These nonfederal disbursements have generally not been reportable or subject to the federal law's limits and prohibitions.

Questions have arisen, however, as to whether this soft money has been used to influence federal elections, whether it should be disclosed, to what extent it can be regulated under federal law, and whether new legislation is needed to monitor its use.<sup>2</sup>

The Commission has been concerned with this issue for a number of years. In 1986, after conducting public hearings, the Commission concluded that evidence of improper use of soft money in federal elections was insufficient to justify the stringent rules suggested in a rulemaking petition submitted by Common Cause. The U.S. District Court for the District of Columbia upheld the Commission's decision to deny the rule changes requested in the petition, but it did order the FEC to clarify its allocation regulations. Subsequently, the court directed the

<sup>2</sup> The Commission has asked Congress to consider legislative action in this area.

Commission to report to it, every 90 days, on Commission progress toward adopting new allocation rules.

In June 1990, after evaluating information gathered from a questionnaire, from responses to a notice of proposed rulemaking and from testimony at hearings,<sup>3</sup> the Commission developed new regulations. The Commission sent the rules and new forms to Congress on June 18 and prescribed them on October 3. For committees engaged in shared federal and nonfederal activity, these revised rules stipulate:

- Specific allocation methods;
- Reporting of allocated expenses by political committees with two accounts—federal and nonfederal;
- For allocable expenses, payments to vendors from the federal account and corresponding transfers from the nonfederal account for its share, to be made within a 40-day window;
- A rebuttable presumption that any fundraising notice that mentions a federal candidate or election is soliciting federally permissible funds for the federal account only; and
- Reporting by national committees of all activity of their nonfederal accounts as well as their federal accounts.

The revised rules took effect January 1, 1991, and are summarized in Appendix 6.

### **New Debt Retirement Rules**

The Commission also promulgated new regulations concerning debts owed by candidates and political committees. Under the new rules, only "terminating committees" are permitted to settle debts for less than the amount owed. However, an ongoing committee may request that the Commission determine that a debt is unpayable because the creditor cannot be located or has gone out of business. Further, subject to Commission review, a creditor may forgive the

outstanding balance of a debt owed by an ongoing committee if the committee is inactive and unable to pay its bills, or if the committee cannot be located. The new rules, which went into effect October 3, 1990, are summarized in Appendix 7.

### **Foreign National Rules**

The Commission revised the regulations governing election-related activity by foreign nationals. The new rule, which took effect April 11, 1990, clarifies that foreign nationals may not make expenditures in connection with federal or nonfederal elections and may not participate in the decision-making process of other persons (including corporations, labor organizations and political committees) with regard to their election-related activity.<sup>4</sup>

### **Rules on Computerized Recordkeeping**

The Commission also prescribed new regulations governing technical aspects of FEC audits. The rules apply to publicly funded presidential committees that maintain computerized records and submit magnetic media as part of the FEC's audit. (See Chapter 1)

## **Advisory Opinions**

The Commission issued 26 advisory opinions in 1990. These opinions, which respond to formal requests from anyone involved in activity subject to federal election law, clarify the law for the requester and for those in the same situation as the requester. In addition, requests for advisory opinions sometimes bring to light areas of the law that need further clarification, leading eventually to revised regulations.

Selected advisory opinions issued in 1990 are summarized in Chapter 3, Legal Issues.

<sup>3</sup> See 1989 Annual Report for background.

<sup>4</sup> On August 22, 1990, the Commission published a Notice of Proposed Rulemaking seeking comments on whether the agency should further amend its regulations governing foreign nationals to address their role in domestic corporations. (See Chapter 3)



## Assistance and Outreach

### Telephone Assistance

The Commission has developed a strong outreach program to help those who must comply with the campaign finance law. The heart of the program is the toll-free information line (800-424-9530). Public affairs specialists answer thousands of questions on the toll-free and local lines each year.

### Reporting Assistance

Reports analysts conduct detailed reviews of all reports filed (nearly 35,000 in 1990) and are therefore extremely well versed in the complexities of reporting and related compliance matters. Any committee is free to call the Commission and speak directly to the analyst who handles its report.

If an analyst finds an apparent problem in a committee's report, the Commission will send a letter (called a request for additional information or RFAI) to the committee, offering it an opportunity to correct its report voluntarily or to provide further information. A committee's cooperation often resolves a problem that might otherwise result in an enforcement action by the Commission.<sup>5</sup>

The FEC goes to great lengths to inform committees about upcoming reporting dates and reporting rules. The agency sends each committee treasurer a reminder of upcoming deadlines three weeks before the due date of a report. More than 44,000 of these notices were mailed this year. The FEC's monthly newsletter, the *Record*, also alerts readers to reporting requirements. In 1990, seven of its twelve issues contained reporting notices.

### Publications

The *Record*, published monthly, is key to staying abreast of Commission decisions and activity. In addition to detailing the reporting requirements, it briefs readers on new advisory opinions, regulations

and litigation. All treasurers automatically receive the *Record*, but anyone may order a free subscription.

In 1990 the agency revised the *Campaign Guide for Party Committees*, published a special *Record Supplement* on the new allocation rules and published, for the first time, a compilation of *Selected Court Case Abstracts* pertaining to the federal election law. (Previously, the collection had been available only as an internal document.)

Further, the agency produces and distributes free publications and video tapes that explain the law. In 1990, the Commission updated the *Explanation and Justification* (E&J) for Commission regulations and published the fifth edition of the *State/Federal Disclosure Directory*.

### Conferences and Visits

Commissioners and staff also conduct conferences each year, which include basic as well as more advanced workshops on the law. At the 1990 conferences, held in Washington, D.C., and Phoenix, Arizona, Internal Revenue Service staff were also available to answer questions on tax-related issues.

In another outreach effort, public affairs specialists traveled to three cities to brief staff of political action committees, party committees and candidate committees on the requirements of the law. Specialists spent two days in each city—Lansing, Nashville and Honolulu—answering questions and reviewing areas of the law specific to the needs of the participants.

Late in the year, several Commissioners and FEC staff members began conducting allocation workshops for state party committees and others affected by the new regulations (discussed in this chapter). Staff traveled to Tallahassee, Miami, Seattle and Los Angeles before the year was out. Additional training sessions were scheduled for early 1991 in New York, Boston, Denver, Des Moines, Austin, Columbus and Washington, D.C.

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<sup>5</sup> The Commission mailed more than 8,000 RFAI's in 1990. (See Appendix 5)

## Enforcement

### The Enforcement Process

The Commission is alerted to possible violations of the law through its own internal monitoring procedures, through externally generated complaints and by referrals from other law enforcement officials. Potential violations become Matters Under Review (MURs) and are assigned case numbers.

All phases of the enforcement process remain confidential until a case is closed and put on the public record. Respondents are given a reasonable opportunity to demonstrate that no action should be taken against them. If the Commission decides there is "reason to believe" a violation of the law has occurred, it investigates the matter. The Commission may also issue orders and subpoenas that require individuals to answer questions or produce documents. When necessary, the agency may ask a federal district court to enforce FEC orders and subpoenas. If the Commission believes there is sufficient evidence to show "probable cause to believe" the respondent violated the law, the agency must try to resolve the matter through a conciliation agreement. If conciliation fails, the agency may file suit against the respondent in a federal district court.

The accompanying table shows the Commission's caseload of MURs from 1985 through 1990.

### Enforcement of Civil Penalties

The Commission explored new methods to secure payment of outstanding civil penalties in 1990. The agency initiated contempt proceedings against several committees and treasurers, resulting in additional penalties for many of the committees involved.<sup>6</sup> The courts imposed fines as large as \$10,000 plus interest.

In at least one contempt finding, the court specifically held the committee's treasurer liable. The court ruled that because "political committees have a tendency to dissolve after an unsuccessful campaign," Congress chose to hold an individual—the committee treasurer—responsible for compliance with the Federal Election Campaign Act. It therefore follows that "an individual will also stand responsible for his indiscretions as a treasurer."<sup>7</sup>

<sup>6</sup> 1990 Contempt cases: *FEC v. Augustine*; *FEC v. Dramesi for Congress Committee*; *FEC v. Weinberg*; *FEC v. Working Names, Inc.*; *FEC v. Friends of Isaiah Fletcher Committee*.

<sup>7</sup> *FEC v. Dramesi for Congress Committee*, Civil Action No. 85-4039 (MHC) (D.N.J. 1990).

### Caseloads of MURs

	1985	1986	1987	1988	1989	1990
Pending at Beginning of Year	172	137	143	171	220	201
Opened During Year	257	191	261	236	218	195
Closed During Year	292	185	233	187	237	159
Pending at End of Year	137	143	171	220	201	237

## Clearinghouse on Election Administration

The Commission's National Clearinghouse on Election Administration serves as a central exchange for research and information on the administration of federal elections. This section covers 1990 Clearinghouse activities.

### Advisory Panel

The Commission confirmed three new members of the Clearinghouse Advisory Panel, which is composed of election officials from around the country. The appointment of these new members maintains the panel's geographic representation and ideological balance.

At its annual meeting, held in Chicago on December 12-14, the Panel discussed economic issues, the 1990 census and election-related crimes.

### Publications

*Ballot Access.* This four-volume 1990 publication is a comprehensive, state-by-state guide to ballot access requirements for primary and general elections, both Presidential and Congressional. It covers requirements for major, minor, independent and write-in candidates.

*Election Case Law 89.* This publication contains an overview of the laws governing elections as applied by state and federal appellate courts. Each chapter addresses a separate issue, opening with a comprehensive summary of the current state of the law, followed by summaries of leading court cases. Each chapter also contains synopses of other selected cases and a bibliography of legal literature.

*Contested Elections and Recounts.* This two-volume report describes methods of processing challenges to federal elections and the major policy issues involved. It provides a legal background and explains procedures for handling contested elections, and describes

the procedures followed by each state in contested elections and recounts.

*Campaign Finance Law 90.* This publication provides quick reference charts and detailed state-by-state descriptions of state campaign finance report filing requirements, contribution and solicitation limitations, special tax or public financing provisions, regulatory agencies and many other important features of state campaign finance laws.

### Voting System Standards

The Commission officially issued the Clearinghouse's *Performance and Test Standards for Punchcard, Marksense, and Direct Recording Electronic Voting Systems* in early 1990. This publication, the result of long-term research and dialogue, presents voluntary performance and test standards that may be used by states and voting system vendors to improve the accuracy, integrity and reliability of computer-based voting systems.

The Commission issued three advisory plans in conjunction with these standards: *A Plan for Implementing the FEC Voting System Standards*, *A System Escrow Plan for the Voting System Standards Program* and *A Process for Evaluating Independent Test Authorities*. These documents sequentially discuss issues that states may wish to consider when implementing the standards, the placement of voting system proprietary information in escrow and a method of assessing the potential independent authorities that are willing to test computer-based ballot tabulation systems against the standards.

This chapter summarizes a number of campaign finance issues addressed in the year's litigation, advisory opinions and enforcement cases (MURs).

### Nonprofit Corporations: MCFL Issues

The extent to which laws may limit election-related activity by nonprofit corporations continued to occupy the courts, legislatures and executive agencies during 1990. All three branches explored the application of the Supreme Court's 1986 decision in *FEC v. Massachusetts Citizens for Life* (MCFL).<sup>1</sup> In that case, the Court ruled on the constitutionality of 2 U.S.C. §441b, the provision in the Federal Election Campaign Act that prohibits corporate contributions and expenditures.

#### Issues

**The MCFL Exception.** The Supreme Court concluded in 1986 that "§441b's restriction of independent spending<sup>2</sup> is unconstitutional as applied to MCFL." The Court ruled that "MCFL has three features essential to our holding that it may not constitutionally be bound by §441b's restriction on independent spending." The three features are:

1. The organization is a nonprofit ideological corporation formed "for the express purpose of promoting political ideas, and cannot engage in business activities."
2. It has "no shareholders or other persons affiliated so as to have a claim to its assets or earnings."

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<sup>1</sup> 479 U.S. 238 (1986)

<sup>2</sup> An independent expenditure is an expenditure for a communication which expressly advocates the election or defeat of a clearly identified candidate but which is not made in cooperation or consultation with, or at the request or suggestion of, or with the prior consent of any candidate or his or her authorized committees or campaign agents. 2 U.S.C. §431(7)

3. It has not been established by a corporation or labor union and has a policy "not to accept contributions from such entities."

**Express Advocacy.** The Court rejected MCFL's argument that its election-related publication did not constitute an expenditure under the Act because it did not "expressly advocate" the election or defeat of a clearly identified candidate. The Court's opinion, however, included language indicating that an express advocacy standard was the proper test to determine whether or not a publication met the Act's expenditure definition. The Commission has contended in subsequent litigation that this language is dicta (that is, a statement, but not a binding ruling). See, for example, the discussion below of *Faucher and Maine Right to Life Committee v. FEC*.

#### Application to 1990 Court Cases

During 1990, two courts applied these MCFL standards in their decisions.

**Austin v. Michigan Chamber of Commerce.** Application of the MCFL exception was central to a 1990 case involving Michigan state law and activities conducted by the Michigan Chamber of Commerce. On March 27, the Supreme Court of the United States upheld a Michigan statute containing prohibitions similar to section 441b.<sup>3</sup> The Court held that the Chamber did not qualify for the constitutional exemption from the ban on corporate spending set forth in the MCFL case because the Chamber, in effect, did not meet the 3-part test explained in MCFL.

With regard to the first characteristic, the Court observed that, unlike MCFL, the Chamber of Commerce's activities were not limited to political and public educational purposes.

The Chamber also failed to meet the second of the MCFL criteria. The Court concluded, "[W]e are persuaded that the Chamber's members are more similar to the shareholders of a business corporation

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<sup>3</sup> Section 54(1) of the Michigan Campaign Finance Act.

than to the members of MCFL." Because the Chamber provided its members with several nonpolitical benefits and services, members had an economic disincentive to withdraw support from the organization even if they disagreed with its political views.

With respect to the third MCFL feature, the Court noted that here "the Chamber differs most greatly from the Massachusetts organization." While "MCFL was not established by, and had a policy of not accepting contributions from, business corporations," three-fourths of the Chamber's members were business corporations, and the organization's treasury contained corporate funds in the form of membership dues. "Because the Chamber accepts money from for-profit corporations, it could, absent application of §54(1), serve as a conduit for corporate political spending," the Court concluded.

#### ***Faucher and Maine Right to Life Committee***

**(MRLC) v. FEC.** This case involved both the MCFL exception and the express advocacy standard. The U.S. District Court for the District of Maine employed the "express advocacy test" in evaluating the Commission's voter guide regulation (11 CFR 114.4(b)(5)(i)). The regulation permits a corporation to publish voter guides for distribution to the general public so long as certain nonpartisan criteria are met. Among them is a requirement that the voter guide not advocate a particular stance on the issues presented. The district court's opinion concluded that "the regulation, as currently promulgated with its focus on issue advocacy [rather than express advocacy], is contrary to the statute as the United States Supreme Court has interpreted it...." *Faucher v. FEC*, No. 90-0112-B, slip op. at 10 (D.Me. June 29, 1990). The court denied, however, MRLC's claim that it qualified for the MCFL exception, because MRLC did not have a policy against accepting contributions from corporations and labor organizations. The Commission has appealed the court's decision invalidating the voter guide regulation. For a summary of the case and the court's decision, see the September 1990 *Record*.

#### **Request for Comments on MCFL Rulemaking**

On October 3, 1990, the Commission published a Notice in the Federal Register (55 Fed. Reg. 40397) seeking comments as to whether the Supreme Court's decision in *Austin*, which elaborated on the MCFL exception, should be incorporated into Commission regulations. The Notice also sought comments on the district court's application of the express advocacy standard in *Faucher* (MRLC) and in a 1989 case involving the National Organization for Women.<sup>4</sup>

The notice was the third such request for public comment. In 1987, the Commission invited comments on a rulemaking petition filed by the National Right to Work Committee, which wanted the Commission to incorporate the express advocacy test set forth in *MCFL* as the standard for judging expenditures. In 1988, the Commission published an Advance Notice of Proposed Rulemaking that sought comments not only on the express advocacy issue but also on other questions raised by the *MCFL* decision. The Commission held a hearing later that year, at which two witnesses testified concerning these issues.

In addition to the proposed rulemaking, the Commission has submitted legislative recommendations asking Congress to consider addressing these issues through statutory revisions.<sup>5</sup>

#### **Foreign-Owned Corporations**

Foreign nationals are prohibited from making direct or indirect contributions in connection with elections to

<sup>4</sup> In *FEC v. National Organization for Women (NOW)*, 713 F. Supp.428 (D.D.C. 1989), decided on May 11, 1989, the U.S. District Court for the District of Columbia applied an express advocacy standard to determine whether section 441b permitted an incorporated membership organization to pay for certain letters directed to the general public that solicited new members and derogated specific federal candidates. The court concluded that the corporation had not violated section 441b because the letters did not go beyond the discussion of issues to express advocacy. The Commission has filed an appeal in this case.

<sup>5</sup> See Annual Report 1989.

any public office: state or local as well as federal. The definition of foreign national includes a corporation organized under the laws of a foreign country or having its principal place of business in a foreign country. (See 22 U.S.C. §611(b).) In an advisory opinion released in 1990, the Commission permitted domestic subsidiaries of foreign companies to establish separate segregated funds subject to certain rules (see below). However, the Commission also considered drafting a new regulation that would change the definition of foreign national to include any corporation that is more than 50 percent foreign owned. If adopted, such a change would have the practical effect of prohibiting such subsidiaries from establishing SSFs, thus superseding not only the opinion discussed here, but also several past Commission opinions on the subject.

#### **Corporation Majority-Owned by Foreign Bank**

In AO 1990-8 CIT Group Holdings, Inc. (CIT), a Delaware corporation, was permitted to establish and operate a separate segregated fund even though 60 percent of its stock was owned by a Japanese bank and CIT's 10-member board included five foreign national members.

The Commission stipulated that foreign nationals could not be solicited for contributions and could not participate directly or indirectly in the decision-making process of CITPAC. To ensure the exclusion of foreign nationals from participation in PAC activity, the Commission required foreign national board members to abstain from voting, not just on matters concerning the PAC, but also on the selection of individuals to operate the PAC.

#### **Proposed Rulemaking**

On August 22, 1990, the Commission published a Notice of Proposed Rulemaking seeking comments on whether the agency should change its regulations governing foreign nationals. The proposed rule would treat a domestic corporation as a foreign national if the corporation's foreign ownership exceeded 50 percent.

At public hearings held in October, all but one of the thirteen witnesses who testified opposed the rule

change. Several representatives of affected corporations argued that the new rule would unconstitutionally limit their employees' right to participate in the political process, and that any change to the existing regulations would have to be initiated through legislation rather than Commission action.<sup>6</sup>

Testifying in support of the proposed rule, a representative of Senator Lloyd Bentsen argued that the proposal was consistent with the intent of the statute and that it served the American public's interest in keeping questionable money out of U.S. elections.<sup>7</sup>

The Commission also received more than 60 written comments. Among those submitting comments, the Departments of Treasury, State and Commerce opposed the rule, citing a U.S. policy of equal treatment for foreign-owned companies. The Department of Justice, however, supported the proposal as being consistent with the internal security objectives of the statute (2 U.S.C. §441e).<sup>8</sup>

## **Fundraising Via 900-Line Telephone Service**

Political committees are beginning to employ new technologies in their fundraising efforts. One such technology is 900-line telephone service. When a caller dials the committee's 900 number, he or she may hear a message and/or register an opinion. The cost of the call is a contribution from the caller to the committee. Typically, the committee contracts with a telephone service bureau that provides the 900-line program. This service bureau then works with the telephone company and its local carriers to get the service on-line and to provide for caller billing.

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<sup>6</sup> The Commission has, on several occasions, submitted legislative recommendations encouraging Congress to consider a statutory revision.

<sup>7</sup> For a summary of the hearing, see the December 1990 *Record*, p. 2.

<sup>8</sup> Copies of written comments are available in the FEC's Public Records Office.

In AOs 1990-1 and 1990-14 the Commission approved plans submitted by Digital Corrections Corporation (a service bureau) and AT&T (a telephone company), respectively, to provide 900-line service to federal candidates and committees for fundraising purposes provided that the companies met certain conditions ensuring compliance with the limitations and prohibitions on contributions and with the rules governing fundraising activities.

Since corporations are prohibited from making contributions in connection with federal elections, political committees had to pay the usual and normal charge, and precautions had to be taken to prevent service bureaus and telephone companies from absorbing any of the costs of the program, and thereby illegally contributing to the political committees. In 1990-1, DCC proposed a deposit from committees sufficient to cover the costs of the program, and adequate to cover any losses. Since AT&T generally does not contract directly with political committees, it did not have to require a deposit, but it had to operate according to its normal business practices and monitor the program closely.

To preclude the acceptance of a prohibited contribution from other corporations and ineligible sources, DCC had to provide the committees with the identity of callers. DCC planned to use existing technology to identify callers by telephone number, screening out prohibited contributors (foreign, corporate, labor, etc.), and facilitating necessary recordkeeping and reporting.

Subject to these and other conditions, the Commission approved the use of 900-lines to raise funds for political committees.<sup>9</sup>

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<sup>9</sup> In December, Call Interactive requested an opinion concerning its role in providing 900 service to political committees. Call Interactive is a service bureau similar to DCC (above), but in some respects its procedures differ from those of DCC. For example, it does not require a deposit. The Commission did not issue an opinion in this case.

## Excessive Contributions

Contributions made in connection with federal elections are subject to the limitations of 2 U.S.C. §441a. During 1990, the Commission pursued several enforcement cases in which contribution limits were exceeded in various ways. Some of special significance are described below.

### Excessive Contribution Received by Candidate Committee

One enforcement action concerned a Congressional candidate committee's acceptance of an excessive contribution and the committee's failure to disclose the contribution correctly.

In MUR 2823, a Congressional candidate received a \$20,000 loan from a supporter, secured with 4,000 shares of corporate stock from the candidate's personal assets. The candidate then passed the funds on to his campaign committee. The candidate and the supporter ratified their agreement with a preprinted promissory note obtained from a bank. Although the candidate claimed that the transaction constituted a sale, in which the stock was exchanged for cash, the Commission said the transaction was a loan to the committee. Because the amount exceeded the individual \$1,000 per election contribution limit, the loan was an excessive contribution.

The Commission entered into conciliation agreements with the candidate, the committee and the supporter prior to finding probable cause. The agreements included an admission of knowing and willful violation, a civil penalty of \$7,750 for the candidate and his committee and a penalty of \$7,500 for the supporter.

### Excessive Contributions Made in the Name of Others

*Goland v. U.S. and FEC* involved the making of excessive contributions in the name of others and the court's denial of the defendant's claim that the First Amendment guaranteed his right to make unlimited anonymous contributions to third-party candidates.

**Criminal Indictments and Trials.** On December 14, 1988, a federal grand jury in Los Angeles indicted Mr. Goland for violations of the Federal Election Campaign Act and criminal statutes stemming from his activities during the 1986 election. According to the indictments, he had advanced \$120,000 to a media company to produce advertisements for a third-party Senate candidate. Mr. Goland actually wanted the Democratic candidate to win the election and had financed the last-minute third-party effort in order to divert votes from the Republican candidate. Mr. Goland tried to conceal his identity as the donor of the \$120,000 contribution by funneling the money through 56 persons, who were later reimbursed by Mr. Goland. The third-party campaign, uninformed of the true source of the contribution, reported the money as contributions from the 56 individuals.

The federal grand jury charged that Mr. Goland had knowingly and willfully caused the treasurer of the third party campaign to make false statements to the FEC for the purpose of concealing the \$120,000 contribution. Additionally, it charged Mr. Goland with violating the Act by exceeding the \$1,000 per election contribution limit and by making a contribution in the name of another.<sup>10</sup>

The first criminal trial of Mr. Goland, which concluded on July 10, 1989, resulted in a mistrial because of a hung jury. On September 19, 1989, a federal grand jury returned a superseding indictment charging additional violations of the Act's contribution limits and of criminal statutes. The second trial ended on May 3, 1990, convicting Mr. Goland of one misdemeanor count of making an excessive contribution. He was acquitted on four other counts of conspiracy and making false statements. The jury deadlocked on one felony count of making false statements. On July 16, 1990, Mr. Goland received a federal prison

sentence of 90 days on the one conviction (excessive contribution).

**Constitutional Challenges.** On March 13, 1989, after the December 1988 criminal indictment, Mr. Goland filed civil suit in the U.S. District Court for the Central District of California seeking immediate certification to the *en banc* court of appeals under 2 U.S.C. §437h of three constitutional challenges to the Act. He claimed, in essence, that the First Amendment protected his right to make unlimited anonymous contributions to a third-party candidate. On May 1, 1989, the court dismissed the suit with prejudice, concluding that the constitutional claims were frivolous under *Buckley v. Valeo*. Mr. Goland immediately filed an appeal.

In its opinion of May 21, 1990, the appeals court affirmed the district court's judgment, denying appellant's constitutional challenges and dismissing the suit.

### **Earmarked Contributions Result in Excessive Contributions**

In *FEC v. National Republican Senatorial Committee*, the Commission asked the district court to find that the National Republican Senatorial Committee (NRSC) (1) exceeded contribution limits by over \$2.6 million<sup>11</sup> and (2) failed to report approximately \$2.7 million in contributions made by NRSC because contributions it had solicited and passed on to candidates had not been effectively earmarked for the candidates, and because NRSC had exercised "direction or control" over the choice of recipients of the contributions. (See *FEC v. NRSC* below)

**Original Complaint.** In 1986, Common Cause filed an administrative complaint (MUR 2282) alleging that NRSC had made excessive contributions to 12

<sup>10</sup> 2 U.S.C. §441f prohibits a person from making a contribution in the name of another, allowing his/her name to be used for such a contribution, and from knowingly accepting such a contribution.

<sup>11</sup> National party committees may contribute up to \$5,000 per election to a federal candidate, and \$5,000 per calendar year to other political committees. In addition, a national party committee and its Senate campaign committee share a special limit for Senate candidates: \$17,500 per candidate for the entire campaign period. 2 U.S.C. §441a



Senate candidates, the result of a series of direct mail solicitations in which NRSC asked contributors to write checks payable to NRSC to be used to benefit 1986 Republican Senate candidates in four states. The solicitation letter said that the amount an individual contributed would be divided equally among the four campaigns mentioned in the letter.

Commission regulations provide that earmarked contributions are attributable to both the original contributor and the conduit organization if the conduit exercises "direction or control" over the choice of the recipient candidate(s). 11 CFR §110.6

The Commission's General Counsel recommended that the Commission conclude that the contributions had been properly earmarked for the recipient candidates, and that it find probable cause to believe that NRSC should have considered the \$2.7 million paid to the 12 candidates as contributions from NRSC because NRSC had exerted "direction or control" over the choice of the recipient candidates.

The Commission voted 3-3 on the "direction or control" issue, and therefore dismissed this part of the complaint. (The Commission did find probable cause to believe that there were other violations, including excessive contributions totaling \$545,249, and in December 1988 it voted to accept a conciliation agreement with NRSC and its treasurer. The agreement included a \$20,000 civil penalty.)

**Common Cause v. FEC.** In February 1989, Common Cause filed suit requesting that the U.S. District Court for the District of Columbia declare that the Commission's dismissal of the "earmarking" and "direction or control" charges in its complaint was arbitrary, capricious and contrary to law. The court, on January 24, 1990, made such a ruling, specifically concluding that (1) the contributions had not been properly earmarked for the recipient candidates and (2) the NRSC had exercised "direction or control" over the contributions in question. The court remanded the case to the FEC with instructions to conform with the court's declaration within 30 days.

**FEC v. NRSC.** By a 3-3 vote, the Commission decided not to appeal the district court's decision, and

on February 15, 1990, reopened enforcement proceedings. Consistent with the court's decision, the Commission found probable cause to believe that NRSC and its treasurer had violated FEC regulations by failing to report, as contributions from NRSC, over \$2.7 million in payments it made to the 12 Senate candidates. The Commission also found probable cause to believe that defendants had exceeded the limits on contributions to the candidates by over \$2.6 million. However, the Commission could not reach a conciliation agreement with defendants and therefore authorized a lawsuit on August 24.<sup>12</sup>

## Redistricting

As results from the 1990 Census become final, many states will need to redraw district lines to account for changes in Congressional representation. Candidate efforts to raise funds to influence redistricting was the subject of AO 1990-23.

In this advisory opinion the Commission said that Representative Martin Frost could not set up a "separate segregated" account within his principal campaign committee to receive funds prohibited under the Federal Election Campaign Act to cover expenses related to redistricting and reapportionment matters. However, Mr. Frost could himself set up a reapportionment fund that was independent of his authorized committee; such a fund would not be subject to the requirements of the Act. Further, the committee could use its funds to pay reapportionment expenses and report them as committee disbursements.

## Transfer from State PAC to Affiliated Federal PAC

Commission regulations permit affiliated committees to make unlimited transfers between each other. Generally, political committees are considered to be

<sup>12</sup> The case was pending in the U.S. District Court for the District of Columbia at the end of 1990.

affiliated if they are established, financed, maintained or controlled by the same person. 11 CFR §100.5(g)

Applying this provision in advisory opinion 1990-16, the Commission concluded that Illinois Governor James R. Thompson's nonfederal committee, Citizens for Thompson (CFT), and America 2000, a federal committee also controlled by Governor Thompson, were affiliated. As such, CFT could transfer funds to America 2000, subject to certain conditions set forth in the opinion, without such transfers being considered contributions. 11 CFR §102.6(a)(1)

In order to include funds in the transfer, CFT had to notify the contributors that their contributions would now be subject to the Act's limits and prohibitions. See 11 CFR 102.5(a)(2). To ensure that donors did not exceed the \$5,000 per year limit on contributions to a PAC, CFT had to aggregate contributions regardless of whether they were made in the year of the transfer or in previous years. Additionally, because CFT and America 2000 were affiliated, contributions transferred to America 2000 counted against each contributor's \$5,000 limit for America 2000.

- The newsletter contained articles or editorials that referred to her views, or those of her opponent, on public policy issues, or referred to issues raised in the campaign; or
- The distribution of the newsletter were expanded beyond its present audience or in any manner that would indicate its use as a campaign communication.<sup>13</sup>

## Newsletter Published by Candidate

In advisory opinion 1990-9, the Commission said that House candidate Margaret R. Mueller, as an unincorporated sole proprietor, could use unlimited personal funds to publish a newsletter. Funds received and payments made to publish the newsletter would result in contributions and expenditures if the publication contained campaign-related material.

In a previous advisory opinion also issued to Ms. Mueller (1990-5), the Commission concluded that, given the circumstances presented, the publication of a newsletter by a corporation owned by Ms. Mueller would result in expenditures to influence her election if:

- The newsletter directly or indirectly referred to the candidacy, campaign or qualifications for public office of Ms. Mueller or her opponent;

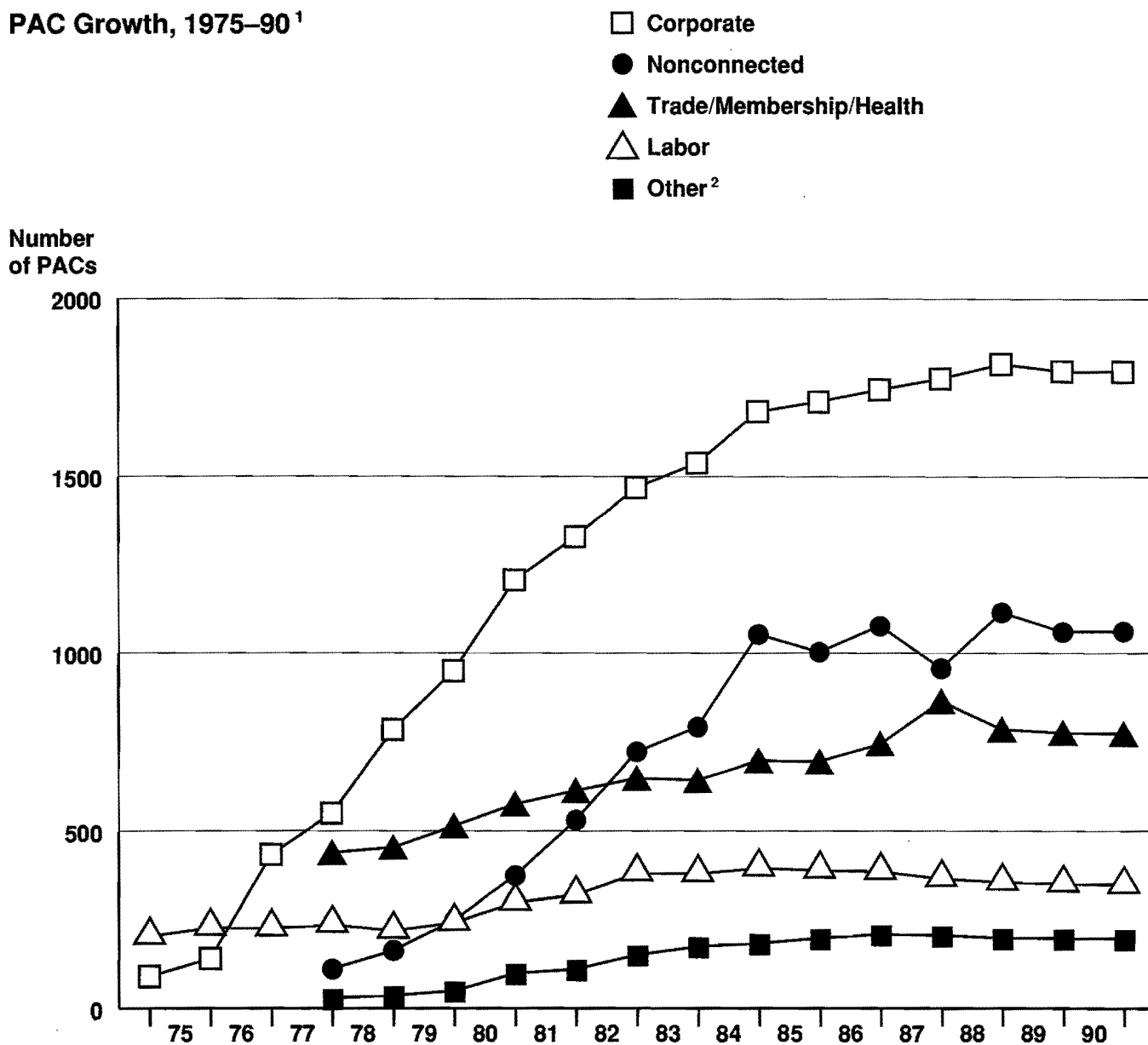
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<sup>13</sup> See the June 1990 Record for a summary of AO 1990-5.

# Chapter 4 Campaign Finance Statistics

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## PAC Growth, 1975–90<sup>1</sup>



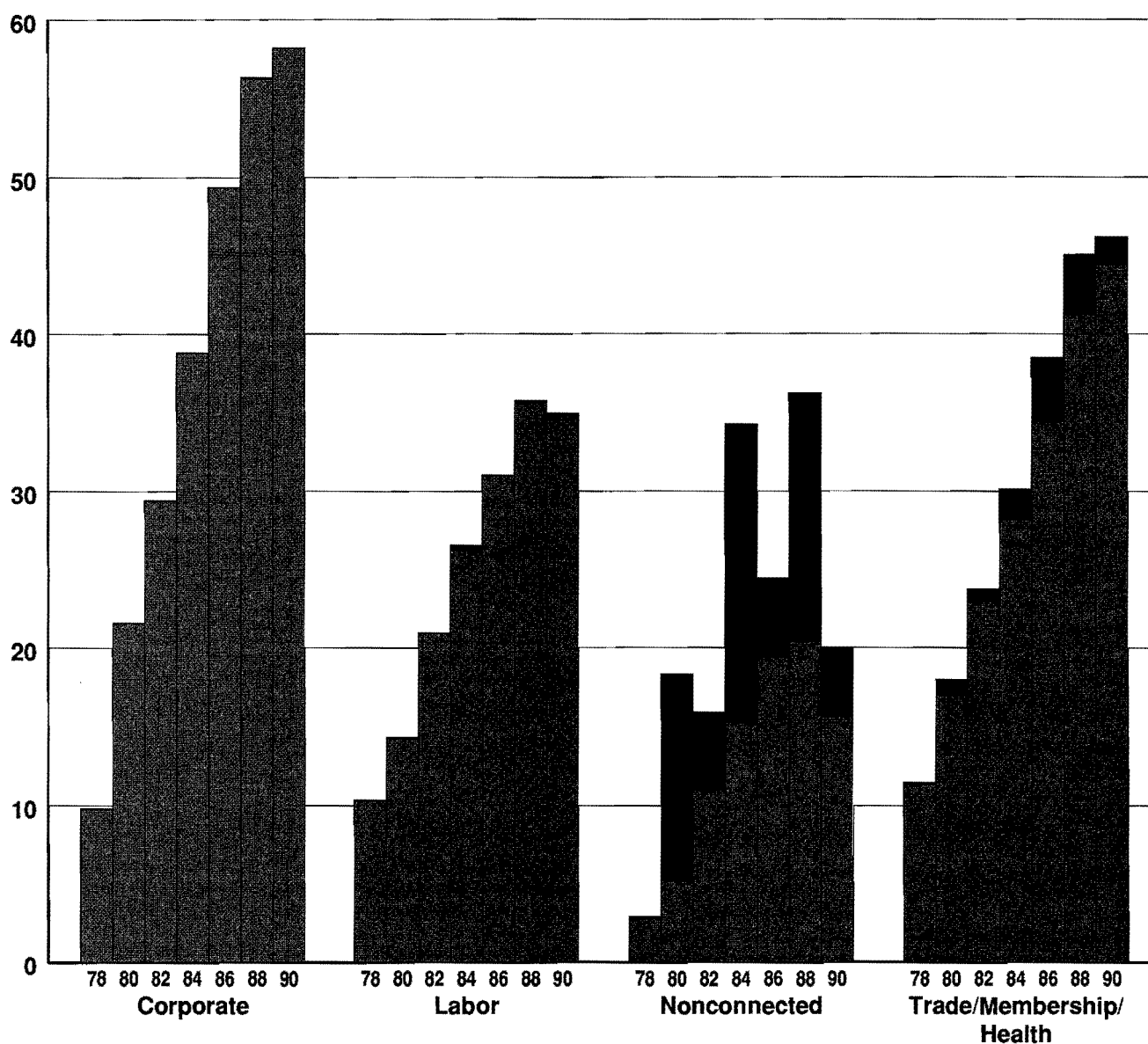
<sup>1</sup> For the years 1974 through 1976, numbers are not available for Nonconnected PACs, Trade/Membership/Health PACs and PACs in the "Other" category.

<sup>2</sup> "Other" category includes PACs formed by corporations without capital stock and PACs formed by incorporated cooperatives.

# **PAC Support of Candidates By Election Cycle <sup>1</sup>**

■ Independent Expenditures  
■ Contributions to Candidates

Millions of Dollars



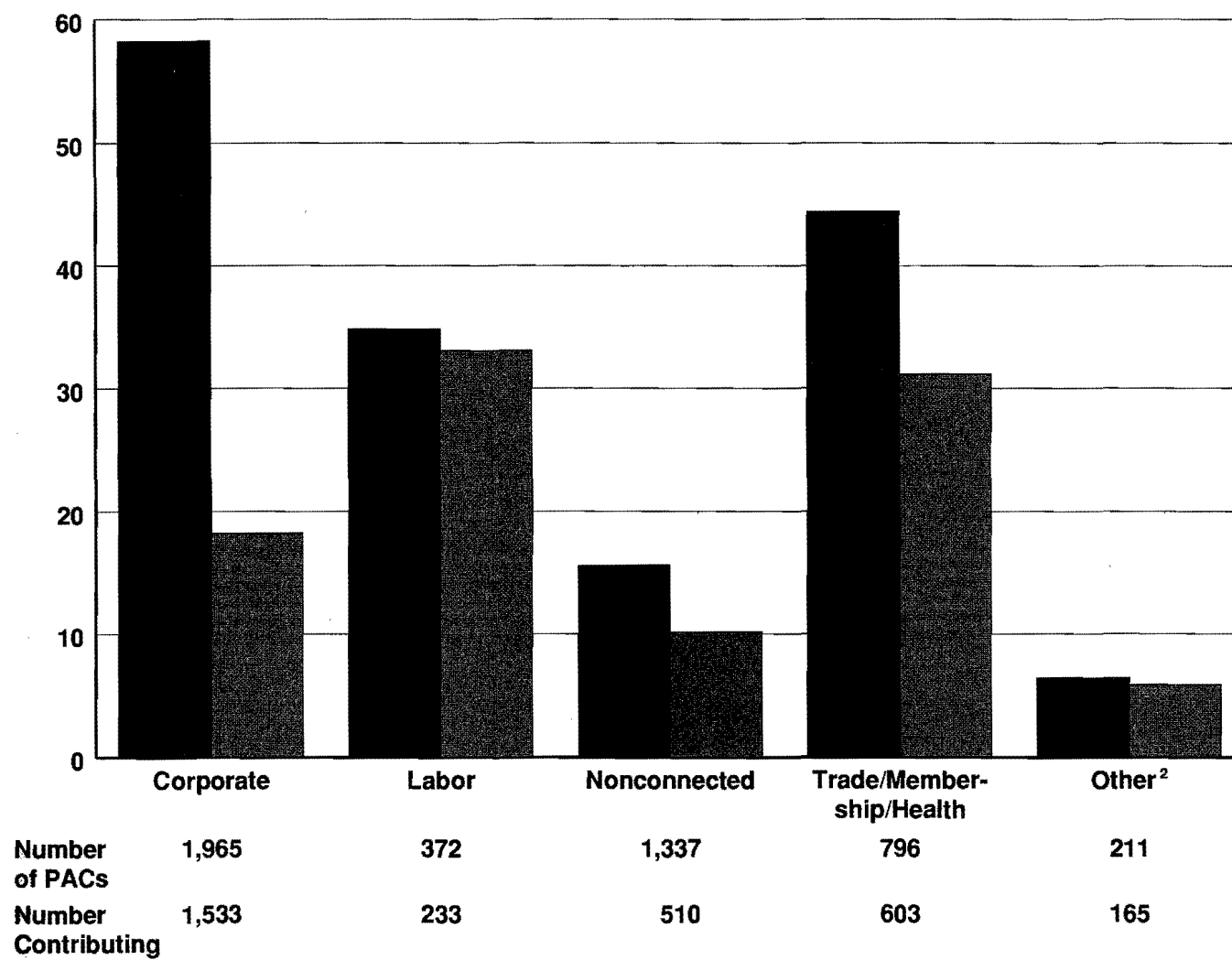
<sup>1</sup> Chart does not include activity by PACs of cooperatives and corporations without capital stock.

**Contributions to Candidates  
By Top 50 PACs<sup>1</sup>  
January 1989 – December 1990**

■ Contributions by All PACs  
■ Contributions by Top 50 PACs

**Comparison of Top 50 PACs with All PACs**

Millions of Dollars



<sup>1</sup> Ranked according to total amount contributed to candidates between January 1, 1989, and December 31, 1990.

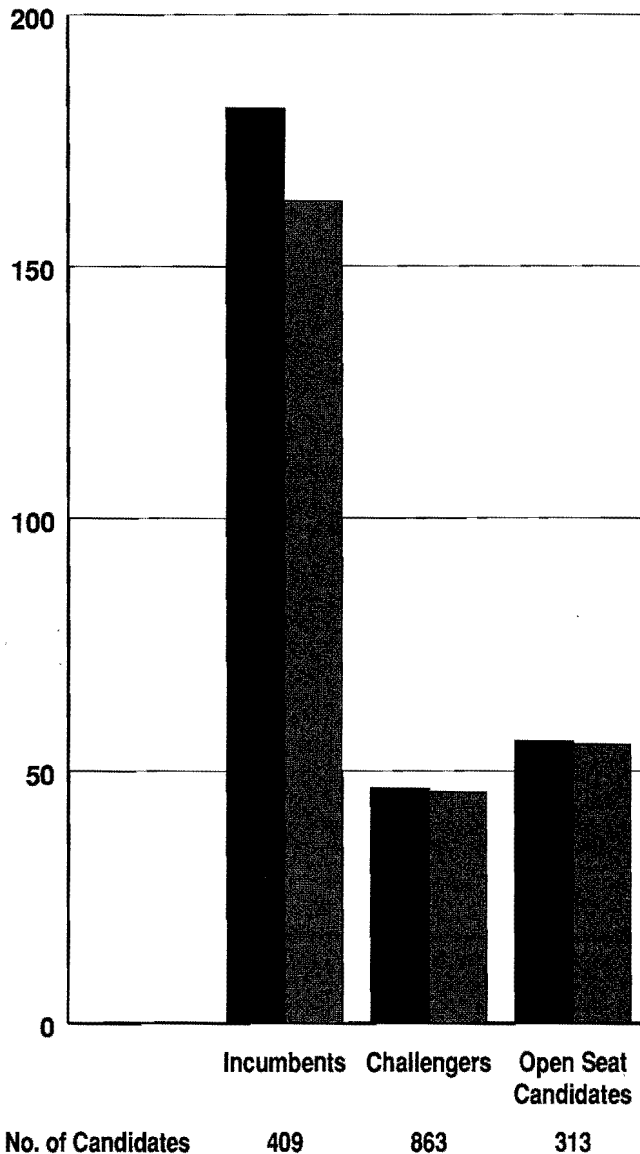
<sup>2</sup> "Other" category consists of PACs formed by corporations without capital stock and PACs formed by cooperatives.

**Receipts and Disbursements of 1990  
House and Senate Candidates**  
(January 1, 1989, through December 31, 1990)

■ Receipts  
■ Disbursements

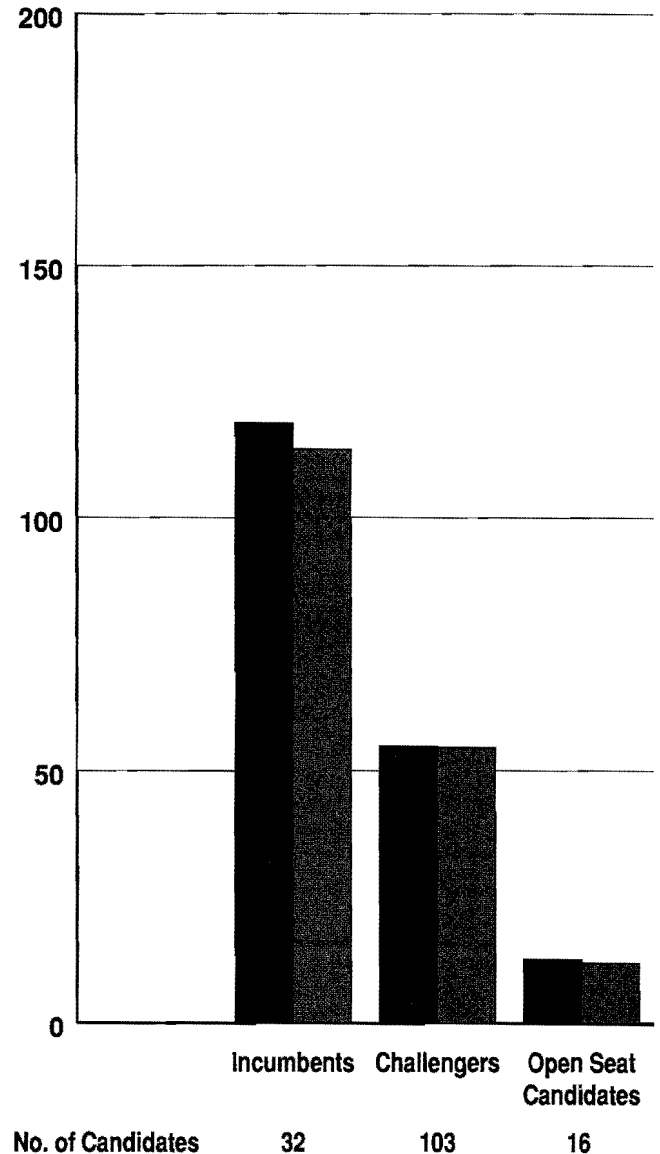
**House Candidates**

Millions of Dollars

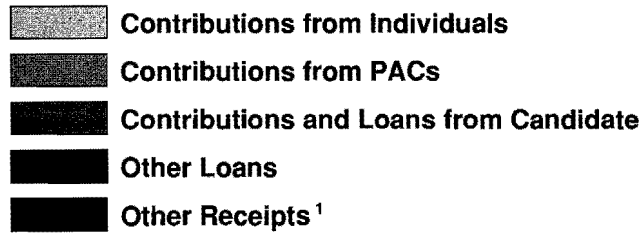


**Senate Candidates**

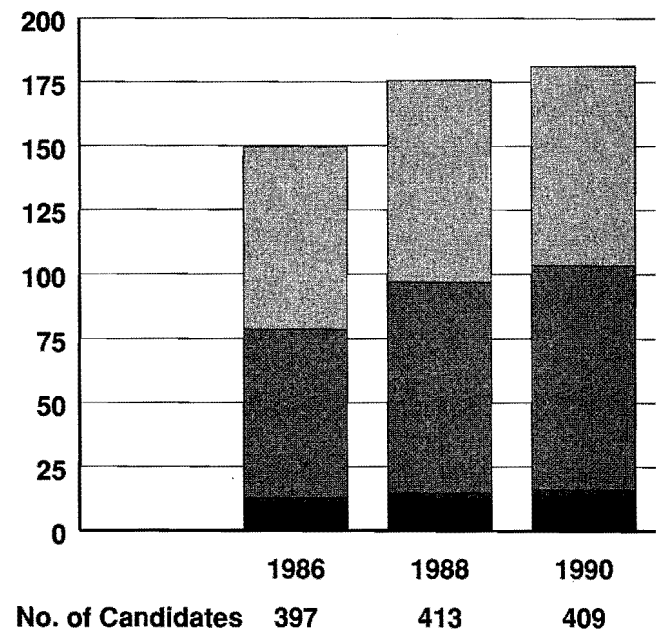
Millions of Dollars



**House Candidates'**  
**Sources of Receipts:**  
**Full 24 Months of Election Cycle**

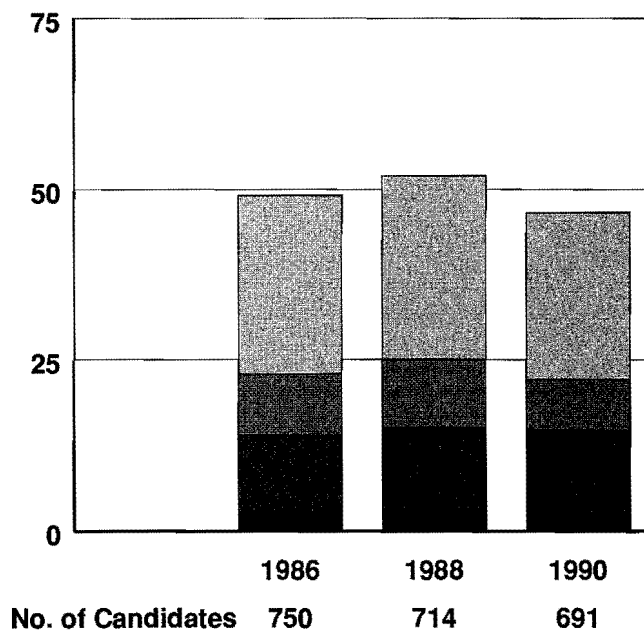


**Incumbents**  
**Millions of Dollars**



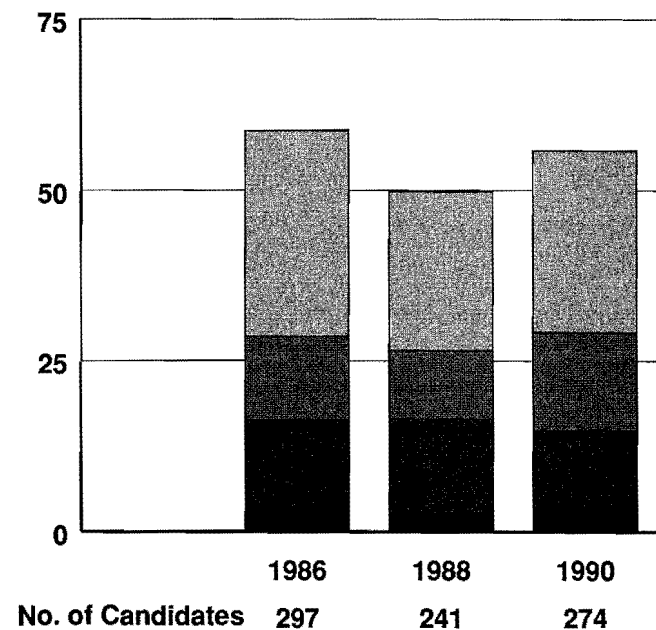
**Challengers**

**Millions of Dollars<sup>2</sup>**



**Open Seat Candidates**

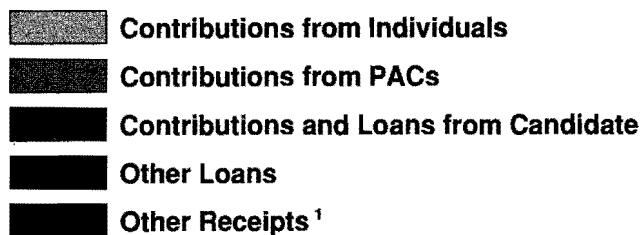
**Millions of Dollars<sup>2</sup>**



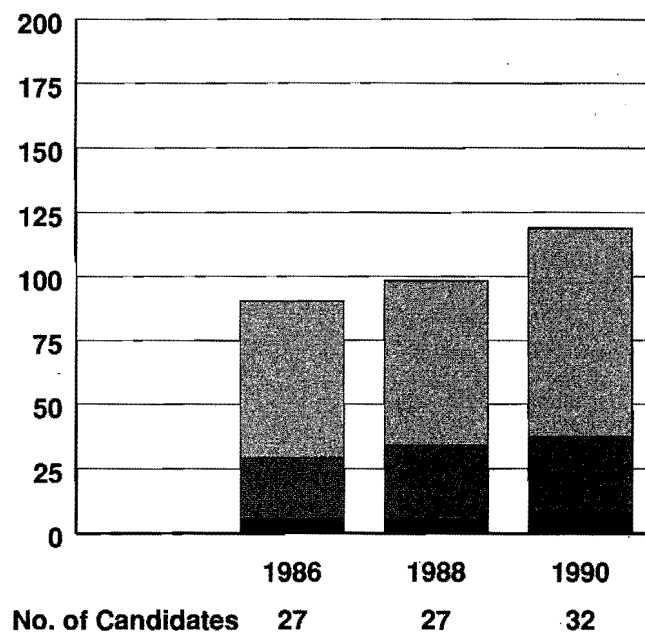
<sup>1</sup> Other receipts consist of contributions from party committees, transfers (such as joint fundraising proceeds but not funds transferred from committees authorized by the candidate for the current campaign), refunds and rebates, and interest income.

<sup>2</sup> Note change in scale between chart for Incumbents and those for Challengers and Open Seat Candidates.

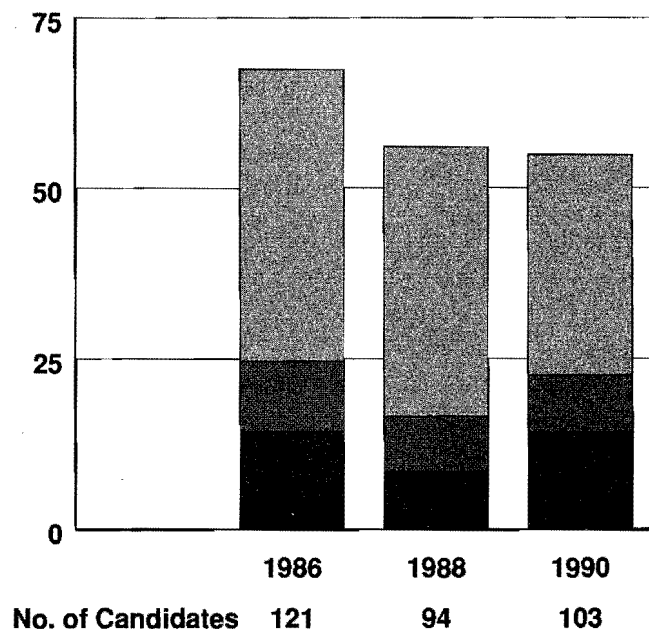
**Senate Candidates'  
Sources of Receipts:  
Full 24 Months of Election Cycle**



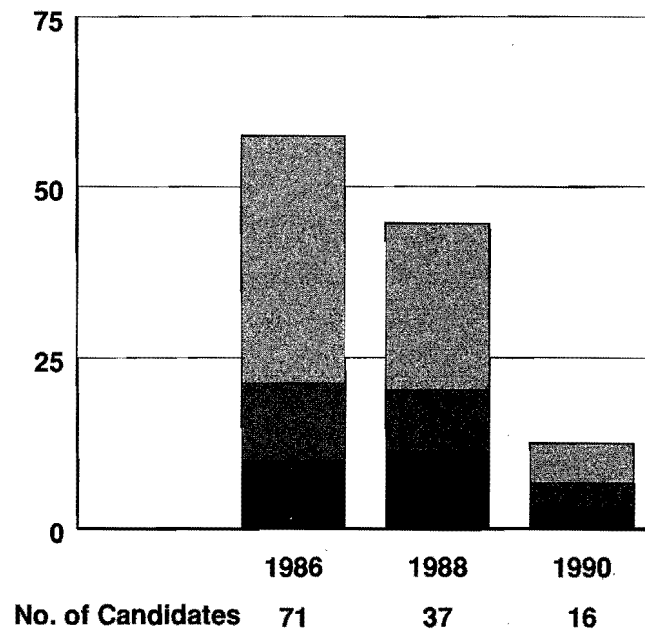
**Incumbents  
Millions of Dollars**



**Challengers  
Millions of Dollars <sup>2</sup>**



**Open Seat Candidates  
Millions of Dollars <sup>2</sup>**



<sup>1</sup> Other receipts consist of contributions from party committees, transfers (such as joint fundraising proceeds but not funds transferred from committees authorized by the candidate for the current campaign), refunds and rebates, and interest income.

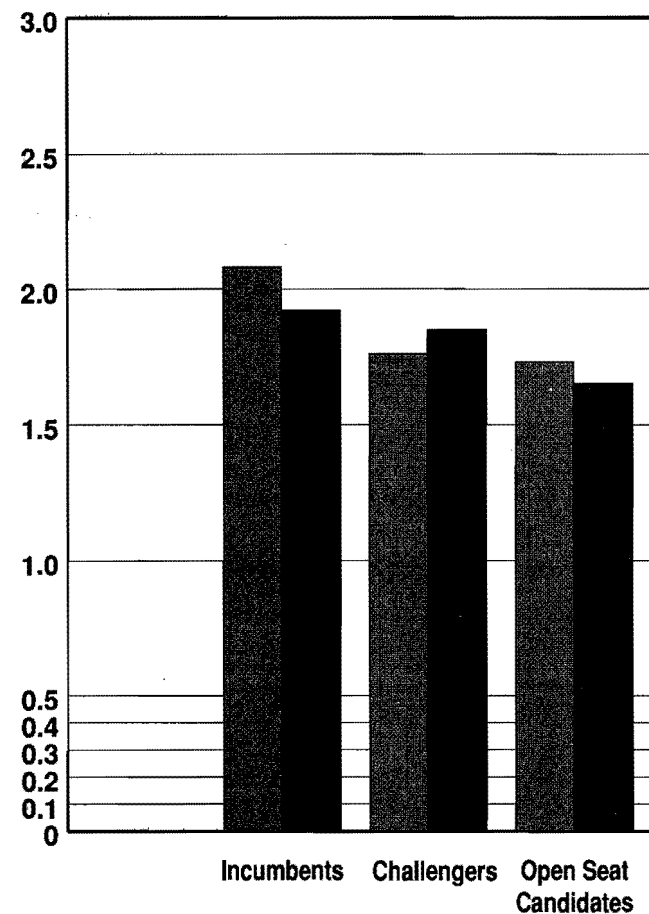
<sup>2</sup> Note change in scale between chart for Incumbents and those for Challengers and Open Seat Candidates.



 Receipts  
 Disbursements

**Senate Republican Candidates**

Millions of Dollars



No. of Candidates

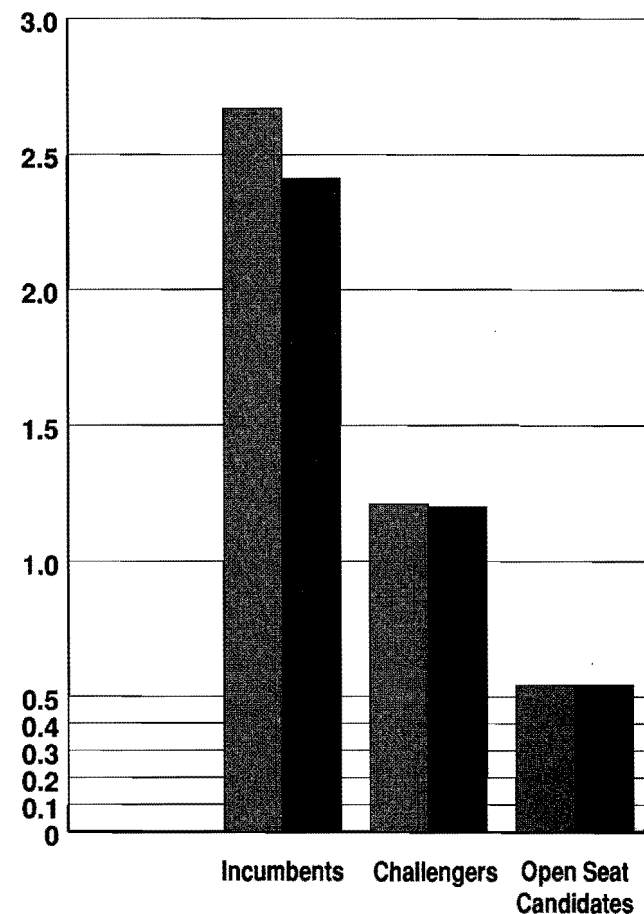
15

15

3

**Senate Democratic Candidates**

Millions of Dollars



No. of Candidates

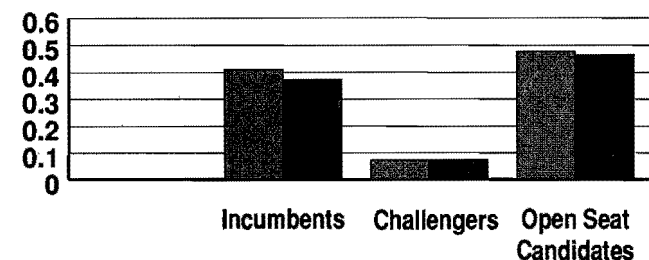
17

14

3

**House Republican Candidates**

Millions of Dollars



No. of Candidates

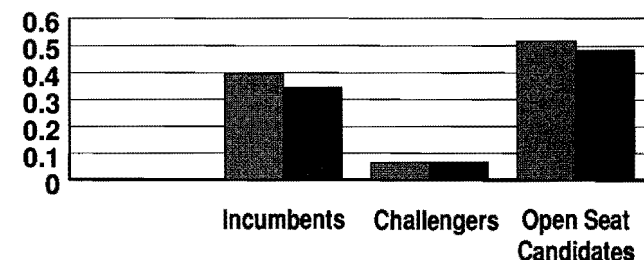
159

143

29

**House Democratic Candidates**

Millions of Dollars



No. of Candidates

249

100

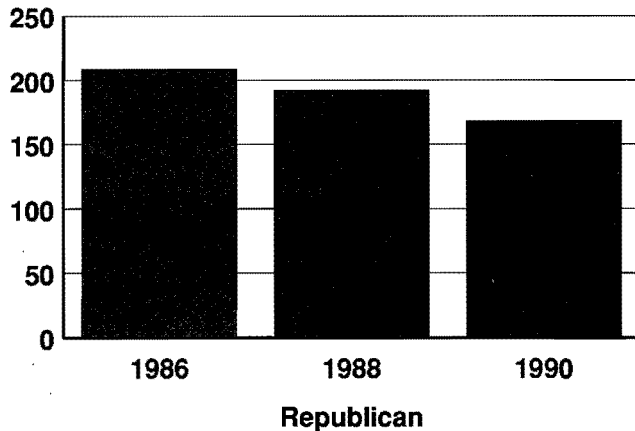
30

<sup>1</sup> Median activity means that an equal number of candidates had activity above and below the amounts shown. Note that only candidates who raised over \$5,000 are included in these charts. See the definition of candidate at 2 U.S.C. §431(2) and 11 CFR 100.3(a).

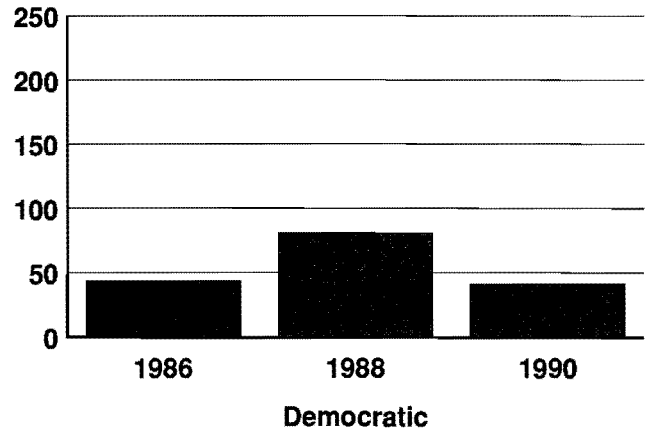
# National Party Committee Activity: Full 24 Months of Election Cycle<sup>1</sup>

## Receipts

Millions of Dollars

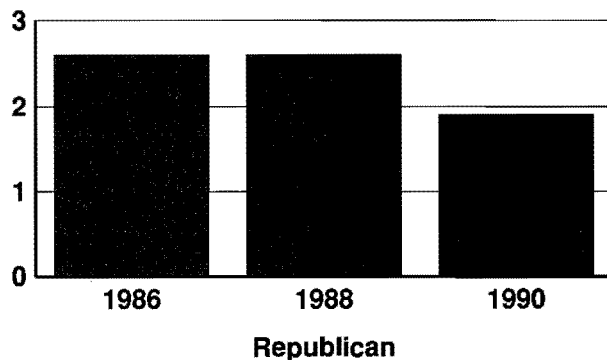


Millions of Dollars

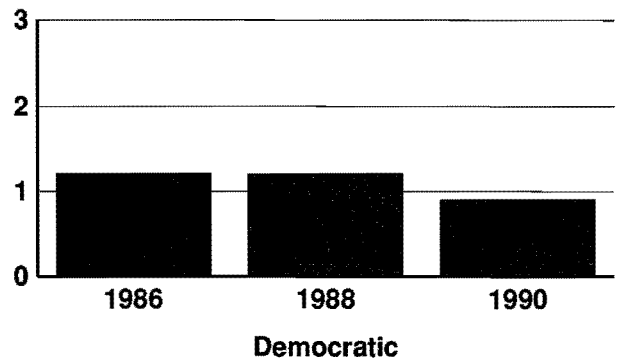


## Contributions to Candidates

Millions of Dollars

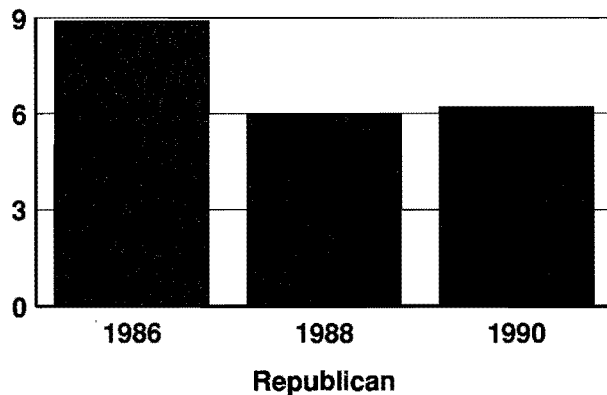


Millions of Dollars

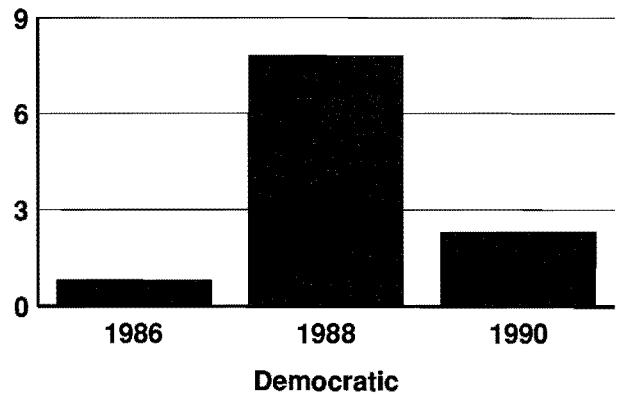


## Transfers to State and Local Party Committees<sup>2</sup>

Millions of Dollars



Millions of Dollars



<sup>1</sup> Graphs show the aggregate activity of the three national committees of each major party: the national party committee, the Senatorial campaign committee and the Congressional campaign committee.

<sup>2</sup> Limited to transfers made for federal election activity.

### Commissioners

Commission officers during 1990 were Chairman Lee Ann Elliott and Vice Chairman John Warren McGarry. In December 1990, the Commission elected the 1991 officers: Chairman John Warren McGarry and Vice Chairman Joan D. Aikens.

Biographies of the Commissioners, the Staff Director, General Counsel and Inspector General appear in Appendix 1.

### International Delegations

As nations throughout the world began to implement democratic electoral systems, the FEC served as a global resource on the workings of such a system. Visitors from a broad scope of nations asked the Commission to explain the mechanics of the American electoral process. The Commission briefed visitors from the USSR, Poland, Yugoslavia, Bulgaria, Mexico, Argentina, Hong Kong and more than 50 other countries. Most noteworthy among the FEC's international contacts were the exchange visits between the Soviet Union's Central Electoral Commission and the FEC.

The exchange program began in 1989 when an FEC delegation visited the USSR in June; members of the Soviet Central Electoral Commission came to the U.S. in November. The trips included talks between American and Soviet election officials at all levels of government and covered such topics as election administration and campaign finance reform.

In March 1990 Chairman Lee Ann Elliott continued the exchange program, leading a delegation of American federal and state election officials to the Soviet Union. The delegation met with election officials and observed republic-level elections in the Russian and Kazak Republics.

Then in November 1990 a six-member delegation from the Central Electoral Commission (CEC) visited the United States. The delegation, headed by Vladimir P. Orlov, Chairman of the CEC, observed elections in Chicago and New York, and attended a seminar at the FEC focusing on two aspects of the United States electoral system: private sector involvement in

elections and the role of the courts in campaigns and elections.

All of the Soviet exchange visits were funded by the International Foundation for Electoral Systems, a nonprofit organization designed to promote worldwide understanding of democratic processes and elections.

### Ethics Training

The FEC's General Counsel, who serves as the Designated Agency Ethics Official, directed his staff to conduct intraagency ethics training sessions in 1990. These sessions, mandated by a 1989 Executive Order,<sup>1</sup> briefed agency staff on the the Ethics Reform Act of 1989, the Hatch Act and the FEC Standards of Conduct. The ethics staff plans to begin publishing an intraagency newsletter to further advise the staff on matters of conduct.

### Personnel and Labor Relations

#### Labor-Management Relations

The Commission and the National Treasury Employees Union entered into a new labor-management agreement on November 6, 1989. In 1990, supervisors attended orientation sessions to learn about changes from the previous contract.

#### Equal Employment Opportunity Program

In 1990, the Commission approved an overall EEO program, an affirmative employment plan for 1990-91, and a plan for preventing sexual harassment. The EEO officer manages these programs and special emphasis programs for minorities and women. The officer also files annual statistical reports on discrimination and the Commission's workforce with the Equal Employment Opportunity Commission and status reports on the Disabled Veterans Affirmative Action Plan with the Office of Personnel and Management.

In 1990 the Office of Equal Employment Opportunity Programs (OEEOP) made recommendations on

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<sup>1</sup> Executive Order #12674 - April 12, 1989.

recruitment, participated in the Commission's orientation program and assisted the Personnel Office in developing the Commission's first comprehensive in-house training course for supervisors. The OEEOP also published a bimonthly newsletter, *EEO Focus*, for Commission staff, provided counseling for those with equal employment concerns and sponsored several workshops on how to tackle personal issues.

### **Recruitment**

Like other federal agencies, the Commission has had difficulty recruiting secretaries, auditors and attorneys. The federal government payscale and the high cost of living in the Washington, D.C., area discourage many qualified candidates from applying for and accepting these positions. To supplement in-house efforts to recruit auditors, the FEC has continued its arrangement with the General Accounting Office (GAO) that allows the Commission to take advantage of GAO's extensive recruitment program. In addition, the Office of General Counsel continued efforts to attract qualified attorneys by conducting on-campus interviews at various law schools and consortia around the country.

### **Inspector General**

In compliance with the 1988 amendments to the Inspector General Act of 1978, the Commission appointed the agency's first permanent Inspector General in February 1990.

Charged with conducting audits and investigations to detect fraud, waste and abuse within the agency, the Office of the Inspector General (OIG) reports directly to the Commission. The OIG also advises the Commissioners on ways to improve the economy and efficiency of agency operations.

The new OIG established a hotline and implemented other procedures for employees to report instances of waste and abuse. Additionally, it developed procedures for audits and investigations and for the preparation of staff responses to audit reports.

The OIG is required to submit to Congress semianual reports which summarize the activities of the office during the preceding six-month period. These

reports must include, but need not be limited to, a description of significant problems, abuses or deficiencies in agency operations, and a description of corrective action taken (or recommended by OIG but not taken) by management.

### **Administrative Management**

The Commission continued to expand its new computer system and instruct staff on its use. Nearly every division had access to the VAX system, and many of those currently without access will come on-line soon. The Data Systems division conducted staff training and introduced an intraagency newsletter providing helpful hints on the system's many functions.

### **The FEC's Budget**

#### **Fiscal Year 1990**

The final appropriation for FY 1990 was \$15.330 million, the full amount requested. However, to cover the cost of the 3.6 percent payraise (\$274,000) in January 1990, the agency had to cut nonpersonnel costs and reduce the FY 1990 staffing level by attrition from the 253 full-time equivalent (FTE) positions authorized by the budget to 248 FTE. This represented a slight reduction from the 1989 average of 251.3 FTE, but an increase over the 243 FTE level at the end of the 1989 fiscal year.

Nevertheless, as a result of a personnel shortage and savings on some nonpersonnel costs, there was a \$97,000 surplus for the 1990 fiscal year. The Commission was able to reallocate funds for improvement and expansion of the agency's computer system and for educational programs on the new allocation regulations and the public funding tax checkoff.

The FY 1990 management plan called for a gradual return to an Audit Division staffing level comparable to that of the 1980 Presidential cycle (42 FTE positions). After 1980, budget constraints and legislative limits on non-Presidential audits led the Commission to reduce Audit staff to a core of 24 FTE, supplemented in Presidential years by temporary staff and GAO staff (detailed on a nonreimbursable basis)

to help with the public funding program. During the 1988 Presidential cycle, however, the Commission experienced problems created by a shortage of experienced Audit staff. With the planned increase in Audit staff, supplemented by GAO employees, the agency will have sufficient trained staff in place for the 1992 Presidential elections.

#### **Fiscal Year 1991**

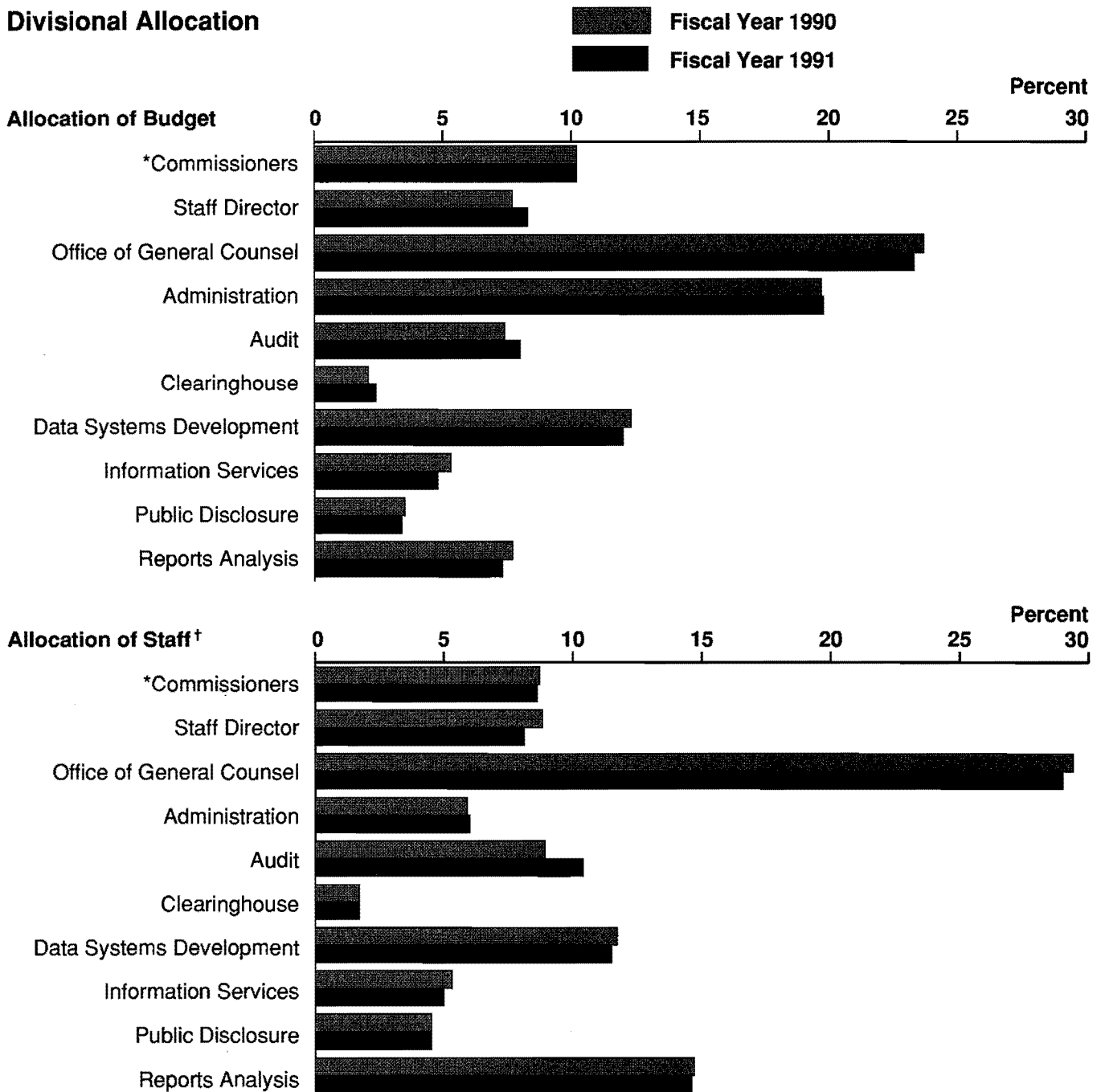
The final appropriation for FY 1991 was \$17.150 million, which represents the full amount requested. The Commission anticipated cuts, however, of \$88,000 in nonpersonnel expenses and \$439,500 in personnel costs to cover larger-than-anticipated pay increases for executives and staff. The personnel savings will be achieved through a projected lapse of about 10 positions, reducing the 1991 staffing level from 266 FTE, as originally expected, to 254.5 FTE. The nonpersonnel reductions include cuts in training, equipment purchases and contracts.

A comparison of the allocation of budget resources for FYs 1990 and 1991 appears in the table and the graphs below.

#### **Functional Allocation of Budget**

	<b>FY 1990</b>	<b>FY 1991</b>
Personnel	\$10,983,100	\$12,148,000
Travel	146,000	205,000
Motor Pool	5,000	7,500
Commercial Space	17,900	21,000
GSA Space	1,671,400	1,753,000
Equipment Rental	231,500	300,000
Equipment Purchase	220,900	138,000
Printing	303,800	370,000
Support Contracts	632,800	844,000
Administrative Expenses	143,500	164,000
Supplies and Materials	222,100	260,000
Publications	134,200	150,000
Telephone/Telegraph	319,900	334,500
Postage	116,500	105,000
Training	53,700	113,000
GSA Services, Other	127,700	237,000
<b>Total</b>	<b>\$15,330,000</b>	<b>\$17,150,000</b>

## Divisional Allocation



\*Includes Inspector General's Office.

<sup>†</sup> The Commission averaged 241.7 full-time equivalent positions (FTE) in FY 1990 and projected 254.5 FTE for FY 1991.

### Legislative Action on Past Recommendations

Campaign finance reform legislation saw a lot of activity during the 101st Congress. By the end of the second session, over 125 bills had been introduced that would change in some fashion, the way Congressional campaigns are currently financed. Both the United States Senate and the House of Representatives passed their own versions of a reform bill, S. 137 and H.R. 5400 respectively. Both of these bills, though never enacted into law, contained several of the Commission's technical legislative recommendations. For example, both the Senate and House bills contained the Commission's legislative recommendation which deals with the fraudulent solicitation of funds. This recommendation would prohibit any person from fraudulently soliciting contributions. (See page 48.)

The House bill contained the Commission's recommendation to eliminate the state-by-state limitations on expenditures for publicly financed Presidential primary candidates. The Commission has made this recommendation in order to eliminate some rather cumbersome requirements of the Federal Election Campaign Act that have become a burden for all campaigns to follow, as well as for the Commission to track and enforce; yet the limitations could be removed with no significant impact on the process. (See page 40.)

These two bills, as well as other proposals introduced during the 101st Congress, contained other discrete legislative recommendations that have been propounded by the Commission, such as those dealing with the Commission's authority over the allocation and disclosure of nonfederal ("soft money") accounts, random audits, seeking injunctions in enforcement cases, disclaimer notices, fundraising projects operated by unauthorized committees, Commission as sole point of entry for disclosure documents, campaign cycle reporting, monthly reporting for Congressional candidates, and the budget reimbursement fund.

The following recommendations are offered in 1991 to further the goal of efficiently administering and enforcing the campaign finance laws.

### Public Financing

#### Presidential Election Campaign Fund (revised 1991)

*Section:* 26 U.S.C. §6096

*Recommendation:* Congress should amend the Revenue Act to ensure that sufficient funds will be in the Presidential Election Campaign Fund to cover the outlays anticipated in 1992 and prevent future imbalances between the Fund's receipts and the Fund's payouts to Presidential candidates and party convention committees. Among the alternative remedies for this imbalance, Congress should consider:

- Periodically adjusting the amount designated on the income tax return to correspond to the index for payments from the Fund;
- Changing the system to an entitlement program wherein the amount of payments would be determined solely by the statutory eligibility criteria;
- Changing the system to a traditional appropriated account or, should the check-off system be retained, permitting special appropriations to compensate for a projected shortfall; or
- Reducing disbursements from the Fund, for example by matching a smaller amount of money in the primaries or by not increasing the convention and general election payouts by the full inflation rate.

*Explanation:* The present system, wherein a non-indexed, \$1 tax check-off mechanism must fund inflation-indexed payments, is approaching insolvency. Since 1974 (the index year for payments), inflation has increased payments by over 250 percent. As previously reported, unless the system is changed, the Fund balance is likely to be inadequate to meet the entitlements of candidates for the 1992 Presiden-

tial election. Even if a shortfall is avoided in the '92 cycle, a deficiency in the Fund is a certainty by the 1996 elections.

If Congress wishes to retain the check-off mechanism, it should index the tax check-off to correspond to the index on Fund payments to Presidential candidates. Automatic indexing could be simplified to require a change on tax form 1040 (individual income tax return) only when inflation warranted an increase of a full or a half dollar. This would preclude annual changes and prevent absurdly precise amounts from being printed on the form.

#### **Enforcement of Nonwillful Violations**

*Section:* 26 U.S.C. §§9012, 9042

*Recommendation:* Congress should amend the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act to make it clear that the Commission has authority for civil enforcement of nonwillful violations of the public funding provisions.

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

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

provide explicit authority for civil enforcement of these provisions.

#### **Eligibility for Public Financing (revised 1991)**

*Section:* 26 U.S.C. §§9003, 9033

*Recommendation:* Congress should reexamine the eligibility requirements for publicly funded Presidential candidates. In particular, two areas merit special attention: (1) the need to raise the threshold amount of matchable contributions required to qualify for Presidential primary matching funds; and (2) the need to ensure that candidates who have willfully violated laws related to the public funding process will not be eligible for public funding.

*Explanation:* Congress should consider raising the threshold amount required to qualify for primary matching payments. The Federal Election Commission has administered the public funding provisions in four Presidential elections. The statute provides for a cost-of-living adjustment (COLA) on the overall primary spending limitation, which has more than doubled since 1976. There is, however, no corresponding adjustment to the threshold requirement. It remains exactly the same as it was in 1976. An adjustment to the threshold requirement would ensure that funds continue to be given only to candidates who demonstrate broad national support. To reach this higher threshold, Congress could increase the number of states in which the candidate 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.

With regard to the candidate's past experience with the public funding process, neither of the Presidential public financing statutes places any limitation on eligibility for funding based upon a candidate's prior violations of law, no matter how severe. Public confidence in the integrity of the public financing system could be eroded if the Commission were compelled to provide public funds to candidates who have been convicted of felonies related to the public funding process. For example, if a candidate has been convicted of fraud with respect to raising funds



for a campaign that was publicly financed, the Commission should not be required to certify funds for future campaigns. Congress may wish to add a requirement that an individual seeking public funds may not have been convicted of crimes related to the public financing process. Similarly, the Commission should not be required to certify funds to candidates who, in connection with past Presidential campaigns, have failed to make repayments or who have willfully disregarded the statute or regulations. Congress should amend the eligibility requirements to ensure that such candidates do not receive public financing for their Presidential campaigns.

**Contributions to Presidential Nominees Who Receive Public funds in the General Election (1991)<sup>1</sup>**

*Section:* 26 U.S.C. §9003

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

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

**Fundraising Limitation for Publicly Financed Presidential Primary Campaigns (revised 1991)**

*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 COLA<sup>2</sup>) limit for campaign expenditures and a \$2 million (plus COLA) limit for fundraising (20 percent of overall limit), each candidate would have one \$12 million (plus COLA) limit for all campaign expenditures.

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

The advantages of the recommendation, however, are substantial. They include a reduction in accounting burdens and a simplification in reporting requirements for campaigns, and a reduction in the Commission's auditing task. For example, the Commission would no longer have to ensure compliance with the 28-day rule, i.e., the rule prohibiting committees from allocating expenditures as exempt fundraising expenditures within 28 days of the primary held within the state where the expenditure was made.

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<sup>1</sup> The date "1991" indicates that the recommendation was adopted for the first time in 1991. Recommendations without the date were initially adopted in previous years and reaffirmed by the Commission in 1991.

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

## **State Expenditure Limits for Publicly Financed Presidential Primary Campaigns (revised 1991)**

*Section: 2 U.S.C. §441a*

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

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

Our experience has shown that 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 personal travel expense provisions, the use of a personal residence in volunteer activity exemption, and a complex series of allocation schemes have developed into an art which when skillfully practiced can partially circumvent the state limitations.

In addition, experience has shown that one of the Congressional concerns motivating the adoption of

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

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

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.

## **Contributions and Expenditures**

### **Independent Expenditures by Principal Campaign Committees (1991)**

*Section: 2 U.S.C. §432(e)(3)*

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

dent expenditures on behalf of other principal campaign committees.

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

#### **Contributions and Expenditures to Influence Federal and Nonfederal Elections (revised 1991)**

*Section:* 2 U.S.C. §§441 and 434

*Recommendation:* Congress may wish to consider whether new legislation is needed to monitor political committees that engage in activities that influence both federal and nonfederal elections.

*Explanation:* The law requires that all funds spent to influence federal elections come from sources that are permissible under the limitations and prohibitions of the Act. Problems arise with the application of this provision when committees engage in activities that support both federal and nonfederal candidates. In this regard, the Commission has recently promulgated new rules on allocating disbursements between federal and nonfederal election activity. These rules, which went into effect on January 1, 1991, also added new disclosure requirements for allocated activities.

The District Court for the District of Columbia, in *Common Cause v. FEC*, confirmed the Commission's long-standing view that allocation is the appropriate way to reconcile its mandate (to monitor excessive and prohibited funds) and the limits on its jurisdiction

(to regulate money influencing federal elections but not state or local). Notwithstanding the Commission's regulatory efforts, public attention continues to be focused on the perceived impact of so-called "soft money" on federal elections. In light of this public concern, Congress may wish to reevaluate the Commission's role in regulating political committees that support both federal and nonfederal candidates.

#### **Nonprofit Corporations**

*Section:* 2 U.S.C. §441b

*Recommendation:* In light of the decision of the U.S. Supreme Court in *Federal Election Commission v. Massachusetts Citizens for Life, Inc. (MCFL)*, Congress may wish to amend the provision prohibiting corporate and labor spending in connection with federal elections in order to incorporate in the statute the text of the Court's decision.

*Explanation:* In the Court's decision of December 15, 1986, the Court held that the Act's prohibition on corporate political expenditures was unconstitutional as applied to independent expenditures made by a narrowly defined type of nonprofit corporation. Since that time, the Commission has published an Advance Notice of Proposed Rulemaking and has conducted hearings on whether regulatory changes are needed as a result of the Court's decision. Congress may wish to consider whether statutory changes are required as well.

The Court found that certain nonprofit corporations were not subject to the prohibitions of 2 U.S.C. §441b. The Court determined, however, that these nonprofit corporations had to disclose some aspect of their financial activity—in particular, independent expenditures exceeding \$250 and identification of persons who contribute over \$200 to help fund these expenditures. The Court further ruled that spending for political activity could, at some point, become a major purpose of the corporation, and the organization would then become a political committee.

## **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.

## **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 (revised 1991)**

*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.<sup>3</sup>

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

Problems have also occurred in situations where the candidate uses assets held jointly with a spouse. When the candidate uses more than one-half of the

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<sup>3</sup> While 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.

value of the asset held commonly with the spouse (for example, offering property as collateral for a loan), the amount over one-half represents a contribution from the spouse. If that amount exceeds \$1,000, it becomes an excessive contribution from the spouse.

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

### 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.

## Litigation

### Independent Authority of FEC in All Court Proceedings

*Section: 2 U.S.C. §437c(f)(4)*

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

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

*Explanation:* With regard to the first of these recommendations, most district courts have rules requiring that all litigants be represented by counsel located within the district. The Commission, which conducts all of its litigation nationwide from its offices in Washington, D.C., is unable to comply with those rules without compromising its independence by engaging the local United States Attorney to assist in representing it in courts outside of Washington, D.C. Although most judges have been willing to waive applying these local counsel rules to the Commission, some have insisted that the Commission obtain local representation. An amendment to the statute specify-

ing that such local counsel rules cannot be applied to the Commission would eliminate this problem.

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

## Compliance

### Protection for Those Who File Complaint or Give Testimony

*Section:* 2 U.S.C. §437g

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

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

§215(3) (Fair Labor Standards Act); 42 U.S.C. §2000e-3(a) (Equal Employment Opportunities Act). Congress should consider including a similar provision in the FECA.

### Random Audits

*Section:* 2 U.S.C. §438(b)

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

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

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

Another approach would be to randomly select several Congressional districts and audit all political committees in those districts, for a given election cycle. This system might result in concentrating audits in fewer geographical areas.

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

### **Modifying “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:*<sup>4</sup> 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

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<sup>4</sup> Commissioner Elliott filed the following dissent:

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

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

United States district court without awaiting expiration of the 15-day period for responding to a complaint or the other administrative steps enumerated in the statute. The person against whom the Commission brought the action would enjoy the procedural protections afforded by the courts.

*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 clear-cut 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.

## Disclaimers

### Disclaimer Notices

*Section:* 2 U.S.C. §441d

*Recommendation:* Congress should revise the statute to require registered political committees to display the appropriate disclaimer notice (when practicable) in any communication issued to the general public, regardless of its purpose or how it is distributed.

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

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

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

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

Most of these problems would be eliminated if the language of 2 U.S.C. §441d were simplified to require a registered committee to display a disclaimer notice whenever it communicated to the public, regardless of



the purpose of the communication and the means of preparing and distributing it. The Commission would no longer have to examine the content of communications or the manner in which they were disseminated to determine whether a disclaimer was required.

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

#### **Contributions to Unauthorized Committees (1991)**

*Section:* 2 U.S.C. §432(e)

*Recommendation:* Congress should consider amending the statute to require that contributions solicited by unauthorized committees be made payable to the name of the committee.

*Explanation:* Unauthorized committees are not permitted to use the name of a federal candidate in their name. 2 U.S.C. §432(e)(4). These committees, with names like "Pro-World PAC," frequently feature the name of candidates in their fundraising *projects*, such as "Citizens for Smith." Contributors may be confused, believing that they are contributing to the candidate's authorized committee when they make checks payable to these project names. This confusion sometimes leads to requests for refunds, allegations of coordination and inadequate disclaimers, and inability to monitor contributor limits. Contributor awareness might be enhanced if the statute required that all checks intended for an unauthorized committee be made payable to the registered name of the unauthorized committee and if the statute prohibited unauthorized committees from accepting checks payable to these project names.

#### **Fundraising Projects Operated by Unauthorized Committees**

*Section:* 2 U.S.C. §432(e)(4)

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

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

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<sup>5</sup> Commissioner Elliott filed the following dissent:

I support the policy underlying this legislative recommendation and recognize the seriousness of this problem. The scope of the recommendation, however, is far too broad and inflexible given the traditional fundraising events held by political parties and some unauthorized political committees.

Because party committees are not authorized committees, they would come under the general prohibitions included in the recommendation, precluding the use of a candidate's name for any activity of a party committee. Oftentimes, however, fundraising events conducted by a party committee incorporate the name of a well-known Member of Congress as a fundraising tool. Typically, the fundraising contributions are made in the form of checks made payable to the name of the event, e.g., "Happy Birthday, Senator Smith"; "Mike's Annual Barbecue"; "Sail With Senator Sanford"; "Roast Roberts." I do not believe Congress intends to preclude the use of the candidates' names in such activities, especially when the candidate is not only aware that his/her name is being used but approves and is actively participating in the event.

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

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

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.

### **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 mis-

used in a manner in which they did not intend. The Commission has been unable to take any action on these matters because the statute gives it no authority in this area.

## **Public Disclosure**

### **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.

Finally, a single point of entry would enhance disclosure. Often the public and FEC staff have difficulty deciphering information from reports filed with the Clerk of the House and the Secretary of the Senate because these reports have been photocopied several times. A single point of entry would reduce the number of times a report had to be photocopied, thereby rendering it more legible and ensuring the placement of more accurate information on the public record.

If the Commission received all documents, it would transmit on a daily basis file copies to the Secretary and the Clerk, 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).

### **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.

## Registration and Reporting

### False Contributor Information

*Section:* 2 U.S.C. §434

*Recommendation:* Congress may wish to amend the Act to make it unlawful to knowingly provide false contributor information to a political committee.

*Explanation:* Under 2 U.S.C. §434, political committees are required to report certain information about their contributors to the Commission for public disclosure. Political committees usually must depend upon their contributors to provide truthful information for reporting to the Commission, yet no provision of the Act makes it unlawful for contributors to provide false information to the political committee. A statutory change would protect political committees that attempt to disclose campaign information accurately.

### 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 deter-

mine 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 review 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 the monthly option when they have a high volume of activity. Under those circumstances, accounting and reporting are easier on a monthly basis because fewer transactions have taken place during that time. Consequently, the committee's reports will be more accurate.

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

## **Monthly Reports**

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

*Recommendation:* Congress should change the reporting deadline for monthly filers from the twentieth to the fifteenth of the month.

*Explanation:* Committees filing monthly reports are now required to file reports disclosing each month's activity by the twentieth day of the following month. Particularly in the fast-paced Presidential primary period, this 20-day lag does not meet the public's need for timely disclosure. In light of the increased use of computerized recordkeeping by political committees, imposing a monthly filing deadline of the fifteenth of the month would not be unduly burdensome and would ensure timely disclosure of crucial financial data.

## **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.

## **Agency Funding**

### **Statutory Gift Acceptance Authority**

*Section:* 2 U.S.C. §437c

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

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

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

#### **Budget Reimbursement Fund (revised 1990)**

*Section:* 2 U.S.C. §438

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

*Explanation:* At the present time, copies of reports, microfilm, and computer tapes are sold to the public at the Commission's cost. However, instead of the funds being used to reimburse the Commission for its expenses in producing the materials, they are credited to the U.S. Treasury. The effect on the Commission of selling materials is thus the same as if the materials had been given away. The Commission absorbs the entire cost. In FY 1989, in return for services and materials it offered the public, the FEC collected and transferred \$113,466 in miscellaneous receipts to the Treasury. During the first three months

of FY 1990, \$25,703 was transferred to the Treasury. Establishment of a reimbursement fund, into which fees for such materials would be paid, would permit this money to be applied to further dissemination of information. Note, however, that a reimbursement fund would not be applied to the distribution of FEC informational materials to candidates and registered political committees. They would continue to receive free publications that help them comply with the federal election laws.

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

## **Miscellaneous**

### **Draft Committees**

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

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

1. *Bring Funds Raised and Spent for Undeclared but Clearly Identified Candidates Within the Act's Purview.* Section 431(8)(A)(i) should be amended to include in the definition of "contribution" funds contributed by persons "for the purpose of influencing a clearly identified individual to seek nomination for election or election to Federal office...." Section 431(9)(A)(i) should be similarly amended to include within the definition of "expenditure" funds expended by persons on behalf of such "a clearly identified individual."
2. *Restrict Corporate and Labor Organization Support for Undeclared but Clearly Identified Candidates.* Section 441b(b) should be revised to expressly state that corporations, labor organizations and national banks are prohibited from making contributions or expenditures "for the



purpose of influencing a clearly identified **individual** to seek nomination for election or election..." to federal office.

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

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

## Honoraria

*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:* In the Ethics Reform Act of 1989, Congress prohibited the receipt of honoraria by Members of the House of Representatives and officers and employees of the federal government. To conform with this new prohibition, Section 441i was amended to apply only to Senators and officers and employees of the United States Senate. However, Congress had previously eliminated the \$25,000 annual limit on the amount of honoraria that could be accepted, but it did not take out two sections, which only apply to the \$25,000 limit. This clarification would eliminate confusion and thereby help the Commission in its administration of the Act.

# Appendix 1

## Biographies of Commissioners and Officers

### Commissioners

#### Lee Ann Elliott, Chairman

**April 30, 1993**

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

A native of St. Louis, Chairman Elliott graduated from the University of Illinois. She also completed Northwestern University's Medical Association Management Executive Program and is a Certified Association Executive. She also served as Commission Chairman in 1984.

#### John Warren McGarry, Vice Chairman

**April 30, 1995**

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

After graduating cum laude from Holy Cross College, Mr. McGarry did graduate work at Boston

University and earned a J.D. degree from Georgetown University Law School.

#### Joan D. Aikens

**April 30, 1995**

One of the original members of the Commission, Mrs. Aikens was first appointed in 1975. Following the reconstitution of the FEC that resulted from the Supreme Court's *Buckley v. Valeo* decision, President Ford reappointed her to a five-year term. In 1981, President Reagan named Mrs. Aikens to complete a term left open because of a resignation and, in 1983, once again reappointed her to a full six-year term. Most recently, Mrs. Aikens was reappointed by President Bush in 1990. She served as FEC Chairman in 1978 and 1986.

Before her 1975 appointment, Mrs. Aikens was an executive with Lew Hodges Communications, a public relations firm in Valley Forge, Pennsylvania. She was also a member of the Pennsylvania Republican State Committee, president of the Pennsylvania Council of Republican Women and on the board of directors of the National Federation of Republican Women. A native of Delaware County, Pennsylvania, 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, where she received her B.A. degree and an honorary Doctor of Law degree.

#### Thomas J. Josefiak

**April 30, 1991**

Mr. Josefiak was appointed to the Commission in 1985 and was the 1988 FEC Chairman. He previously served at 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 served as legislative assistant to the late Congressman Silvio O. Conte.

A native of Massachusetts, Mr. Josefiak graduated from Fairfield University, Connecticut, and holds a J.D. degree from the Georgetown University Law Center.

#### **Danny L. McDonald**

**April 30, 1993**

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

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

#### **Scott E. Thomas**

**April 30, 1991**

Mr. Thomas was appointed to the Commission in 1986 and was the 1987 Chairman. He previously served as executive assistant to former Commissioner Thomas E. Harris and succeeded him as Commissioner. Joining the FEC as a legal intern in 1975, Mr. Thomas eventually became the Assistant General Counsel for Enforcement.

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

### **Ex Officio Commissioners**

#### **Donnald K. Anderson**

Mr. Anderson was appointed Clerk of the House of Representatives in 1987. Before his appointment, he was Majority Floor Manager under Speakers Carl

Albert and Thomas P. O'Neill, Jr. A native of California, he began his career as a page in the 86th Congress. He was appointed assistant enrolling clerk and clerk in the Finance Office by Representative Hale Boggs. Speaker John W. McCormack later appointed him assistant manager of the Democratic Cloakroom.

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

#### **Walter J. Stewart**

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

David G. Gartner, attorney and Special Deputy to the Secretary of the Senate, continues to represent Mr. Stewart at the Commission.

### **Statutory Officers**

#### **John C. Surina, Staff Director**

Before joining the Commission in 1983, Mr. Surina was assistant managing director of the Interstate Commerce Commission, where he was detailed to the "Reform 88" program at the Office of Management and Budget. In that role, he worked on projects to reform administrative management within the federal government. He was also an expert-consultant to the Office of Control and Operations, EOP-Cost of Living Council-Pay Board and on the technical staff of the Computer Sciences Corporation. During his Army service, Mr. Surina was executive officer of the

Special Security Office, where he supported senior U.S. delegates to NATO's civil headquarters in Brussels. At its 1990 annual conference, the Council on Government and Ethics Laws (COGEL) elected Mr. Surina to be its 1991 chairman.

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

**Lawrence M. Noble, General Counsel**

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

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

**Lynne McFarland, Inspector General**

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

A Maryland native, Ms. McFarland holds a sociology degree from Frostburg State College.

# Appendix 2

## Chronology of Events, 1990

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### January

- 1—Chairman Lee Ann Elliott and Vice Chairman John Warren McGarry begin one-year terms as officers.
- 17—FEC conducts election law conference in Washington, D.C. for corporations, labor organizations and trade associations.
  - FEC reports decrease in PAC registrations in 1989.
- 24—In *Common Cause v. FEC* (89-0524), district court finds FEC's partial dismissal of Common Cause complaint against NRSC arbitrary, capricious and contrary to law, and remands matter to FEC.
  - In *FEC v. Life Amendment PAC, Inc.*, district court orders PAC to pay \$125,000 in civil penalties for recordkeeping and reporting violations.
- 25—FEC releases final audit report on 1988 Hart campaign.
  - FEC approves voluntary standards for voting systems.
- 31—1989 year-end report due.

### February

- 1—FEC publishes revised *Party Guide*.
- 2—FEC releases campaign finance figures on 1989 Special Elections.
- 6—FEC releases party finance statistics.
- 9—FEC appoints Inspector General.
- 12—FEC notifies Congress, the President and the Secretary of the Treasury that the Presidential Election Campaign Fund will likely be insufficient to finance the 1992 campaigns.
- 20—FEC releases final audit report on Quayle for Vice President - 1988.
- 21—FEC testifies at budget hearings before Senate Appropriations Subcommittee on Treasury, Postal Service and General Government.

26—FEC releases 1990 Senate candidate spending figures.

28—FEC releases PAC finance statistics.

### March

- 1—FEC releases final audit report on Bentsen for Vice President - '88.
- 8—FEC conducts regional conference in Scottsdale, AZ for candidates, campaign workers and PACs.
- 16—Chairman Lee Ann Elliott leads delegation of American election officials on 10-day visit to Soviet Union.
- 20—New York special elections to fill two vacant House seats.
- 21—FEC submits legislative recommendations to Congress and President.
- 27—Supreme Court upholds Michigan law prohibiting independent expenditures by corporations (*Austin v. Michigan Chamber of Commerce*).
- 30—FEC conducts conference in Washington, D.C. for candidates.

### April

- 4—FEC publishes Notice of Proposed Rule-making on computerized magnetic media for Presidential audits.
- 11—Effective date for revised regulation governing election-related activity by foreign nationals.
- 15—Quarterly report due.
- 16—FEC releases statistical report on home-state and out-of-state contributions to Senate candidates.
- 17—In *FEC v. New York State Conservative Party State Committee/1984 Victory Fund*, district court finds defendant made excessive contributions.

- 26—FEC adopts new procedures for informal investigation.

## May

- 1—Clearinghouse publishes four-volume series, *Ballot Access*.
- 4—President Bush signs amendments to Ethics Reform Act of 1989, which include honoraria restrictions.
- 8—Commission releases 15-month Congressional election figures.
- 10—FEC testifies at budget hearings before Senate Rules Committee.
  - District court finds Working Names, Inc. in contempt for failing to pay civil penalties.
- 18—District court orders Friends of Isaiah Fletcher and treasurer to pay civil penalties.
- 21—In *Goland v. U.S. and FEC*, court of appeals affirms district court's dismissal of constitutional challenges to Federal Election Campaign Act.
- 23—FEC releases final audit report on LaRouche Democratic Campaign.
- 25—FEC releases statistics on finances of political parties.
- 27—FEC releases statistics on PAC contributions to Congressional campaigns.
- 31—Clearinghouse publishes *Election Case Law 89*.

## June

- 1—FEC publishes *Annual Report 1989*.
- 5—New Jersey special primary election for vacant 1st Congressional District seat.
- 18—FEC sends revised allocation regulations to Congress.
- 19—In *Common Cause v. FEC* (89-5231), court of appeals reverses district court decision and holds that FEC failed to adequately analyze affiliation issue and remands to

district court with instructions to return to FEC for reconsideration.

- 22—FEC sends revised debt settlement regulations to Congress.
  - FEC sends revised rules on computer formats for Presidential audits to Congress.
- 28—FEC initiates foreign national rulemaking.
- 29—In *Faucher and Maine Right to Life Committee, Inc. v. FEC*, district court finds FEC regulation on corporate voter guides invalid to the extent that it restricts "issue advocacy."

## July

- 10—In *FEC v. AFSCME-PQ*, district court rules that the PAC violated election law by failing to report in-kind contributions in timely fashion.
- 11—FEC asks Treasury to write rules to handle shortfall in Presidential Election Campaign Fund.
- 15—Quarterly report due.
- 25—FEC releases mid-year PAC count.

## August

- 5—FEC releases statistics on 18-month candidate spending.
- 15—District court finds Mark R. Weinberg in contempt for failing to pay civil penalties.
- 16—FEC releases 18-month party spending figures.
- 22—FEC publishes Notice of Proposed Rulemaking on foreign nationals.
  - FEC publishes Notice of Proposed Rulemaking on Presidential Conventions.
- 27—In *Democratic Senatorial Campaign Committee v. FEC*, district court rules that FEC did not act contrary to law in dismissing part of a complaint filed by DSCC.
- 31—FEC releases statistics on PAC contributions to Congressional candidates.

## September

- 4—FEC releases final audit report on Louisiana Host Committee 1988, Inc.
- 5—District court finds John A. Dramesi for Congress Committee in contempt for failing to pay civil penalties.
- 22—Hawaii special primary to fill vacant Senate seat.
  - Hawaii special election to fill 2nd Congressional District seat.
- 28—FEC releases final audit report on Atlanta '88 Committee, Inc.

## October

- 1—FEC publishes *Selected Court Case Abstracts*.
- 3—Effective date of Debt Settlement rules and Magnetic Media rules.
  - FEC announces Allocation rules effective January 1, 1991.
  - FEC publishes request for comments on nonprofit corporation (MCFL) rulemaking.
  - LaRouche committee makes oral presentation contesting FEC audit report.
- 15—Quarterly report due.
- 30—FEC holds hearings on proposed foreign national rules.

## November

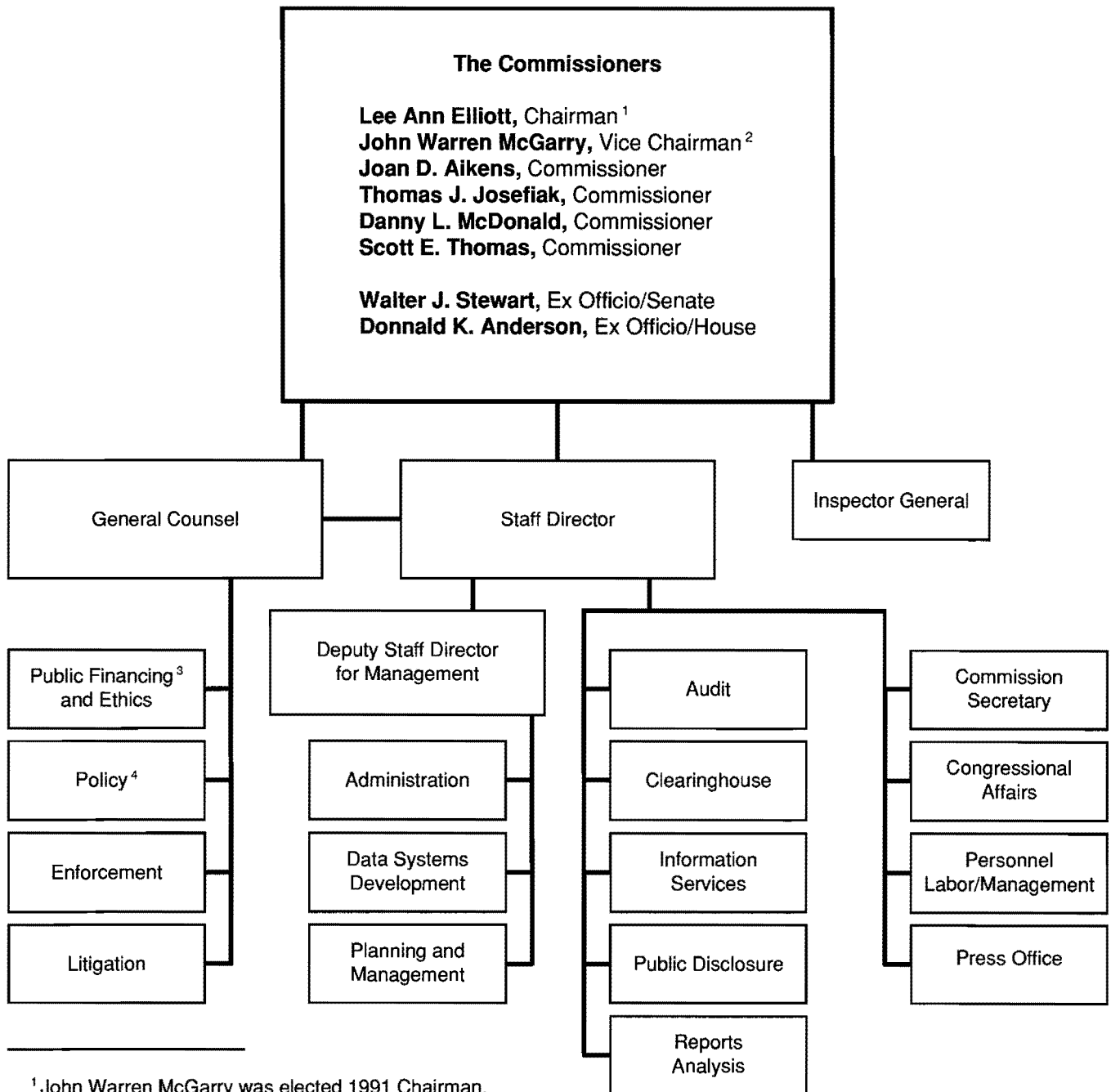
- 1—FEC releases statistics on party spending.
  - Clearinghouse publishes *Contested Elections and Recounts*.
  - FEC publishes *Record Supplement* on Allocation rules.
- 2—Soviet delegation visits FEC.
  - Commission releases statistics on incumbent spending.
- 6—General election.
  - Hawaii special election to fill vacant Senate seat.

- 13—In *Common Cause v. FEC* (90-5317), court of appeals upholds district court's denial of National Republican Senatorial Committee's motion to intervene.

## December

- 4-6—FEC conducts allocation workshops in Seattle and Los Angeles.
- 13—Treasury publishes Notice of Proposed Rulemaking on rules to handle shortfall in Presidential Election Campaign Fund.
- 18—Commission elects John Warren McGarry as 1991 Chairman and Joan D. Aikens as 1991 Vice Chairman.

# Appendix 3 FEC Organization Chart



<sup>1</sup> John Warren McGarry was elected 1991 Chairman.

<sup>2</sup> Joan D. Aikens was elected 1991 Vice Chairman.

<sup>3</sup> Public financing covers presidential campaign funding laws and special projects in the Office of the General Counsel.

<sup>4</sup> Policy covers regulations, advisory opinions, legal review and administrative law.



This appendix briefly describes the offices within the Commission, located at 999 E Street, NW, Washington, D.C. 20463. The offices are listed alphabetically, with local telephone numbers given for offices that provide services to the public. Commission offices can also be reached toll-free on 800-424-9530 and locally on 202-376-5140.

### Administration

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

### Audit

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

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

### Clearinghouse

The National Clearinghouse on Election Administration, located on the seventh floor, assists state and local election officials by responding to inquiries, publishing research and conducting workshops on all matters related to election administration. Additionally, the Clearinghouse answers questions from the public and briefs foreign delegations on the U.S. election process. Local phone: 376-5670.

### Commission Secretary

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

### Commissioners

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

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

### Congressional, Legislative and Intergovernmental Affairs

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

### Data Systems Development

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

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

finance activity and, additionally, provide a tool for monitoring contribution limitations. The division publishes the *Reports on Financial Activity* series of periodic studies on campaign finance and generates statistics for other publications.

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

### **General Counsel**

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

### **Information Services**

In an effort to promote voluntary compliance with the law, the Information Services Division provides technical assistance to candidates, committees and others involved in elections. Responding to phone and written inquiries, members of the staff conduct research based on the statute, FEC regulations, advisory opinions and court cases. Staff also direct workshops on the law and produce guides, pamphlets and videos on how to comply with the law. Located on the second floor, the division is open to the public. Local phone: 376-3120; toll-free phone: 800-424-9530.

### **Inspector General**

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

ciencies in agency operations and of any corrective steps taken by the agency.

### **Law Library**

The Commission law library, part of the Office of General Counsel, is located on the eighth floor and is open to the public. The collection includes basic legal research tools and materials dealing with political campaign finance, corporate and labor political activity and campaign finance reform. The library staff prepares indexes to advisory opinions and Matters Under Review (MURs) as well as a *Campaign Finance and Federal Election Law Bibliography*, all available for purchase at the Public Records Office. Local phone: 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 provide information on the campaign finance activities of political committees and candidates involved in federal elections. Located on the first floor, the office is a library facility with ample work space and a knowledgeable staff to help researchers locate documents and computer data. The FEC encourages the public to review the many resources available, including committee reports, computer indexes, advisory opinions and closed MURs. Local phone: 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 which requests that the committee either amend its reports or provide further information concerning a particular problem. By sending these letters (RFAs), the Commission seeks to ensure full disclosure and to encourage the committee's voluntary compliance with the law. Analysts also provide frequent telephone assistance to committee officials and encourage them to call the division with reporting questions or compliance problems. Local phone: 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

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## Summary of Disclosure Files

	Total Filers Existing in 1990	Filers Terminated as of 12/31/90	Continuing Filers as of 12/31/90	Number of Reports and Statements in 1990	Gross Receipts in 1990	Gross Expenditures in 1990
<b>Presidential Candidate Committees</b>	299	21	278	465	\$1,223,717	\$2,124,615
<b>Senate Candidate Committees</b>	537	71	466	2,385	\$139,864,965	\$164,291,484
<b>House Candidate Committees</b>	2,806	432	2,374	14,614	\$209,214,786	\$215,034,450
<b>Party Committees</b>	502	79	423	3,042	\$250,444,011	\$268,630,252
<b>Delegate Committees</b>	83	5	78	0	\$0	\$0
<b>Nonparty Committees</b>	4,681	509	4,172	34,254	\$194,801,959	\$222,377,868
Labor committees	372	26	346	3,074	\$44,093,743	\$52,707,008
Corporate committees	1,965	170	1,795	16,062	\$54,379,249	\$60,837,208
Membership, trade and other committees	2,344	313	2,031	15,118	\$96,328,967	\$108,833,652
<b>Communication Cost Filers</b>	182	0	182	112	\$0	\$1,414,862
<b>Independent Expenditures by Persons Other Than Political Committees</b>	157	19	138	56	\$0	\$576,330

### Divisional Statistics for Calendar Year 1990

	Total
<b>Reports Analysis Division</b>	
Documents processed	57,982
Reports reviewed	34,726
Telephone assistance and meetings	8,456
Requests for additional information (RFAs)	6,450
Second RFAs	2,222
Data coding and entry of RFAs and miscellaneous documents	13,912
Names of candidate committees published for failure to file reports	33
Compliance matters referred to Office of General Counsel or Audit Division	88
<b>Data Systems Development Division</b>	
Documents receiving Pass I coding*	55,012
Documents receiving Pass III coding*	43,006
Documents receiving Pass I entry	48,509
Documents receiving Pass III entry	42,864
Transactions receiving Pass III entry	
• In-house	82,354
• Contract	455,758
<b>Public Records Office</b>	
Campaign finance material processed (total pages)	1,134,974
Requests for campaign finance reports	8,698
Visitors	15,458
Total people served	24,156
Information telephone calls	20,015
Computer printouts provided	76,833
Total income (transmitted to U.S. Treasury)	\$97,410
Cumulative total pages of documents available for review	9,350,695
Contacts with state election offices	3,199
Notices of failure to file with state election offices	309

	Total
<b>Administrative Division</b>	
Contracting and procurement transactions	1,555
Pieces of outgoing mail processed	255,370
Publications prepared for print	50
Pages of photocopying	7,365,458
<b>Information Services Division</b>	
Telephone inquiries	70,942
Information letters	79
Distribution of FEC materials	8,386
Prior notices (sent to inform filers of reporting deadlines)	44,278
Other mailings	27,631
Record mailings	171,152
Visitors	107
Public appearances by Commissioners and staff	230
State workshops	3
Publications	29
<b>Press Office</b>	
Press releases	132
Telephone inquiries from press	13,817
Visitors to Press Office	3,783
Freedom of Information Act (FOIA) requests	193
Fees for materials requested under FOIA (transmitted to U.S. Treasury)	\$24,658
<b>Clearinghouse on Election Administration</b>	
Telephone inquiries	2,394
Information letters	75
Visitors	46
State workshops	27
Publications	8
Project conferences	17
Foreign briefings	64

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

	<b>Total</b>
<b>Office of General Counsel</b>	
Advisory opinions	
Requests pending at beginning of 1990	3
Requests received	30
Issued, closed or withdrawn *	28
Pending at end of 1990	5
Compliance cases (MURs)	
Pending at beginning of 1990	201
Opened	195
Closed	159
Pending at end of 1990	237
Litigation	
Cases pending at beginning of 1990	41
Cases opened	24
Cases closed	16
Cases pending at end of 1990	49
Cases won	13
Cases lost	1
Cases voluntarily dismissed	2
Cases dismissed as moot	0
Law Library	
Telephone inquiries	1,893
Visitors served	988

#### Audits Completed by Audit Division, 1975-1990

Presidential	66
Presidential Joint Fundraising	8
Senate	13
House	118
Party (National)	46
Party (Other)	110
Nonparty (PACs)	71
<b>Total</b>	<b>432</b>

\* Twenty-six opinions were issued; two opinion requests were closed without issuance of an opinion.

### Revised Allocation Rules: Summary

#### Who Must Allocate

New Sections 106.5(a)(1) and 106.6(a) explain that the allocation rules apply both to:

- Political committees that maintain separate accounts for federal and nonfederal activity (as opposed to political committees that conduct mixed activity from one federal account); and
- Committees that are not “political committees” as defined under the Federal Election Campaign Act but that make disbursements for both federal and nonfederal activity.

The rules specify that the following types of committees must allocate federal/nonfederal expenses, whether or not they are “political committees” under the Act:

- National party committees;
- The House and Senate campaign committees of national parties;
- State and local party committees;
- Separate segregated funds; and
- Nonconnected committees.

(The revised rules at 11 CFR 106.6(a) define a nonconnected committee as a committee that is not a party committee, a separate segregated fund or an authorized committee of a candidate.)

#### What Costs Must Be Allocated

The revisions provide committees with significantly more guidance than current rules on how to allocate expenses. The revised rules at 11 CFR 106.1(a), 106.5(a)(2) and 106.6(b) describe several categories of joint federal/nonfederal activity subject to allocation:

- Administrative expenses (e.g., rent, utilities, office supplies, salaries);
- Generic voter drive activities (e.g., voter-identification, voter-registration and get-out-the-vote drives that do not mention specific candidates);

- Fundraising programs or events through which one committee collects both federal and nonfederal funds;
- “Exempt party activities” conducted by state and local party committees in conjunction with nonfederal election activity;<sup>1</sup> and
- Direct support of specific federal and nonfederal candidates, and fundraising on behalf of specific federal and nonfederal candidates. (Direct support and fundraising on behalf of specific federal candidates result in in-kind contributions, independent expenditures or coordinated party expenditures (2 U.S.C. §441a(d); 11 CFR 106.1(a)(1).)

#### Allocation Methods

The revised rules contain several allocation methods:

- Fixed or minimum percentage;
- Funds expended ratio;
- Funds received ratio;
- Time or space (communication) ratio; and
- Ballot composition ratio.

As explained in the paragraphs below, the specific method used to allocate an expense depends on the category of activity and the type of committee conducting the activity.

#### Administrative Expenses/Generic Voter Drives

**National Party Committees.** The revised rules provide that, in Presidential election years, national party committees must allocate to their federal

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<sup>1</sup> Exempt party activities are certain election-related activities conducted by state and local party committees that are not considered contributions or expenditures on behalf of the federal candidates benefiting from the activity. The three types of exempt activities are: slate cards, campaign materials and Presidential voter drives. 11 CFR 100.7(b)(9), (15) and (17) and 100.8(b)(10), (16) and (18).

accounts at least 65 percent of administrative expenses and costs for generic voter drives. In other years, they must allocate at least 60 percent of such costs to their federal accounts. These are *fixed percentages*. 11 CFR 106.5(b)(2).

**House and Senate Campaign Committees of National Parties.** Under the revised rules, these committees allocate administrative expenses and costs for generic voter drives according to the *funds expended* method, but at least 65 percent of such costs must be allocated to the federal account. (This is a *minimum percentage*.) Under the funds expended method, expenses are allocated based on the ratio of federal expenditures to total federal and nonfederal disbursements made during a two-year federal election cycle. In calculating the ratio, the committee uses only amounts spent on behalf of specific federal and nonfederal candidates, excluding overhead and other generic costs.

**State and Local Party Committees.** The revised rules provide that state and local party committees must allocate their administrative and generic voter drive expenses using the *ballot composition* method: the ratio of federal offices to total federal and nonfederal offices expected to be on the ballot in the next general election to be held in the committee's state or geographic area. The ratio is determined by the number of categories of offices on the ballot. The revised rules specify the categories to be included and the number of offices that may be counted in each category.

In states that do not hold federal and nonfederal elections in the same year, state and local party committees allocate the costs of generic voter drives using the ballot composition method (described above) calculated for the current calendar year. These committees allocate their administrative expenses using the ballot composition method calculated for the two-year federal election cycle. 11 CFR 106.5(d).

**Separate Segregated Funds and Nonconnected Committees.** Under the revised rules, these commit-

tees allocate their administrative and generic voter drive expenses using the *funds expended* method. (A separate segregated fund must allocate administrative expenses only if they are not paid by the connected organization.) Under this method, expenses are allocated based on the ratio of federal expenditures to total federal and nonfederal disbursements made during the two-year federal election cycle. In calculating the ratio, the committee uses only amounts spent on behalf of specific federal and nonfederal candidates, excluding overhead and other generic costs. (This is the same method used by party House and Senate campaign committees; however, separate segregated funds and nonconnected committees are not required to allocate a minimum federal percentage.) 11 CFR 106.6(c).

#### **Exempt Activities: State and Local Party Committees**

The revised rules provide that expenses for exempt party activities must be allocated according to *the proportion of a communication's time or space* that is devoted to federal elections as compared with the entire communication. In the case of a publication, committees apply the ratio to the space. In the case of a phone bank, committees apply the ratio to the number of questions or statements. 11 CFR 106.5(e).

#### **Fundraising Expenses: All Committees**

A committee must allocate the direct costs of each fundraising program or event in which the committee collects federal and nonfederal funds. (In the case of a separate segregated fund, fundraising costs must be allocated only if they are not paid by the connected organization.) Fundraising costs must be allocated according to the *funds received* method: the ratio of federal funds received to total receipts for the program or event. 11 CFR 106.5(f) and 106.6(d).

#### **Expenses for Direct Support of Specific Candidates: All Committees**

Under the revised rules, committees must allocate payments involving both expenditures on behalf of one or more specific federal candidates and disbursements on behalf of one or more specific nonfederal



candidates according to the benefit reasonably expected to be derived. For example, in the case of a communication, the costs must be allocated in proportion to the *time or space devoted* to federal candidates compared with the total time or space devoted to all candidates. In the case of a fundraising program in which funds are collected by the committee for specific federal and nonfederal candidates, the allocation is based on the proportion of *funds received* by federal candidates compared with the total receipts of all candidates.<sup>2</sup> 11 CFR 106.1(a).

Note that expenditures on behalf of federal candidates result in in-kind contributions, independent expenditures or coordinated party expenditures (2 U.S.C. §441a(d)). 11 CFR 106.1(a)(1).

### **Payment of Allocated Expenses**

**Payment Options.** Under the revised rules, committees that have established separate federal and nonfederal accounts (whether or not they are "political committees" under federal law) may choose one of two methods to pay for joint federal and nonfederal activities. Under the first method, a committee pays the entire amount from its federal account, transferring funds from the nonfederal account to cover the nonfederal share of an allocable expense. The second method allows a committee to establish a separate allocation account solely for the purpose of paying allocable expenses. In this case, the committee transfers funds from the federal and nonfederal accounts to the allocation account in amounts proportionate to the federal and nonfederal share of each allocable expense. The allocation account is considered a federal account, subject to federal reporting requirements. 11 CFR 106.5(g)(1) and 106.6(e)(1).

The revised rules amend 11 CFR 102.5(a)(1)(i), which currently prohibits committees from transferring funds from a nonfederal account to a federal account.

The revision permits committees to make such transfers for the limited purpose of paying the nonfederal share of allocated expenses.

**Timing of Transfers.** As a general rule, transfers to pay for allocable expenses (either from a nonfederal account to a federal account or from both the federal and nonfederal accounts to the allocation account) must be made after the final cost of the activity is determined. Transfers may be made in advance of this determination only if advance payment is required by the vendor and if the payment is a reasonable estimate of the activity's final cost, as determined by the committee and the vendor.

In any event, transfers must be made within a 40-day time period: no more than 10 days before or 30 days after the payment for which the funds are designated is made. 11 CFR 106.5(g)(2) and 106.6(e)(2).

### **Reporting Federal and Nonfederal Activity**

The new reporting requirements for allocable expenses apply only to committees that qualify as federal "political committees" and that have established separate federal and nonfederal accounts. The revised rules at section 104.10 set out procedures for reporting allocation ratios and for reporting transfers and disbursements made to pay for allocable expenses.

Committees will report this information on the revised Form 3X and new Schedule H.

### **Additional Reporting Rules for National Party Committees**

Under the revised rules, national party committees must disclose information on their nonfederal accounts and building fund accounts, as well as their federal accounts, applying the same itemization thresholds to all three types of accounts. Transfers from a national party committee's nonfederal account to the nonfederal accounts of state and local party committees are also reportable. The revised reporting rules for national party committees are located at 11 CFR 104.8(e) and (f) and 104.9(c)-(d).

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<sup>2</sup> These allocation methods (used to allocate disbursements between federal and nonfederal candidates) are also used to allocate expenditures made on behalf of federal candidates only.

National party committees will use new Schedule I to summarize the information that they have reported on each of their nonfederal accounts and building fund accounts.

**Party Committee Solicitations**

Revised section 102.5(a)(3) creates the presumption that funds resulting from party committee solicitations that refer to a federal candidate or a federal election are raised for the purpose of influencing a federal election and are thus subject to the limits and prohibitions of the Federal Election Campaign Act. This presumption may be rebutted by demonstrating that the funds were solicited with express notice that they would not be used for federal election purposes.

### New Debt Settlement Rules: Summary

#### Eligibility for Settling Debts

Under the new rules, only "terminating committees" are permitted to settle their debts for less than the amount owed. A terminating committee is a political committee which has debts and which receives contributions and makes expenditures only for the purpose of retiring its debts and paying winding down costs. 11 CFR 116.1(a) and 116.2(a).

An "ongoing committee"—a political committee that does not qualify as a terminating committee—is not permitted to settle debts for less than the amount owed. 11 CFR 116.1(b) and 116.2(b). However, under sections 116.9 and 116.10, an ongoing committee may request a Commission determination that a debt is not payable and may resolve disputed debts. Further, a creditor may forgive the outstanding balance of a debt owed by an ongoing committee if the committee is essentially defunct and unable to pay its bills or if the committee cannot be located.

#### Authorized Committees: Special Rules

**Settlement of Debts.** The new rules include provisions that address debts owed by authorized committees of candidates. The rules prohibit an authorized committee from:

- Settling debts, if an affiliated authorized committee for a previous or future election has funds available to pay part or all of the debts;
- Terminating, if the committee can help pay the debts of an affiliated authorized committee that is unable to pay its debts; or
- Transferring funds to an affiliated authorized committee, if the transferring committee has net debts outstanding. (See 11 CFR 110.1(b)(3)(ii).) 11 CFR 116.2(c)(1) and (2).

**Assigning Debts to Another Committee.** Under the new rules, a terminating authorized committee may

assign its debts to an authorized committee of the same candidate only if the assigning committee:

- Has no cash on hand or assets to pay any part of the debts; and
- Was not organized to further the candidate's campaign in a future election.

The new rules provide an additional requirement for Presidential candidate committees receiving public funds: a publicly funded committee may neither assign debts nor receive assigned debts until after the committee has made all repayments of public funds and has paid all civil penalties.

An authorized committee that has assigned its debts to another committee may terminate provided:

- It notifies each creditor in writing of the name and address of the committee that will receive the debts no later than 30 days before the assignment takes effect; and
- The committee that receives the assigned debts notifies the Commission in writing that it has assumed the obligation to pay the debts and to report both the debts and contributions received to retire them. 11 CFR 116.2(c)(3).

#### Extensions of Credit by Commercial Vendors

New section 116.3 generally follows previous section 114.10, which listed factors for determining the permissible extension of credit by corporations to political committees. The new section adds corresponding standards for unincorporated commercial vendors. Failure to meet these standards results in a contribution—prohibited in the case of a corporation and possibly excessive in the case of a noncorporate vendor.

Under the new rules, an extension of credit by either a corporate or noncorporate vendor is not considered a contribution to a candidate or political committee if:

- The credit is extended in the ordinary course of business; and

- The terms are substantially the same as extensions of credit of similar amounts to nonpolitical debtors of similar risk. 11 CFR 116.3(a) and (b).

The new rules at 116.3(c) list factors the Commission will consider in determining whether credit was extended in the ordinary course of business:

- Whether the commercial vendor followed established procedures and past practice in approving the credit;
- Whether, in the past, the commercial vendor received prompt payment from the same candidate or political committee; and
- Whether the extension of credit conformed to the usual and normal practice in the vendor's trade or industry.

The Commission may also consider regulations prescribed by other federal agencies in determining whether extensions of credit are made in the ordinary course of business. 11 CFR 116.3(d).

#### **Settlement of Debts Owed to Commercial Vendors**

New section 116.4 addresses the forgiveness or settlement of committee debts owed to incorporated and unincorporated vendors. (Previous section 114.10 covered only debts owed to corporations.) The forgiveness or settlement of such debts will not result in a contribution provided that:

- The debt settlement is "commercially reasonable" and the parties have complied with the rules governing debt settlement plans (116.7) or debt forgiveness requests (116.8), as appropriate; or
- The amount forgiven is exempted from the definition of contribution (e.g., a legal or accounting service under 11 CFR 100.7(b)(13) or (14)). 11 CFR 116.4(a) and (b).

**Commercially Reasonable Debt Settlement.** A debt settlement is commercially reasonable if it satisfies three criteria:

- *Initial Extension of Credit.* Credit was initially extended in accordance with the standards of 11 CFR 116.3 (see above). 11 CFR 116.4(d)(1).

- *Committee's Efforts to Repay.* The candidate or political committee undertook all reasonable efforts to satisfy the outstanding debt, such as fundraising, reducing overhead costs or liquidating assets. 11 CFR 116.4(c)(2) and (d)(2).
- *Creditor's Efforts to Collect.* The commercial vendor made the same efforts to collect the debt as those made to collect from a nonpolitical debtor in similar circumstances. Remedies might include, for example, late fee charges, referral to a debt collection agency or litigation. 11 CFR 116.4(d)(3).

**Vendor's Rights.** Commercial vendors, however, are not required to forgive or settle debts owed by candidates and committees. Moreover, the explanation and justification to the new rules states that a creditor is not required to pursue activities that are unlikely to result in the reduction of the debt.

#### **Advances to Committees by Staff and Other Individuals**

New section 116.5 clarifies that payments by individuals using personal funds or personal credit cards to obtain goods or services for a political committee generally result in in-kind contributions to that committee unless the payment is a travel or subsistence expense covered by one of the exceptions explained below. For example, an in-kind contribution results if an individual pays for the transportation or subsistence expenses of *others* or pays for nontravel expenses. If the committee intends to reimburse the individual for such payments, the obligation must be treated and reported as a debt. 11 CFR 116.5(c) and (e). Reimbursements are treated as refunds of contributions.

Note that, in all cases, the exceptions described below do not apply to individuals who are acting as commercial vendors since they are covered by the commercial vendor rules previously discussed.

**Exception: Exempt Travel and Subsistence Payments.** Under 11 CFR 100.7(b)(8), payments made from an individual's personal funds for his or

her transportation expenses incurred while traveling on behalf of a candidate or political party committee are not contributions if they do not exceed \$1,000 per candidate, per election, or \$2,000 per year for travel on behalf of a party committee. Section 100.7(b)(8) also exempts all payments by volunteers for subsistence expenses incidental to volunteer activity.

**Exception: Reimbursed Travel and Subsistence Payments.** Under the new rule at 11 CFR 116.5(b), transportation and subsistence expenses which are incurred and paid for by an individual while traveling on behalf of a candidate or party committee and which are not covered under the 100.7(b)(8) exemption are not considered contributions as long as the committee reimburses the individual within certain time periods.<sup>1</sup> In the case of a credit card payment, the committee must reimburse the individual within 60 days after the closing date of the billing statement on which the charges first appear. In all other cases, the committee must reimburse the individual within 30 days after the expenses were incurred.

#### **Salary Payments Owed to Employees**

New section 116.6 clarifies that unpaid salaries owed to committee staff are not contributions. If a political committee does not pay an employee in accordance with an agreement, the unpaid amount may be treated either as volunteer services, which are exempt from the definition of contribution under 11 CFR 100.7(b)(3), or as a debt. The services may be converted to volunteer activity only if the employee signs a statement agreeing to be considered a volunteer. If the unpaid amount is treated as a debt, the amount owed must be reported as such and may be settled.

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<sup>1</sup> This exception applies to the subsistence expenses of paid campaign staff since a volunteer's subsistence expenses are covered under the 100.7(b)(8) exemption.

#### **Debt Settlement Plans Filed by Terminating Committees**

New section 116.7 contains guidelines concerning debt settlement plans submitted by terminating committees on new FEC Form 8. (Unlike previous section 114.10, the new rules do not provide for the filing of debt settlements by creditors.) Terminating committees may file debt settlement plans once they have reached agreement with their creditors, although not all creditors need be included in one plan. The committee must postpone payment until the Commission has reviewed the debt settlement plan.

**Debts Subject to Settlement.** The types of debts that are subject to debt settlement requirements include:

- Amounts owed to commercial vendors;
- Debts arising from advances by individuals;
- Salary owed to committee employees; and
- Loans owed to political committees or individuals, including candidates. 11 CFR 116.7(b).

**Debts Not Subject to Settlement.** The debt settlement rules do not apply to public funding repayments, which may not be settled, or to disputed debts, which are covered by other rules. 11 CFR 116.7(c). Moreover, the explanation and justification to the rules indicates that the debt settlement rules would not apply to bank loans. Guidance on the treatment of bank loans may be provided in a separate rulemaking.

**Content of Debt Settlement Plan.** For each debt covered by a debt settlement plan, the committee must include the information listed below on FEC Form 8. 11 CFR 116.7(e).

- The terms of the initial extension of credit and the terms of similar amounts of credit extended to nonpolitical debtors of similar risk;
- The committee's efforts to pay the debt;

- The remedies pursued by the creditor to obtain payment compared with the remedies customarily pursued in similar circumstances involving nonpolitical debtors;
- A comparison between the terms of the settlement and debt settlement terms involving nonpolitical debtors;
- A signed statement from the creditor agreeing with the terms of the settlement;
- A statement as to whether the terminating committee has sufficient cash to pay the amount indicated in the plan or, if not, the steps the committee will take to obtain the funds; and
- A demonstration that the committee qualifies as a terminating committee and the date the committee expects to file a termination report.

If the plan does not include settlements for all of the committee's outstanding debts, the plan must additionally provide the following information:

- A list of the committee's remaining debts;
- Whether the committee intends to pay the entire amount of the remaining debts or to settle them, and, if settlement is contemplated, the terms offered to the creditors; and
- Whether the terminating committee has sufficient cash to pay the remaining debts, and, if not, what steps the committee will take to obtain the funds.

**Commission Review of Plan.** The new rules list factors the Commission will examine in reviewing debt settlement plans. 11 CFR 116.7(f).

**Reporting Debts Undergoing Settlement.** A terminating committee must continue to report each debt or obligation included in a debt settlement plan until the Commission has completed a review of the plan. 11 CFR 116.4(f); 116.5(e); 116.6(c); and 116.7(d).

**Debts Discharged in Bankruptcy.** If a committee is released from debts through a bankruptcy court decree pursuant to 11 U.S.C. Chapter 7, the commit-

tee must include the court order in its debt settlement plan as well as a list of the obligations from which the committee is released. 11 CFR 116.7(g). The Commission will treat an authorized committee's debts as settled for purposes of the Federal Election Campaign Act if the candidate received a Chapter 7 discharge that applies to the committee's debts.

### **Creditor's Forgiveness of Debts Owed by Ongoing Committees**

Under section 116.8, creditors may completely forgive the outstanding balance of debts owed by ongoing committees that cannot be located or that are clearly unable to pay their bills, provided that:

- The debt has been outstanding for at least two years;
- The committee has insufficient cash to pay the debt;
- The committee's receipts and disbursements over the past two years each total less than \$1,000; and
- The committee's debts are so large that the creditor could reasonably conclude that the debt will not be paid.

Under these circumstances, a creditor must submit for the Commission's review a letter of intent that provides the following information:

- The terms of the initial extension of credit;
- The committee's efforts to satisfy the debt;
- The remedies pursued by the creditor to collect on the debt; and
- A description of how the creditor has pursued and forgiven similar debts involving nonpolitical debtors.

### **Unpayable Debts**

Section 116.9 sets forth procedures that allow a terminating committee or an ongoing committee to obtain a Commission determination that a debt is unpayable for purposes of the Act because the creditor cannot be located or has gone out of busi-

ness. The committee must demonstrate that it made the necessary efforts to locate the creditor and must continue to report the debt until the Commission determines that the debt is unpayable.

### **Reporting Disputed Debts**

The new rules at 11 CFR 116.1(d) define a disputed debt as a bona fide disagreement between the creditor and the committee as to the existence of a debt or the amount owed by the committee. Under section 116.10, until the creditor and committee resolve the dispute (and if the creditor did provide something of value), the committee must disclose the amount the committee admits it owes, the amount the creditor claims is owed and any amounts the committee has paid the creditor.

When filing a debt settlement plan, a committee must describe any disputed debts and the committee's efforts to resolve them.

### **Continuous Reporting of Debts**

Several revisions have been made to 11 CFR 104.11(b), which concerns the continuous reporting of debts and obligations. The revised rule clarifies that debts exceeding \$500 must be reported as of the date the debts are incurred. (The previous language said "as of the time of the transaction.") The revisions also clarify that periodic administrative costs (e.g., rent, staff salaries) need not be reported as debts if payment is not due before the end of the reporting period. However, if payment is not made on the due date, the amount outstanding must be reported as a debt. Finally, new language incorporates current policy that if the exact amount of a debt is not known, a committee must report the estimated amount of the debt and then either amend the report or include the correct figure in a later report when the exact amount is known.

# Appendix 8

## 1990 Federal Register Notices

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### **1990-1**

Voluntary Standards for Computerized Voting Systems: Notice of Final Standards (55 Fed. Reg. 3764, February 5, 1990)

### **1990-2**

Filing Dates for New York Special Elections (55 Fed. Reg. 7027, February 28, 1990)

### **1990-3**

11 CFR Parts 106, 9003, 9007, 9033, 9035 and 9038: Presidential Primary and General Election Candidates: Technical Requirements for Computerized Magnetic Media (55 Fed. Reg. 12499, April 4, 1990)

### **1990-4**

11 CFR Part 110: Contributions and Expenditures: Prohibited Contributions (Foreign Nationals) (55 Fed. Reg. 13507, April 11, 1990)

### **1990-5**

Filing Dates for the New Jersey Special Elections (55 Fed. Reg. 18388, May 2, 1990)

### **1990-6**

11 CFR Parts 102, 104 and 106: Methods of Allocation Between Federal and Nonfederal Accounts; Payments; Reporting; Transmittal of Final Rule to Congress (55 Fed. Reg. 26058, June 26, 1990)

### **1990-7**

Filing Dates for the Hawaii Congressional Special Elections (55 Fed. Reg. 25880, June 25, 1990)

### **1990-8**

Filing Dates for the Hawaii Special Senate Elections (55 Fed. Reg. 25881, June 25, 1990)

### **1990-9**

11 CFR Parts 106, 9003, 9007, 9033, 9035 and 9038: Presidential Primary and General Election Candidates; Technical Requirements for Computerized Magnetic Media; Transmittal of Final Rule to Congress (55 Fed. Reg. 26392, June 27, 1990)

### **1990-10**

11 CFR Parts 100, 104, 114 and 116: Debts Owed by Candidates and Political Committees; Transmittal of Final Rule to Congress (55 Fed. Reg. 26378, June 27, 1990)

### **1990-11**

11 CFR Part 110: Domestic Subsidiaries of Foreign Nationals; Notice of Proposed Rulemaking (55 Fed. Reg. 34280, August 22, 1990)

### **1990-12**

11 CFR Parts 107, 114 and 9008: Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions; Notice of Proposed Rulemaking (55 Fed. Reg. 34267, August 22, 1990)



**1990-13**

11 CFR Parts 102, 104 and 106: Methods of Allocation Between Federal and Nonfederal Accounts; Payments; Reporting; Final Rule, Announcement of Effective Date (55 Fed. Reg. 40377, October 3, 1990)

**1990-14**

11 CFR Parts 109 and 114: Corporate and Labor Organization Expenditures (MCFL issues); Additional Request for Comments (55 Fed. Reg. 40397, October 3, 1990)

**1990-15**

11 CFR Parts 106, 9003, 9007, 9033, 9035 and 9038: Presidential Primary and General Election Candidates; Technical Requirements for Computerized Magnetic Media; Final Rule; Announcement of Effective Date (55 Fed. Reg. 40377, October 3, 1990)

**1990-16**

11 CFR Parts 100, 104, 114 and 116: Debts Owed by Candidates and Political Committees; Final Rule; Announcement of Effective Date (55 Fed. Reg. 40376, October 3, 1990)

**1990-17**

11 CFR Part 110: Domestic Subsidiaries of Foreign Nationals; Announcement of Additional Public Hearing on October 30 (in addition to previously scheduled hearing, October 31.) (55 Fed. Reg. 41100, October 9, 1990)

**1990-18**

11 CFR Parts 109 and 114: Corporate and Labor Organization Expenditures (MCFL issues); Extension of Comment Period to November 30, 1990 (55 Fed. Reg. 45809, October 31, 1990)

**1990-19**

11 CFR Parts 100, 106, 110, 9001-9007, 9012 and 9031-9039: Public Financing of Presidential Primary and General Election Candidates Notice of Proposed Rulemaking. (56 Fed. Reg. 106, January 2, 1991)