Federal Election Commission

Annual Report 1991

Federal Election Commission
Washington, DC 20463

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 1, 1992

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 17th annual report of the Federal Election Commission, as required by the Federal Election Campaign Act of 1971, as amended. The Annual Report 1991 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 1992. 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,

Joan D. Aikens

Joan D. Aikens
Chairman

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Introduction

Throughout 1991, the Commission prepared for the 1992 elections. Activity focused on the Presidential elections, where a possible shortfall in public funding was projected for the 1992 and/or 1996 election cycle.

As the agency responsible for administering the Presidential Election Campaign Fund, the Commission monitored Fund receipts and estimated 1992 disbursements to gauge the likelihood and timing of any shortfall. The Commission also amended its Presidential certification regulations to comport with Treasury rules for disbursing funds in the event of a shortfall. In addition, the Commission launched an education program to inform the public about the $1 tax checkoff that finances the public funding system.

Even during this nonelection year, the Commission monitored campaign finance activity related to seven special elections for the House and Senate. The Commission adopted several new regulations, including new bank loan rules. It concluded a rulemaking on foreign nationals and provided training to committees affected by the new "soft money" rules. The agency also continued to carry out its other administrative and enforcement responsibilities. These activities, and others, are described in the succeeding chapters.

Chapter 1
Presidential Public Funding

Public funding has been part of our Presidential election system since 1976. Using the single dollars checked off on income tax returns, the federal government provides grants to the Presidential nominees for their general election campaigns and to the major parties for their Presidential nominating conventions. Additionally, matching funds are given to qualified Presidential primary candidates. But by 1996, the funds available for Presidential public funding will be in short supply. The Federal Election Commission, the agency responsible for administering and enforcing the public funding program, projects a deficit of $75-100 million in the Presidential Election Campaign Fund (the Fund) for the 1996 campaign, unless Congress intervenes.[1]

Shortfall

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

A funding shortfall—at some point—is inevitable because payments from the Fund are indexed to inflation, but the $1 tax checkoff that finances the system is not. Therefore, as the consumer price index increases, the Fund needs more and more taxpayers to designate dollars in order to keep pace with the increasing payments to qualified committees. Internal Revenue Service (IRS) statistics, however, indicate that citizen participation has declined. After peaking at 28 percent in 1980, the percentage of tax forms on which the taxpayer checked yes has fallen to approximately 20 percent, where it has remained over the last couple of years.

Public Education Program

In an effort to better understand the public's view of the tax checkoff, the Commission obtained further statistical information from the IRS and conducted focus groups around the country.[3] While some focus group participants criticized the public funding program and others supported it, many did not know why the tax checkoff was implemented or how it works. Most participants, however, said they would like to know more. Noting that the creation of an informed populace might not alter existing patterns of participation in the checkoff, the focus group report nevertheless recommended that the FEC conduct a public education program to address three key points:

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

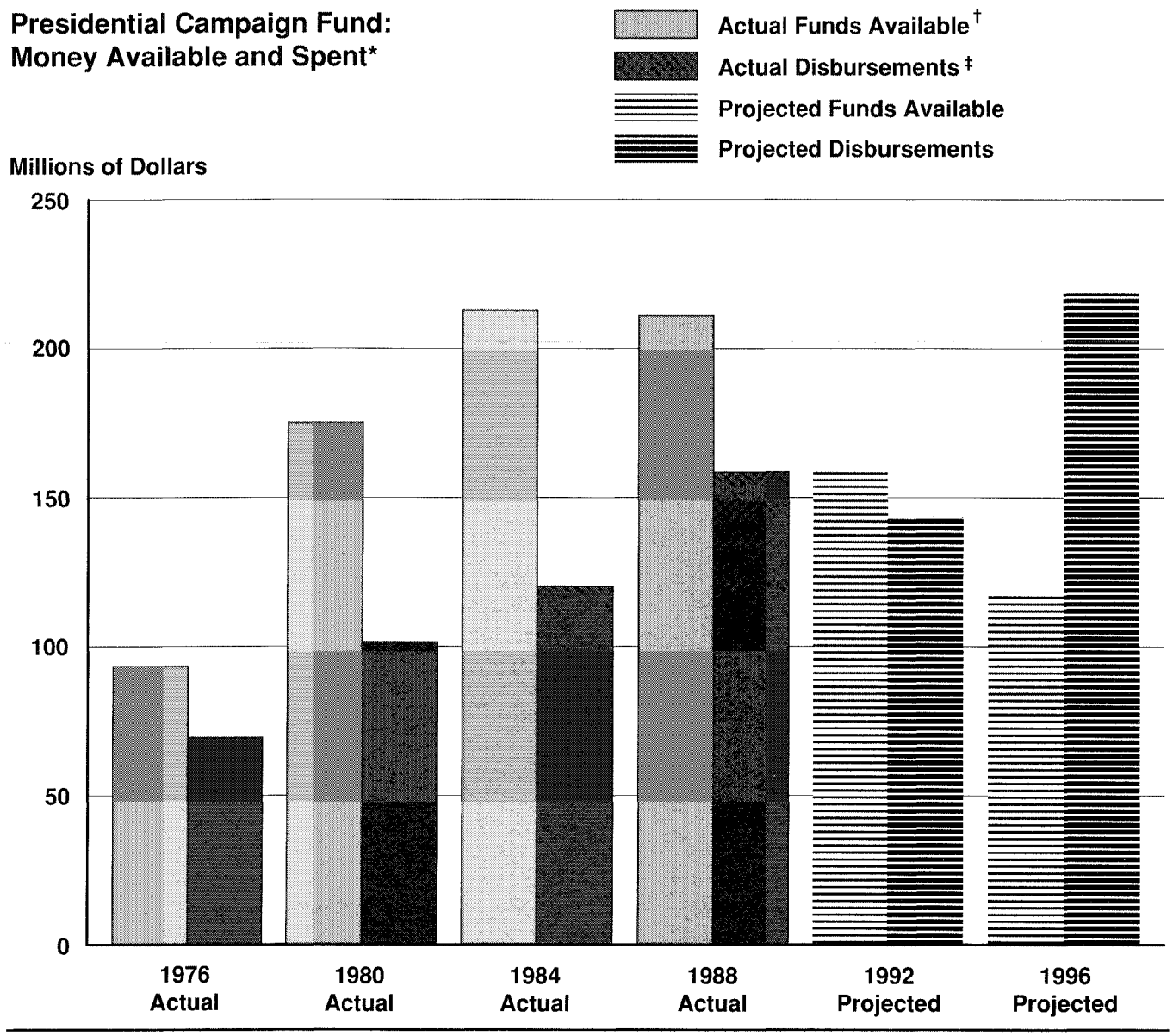
On March 5, 1991, the Commission launched a nationwide public information program to implement these recommendations. The multimedia education program featured television and radio public service announcements in English and Spanish, a flyer, a brochure and an op-ed piece and media appearances by Chairman John Warren McGarry. The media announcements, which aired during the height of the tax-filing season, urged taxpayers to make "an informed choice" when deciding whether to designate

[1]See finance committee chairman Scott Thomas's testimony before the House Subcommittee on Elections, February 26, 1992.

[2]The FEC's estimates had been based on an expectation that checkoff dollars would decline by $2 million in 1991. In fact, they declined by approximately $140,000—from $32,462,979 in 1990 to $32,322,336 in 1991.

[3]See *Annual Report 1990*, p. 3.

Presidential Campaign Fund: Money Available and Spent*

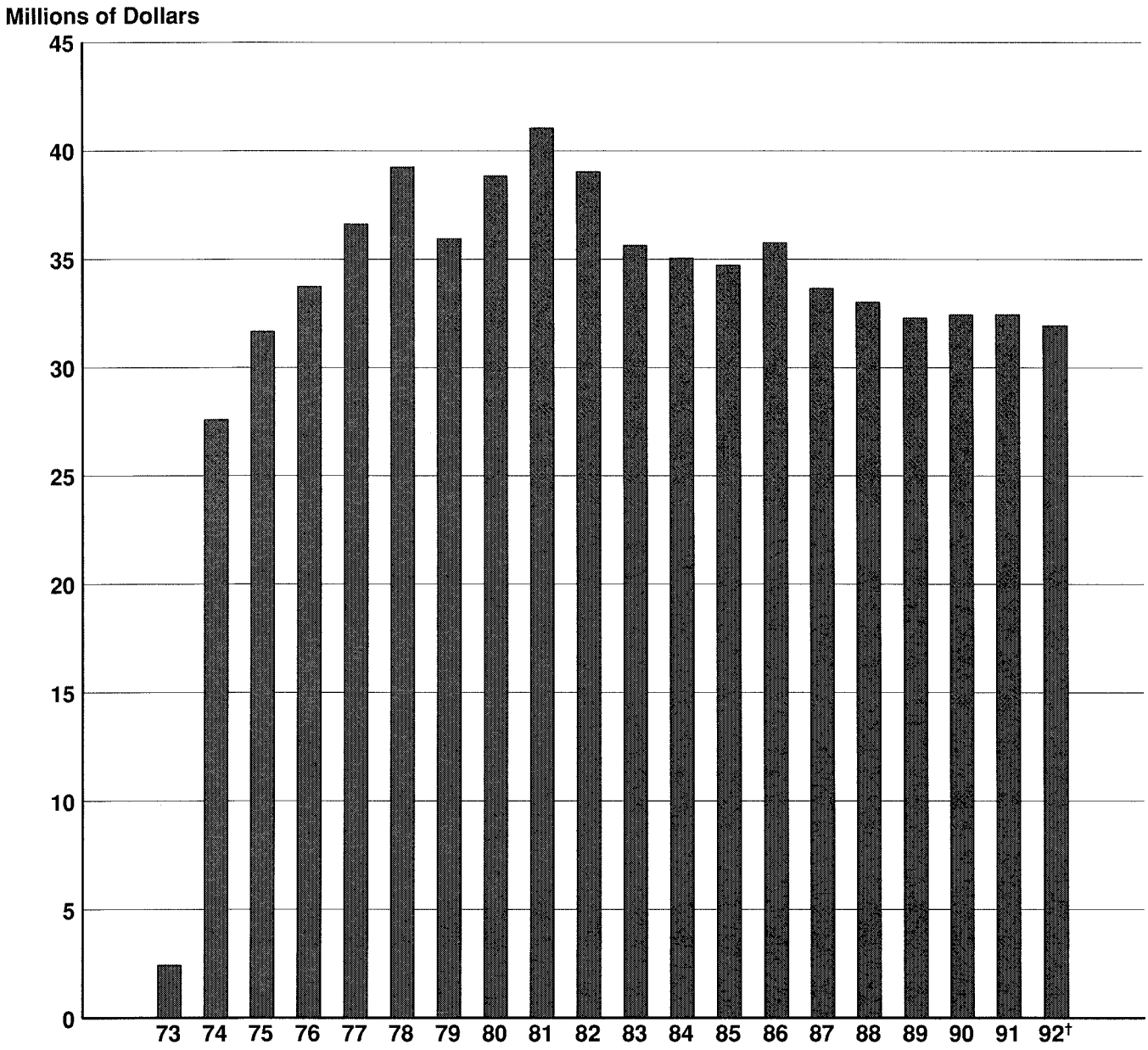


* The Commission used the following assumptions and estimates in making its projections: (1) a 3.5 percent inflation rate for calendar years 1992-1995; (2) estimated 1992 election cycle payouts to primary candidates based on submissions made through March 1992; (3) estimated 1996 election cycle payouts to primary candidates based on 1988 figures adjusted for inflation; (4) in 1996, no incumbent candidate (wide-open field); (5) in 1992 and 1996, no payouts to independent or third party candidates or conventions.

† "Actual Funds Available" means the balance at the end of the year before the Presidential election year plus election year checkoff receipts.

‡ "Actual Disbursements" means disbursements from the Fund during the Presidential election year.

Income Tax Checkoff Dollars by Year 1973-1992*



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

† Estimate.

one dollar of their taxes for the Presidential public funding program. These messages, combined with television, radio and print news coverage, reached a potential audience of more than 92 million.

At year's end, the Commission was preparing to continue the education program for the 1992 tax season.

Legislative Action

Even with the education program, however, the Commission recognized that a 1996 shortfall was inevitable unless legislative action were taken. On March 6, 1991, Chairman McGarry and Vice Chairman Joan D. Aikens delivered that message in testimony before the Senate Committee on Rules and Administration. Later that month, the Commission submitted legislative recommendations to Congress and the President suggesting possible solutions to the shortfall.[4] Chairman McGarry returned to Capitol Hill in May to testify before the House Subcommittee on Elections.

Congress responded by introducing a number of bills to address the potential shortfall. Among them were House and Senate proposals that would increase the checkoff amount, and index it to inflation. Another House bill would abolish the Presidential Election Campaign Fund entirely. When Congress adjourned for the year, however, none of these bills had been passed into law.

Regulatory Action

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

On May 10, 1991, the Treasury Department published new regulations describing the method it would use to disburse funds. Under the new rules, which apply regardless of whether a shortfall actually occurs, the projected amount needed for the conventions and the general election is to be set aside by January 1 of the Presidential election year. The remaining amount in the Fund—and additional monthly deposits of checkoff dollars—are then to be used for matching payments to primary candidates.

If the amount of matching funds certified by the Commission in one month exceeds the total dollars in the Primary Account as of the last day of the previous month—the amount paid to each candidate will be reduced.[5] The difference between the amount certified and the amount actually paid to the candidate will be carried over to the next month and added to any amounts certified to the candidate during that month.[6]

The new Treasury rules also provide that matching fund payments be made once a month rather than twice a month, as was done in the past.[7]

On July 18, 1991, the Commission adopted conforming regulations to govern submissions and certifications. Candidates are to make matching fund submissions only once a month, instead of twice a month, and the Commission will certify matching fund payments on a fixed day each month, instead of within 5 days of receiving a matching fund submission.

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[4]See *Annual Report 1990*, p. 37.

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[5]The candidate would receive a payment equal to the amount certified to the candidate during that month multiplied by the following fraction:

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

[6]The Commission had proposed a "partial set-aside" alternative to Treasury's approach. The Commission's plan (submitted to Treasury as oral and written testimony by Chairman McGarry) would have factored into the equation anticipated 1992 receipts to pay for the general election, thus affording more funds for the early primary campaigns. This proposal was incorporated into two House bills, H.R. 2533 and H.R. 3644.

[7]Previous rules permitted two submissions and two resubmissions each month, with corresponding payments made twice a month.

Certification of Matching Funds

Under the Primary Matching Fund Act, candidates may submit documentation to establish their eligibility for matching funds the year before the primaries are held. In 1991, the Commission declared 8 candidates eligible.

To be eligible to receive matching funds, a candidate must first raise in excess of $5,000 in each of 20 States (i.e., over $100,000 in contributions). Only contributions from individuals apply toward this threshold. Although an individual may contribute up to $1,000 to a candidate, only a maximum of $250 counts as a matchable contribution, applicable to the $5,000 threshold. To be eligible for matching funds, the candidate must also submit a letter of agreements and certifications in which the candidate agrees to comply with the provisions of the Federal Election Campaign Act and the Primary Matching Fund Act including the limits set on campaign spending.

Once certified eligible, candidates may submit additional matching fund requests for Commission review. The Audit staff evaluates the submissions to see if the requests contain proper documentation.

By year's end, Edmund G. Brown, Jr., George Bush, Bill Clinton, Lenora Fulani, Tom Harkin, Bob Kerrey, Paul Tsongas and Douglas Wilder had become eligible for matching funds. The Commission certified a total of $6.4 million to these 8 eligible candidates.

On December 19, 1991, the Commission made an initial determination that Lyndon H. LaRouche was ineligible to receive primary matching funds, based on a pattern of fraudulent fundraising and election law violations by previous LaRouche campaigns. The Commission also noted that Mr. LaRouche was a currently imprisoned felon and would therefore not qualify for the ballot in most states. The LaRouche committee will have an opportunity to respond before the Commission makes a final determination.

Because, under the election law, candidates may not receive actual payment from the U.S. Treasury until after the election year begins, the eligible candidates received their initial payments in January 1992.

The table below lists the eligible candidates and the total amount of matching funds certified to each during 1991.

Candidate	Amount Certified in 1991
Edmund G. Brown, Jr.	$ 234,926
George Bush	2,629,365
Bill Clinton	579,364
Lenora Fulani	624,497
Tom Harkin	1,075,188
Bob Kerrey	574,596
Paul Tsongas	456,534
Douglas Wilder	198,315

Certification of Convention Funds

Under the public funding law, national party committees may become eligible to receive public funds to help pay the official costs of their presidential nominating conventions. Eligible committees receive $4 million plus an adjustment for inflation, provided they agree to certain requirements, including the filing of periodic disclosure reports and detailed audits.

In 1991, the Commission certified that the 1992 Democratic National Convention Committee and the Committee on Arrangements for the 1992 Republican National Convention were eligible to receive $10.6 million each in public funds. The Department of Treasury made the payments and will make an additional cost-of-living payment in 1992.

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. Continuing

to process the audits of 1988 Presidential committees, the agency released eight final audits in 1991.

At the conclusion of a fieldwork audit, FEC auditors hold an exit conference to discuss preliminary findings with the committee. Later, these findings are incorporated into an interim audit report. Interim reports are reviewed by the Office of General Counsel and approved by the Commission before being sent to the committee treasurer. The committee may dispute the findings contained in the interim audit report.

The Commission considers audit reports in open meetings and then releases the approved final audit reports to the public. The final report may include an initial determination by the Commission that the committee repay public funds.[8] Certain matters noted during the audit may be referred to the Office of General Counsel for enforcement.

Repayment Process

A repayment is required when the Commission determines that a primary or general election committee:

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

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

If a committee wishes to dispute the Commission's initial repayment determination, the committee may submit legal and factual materials to support its view. The committee may also request an oral presentation before the Commission. Both the Gephardt and Kemp campaigns made such a presentation in 1991 (see below).

The basis for the Commission's final repayment determination is set forth in a statement of reasons prepared by the Office of General Counsel. A committee that disputes the initial repayment determination must nevertheless repay the amount specified in the final determination within the payment deadline unless the committee obtains a stay from the Commission pending an appeal of its decision.

1988 Presidential Audits[9]

The paragraphs below summarize findings relating to repayment determinations contained in the final audit reports released in 1991.[10] Matters not related to repayments are not included.

- **Dole for President.** On April 11, 1991, the Commission released the final audit report on the Dole for President Committee. Senator Dole received $7.618 million in primary matching funds for his 1988 Presidential campaign. Based on the results of the audit, the Commission made an initial determination that the Committee repay a total of $245,534 to the U.S. Treasury. The repayment amount included:
  - A $170,044 repayment for exceeding the Iowa and New Hampshire expenditure limits;
  - A $3,757 repayment for undocumented expenditures by affiliated delegate committees; and

[8]The Commission may issue addenda to final audit reports based on follow-up fieldwork.

[9]Audit reports are available to the public at the FEC. Reports on the following 1988 committees were released in previous years: duPont, Babbitt, Haig, Gore, RNC Convention, Fulani, DNC Convention, Hart, Quayle for Vice President, Bentsen for Vice President, LaRouche, Louisiana Host Committee, The Atlanta 88 Committee. (See *Annual Report 1989* and *Annual Report 1990.*)

[10]These repayment figures may be revised by the Commission in 1992.

- A $71,733 repayment representing the total of stale-dated Committee checks that were never cashed by the payees.

- **Gephardt for President.** On May 23, 1991, the Commission released the final audit report on the Gephardt for President Committee, Inc. Congressman Gephardt received $3.396 million in primary matching funds. The Commission made an initial determination that the Committee repay a total of $126,383 to the U.S. Treasury for exceeding the Iowa expenditure limit.

  The campaign made an oral presentation before the Commission on November 11, 1991, contesting the results of the audit.

- **Jack Kemp for President.** On July 25, 1991, the Commission made an initial determination that the Jack Kemp for President committee repay $187,069 in federal matching funds. The Committee had received $5.985 million in primary matching funds for Mr. Kemp's 1988 Presidential primary campaign. The repayment amount included a $60,259 repayment for exceeding the Iowa and New Hampshire expenditure limits. The remainder of the repayment—$126,811—was the total of Committee checks that were never cashed by the payees.

  The campaign contested the audit results at an oral presentation before the Commission on December 10, 1991, and submitted additional materials that relate to the amount of the repayment.

- **Paul Simon for President Committee.** On August 29, 1991, the Commission released the final audit report on the Paul Simon for President Committee. The Commission made an initial determination that the committee repay $430,465 in federal matching funds. The Simon Committee had received $3.774 million in federal matching funds. The repayment amount included:
  - $367,906 for exceeding the Iowa and New Hampshire spending limits;
  - $53,014 for nonqualified expenses; and
  - $9,545 for matching funds received for unmatchable contributions and for committee checks that were never cashed by the payees.

  The campaign asked to make an oral presentation as part of its response to the audit report.

- **Bush/Quayle (General Election).** On October 3, 1991, the Commission made an initial determination that the Bush/Quayle Compliance Committee repay $126,510 in federal matching funds. The repayment amount included:
  - $95,909 for profit from press travel;
  - $30,101 for nonqualified campaign expenses; and
  - $500 for an outstanding committee check.

  The campaign asked to make an oral presentation as part of its response to the audit report.

- **Dukakis for President Committee.** On October 10, 1991, the Commission released the final audit report on the Dukakis for President Committee, the primary election committee. The Commission made several initial repayment determinations that amounted to an overall repayment of $492,164. The repayment amount included:
  - $99,490 for exceeding the Iowa and New Hampshire spending limits;
  - $314,640, representing matching funds to which the candidate was not entitled;
  - $35,634, the pro rata portion of $120,146 in surplus funds that remained after the committee had paid its debts; and
  - $42,400, the total of stale-dated committee checks that were never cashed.

The Dukakis Committee had made a partial repayment of $485,000 to the U.S. Treasury on April 1, 1991, leaving $7,164 as yet unpaid.

- **Dukakis/Bentsen for President Committee and Compliance Committee (General Election).** On October 31, 1991, the Commission released the final audit report on the Dukakis/Bentsen Committee and the campaign's legal and compliance fund. The report contained one repayment determination: $334,683 repayable as interest earned on public funds minus taxes. The Committee had made the repayment on February 14, 1991, satisfying the obligation.

Anticipating the '92 Presidential Elections[11]

Regulations: Primary and General Election Candidates

On July 18, 1991, the Commission approved final revisions to the rules governing the public funding of Presidential primary and general election candidates.[12]

The revised rules simplify the process of allocating expenses to the state spending limits, a requirement for primary candidates receiving matching funds. In past elections, these spending limits have proven difficult to audit and enforce. The first two primary states, Iowa and New Hampshire, have relatively low spending limits, but have been important electoral tests for Presidential campaigns. As a result, campaigns have often devised complex schemes to reduce amounts allocated to the Iowa and New Hampshire limits. The Commission, in turn, has had to devote considerable resources to determine whether campaigns exceeded state limits and to enforce any violations discovered.[13]

Under the new rules, expenses are allocable only if they fall within one of the five specific categories. By contrast, the previous rules required allocation of all expenses unless an expense was covered by a specific exemption. The rules also permit primary committees to treat up to 50 percent of their allocable expenditures for a particular state as exempt fundraising costs and thus exclude them from the state spending limit.

Guide for Matching Fund Submissions

On August 15, 1991, the Commission approved the 1992 edition of the *Guideline for Presentation in Good Order*, a manual for Presidential primary candidates eligible to receive federal matching funds.[14] The Guideline describes the format and documentation requirements for matching fund requests. Also explained are the procedures campaigns must follow when submitting matching fund requests and the FEC's procedures for certifying the amount of matching funds payable to the campaign by the U.S. Treasury.

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[11]In addition to the regulations and guidelines discussed here, the Commission prescribed new rules governing submissions of computer tapes. These rules became effective October 3, 1990, and were summarized in *Annual Report 1990*. On March 28, 1991, the Commission decided to suspend a rulemaking on Presidential nominating conventions until after the 1992 conventions. (See 56 FR 14319 and 55 FR 34267.)

[12]See 56 FR 35898.

[13]The Commission has submitted legislative recommendations asking Congress to reconsider the state spending limits. (See p.)

[14]On January 31, 1992, the Commission approved the 1992 edition of the *Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing*, another manual designed to assist matching fund recipients.

Chapter 2
Administration of the Law

The Federal Election Commission has sole authority over the administration and civil enforcement of the provisions of the Federal Election Campaign Act and Presidential public financing statutes. This chapter summarizes the agency's efforts to fulfill this statutorily mandated mission in 1991.

Public Disclosure

Public Records

A key component of the FEC's mission is the disclosure of campaign finance data. All campaign reports filed by federal committees are available for inspection in the agency's Public Records Office within 48 hours of receipt. Reporters, committees and other interested persons visit the office to scrutinize these reports and the computer printouts, curious about the sources of funds and spending patterns or 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.

Data Processing

The Commission continued to enhance its computer capabilities in 1991, expanding public access to on-line campaign finance information. More data was coded and made available to the public faster than ever before.

The Direct Access Program (DAP), which permits subscribers to review disclosure information on their own computers, continued to gain acceptance. Subscribers increased from 225 to 349.

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

The Commission purchased eleven lap-top computers for its attorneys and auditors to use while traveling. The agency also began construction to enlarge its computer room.

Press Office

During 1991, the Press Office briefed the media on a variety of election-related topics—from campaign finance reports to Commission rulemakings. With the 1992 Presidential campaign approaching, the press office also responded to numerous media inquiries about the solvency of the Presidential Election Campaign Fund and the Commission's plans for addressing a possible funding shortfall. (See Chapter 1.)

The Press Officer is also the Commission's Freedom of Information Officer, and in that capacity he responded to a record number of FOIA requests in 1991. Requests for computer tapes and access to the Commission's Direct Access Program are among the items processed under the Freedom of Information Act.

Regulations

FEC regulations explain the statute's requirements in detail. The Commission revises its rules to give increased guidance to committees. In 1991, the Commission adopted new regulations regarding:

- bank loans (see Ch. 3);[1]
- public funding of Presidential primary and general election candidates (see Ch. 1);
- joint fundraising (adopted as part of the public funding rules);

[1]The bank loan rules were expected to become effective in 1992.

- redesignations and reattributions (adopted as part of the public funding rules);
- honoraria (superseded by subsequent legislation; see Ethics in Government Act of 1978 and Legislative Branch Appropriations Act, Public Law 102-90); and
- personal use of excess campaign funds by grandfathered Members of Congress (see Ch. 3).

The Commission also responded to three petitions for rulemaking, two concerning "soft money" and a third regarding corporate airplanes. The Commission published a notice of proposed rulemaking for one of the "soft money" petitions and requested comments on the other. With regard to the third petition, the Commission decided not to change its reimbursement rules for use of corporate airplanes.

On June 13, 1991, the Commission voted 4-2 not to adopt a proposed rule that would have treated a domestic corporation as a foreign national if the corporation's foreign ownership exceeded 50 percent. The Commission then unanimously voted to close the rulemaking.

Advisory Opinions

The Commission issued 35 advisory opinions in 1991. These opinions, which respond to formal requests from anyone involved in activity subject to federal election law, clarify the law for the requester and anyone else 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 1991 are discussed in Chapter 3, Legal Issues.

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, often researching relevant advisory opinions and litigation for callers.

Reporting Assistance

Reports analysts are well trained and are knowledgeable about the complexities of reporting and related compliance matters. A committee with a reporting problem or question is encouraged to call the Commission and speak directly to the analyst assigned to review the committee's reports. (See also Review of Reports, below.)

The FEC 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. The FEC's monthly newsletter, the *Record,* also publishes reporting schedules and requirements.

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 1991 the agency updated the *Explanation and Justification* (E&J) for Commission regulations, created a brochure to explain the $1 tax checkoff that funds the Presidential Election Campaign Fund and published a compilation of *Selected Court Case Abstracts* pertaining to the federal election law.

Further, the agency produces and distributes free publications and video tapes that explain the law.

Conferences and Visits

The agency sponsors conferences each year, where Commissioners and staff conduct a variety of technical workshops on the law. At the 1991 conferences, held in Washington, Boston and Chicago, Internal Revenue Service staff were also available to answer questions on tax-related issues. The Commission videotaped a number of the workshops and made the tapes available to the public.

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—Raleigh, Salt Lake City and Baton Rouge—answering questions and reviewing areas of the law specific to the needs of the participants.

Commissioners and FEC staff also conducted special training sessions for state party committees on the new allocation regulations that went into effect on January 1, 1991. Staff traveled to New York, Boston, Denver, Des Moines, Austin and Columbus. Later in the year, the Commission held meetings in San Francisco, Atlanta and Minneapolis to get feedback from committees affected by the new rules.[2]

Review of Reports

Reports analysts are required to examine each report for accuracy and compliance with the regulations and statute. When necessary, an analyst will send a letter (called a request for additional information or RFAI) to a committee that has an apparent reporting problem. A complete and speedy response to this letter will often help a committee avoid an enforcement action by the Commission.

As a result of newly prescribed regulations in 1990 and 1991, reports analysts began reviewing two new reporting forms. The first form was FEC Form 8, which is used by committees to disclose debt settlement plans.[3] Analysts reviewed each plan to ensure it was accurate and complete. If it was not, an RFAI was sent to the committee to obtain further information. Once all required information was received, the plan was forwarded to the Office of General Counsel, which reviewed the plan to ensure that it complied with the Act and regulations. The plan was then forwarded to the Commission for its consideration along with the staff recommendations for the disposition of the debt settlement plan. The Commission received 79 debt settlement plans during the year.

The second set of forms reviewed by the analysts were actually new schedules for the revised FEC Form 3X, Schedules H1 - H4.[4] These schedules are used by committees to report the allocation of expenses between federal and nonfederal accounts of the same committee. Numerous Schedules H1-H4 were reviewed during the year. The review enabled the analysts to educate committees on the proper methods for reporting allocation information in order for them to be in compliance with the new regulations. To this end, analysts contacted, by RFAI and/or by telephone, most committees that disclosed allocated expenses.

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

[2]The allocation rules are discussed in Ch. 3, Legal Issues.

[3]The debt settlement rules went into effect October 3, 1990. For a summary of these regulations, see *Annual Report 1990.*

[4]The allocation rules went into effect January 1, 1991. The regulations were summarized in *Annual Report 1990* and are also discussed in Ch. 3, Legal Issues.

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 1991.

Enforcement Authority

The Commission's enforcement authority was upheld in two 1991 court cases. In *FEC v. Populist Party*, the U.S. Court of Appeals for the District of Columbia granted the FEC's motion for summary reversal of a district court order that had imposed a date by which the Commission had to conclude its investigation of the Populist Party. The appeals court said the district court had exceeded its jurisdiction by setting such a deadline in a proceeding to enforce a subpoena issued by the Commission.[5]

In *FEC v. Mann for Congress Committee*, the U.S. District Court for the District of Columbia granted the FEC's motion for default judgment against a candidate's committee and its treasurer for violating the terms of a conciliation agreement.[6] The court ordered defendants to comply with the agreement's terms within 10 days and to pay the FEC an additional $5,000 civil penalty for violating the agreement. The court also permanently enjoined defendants from future violations of the conciliation agreement.

[5]No. 90-229 and 90-7169.
[6]No. 90-2419(LFO).

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 1991 Clearinghouse activities.

Advisory Panel

The Clearinghouse Advisory Panel, which is composed of election officials from around the country, held its annual meeting in San Francisco on December 15-17. The meeting included discussions on the Voting Rights Act, election case law, effective press relations, contested elections, political patronage, innovations in election administration, the Justice Department's pre-clearance role in redistricting and the impact of the Americans with Disabilities Act on polling place accessibility.

Publications

Polling Place Accessibility in the 1990 General Elections. This is the third progress report issued

Caseloads of MURs

	1985	1986	1987	1988	1989	1990	1991
Pending at Beginning of Year	172	137	143	171	220	201	237
Opened During Year	257	191	261	236	218	195	257
Closed During Year	292	185	233	187	237	159	296
Pending at End of Year	137	143	171	220	201	237	198

under the Voting Accessibility for the Elderly and Handicapped Act of 1984. Under that Act, the FEC must issue two more reports covering the 1992 and 1996 elections. The FEC is responsible for conducting surveys on accessibility and compiling the results; it has no jurisdiction over polling places.

Federal Election Law 91. This publication summarizes selected federal provisions on registration and voting, providing federal government sources where readers can obtain further information.

Election Directory. This directory contains an updated list of names and addresses of state election officials responsible for canceling prior voter registrations.

The Clearinghouse also finalized contracts for a series of publications on recent technological and administrative innovations in election offices. Topics to be addressed include "motor voter" registration programs, signature digitization technology and the Post Office's National Change of Address (NCOA) program.

Chapter 3
Legal Issues

The Federal Election Commission promulgates regulations that explain the requirements of the Federal Election Campaign Act (the Act) and issues advisory opinions that apply these provisions to specific situations. The Commission also has primary jurisdiction over the civil enforcement of the Act.[1] This chapter summarizes some of the key campaign finance issues addressed by the Commission in 1991 through its regulations, advisory opinions and enforcement actions.

Corporate Communications

The Federal Election Campaign Act (the Act) and Commission regulations prohibit corporations from making contributions or expenditures in connection with federal elections. 2 U.S.C. §441b. But the Act and the regulations do, as an exception to this prohibition, permit corporations to pay for some partisan and nonpartisan election-related communications, subject to certain restrictions. Some of these restrictions, contained in Commission regulations, have been challenged in recent years. One such challenge was successful in 1991. In *Faucher and Maine Right to Life Committee v. FEC*, courts invalidated one of the provisions—an FEC regulation on corporate voter guides, 11 CFR 114.4(b)(5)(i)—because the court held that the regulation applied "issue advocacy" as a factor for determining whether a voter guide constituted a prohibited expenditure.[2]

Apart from the court challenge, the Commission addressed other aspects of the corporate communication regulations in several 1991 advisory opinions.

Express Advocacy

Faucher and Maine Right to Life Committee v. FEC. In its March 21, 1991, decision the U.S. Court of Appeals for the First Circuit affirmed the district court's invalidation of the Commission's voter guide regulations. The regulations had permitted a corporation to publish voter guides for distribution to the general public so long as certain criteria for nonpartisanship were met. Among those criteria was a requirement that the voter guide not advocate a particular stance on the *issues* the candidates were asked to address. The district court had ruled that "[t]his approach ignores the clear language of *FEC v. Massachusetts Citizens for Life* [MCFL] that issue advocacy by a corporation cannot be constitutionally prohibited and that only express advocacy...is constitutionally within the statute's prohibition."

The "express advocacy" standard was first employed in the landmark Supreme Court case *Buckley v. Valeo*. The Court defined express advocacy as "communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office," including "communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' [or] 'reject.'" The appeals court, citing *Buckley*, concluded: "The Supreme Court, recognizing that such broad language as found in section 441b(a) creates the potential for first amendment violations, sought to avoid future conflict by explicitly limiting the statute's prohibition to 'express advocacy.'"

On October 7, 1991, the U.S. Supreme Court denied the FEC's petition for the Court to review the appeals court's decision.

FEC v. National Organization for Women (NOW). As a result of the Supreme Court's refusal to review the *Faucher* decision, the Commission filed a motion to dismiss its appeal in *FEC v. NOW*.[3] The court of appeals granted the motion on October 11, 1991. Like the lower courts in the *Faucher* case, the district court in *NOW* also relied on the Supreme Court's "express

[1] See Chapter 2, Administration of the Law.

[2] *Faucher v. FEC*, 743 F. Supp. 64 (D.Me. 1990), *aff'd*, 928 F.2d 468 (1st Cir. 1991), *cert. denied*, 495 U.S. ____ (October 7, 1991).

[3] *FEC v. NOW*, 713 F. Supp. 428 (D.D.C. 1989), *appeal dismissed*, No. 89-5230 (D.C. Cir. Oct. 11, 1991).

advocacy" standard. The *NOW* court ruled that the prohibition on corporate expenditures did not apply to a series of letters sent as part of a NOW membership drive because the material did not contain "express advocacy."

Voter Education and Registration
FEC regulations permit corporations to finance nonpartisan voter education messages and voter drives so long as certain criteria are satisfied.

In AO 1991-17, the Commission applied the criteria to a proposed nonpartisan videotape featuring Members of Congress. The Commission determined that the nonprofit, tax exempt Committee for Citizen Awareness, Inc. (CCA), with the financial support of other corporations, could produce and distribute the tapes to the public. In addition to making references to the federal election process, each tape described a pending issue before Congress, explained the Member's committee assignments and invited constituents to call his or her office. The video also explained how Congress works.

Since the videos did not name any candidate or refer to any political party, and their election message was limited to urging the public to register and vote, they satisfied the nonpartisan voter message regulations at 11 CFR 114.4(b)(2).

The videos also satisfied the requirements for nonpartisan voter drives. 11 CFR 114.4(c)(1) and (2). They were cosponsored and conducted by a nonpartisan, nonprofit tax exempt organization and were offered without regard to a voter's political preference.

Trade Association Communications
Under FEC rules, when a trade association directs partisan communications to incorporated members the association may send the communications only to the official representatives of the members. 11 CFR 114.3.

In AO 1991-24, the Commission concluded that the Credit Union National Association (CUNA) could send the official representatives of its incorporated members (state trade associations) partisan communications that asked them, in turn, to pass on the communications to the representatives of their member corporations (credit unions).

"Soft Money" Issues

Through a series of five 1991 advisory opinions the Commission clarified the application of its new "soft money" regulations. The Commission also responded to an allocation rulemaking petition submitted by the Association of State Democratic Chairs (ASDC) and a petition on a related issue, submitted by Congressman William Thomas.

Background: Regulations on Allocation
The regulations, which became effective January 1, require political committees that maintain separate bank accounts for federal and nonfederal activity to allocate shared expenses between the two accounts according to set formulas. By requiring this allocation of shared federal/nonfederal expenses, the Commission hoped to provide a mechanism ensuring that committees would not use nonfederal "soft money" to subsidize federal election activities.

Advisory Opinions on Allocation
In Advisory Opinions 1991-6, 1991-15, 1991-25, 1991-27 and 1991-35, the Commission applied these rules to a variety of special situations.

In several opinions, the Commission required committees to adjust their allocation formulas to more accurately reflect the federal/nonfederal composition of their activities. In AOs 1991-6 and 1991-25, the California Democratic Party (CDP) and the Pennsylvania Democratic and Republican State Party Committees, respectively, were required to increase the federal percentage of certain shared costs to account for special elections for the Senate. The committees were also permitted to augment their nonfederal percentages to reflect certain local elections that were not contemplated by the prescribed allocation formulas. For example, in 1991-25, the Commission al-

lowed committees to increase the nonfederal share because local elections were held in a nonfederal election year. In 1991-6, as another example, the Commission increased the nonfederal share because a court ruling permitted CDP to endorse "nonpartisan" local candidates. (This ruling was ultimately vacated by the Supreme Court, however, prompting the Commission to revoke the nonfederal increase. AO 1991-27. See *Geary v. Renne*, 111 S.Ct. at 2336.)

In other AOs, the Commission responded to questions about procedural aspects of the regulations. The rules require committees to make all payments for shared expenses from their federal account. As an exception to the rule banning transfers from a nonfederal account to the federal account, the nonfederal account may transfer its portion of a shared expense to the federal account if the transfer occurs within a 40-day window—beginning ten days before the payment date and ending thirty days after that date. Only transfers that represent the nonfederal portion of a shared expense and that are made within the 40-day window are permissible. In 1991-15, however, the Commission permitted the Georgia Democratic Party to transfer nonfederal funds to its federal account outside this 40-day window because the committee had inadvertently miscalculated its allocation percentages, resulting in an overpayment by the federal account. The one-time transfer, though not directly linked to a shared expense, enabled the committee to correct an error and more accurately reflect the actual federal/nonfederal ratio.

A separate segregated fund (SSF)—a committee established by a corporation or labor organization—must allocate its shared administrative and fundraising expenses only when the committee itself pays for these expenses. Applying this provision in AO 1991-35, the Commission said that the California Farm Bureau Federation PAC (Farm PAC) would not be required to allocate, even if the nonfederal account paid a portion of its own expenses. Under Farm PAC's plan, its connected organization (the California Farm Bureau Federation) would pay the SSF's administrative and fundraising costs (as permitted under 11 CFR 114.1(b)), but would be reimbursed by the committee's nonfederal account for some of the costs attributable to that account. Since expenses would not be "shared" between the committee's federal and nonfederal accounts, Farm PAC would not have to follow the procedures described in the allocation rules.

ASDC Rulemaking Petition on Allocation

On March 26, 1991, the ASDC submitted a rulemaking petition asking the Commission to consider changing some of the allocation formulas and payment procedures set forth in the new regulations. After receiving comments on a Notice of Availability, the Commission published a Notice of Proposed Rulemaking in November that suggested:

- Allowing state and local party committees to add 1 additional point for nonfederal candidates when they calculate the ballot composition ratio used to allocate their shared administrative and generic voter drive expenses;[4]
- Allowing state and local party committees to include another point for nonfederal candidates if any partisan local candidates are expected on the ballot during the two-year Congressional election cycle;
- Expanding the 40-day transfer window to 70 days (10 days before to 60 days after the payment date); and
- Allowing committees 60 days after a fundraising activity to recalculate the federal/nonfederal ratio and to make corresponding transfers between their federal and nonfederal accounts.

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[4]Under the ballot composition method, costs are allocated according to the ratio of federal offices to total federal and nonfederal offices expected on the ballot in the next general election in the state or geographic area. The ratio is determined by the number of categories of offices on the ballot, with a specified number of offices (or points) that may be counted in each category. 11 CFR 106.5(d)(1).

The notice also requested comments on the reporting requirements associated with the allocation regulations.[5]

By year's end, the Commission had received 20 comments, the majority of which supported the Commission's proposed rule changes.

Rulemaking Petition on Transfers from Nonfederal Committees to Federal Committees

On December 5, 1991, Congressman William Thomas submitted a rulemaking petition asking the Commission to revise its regulations governing transfers of funds from nonfederal to federal campaign committees. Under current regulations, a nonfederal candidate committee may transfer funds that are permissible under the Act to a federal campaign committee. No "soft money" may be included in the transfer. 11 CFR 110.3(c)(6).

The petition asserts that these regulations are ineffective because they permit state candidates to spend "soft money" to raise the funds that are ultimately transferred to federal campaigns for use in federal elections. Accordingly, the petition seeks a revised rule that would permit funds to be transferred only if permissible funds were used to raise them.

The Commission responded to the petition by publishing a Notice of Availability in the Federal Register seeking comments on the Congressman's proposal.[6]

Grandfathered Members' Use of Campaign Funds

Although the Federal Election Campaign Act generally prohibits candidates from using campaign funds for personal use, it has long contained a "grandfather clause" permitting certain members of Congress to convert excess campaign funds to personal use. 2 U.S.C. §439a. The Ethics Reform Act of 1989 amended this provision.

Under amended section 439a, no Member of Congress who serves in the 103d or a later Congress may convert excess campaign funds to personal use, as of the first day of such service.[7] Grandfathered Members (those in office on January 8, 1980), who formerly could convert unlimited amounts of excess funds to personal use, may now convert only "the amount equal to the [campaign's] unobligated balance on hand" as of November 30, 1989. The Commission addressed this situation by promulgating new regulations that define "the unobligated balance on hand," thus helping grandfathered Members determine how much they can convert to personal use under the amended statute. There is no time limit for grandfathered Members who do not serve in the 103d or a later Congress who want to convert their unobligated balance to personal use. The only limitation is one of amount.

The new regulations were based on AO 1990-26, which set forth two methods for calculating the "balance." Under the first method, the campaign of a "qualified" (i.e., grandfathered) Member simply determines its cash on hand, minus outstanding debts, as of November 30, 1989. The second method permits the campaign to include noncash campaign assets and committee receivables in its November 30, 1989, balance, but additional reporting is required. The new regulations also clarify that the long-standing prohibition on personal use of excess campaign funds applies to noncash assets as well.

Sale and Use Restriction

Under the Federal Election Campaign Act, itemized information on individual contributors listed on FEC reports may not be sold or used for the purpose of

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[5]The Notice appeared in the Federal Register on November 14, 1991. See 56 Fed. Reg. 57864.

[6]See 56 Fed. Reg. 66866.

[7]Grandfathered Members of the 102d Congress who intend to serve in the 103d Congress should consult House or Senate rules (as appropriate) regarding personal use of campaign funds.

soliciting contributions or for commercial purposes. 2 U.S.C. §438(a)(4). This restriction is designed to protect individuals who have contributed to committees. In 1991, through both an advisory opinion and court cases stemming from compliance action, the Commission enforced this provision.

FEC v. Working Names, Inc.

In February, Working Names, Inc. settled two sale and use suits brought against them by the FEC by agreeing to pay a $15,000 penalty.[8] The agreement was incorporated into a district court order declaring that Working Names knowingly and willfully violated the sale and use provision.

State Copy of FEC Report

On June 18, 1991, the Commission issued AO 1991-16, ruling that contributor information taken from a copy of an FEC report, filed to satisfy an Indiana state reporting requirement, could not be used for a commercial purpose.

The requester, an individual, had intended to publish and sell a campaign finance database on Indiana candidates and political committees, including the names, cities and states of individual contributors obtained from copies of federal reports that committees had submitted to comply with state law. The Commission said the protection afforded individual contributors would be meaningless if it depended on where the reports required by the Act were filed.

FEC v. Political Contributions Data, Inc.

On August 21, 1991, the U.S. Court of Appeals for the Second Circuit, reversing a district court decision, ruled that Political Contributions Data, Inc. did not violate the sale and use provision by selling, for profit, individual contributor information copied from FEC reports.[9]

Under 11 CFR 104.15(c), the use of information copied from FEC reports "in newspapers, magazines, books or *other similar communications* is permissible as long as the principal purpose of such communications is not to communicate any contributor information...for the purpose of soliciting contributions or for *other commercial purposes.*" [emphasis added]

The court found that PCD's contributor lists qualified as "other similar communications" and that PCD's sale of FEC information did not violate the commercial purposes prohibition. The court said, "The absence from PCD's reports of mailing addresses and phone numbers, as well as the caveat on each page against solicitation and commercial use, make it virtually certain that these reports will be used for informative purposes (similar to newspapers, magazines, and books...), not for commercial purposes (similar to soliciting contributions or selling cars)."

Pending Cases

Another sale and use case, *FEC v. Legi-Tech, Inc.*, was pending in D.C. district court at year's end, awaiting the outcome of a D.C. court of appeals case, *FEC v. International Funding, Inc.* That case raised constitutional challenges to the sale and use provision.

Fundraising Techniques

As political committees search for ways to expand their fundraising base, the Commission has been called upon to determine the permissibility of new fundraising methods under the Federal Election Campaign Act (the Act). In 1991, telephone and credit card fundraising were again the subject of advisory opinions.

Telephone 900-lines

This technology permits a caller to dial a committee's 900 number and 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 access to 900-line services, including services provided by the bureau. This service bureau then

[8]No. 90-1009-GAG and 87-2467-GAG.

[9]No. 91-6084.

works with the telephone company and its local carriers to get the service on-line and to provide for caller billing.

While political committees bear ultimate responsibility for complying with the election law, the Commission has set forth, in past advisory opinions, two principal requirements for companies providing 900-line service:

- The company must provide services at the usual and normal charge in order to avoid prohibited corporate contributions to the committee; and
- The company must take certain measures to identify contributions and prevent prohibited and excessive contributions.

The Commission applied and clarified these requirements in several 1991 advisory opinions. In AO 1991-2, for example, the Commission permitted MCI Telecommunications Corporation (MCI)—a telephone company—to forward proceeds of 900-line calls to a service bureau, even though the funds might not have been raised in compliance with FEC regulations. As a common carrier telephone company, MCI had limited obligations and was not responsible for ensuring that the funds were in compliance with the law; that obligation rested with the campaign and the service bureau.

In AO 1991-20, the Commission required Call Interactive—a service bureau—to take steps to ensure that the contributions received by the political committee complied with FEC regulations requiring that contributors be identified, and that the company did not impermissibly advance corporate funds to the committee. The Commission did reiterate, however, that it is ultimately the political committee's responsibility to comply with the election law.

In AO 1991-26, the Commission approved Versatel Corporation's proposal to provide its billing and contribution screening services to telephone companies and/or service bureaus that would, in turn, contract with political committees. The company would identify all contributors and would separate contributions of questionable legality.

Credit Cards

The Commission has long permitted political committees to accept contributions via credit card.[10] In AO 1991-1, however, the Deloitte & Touche PAC presented the Commission with a unique situation where several months might intervene between an individual's authorization of a credit card contribution and the date of the actual charge to the contributor's account. Normally, a credit card contribution is received when the committee receives the donor's authorization to charge it to his or her account. Under this deferred payment system, however, the date the contribution was made by the contributor—and received by the committee—was the date the committee transmitted to the credit card company documentation authorizing the credit to the committee's account and the charge to the cardholder's account. Until that point the contributor had the right to revoke the authorization and had not relinquished control over the contribution.

Excessive Earmarked Contributions

Contributions made in connection with federal elections are subject to the limitations of 2 U.S.C §441a. During 1991, the U.S. District Court for the District of Columbia settled a long-standing case involving a violation of these limits, which resulted from earmarked contributions.

FEC v. National Republican Senatorial Committee

On April 9, 1991, the U.S. District Court for the District of Columbia ruled that the National Republican Senatorial Committee (NRSC) and its treasurer made $2.3 million in excessive contributions by exercising "direction or control" over earmarked contributions.[11]

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[10]See, for example, AOs 1978-68 and 1990-4.

[11]No. 90-2055-GAG.

Background.[12] In its suit, the Commission alleged that NRSC had made $2.3 million in excessive contributions to 12 Senate candidates in violation of 2 U.S.C. §441a(h). These contributions were the result of a series of direct mail solicitations in which NRSC asked contributors to write checks to benefit 1986 Republican Senate candidates in four states. None of the 12 candidates involved in the Senate races was named in the letters. Recipients were asked to write checks payable to NRSC or different accounts controlled by NRSC. The solicitation letter said that the amount an individual contributed would be divided equally among the four campaigns mentioned in the letter.

The Commission alleged that the contributions counted against NRSC's limits for the 12 candidates because the committee exercised "direction or control" over the choice of the recipient candidates. The Commission's rules at 11 CFR 110.6(d) provide that, if an entity acts as a conduit for earmarked contributions, the contributions count against the conduit's contribution limits (as well as the original contributor's) if the conduit exercises "any direction or control" over the choice of the recipient candidate.

The Commission also alleged that, by failing to report the contributions paid to the 12 candidates as contributions from NRSC, the committee violated the reporting requirements of 2 U.S.C. §434(b) and 11 CFR 110.6(d)(2). (The contributions were reported by NRSC and the candidates' committees as contributions from the individual donors.)

District Court Decision. The court declared that NRSC exercised "direction or control" over the choice of the recipient candidates "because NRSC devised the solicitation; matched subgroups of the twelve candidates with groups of donors; presented donors with a pre-selected division of contributions among pre-selected candidates; did not identify the candidates by name; requested checks payable to NRSC and associated entities and not to the individual campaign committees; failed to inform donors, as required by law, that the individual campaign committees had authorized and helped pay for the mailings; and merged and confused the general needs of the Republican Party with the needs of the individual Senate candidates."

Penalty. The Commission asked the court to impose a civil penalty of $4.6 million. However, because the record did not suggest that NRSC had intentionally violated the law, the court imposed a $24,000 penalty and enjoined NRSC from similar future violations. The NRSC has appealed this decision.

Preemption

Potential conflicts between the Federal Election Campaign Act (the Act) and state campaign finance laws were considered in two 1991 advisory opinions. The Act and FEC regulations "supersede and preempt provisions of State law with respect to election to Federal office." 2 U.S.C. §453. The advisory opinions, AOs 1991-5 and 1991-22, cited legislative history as evidence that Congress intended the Act to "occupy the field" of federal campaign financing. In both opinions, the Commission decided that federal law preempted state provisions to the extent that they encroached upon the areas of federal campaign activity.

Tennessee: Building Fund Donations

Under an exemption in the Act, a donation to a national or state political party to defray the cost of constructing or purchasing a party office facility is not a contribution or an expenditure. 2 U.S.C. §431(8)(B)(viii). In AO 1991-5, the Commission concluded that, because Congress specifically decided not to place restrictions in an area which it could restrict as federal activity, the Act would preempt any Tennessee law prohibiting corporate donations to a building fund.

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[12]This suit emanated from another suit, *Common Cause v. FEC*, in which the court ordered the FEC to reopen an administrative complaint (MUR 2282) that Common Cause had filed against NRSC. For a summary of that court case and MUR, which provide further background to this case, see *Annual Report 1990*.

By contrast, a Tennessee law that requires state party committees to report building fund receipts and disbursements would not be preempted. The Commission concluded that such a disclosure requirement would not encroach upon an area occupied by the Act.

Minnesota: Public Funding and Limits

The Minnesota Congressional Campaign Reform Act authorizes the payment of state public funds to Congressional candidates who qualify for the general election ballot in Minnesota. In order to qualify for the funding, candidates are required to abide by state-enforced spending limits.

Based on legislative history stating that, "Federal law occupies the field with respect to...limitations on campaign expenditures, the sources of campaign funds used in Federal races, the conduct of Federal campaigns,..."[13] the Commission found that the Act preempts both the provision of state funds and the enforcement of expenditure limits. Although the provision of state funds might not have been preempted alone, it was inextricably linked to the expenditure limits, which were clearly preempted.

Bank Loans

The Federal Election Campaign Act (the Act) and Commission regulations prohibit corporations, including banks, from making contributions or expenditures in connection with a federal election. 2 U.S.C. §441b(a) and (b). As an exception to this rule, a bank may loan money to a federal committee provided certain conditions are met. Among them is a requirement that the loan "is made on a basis which assures repayment." In 1991, the Commission sent to Congress new regulations to clarify this standard.[14]

Background

The rule changes adopted by the Commission concluded a regulatory process that began in 1986 as part of a rulemaking on public financing. But the issues involved date back to the 1979 amendments to the Act. At that time, Congress set forth criteria used to determine when a loan is made in the ordinary course of business and, therefore, is not a contribution from the lending institution. The loan must:

- bear the usual and customary interest rate of the lending institution;
- be subject to a due date or amortization schedule; and
- be made on a basis which assures repayment.[15]

The last of these criteria has been the subject of a number of enforcement cases (MURs) and advisory opinions (AOs).[16] In these MURs and AOs, the Commission has considered whether certain types of collateral or other "risk reducing features" were sufficient to "assure repayment." The newly promulgated bank loan rules codify some of the Commission's findings.

New Rules

Under the new regulations at 11 CFR 100.7(b)(11) and 100.8(b)(12), a loan, by definition, is made on a basis which assures repayment if it is obtained under either of two authorized methods or a combination of the two.

(1) A loan may be obtained using traditional types of collateral and/or secondary sources of repayment (i.e., guarantees and endorsements). The fair market value of the collateral on the date of the loan must equal or exceed the amount of the loan and any senior liens. Moreover, the candidate or political committee receiving the loan must document that the lending institution has taken steps to legally protect its interest in the collateral, in the event that the borrower defaults on the loan.

(2) A loan may be obtained using future receipts as collateral, such as anticipated contributions, interest income and public financing payments. The loan may not exceed a reasonable estimate of anticipated

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[13]H.R. Rep. No. 93-1438, 93d Cong., 2d Sess. 69 (1974).

[14]The rules were expected to become effective in 1992.

[15]2 U.S.C. §431(8)(B)(vii).

[16]See, for example, MURs 216/239, 382, 1098, 1195, 1689, 2062 and AO 1980-108.

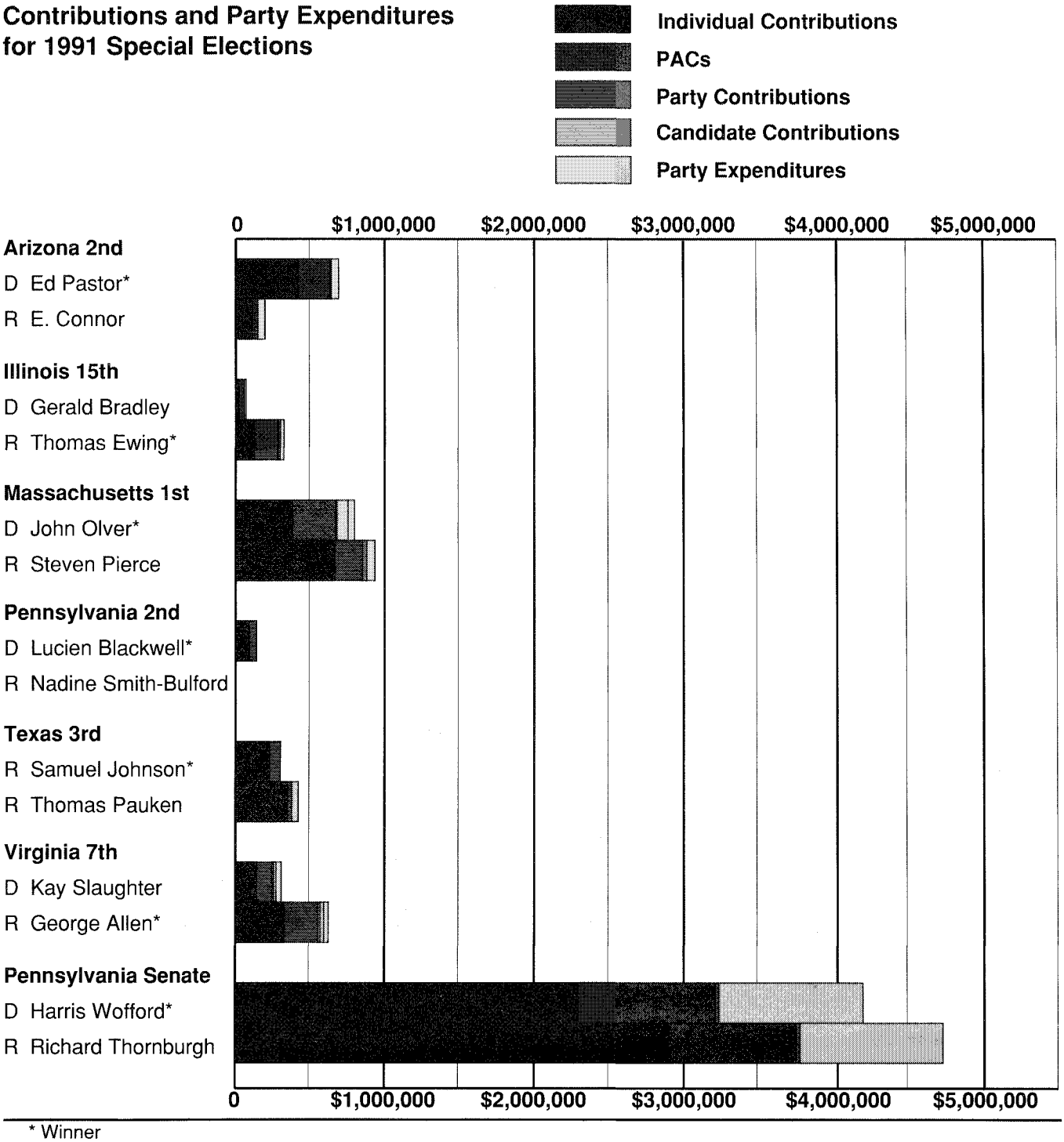
receipts based on documentation provided by the borrower candidate or committee to the lender (e.g., cash flow charts, financial plans). The borrower must also provide the lender with a written agreement that pledges future funds as collateral and that requires the committee to deposit pledged funds in a separate account used to meet repayment requirements. In the case of public financing payments, the candidate or committee must authorize the U.S. Secretary of the Treasury to deposit the payments directly into the account.

When a loan does not meet the above criteria to assure repayment, the Commission will consider the totality of the circumstances in determining whether the loan was made on a basis which assures repayment.

The Commission has developed new reporting schedules C-1 and C-P-1, which document that a loan complies with the requirements described above.

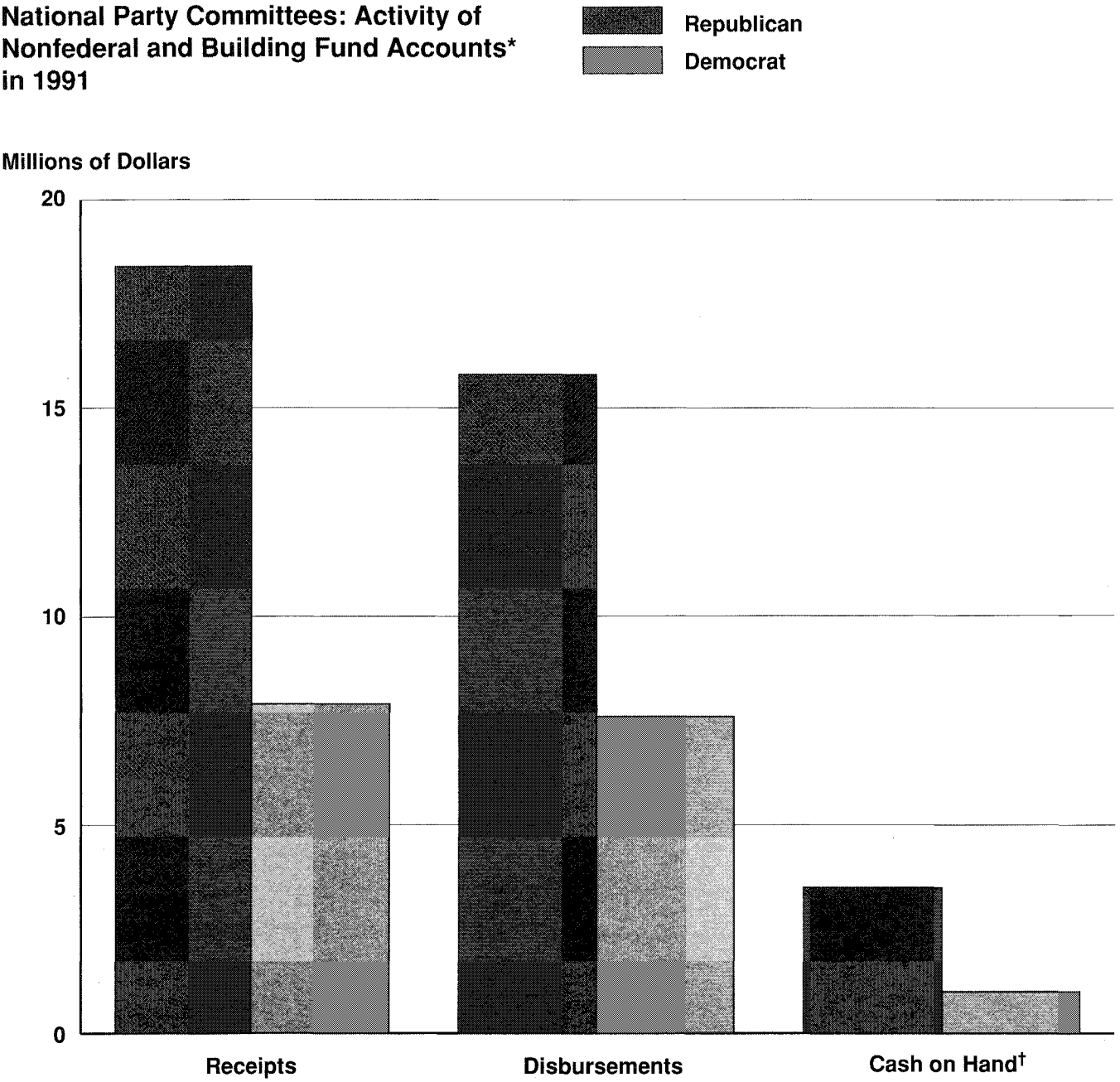
Chapter 4
Campaign Finance Statistics

Contributions and Party Expenditures for 1991 Special Elections



* Winner

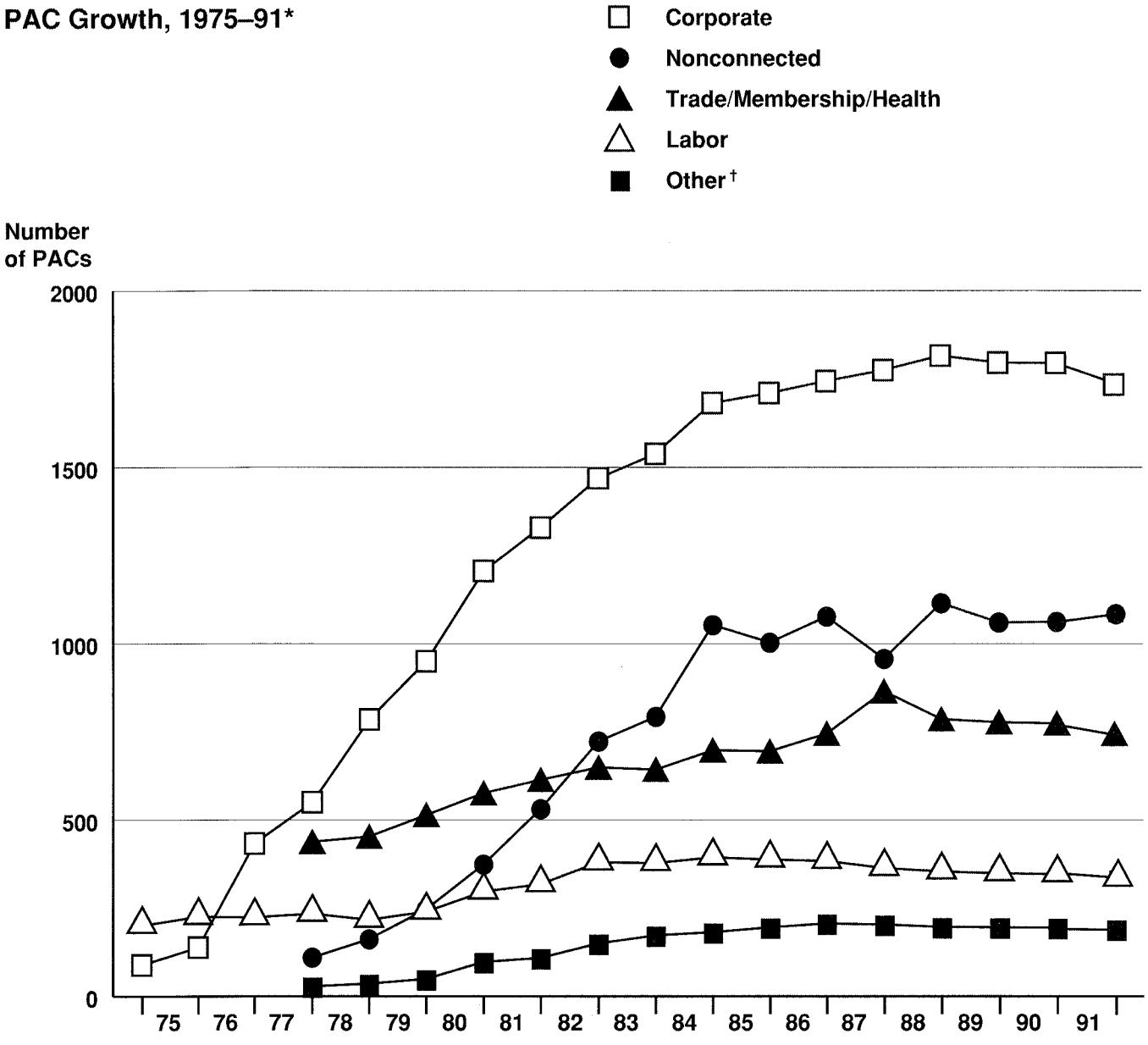
National Party Committees: Activity of Nonfederal and Building Fund Accounts* in 1991



* 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.

† The National Republican Congressional Committee's cash-on-hand total was not available.

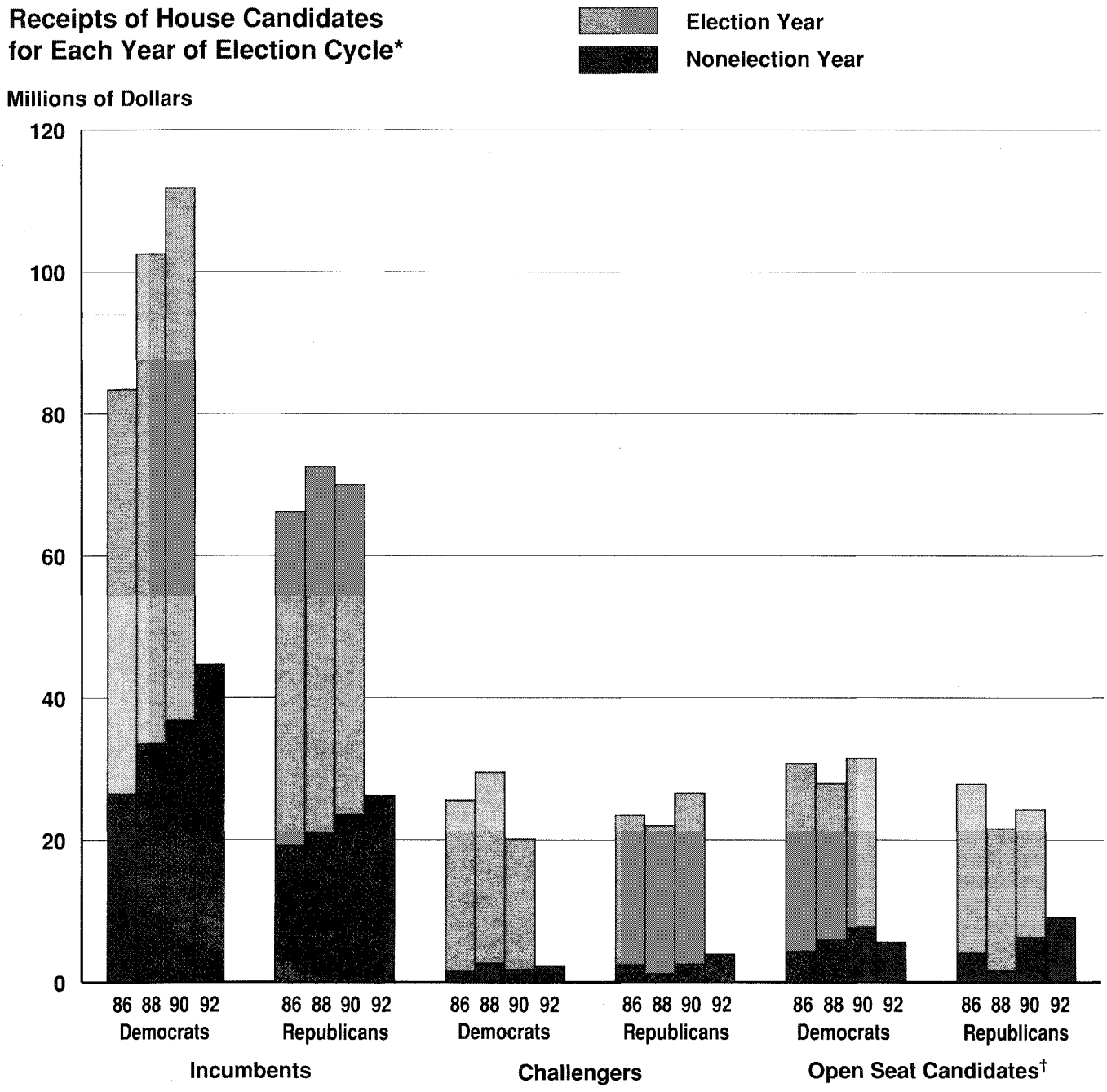
PAC Growth, 1975–91*



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

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

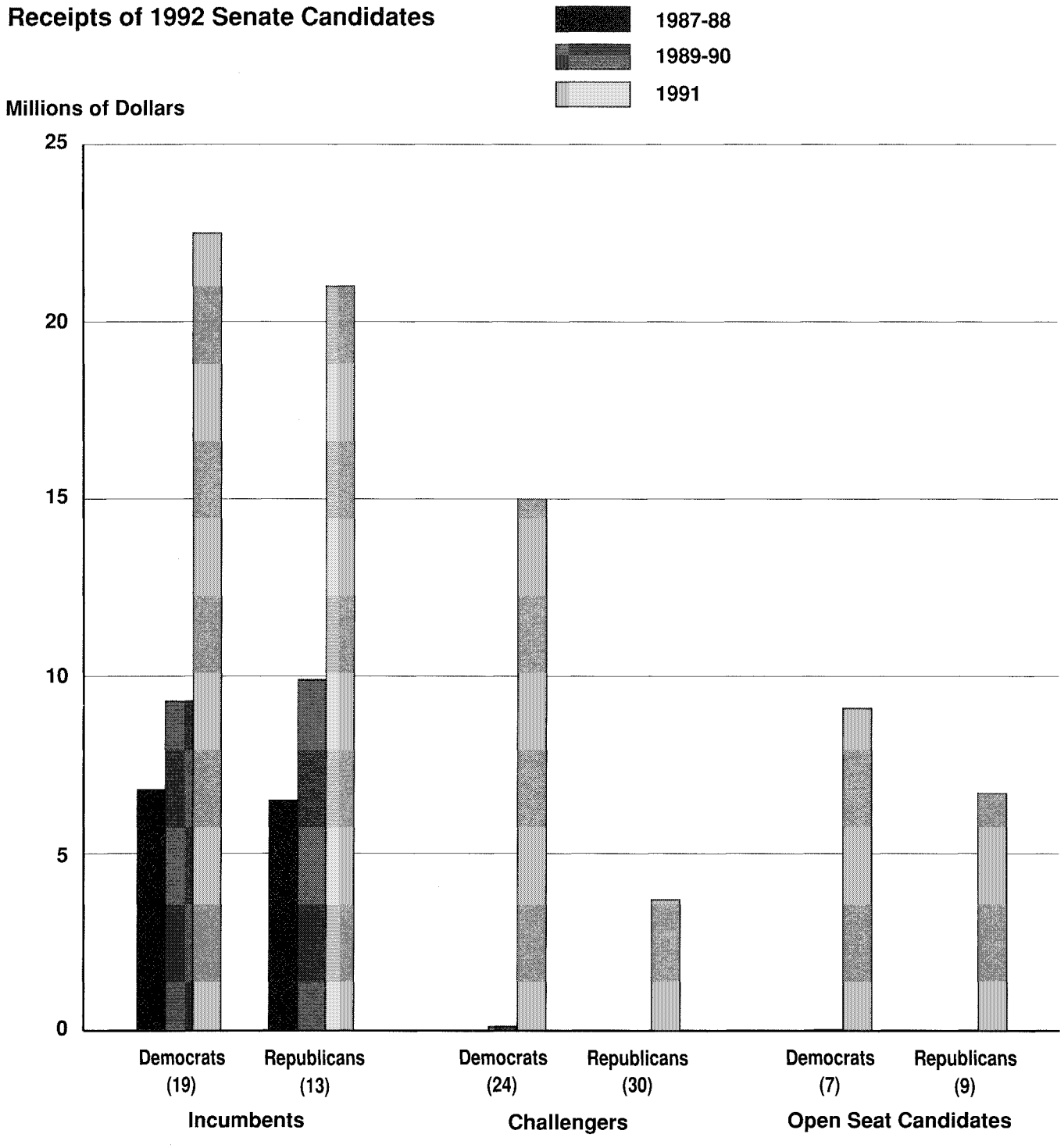
Receipts of House Candidates for Each Year of Election Cycle*



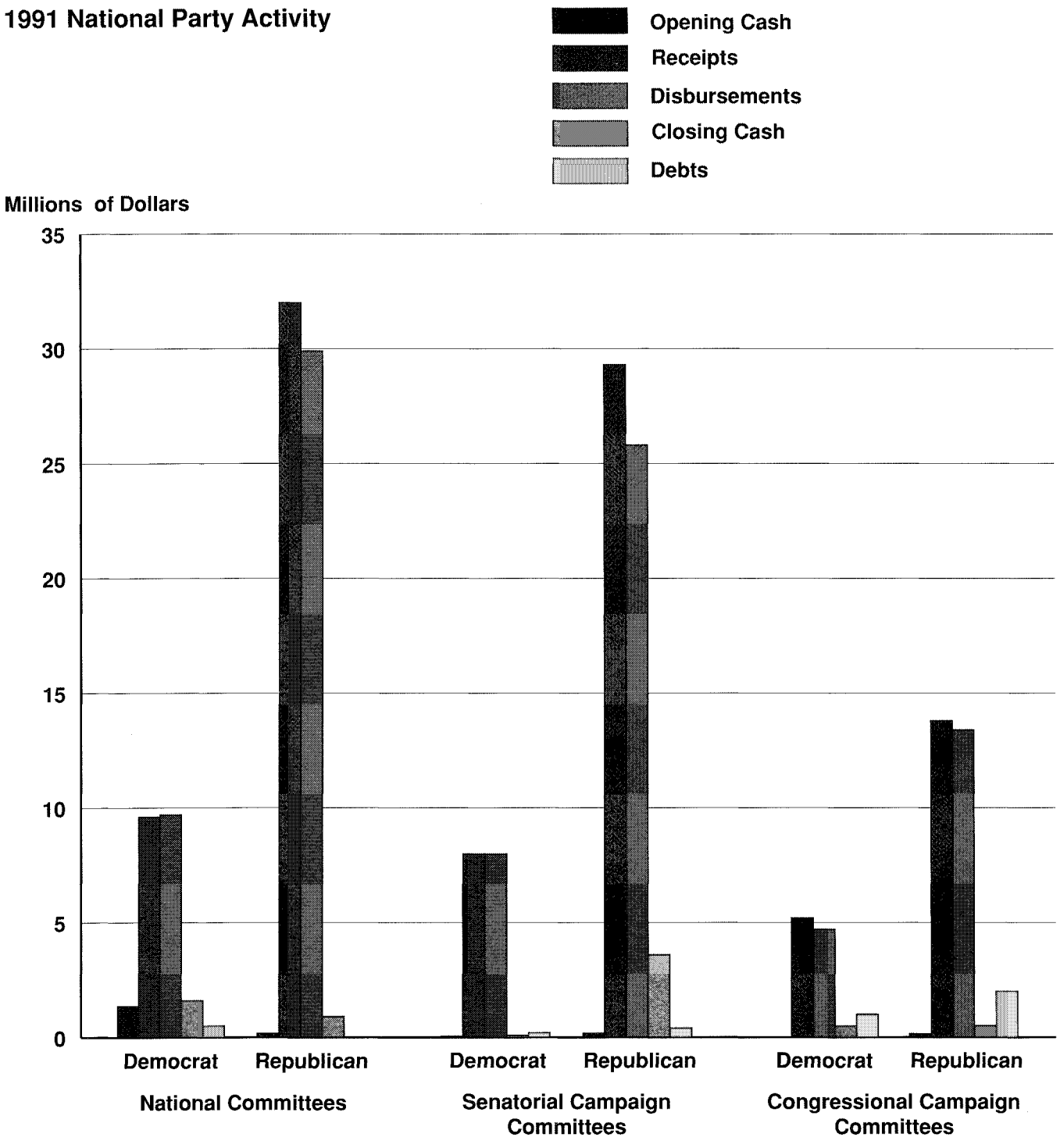
* An election cycle consists of the year before a regularly scheduled election (nonelection year) and the year of the election (election year). Only 1991 data are shown for the 1992 cycle.

† Includes candidates running in special elections to fill vacant seats.

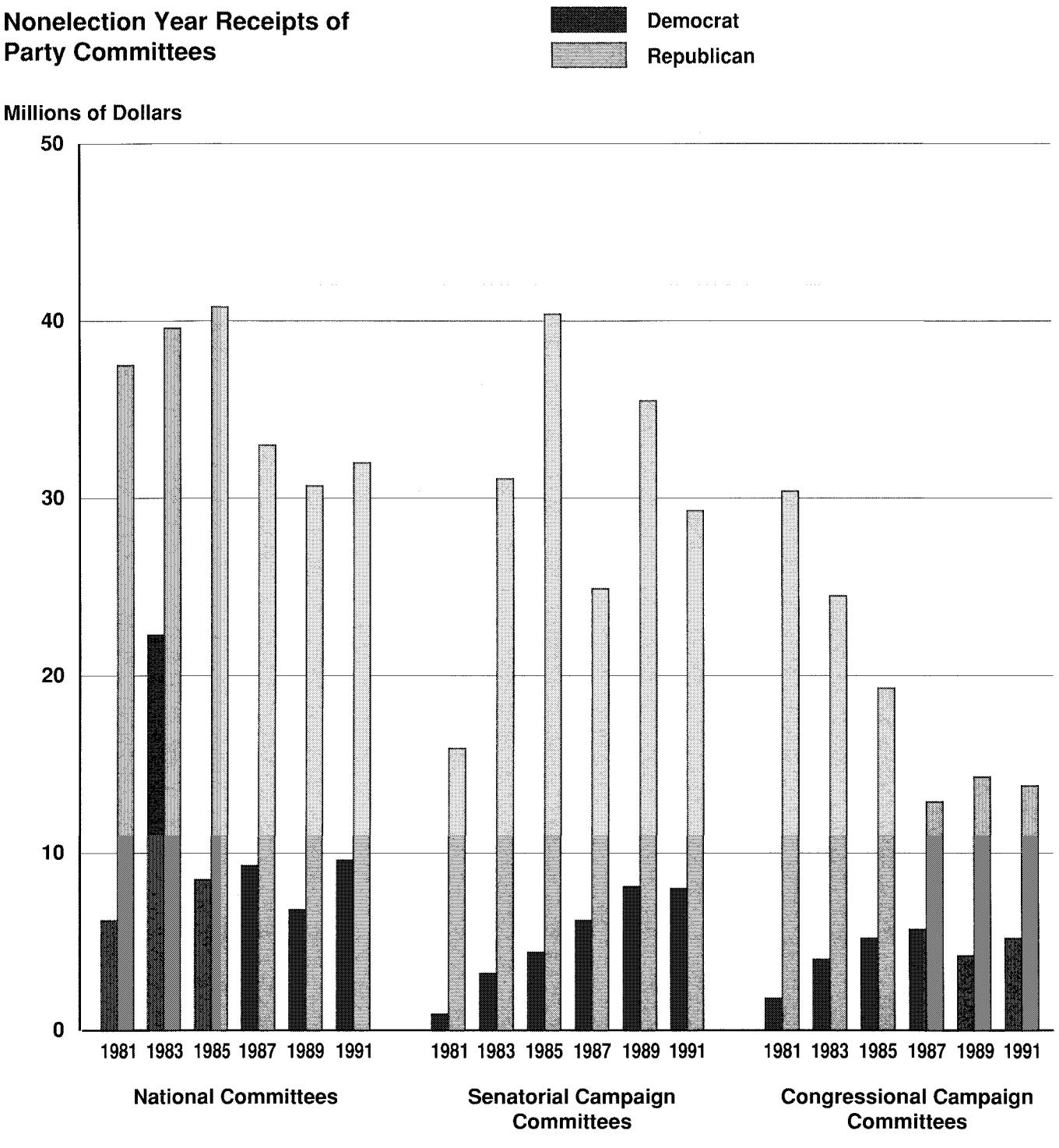
Receipts of 1992 Senate Candidates



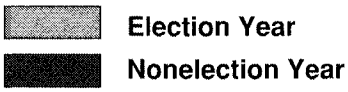
1991 National Party Activity



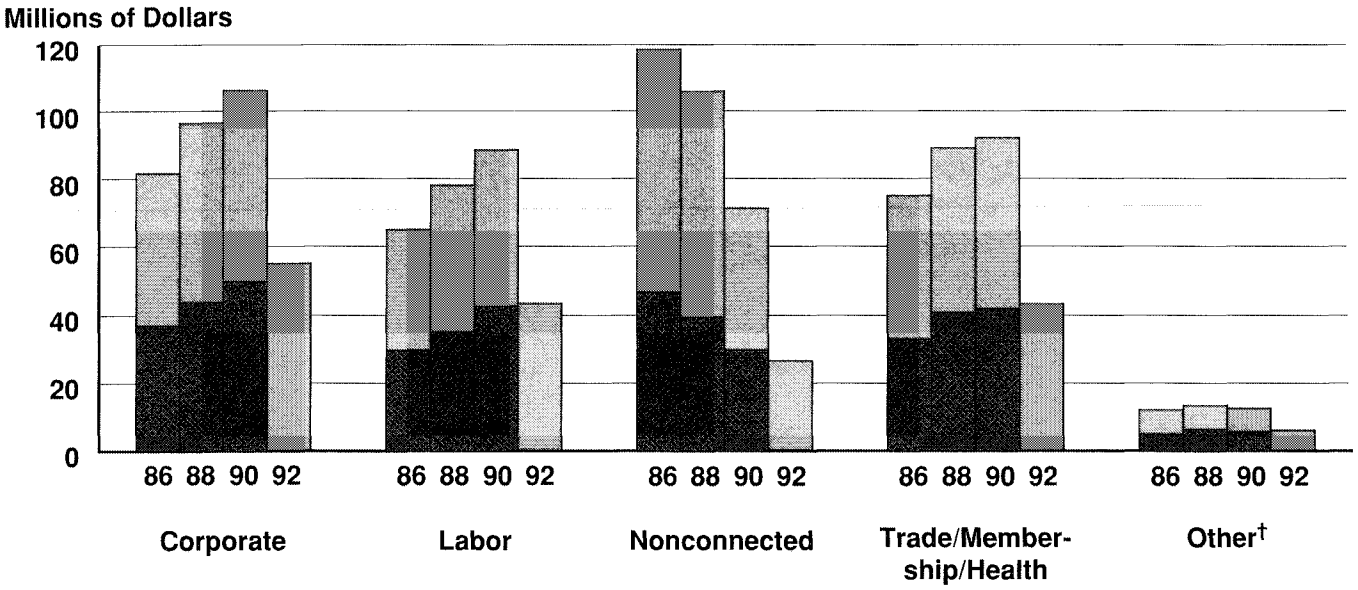
Nonelection Year Receipts of Party Committees



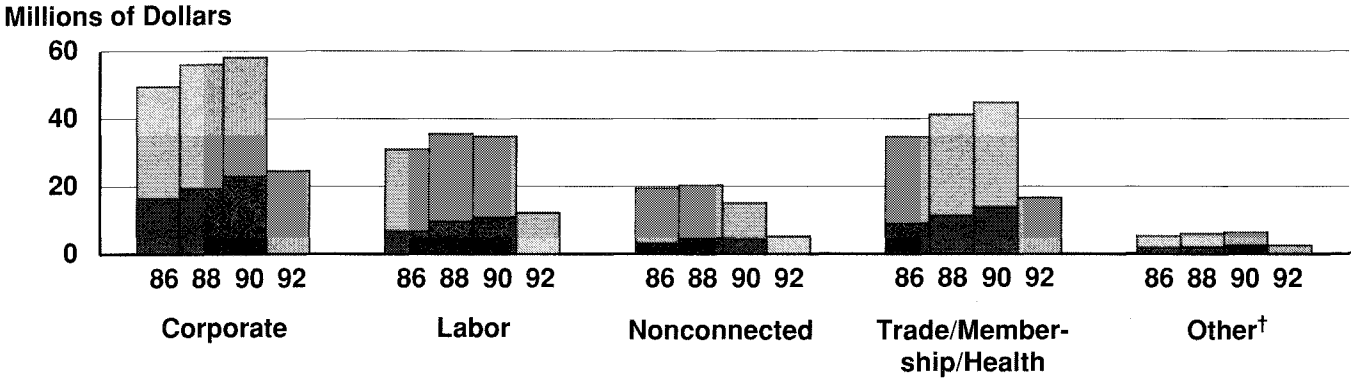
PAC Campaign Finance Activity for Each Year of Election Cycle*



Receipts



Contributions to Candidates



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* An election cycle consists of the year before a regularly scheduled election (nonelection year) and the year of the election (election year).

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

Chapter 5
The Commission

Commissioners

Commission officers during 1991 were Chairman John Warren McGarry and Vice Chairman Joan D. Aikens. In December 1991, the Commission elected the 1992 officers: Chairman Joan D. Aikens and Vice Chairman Scott Thomas.

On November 22, 1991, the Senate confirmed President Bush's appointment of Trevor Potter, and reappointment of Commissioner Scott Thomas to six-year terms as FEC Commissioners. Mr. Potter replaced Thomas J. Josefiak, whose term expired in April 1991. Commissioner Thomas was first appointed in 1986.

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

International Delegations

In 1991, the Federal Election Commission continued to work with foreign nations, sharing information and experience concerning electoral systems. More than 500 journalists, party leaders and election officials from 80 countries visited the agency, seeking information on the American election process and the Commission's role in that process.[1]

Ethics

During 1991, the FEC's ethics staff monitored an ongoing rulemaking conducted by the Office of Government Ethics to establish government-wide standards of conduct for federal employees. The staff commented on the proposed rules and briefed Commission staff on some of the more controversial provisions. The staff is currently planning for the implementation of the final rules, which is expected in 1992.

The FEC's General Counsel, who serves as Designated Agency Ethics Official, also directed his staff to continue its ethics training sessions for new employees. These sessions briefed new staff members on the the Ethics Reform Act of 1989, the Hatch Act and the FEC Standards of Conduct. The ethics staff published an intra-agency newsletter to further advise the staff on conflict of interest matters and participated in the agency's supervisor training sessions.

In addition, the ethics staff implemented interim rules, prescribed by the General Services Administration, on travel by government personnel. The ethics staff also carried out the Commission's responsibilities with respect to personal financial disclosure reports filed by Presidential candidates.

Personnel & Labor Relations

Personnel

With technical assistance from the Data Systems Development Division, the Personnel Office developed an automated processing system. The new system permits offices to request and process personnel actions electronically, saving time, reducing paperwork and streamlining tracking and recordkeeping. The personnel office also completed preliminary work on a questionnaire to be used for exit interviews. This project will provide FEC management with useful information regarding departing staff perceptions about the FEC as an employer. The office also developed a formal supervisory training program in cooperation with the Equal Employment Opportunity office. Regular sessions are now held twice a year.

Labor-Management Relations

The FEC and Chapter 204 of the National Treasury Employees Union entered into negotiations pursuant to a midterm reopener in the collective bargaining agreement. At year's end, the process was continuing.

Equal Employment Opportunity Program

The EEO officer manages the EEO Program, which includes the Federal Women's Program and special emphasis programs for minorities. The officer also

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

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 1991 the Office of Equal Employment Opportunity Programs (OEEOP) made recommendations on recruitment, participated in the Commission's orientation program and assisted the Personnel Office in sponsoring the Commission's comprehensive in-house training course for supervisors. The OEEOP also published a bimonthly newsletter, *EEO Focus*, for Commission staff, provided counseling for those with equal employment concerns and sponsored agency-wide workshops on sexual harassment prevention.

Recruitment

Two recruiting programs continued in 1991. One consisted primarily of on-campus/consortia recruiting by the Office of General Counsel. The other program gave the Audit Division access to applications received by the General Accounting Office. Both programs produced increasing numbers of well-qualified candidates for positions at the Commission. The Commission also developed targeted minority recruiting plans for use in 1992, focusing on specific historically-minority colleges, universities and other sources.

Inspector General

In keeping with its statutorily mandated function—detecting waste, fraud and abuse—the Office of the Inspector General (OIG) audited several facets of Commission operations in 1991, including the agency's:

- internal control and accountability over property and equipment; and
- program for collection of civil penalties.

While no serious deficiencies were discovered, the OIG did offer several recommendations to improve Commission operations.[2]

The OIG also participated in the supervisory training sessions conducted by the Personnel Office, and began participating in the new employee orientation tours to familiarize new staff with the duties and responsibilities of the OIG.

The FEC's Budget

Fiscal Year 1991

The final appropriation for FY 1991 was $17.150 million, the full amount requested. The Commission was forced to make 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 was achieved through a lapse of about 10 positions, reducing the 1991 staffing level from 266 full time equivalent (FTE) positions, as originally expected, to 254.5 FTE. The nonpersonnel reductions included cuts in training, equipment purchases and contracts.

Fiscal Year 1992

The final appropriation for FY 1992 was $18.808 million and 266 FTE, which represented the full amount requested. That amount was reduced by $13,000, however, as part of a $15.8 million government-wide travel reduction. The Commission also planned to reduce non-personnel spending to offset higher personnel costs resulting from career ladder promotions and position reclassifications. Minor spending cuts were expected for training, publications and printing.

A comparison of the allocation of budget resources for FYs 1991 and 1992 appears in the table and graphs below.

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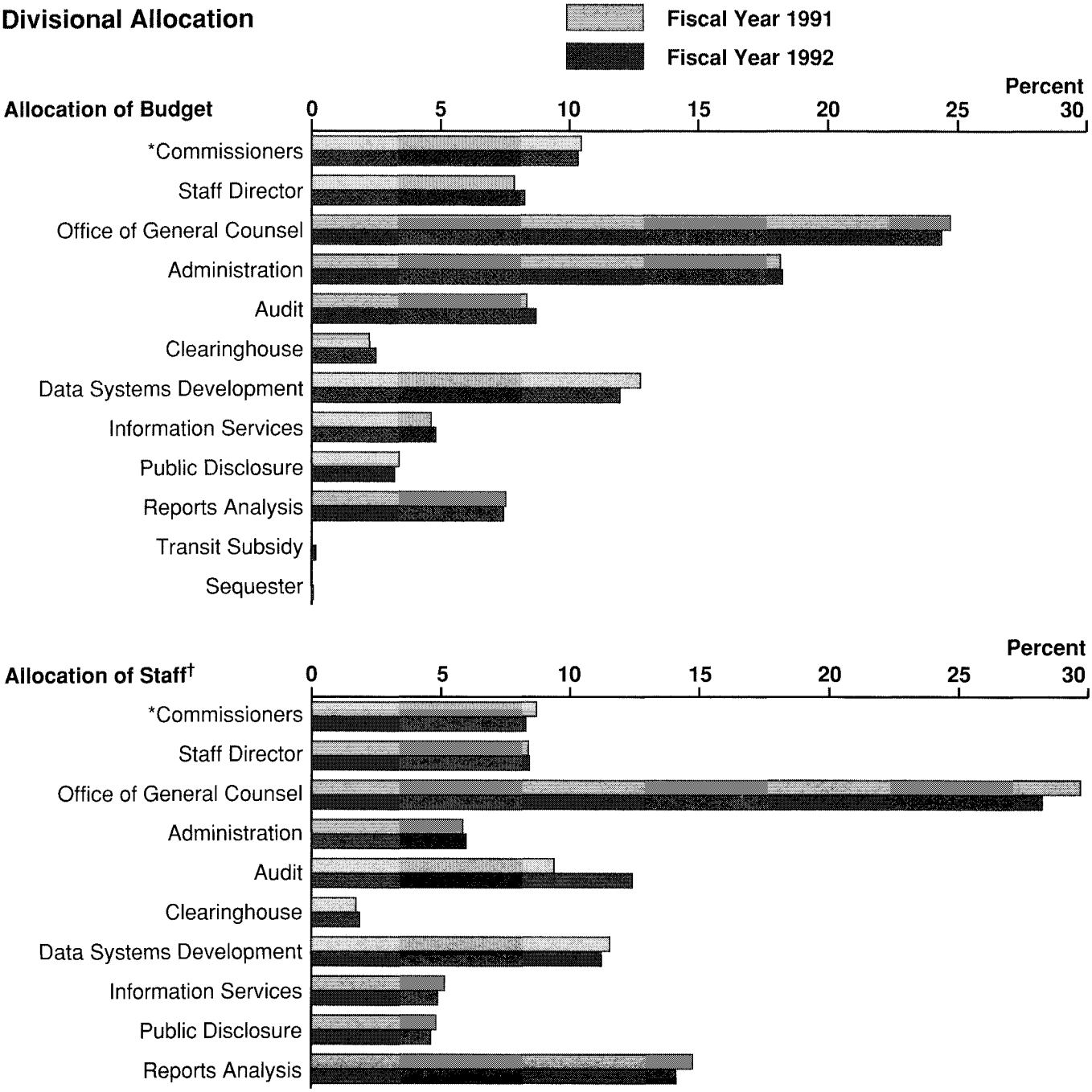
[2]See FEC Office of Inspector General, Semiannual Report to Congress, April 1, 1991 - September 30, 1991.

Functional Allocation of Budget

	FY 1991	FY 1992
Personnel	$12,234,204	$13,644,646
Travel	208,787	227,500
Motor Pool	5,600	7,000
Commercial Space	20,210	24,300
GSA Space	1,756,782	1,922,529
Equipment Rental	304,315	310,000
Equipment Purchase	413,253	245,000
Printing	288,288	364,000
Support Contracts	710,718	811,825
Administrative Expenses	143,722	163,700
Supplies and Materials	218,323	209,000
Publications	167,746	201,500
Telephone/Telegraph	267,258	274,000
Postage	117,040	150,000
Training	77,862	91,000
GSA Services, Other	207,392	117,500
Transit Subsidy	0	31,500
Sequester	223	13,000
Total	$17,141,723	$18,808,000

Divisional Allocation



* Includes Inspector General's Office and Representational Fund.

† The Commission averaged 253 full-time equivalent positions (FTE) in FY 1991 and projected 266 FTE for FY 1992.

Chapter 6
Legislative Recommendations

Legislative Action on Past Recommendations

Campaign finance reform legislation saw a lot of activity during the first session of the 102d Congress as it did during the 101st. By the end of the first session, over 69 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. 3 and H.R. 3750 respectively. Both of these bills, though not enacted into law at this writing, contain several of the Commission's technical legislative recommendations.[1] For example, both the Senate and House bills contain the Commission's recommendation that Congress prohibit any person from fraudulently soliciting contributions. (See page 50.)

These two bills, as well as other proposals introduced during the 102d Congress, contain other discrete legislative recommendations that have been propounded by the Commission, such as those dealing with the allocation and disclosure of nonfederal funds ("soft money"), random audits, 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.

One House proposal contains the Commission's recommendations concerning the funding/payout imbalance in the Presidential Public Funding Program and the state-by-state limits on expenditures by publicly financed Presidential primary candidates. The Commission has recommended the repeal of these limits in order to eliminate burdensome requirements that have been difficult for campaigns to follow and for the Commission to monitor. (See page 42.)

The following recommendations are offered in 1992 to further the goal of efficiently administering and enforcing the campaign finance laws. Parenthetical references to 1992 indicate new recommendations or newly revised recommendations. Three recommendations are new and seven recommendations have been revised this year.

[1]A House and Senate Conference is anticipated in Spring of 1992.

Public Financing

Presidential Election Campaign Fund (revised 1992)
Section: 26 U.S.C. §6096

Recommendation: Congress should be aware that a shortfall of between $75 and $100 million in the Presidential Election Campaign Fund is certain in 1996. If Congress wishes to preserve the Presidential public funding system, a legislative remedy is essential.

Explanation: Although the Fund will not experience a shortfall this Presidential year,[2] the Commission has informed Congress that a serious public funding shortage is virtually assured in 1996. One of the reasons for this is a structural flaw in the checkoff program. The payout to candidates and parties (for their conventions) is indexed to inflation, but the dollar checkoff is not. Spending limits are increased each election cycle to reflect the change in the cost-of-living index. In 1974, the statutory spending limit for the general election was established at $20 million. This year, each party nominee will receive over $55 million, representing a 280 percent increase over the 1974

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

amount. Thus, as the consumer price index increases, the Fund needs more and more checkoff dollars to make the appropriate payments to qualified candidates and parties. Internal Revenue Service statistics, however, indicate that citizen participation in the checkoff program has actually declined. After peaking at 28 percent in 1980, the percentage of tax forms on which the taxpayer checked yes has fallen to approximately 20 percent, where it has remained the last couple of years.

Without a legislative remedy, the FEC predicts that the shortfall in 1996 will be a serious problem. The Commission projects a shortfall of between $75 and $100 million by 1996. Candidates could qualify for more than twice the amount of available checkoff dollars. As a result, there might not be any public money available for the primary election campaigns in 1996.

Enforcement of Nonwillful Violations (revised 1992)
Section: 26 U.S.C. §§9012, 9042

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

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

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

Past Compliance with Law as Eligibility Factor for Public Financing (revised 1992)
Section: 26 U.S.C. §§9003, 9033

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

Explanation: Neither of the Presidential public financing statutes expressly restricts eligibility for funding because of a candidate's prior violations of law, no matter how severe. And yet public confidence in the integrity of the public financing system would risk serious erosion if the U.S. Government were to provide public funds to candidates who had been convicted of felonies related to the public funding process. Congress should therefore amend the eligibility requirements to ensure that such candidates do not receive public financing for their Presidential campaigns. The amendments should make clear that a candidate would be ineligible for public funds if he or she had been convicted of fraud with respect to raising funds for a campaign that was publicly financed, or if he or she had failed to make repayments in connection with a past publicly funded campaign or had willfully disregarded the statute or regulations.

Eligibility Threshold for Public Financing (revised 1992)
Section: 26 U.S.C. §§9003, 9033

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

Explanation: The Federal Election Commission has administered the public funding provisions in four Presidential elections, and is in the midst of doing so for the fifth time. The statute provides for a cost-of-living adjustment (COLA) of the overall primary spending limitation, which has increased by 280 percent over the statutory limit established in 1974. There is, however, no corresponding adjustment to the threshold requirement. It remains exactly the same as it was in 1974. An adjustment to the threshold requirement would ensure that funds continue to be given only to candidates who demonstrate broad national support. To reach this higher threshold, Congress could increase the number of states in which the candidate had to raise the qualifying amount of matchable contributions; and/or increase the total amount of qualifying matchable contributions that had to be raised in each of the states.

Contributions to Presidential Nominees Who Receive Public funds in the General Election
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
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[3]) 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 account-

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

ing 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.

State Expenditure Limits for Publicly Financed Presidential Primary Campaigns
Section: 2 U.S.C. §441a

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

Explanation: The Commission has now 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

Application of $25,000 Annual Limit (1992)
Section: 2 U.S.C. §441a(a)(3)

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

Explanation: Section 44la(a)(3) now provides that a contribution to a candidate made in a nonelection year counts against the individual donor's limit for the year in which the candidate's election is held. This provision has lead to some confusion among contributors. For example, a contributor wishing to support Candidate Smith in an election year contributes to her in November of the year before the election. The contributor assumes that the contribution counts against his limit for the year in which he contributed. Unaware that the contribution actually counts against the year in which Candidate Smith's election is held, the contributor makes other contributions during the election year and inadvertently exceeds his $25,000 limit. By requiring contributions to count against the limit of the calendar year in which the donor contributes, confusion would be eliminated and fewer contributors would inadvertently violate the law. The change would offer the added advantage of enabling the Commission to better monitor the annual limit. Through the use of our data base, we could more easily monitor contributions made by one individual regardless of whether they were given to retire the debt of a candidate's previous campaign, to support an upcoming election (two, four or six years in the future) or to support a PAC or party committee. Such an amendment would not alter the per-candidate, per-election limits. Nor would it affect the total amount that any individual could contribute in connection with federal elections.

Honorarium (1992)
Section: 2 U.S.C. §431(8)(B)(xiv)

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

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

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

Independent Expenditures by Principal Campaign Committees
Section: 2 U.S.C. §432(e)(3)

Recommendation: Congress should consider amending the definition of principal campaign committee to clarify whether these committees may make independent 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
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 (revised 1992)
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. The Commission also sought a second round of public comment following the Court's related decision in *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990). Congress may wish to consider whether statutory changes are required as well.

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

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
Section: 2 U.S.C. §441a

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

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

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

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

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

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[4]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.

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

Concerning the second recommendation, the FECA explicitly authorizes the Commission "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:[5] 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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[5]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

Fundraising Projects Operated by Unauthorized Committees (revised 1992)
Section: 2 U.S.C §432(e)

Recommendation: When unauthorized committees (those not authorized by candidates) raise funds through special fundraising projects that name specific candidates, contributors are sometimes confused or misled, believing that they are contributing to a candidate's authorized committee when, in fact, they are giving to the nonauthorized committee that sponsors the project. To preclude this situation, Congress may wish to amend the statute. Several options are available. (1) Congress could specifically require that contributions solicited by an unauthorized committee (i.e., a committee that has not been authorized by a candidate as his/her campaign committee) be made payable to the registered name of the committee and that unauthorized committees be prohibited from accepting checks payable to any other name. (2) Congress could prohibit an unauthorized committee from using the name of a candidate in the name of any "project" or in the name of any other fundraising activity conducted by the committee. (3) Congress might combine these two solutions.

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

tees from accepting checks payable to these project names. Alternatively, Congress might consider amending the statute to prohibit an unauthorized committee from using the name of any candidate in the name of a "project" or other fundraising activity. Or, Congress might combine these two alternatives.

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.

Fraudulent Solicitation of Funds
Section: 2 U.S.C. §441h

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

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

Public Disclosure

Commission as Sole Point of Entry for Disclosure Documents (revised 1992)
Section: 2 U.S.C. §432(g)

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

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

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

We also reiterate here the statement we have made in previous years because it remains valid. A single point of entry for all disclosure documents filed by political committees would eliminate any confusion about where candidates and committees are to file their reports. It would assist committee treasurers by having one office where they would file reports, 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 because the FEC's copy is actually a photocopy derived from a microfilm copy of the report. Thus, the copy used by the public and by the FEC staff is two generations removed from the original report filed with the Clerk of the House and the Secretary of the Senate. A single point of entry at the FEC would allow the public to view the original report and would permit the FEC staff to use a photocopy that is only one generation removed from the original report.

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

Public Disclosure at State Level
Section: 2 U.S.C. §439

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

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

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

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

State Filing for Presidential Candidate Committees
Section: 2 U.S.C. §439

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

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

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

The second alternative is to require that reports filed with the states contain all summary pages and only those receipts and disbursements schedules that show transactions pertaining to the state in which a report is filed. This alternative would reduce filing and storage burdens on Presidential candidate committees and states. It would also make state filing requirements for Presidential candidate committees similar to those for unauthorized political committees.

Under this approach, any person still interested in obtaining copies of a full report could do so by contacting the Public Disclosure Division of the FEC.

Registration and Reporting

Incomplete or False Contributor Information (1992)
Section: 2 U.S.C. §434

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

Explanation: Under 2 U.S.C. §434, political committees are required to publicly disclose certain information about their contributors, such as the contributor's name and address and name of employer. Political committees depend upon their contributors to provide truthful information for reporting to the Commission. In those cases where contributor information is inadequate, the law states that committees will be in compliance if they make "best efforts" to obtain the information, that is, make one oral or written request for the information. Legislative history indicates that a single request for the information (which can be made in the original solicitation) suffices. In the Commission's experience, however, a single request has been inadequate.

In those cases where committees fail to receive complete information from their contributors, committees should be required to make an additional request *after* the contribution is received, either orally or in writing. Additionally, the request should contain a clear statement that federal law requires the committee to disclose the information. Congress should make clear that the contributor is liable for submitting information known by the contributor to be false pursuant to a specific request by the committee. Taken together, these measures should improve efforts to achieve full disclosure.

Insolvency of Political Committees
Section: 2 U.S.C. §433(d)

Recommendation: The Commission requests that Congress clarify its intention as to whether the Commission has a role in the determination of insolvency and liquidation of insolvent political committees. 2 U.S.C. §433(d) was amended in 1980 to read: "Nothing in this subsection may be construed to eliminate or limit the authority of the Commission to establish procedures for—(A) the determination of insolvency with respect to any political committee; (B) the orderly liquidation of an insolvent political committee, and the orderly application of its assets for the reduction of outstanding debts; and (C) the termination of an insolvent political committee after such liquidation and application of assets." The phrasing of this provision ("Nothing...may be construed to...limit") suggests that the Commission has such authority in some other provision of the Act, but the Act contains no such provision. If Congress intended the Commission to have a role in determining the insolvency of political committees and the liquidation of their assets, Congress should clarify the nature and scope of this authority.

Explanation: Under 2 U.S.C. §433(d)(1), a political committee may terminate only when it certifies in writing that it will no longer receive any contributions or make any disbursements and that the committee has no outstanding debts or obligations. The Act's 1979 Amendments added a provision to the law (2 U.S.C. §433(d)(2)) possibly permitting the Commission to establish procedures for determining insolvency with respect to political committees, as well

as the orderly liquidation and termination of insolvent committees. In 1980, the Commission promulgated the "administrative termination" regulations at 11 CFR 102.4 after enactment of the 1979 Amendments, in response to 2 U.S.C. §433(d)(2). However, these procedures do not concern liquidation or application of assets of insolvent political committees.

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

It has been suggested that 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
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.

Appendix 1 Biographies of Commissioners and Officers

Commissioners

John Warren McGarry, Chairman
April 30, 1995
First appointed to the Commission in 1978, Chairman McGarry was reappointed in 1983 and 1989. He previously served as FEC Chairman in 1981 and 1985. Before his 1978 Commission appointment, Chairman 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, Chairman McGarry was the Massachusetts assistant attorney general.

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

Joan D. Aikens, Vice Chairman
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 1989. She served as FEC Chairman in 1978 and 1986, and was elected Chairman for 1992.

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.

Lee Ann Elliott
April 30, 1993
President Reagan reappointed Mrs. Elliott to her second term as Commissioner in 1987. She served as chairman in 1984 and 1990. Before her first appointment in 1981, Commissioner Elliott was vice president of a political consulting firm in Washington, D.C., Bishop, Bryant & Associates, Inc. She spent several years as associate executive director of the American Medical Political Action Committee, having previously served as assistant director. Commissioner Elliott was also on the board of directors of the American Association of Political Consultants and on the board of the Chicago Area Public Affairs Group, of which she is a past president. She was also a member of the Public Affairs Committee of the U.S. Chamber of Commerce. In 1979, she received the Award for Excellence in Serving Corporate Public Affairs from the National Association of Manufacturers.

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

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.

Mr. Josefiak served on the Commission until December 1991.

Danny L. McDonald,
April 30, 1993

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

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

Trevor Potter
April 30, 1997

Mr. Potter was appointed to the Commission by President Bush in November 1991. Prior to that, he was a partner in the Washington, D.C., law firm of Wiley, Rein & Fielding, where he specialized in campaign and election law. He is currently Vice Chairman of the American Bar Association Committee on Election Law, Administrative Law section.

Mr. Potter previously served as Assistant General Counsel at the Federal Communications Commission (1984-1985), and as a Department of Justice attorney (1982-1984).

Mr. Potter is a graduate of Harvard College. He earned his J.D. degree at the University of Virginia School of Law, where he served as Editor-in-Chief of the *Virginia Journal of International Law* and was a member of the Order of the Coif. Born in Illinois, Mr. Potter is a resident of Fauquier County, Virginia.

Scott E. Thomas
April 30, 1997

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

A Wyoming native, Mr. Thomas graduated from Stanford University and holds a J.D. degree from Georgetown University Law Center. He is a member of the 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. Mr. Surina served as 1991 chairman of the Council on Government and Ethics Laws (COGEL).

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

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

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

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

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

Appendix 2
Chronology of Events, 1991

January

1—Chairman John Warren McGarry and Vice Chairman Joan D. Aikens begin one-year terms as officers.
—Effective date: "Soft Money" allocation rules.
4—FEC receives focus group report on public awareness of dollar tax checkoff.
11—Semiannual PAC Count released.
14—FEC releases final audit report on Durenberger for U.S. Senate Volunteer Committee.
22—FEC submits written comments on proposed Treasury rules on payments to Presidential campaigns.
28—In *Stern v. General Electric Company,* court of appeals rules Federal Election Campaign Act does not preempt state law on corporate waste.
31—1990 year-end report due.

February

11—Chairman John Warren McGarry testifies at IRS hearing on proposed Presidential public funding rules.
22—FEC releases spending figures for 1990 Congressional elections.
28—In *FEC v. Working Names*, defendants agree to pay $15,000 to settle sale and use cases.

March

5—FEC holds press conference to launch public education program on dollar tax checkoff.
6—Chairman John Warren McGarry and Vice Chairman Joan D. Aikens testify before Senate Committee on Rules and Administration on shortfall in Presidential Election Campaign Fund.
—Effective date: Technical amendments to Honoraria rules.
7—In *FEC v. Political Contributions Data*, district court orders defendant to pay $5,000 civil penalty for sale and use violations.
12—FEC testifies on FY 1992 budget request, before Committee on House Administration's Subcommittee on Elections.
15—FEC releases statistics on 1989-90 party activity.
21—In *Faucher and Maine Right to Life Committee, Inc. v. FEC*, court of appeals finds FEC regulation on corporate voter guides invalid.
—FEC testifies on FY 1992 budget request, before House Committee on Appropriation's Subcommittee on Treasury, Postal Service and General Government.
—In *FEC v. Mann for Congress Committee*, district court fines defendant $5,000 for violating terms of conciliation agreement.
28—FEC submits legislative recommendations to Congress and President.
—FEC suspends rulemaking on Presidential Nominating Conventions.
31—FEC releases statistics on 1989-90 PAC activity.

April

8—In *FEC v. Lawson*, district court fines defendant $5,000 for making contributions in name of another.
9—In *FEC v. National Republican Senatorial Committee*, district court imposes $24,000 civil penalty for excessive contributions.
19—FEC conducts candidate conference in Washington, D.C.
30—FEC releases final audit report on Dole for President Committee.
—Massachusetts special primary election for vacant 1st Congressional District seat.

May

1—Chairman John Warren McGarry testifies on shortfall in Presidential Election Campaign Fund before House Subcommittee on Elections.
2-3—FEC conducts PAC conference in Washington, D.C.

4—Texas special election for vacant 3rd Congressional District seat.
10—Treasury adopts final rules on public funding payments.
14—Chairman John Warren McGarry testifies on accessibility of polling places before House Subcommittee on Elections.
18—Texas special runoff election for vacant 3rd Congressional District seat.
21—Illinois special primary election for vacant 15th Congressional District seat.
31—In *FEC v. Populist Party*, court of appeals rules district court exceeded its jurisdiction by imposing deadlines for FEC enforcement actions.

June

1—FEC publishes *Annual Report 1990*.
4—Massachusetts special general election for vacant 1st Congressional District seat.
13—Foreign national rulemaking closed.
18—FEC releases final audit report on Gephardt for President Committee.
28—Commission declares 1992 Democratic National Convention Committee eligible to receive $10.6 million for its presidential nominating convention.

July

1—FEC releases semiannual PAC count.
2—Illinois special general election for vacant 15th Congressional District seat.
3—FEC releases 1991 party spending limits.
—Commission declares Committee on Arrangements for the 1992 Republican National Convention eligible to receive $10.6 million for its presidential nominating convention.
17—FEC releases final audit report on Anna Eshoo for Congress committee.
18—FEC approves final rule on Matching Fund Submissions and Certifications.
—FEC approves final rules on Public Funding of Presidential Candidates; redesignations and reattributions; joint fundraising; and subsistence expenses.
—FEC approves final rules on conversion of excess campaign funds to personal use.
26—FEC releases statistics on 1992 Senate candidates.
31—FEC releases final audit report on Jack Kemp for President; Kemp/Dannemeyer Committee and Victory '88.
—Mid-year report due.

August

2—FEC comments on proposed FCC rulemaking on political broadcasts.
6—FEC releases report on national party committees' nonfederal and building fund account activity.
13—Arizona special primary election for vacant 2nd Congressional District seat.
14—President Bush signs law amending Ethics in Government Act to prohibit honoraria for Senate.
15—FEC approves 1992 *Guideline for Presentation in Good Order*.
19—FEC releases final audit report on Curry for Congress.
21—In *FEC v. Political Contributions Data*, court of appeals rules defendant did not violate sale and use restriction.
27—FEC releases final audit report on Friends of Sam Beard for the U.S. Senate.

September

9—FEC releases final audit report on the Gephardt Committee.
11-12—FEC conducts conference in Boston.
17—FEC releases final audit report on Taylor for Congress Committee.
24—Arizona special general election for 2nd Congressional District seat.

October

7—In *Faucher and Maine Right to Life Committee, Inc. v. FEC*, Supreme Court denies FEC petition for Court review.

11—In *FEC v. National Organization for Women,* court of appeals grants FEC motion to dismiss its appeal.
30—FEC releases final audit report on Paul Simon for President.
—FEC releases statistics on 1992 Presidential campaigns.
31—FEC declares Lenora B. Fulani eligible to receive primary matching funds.

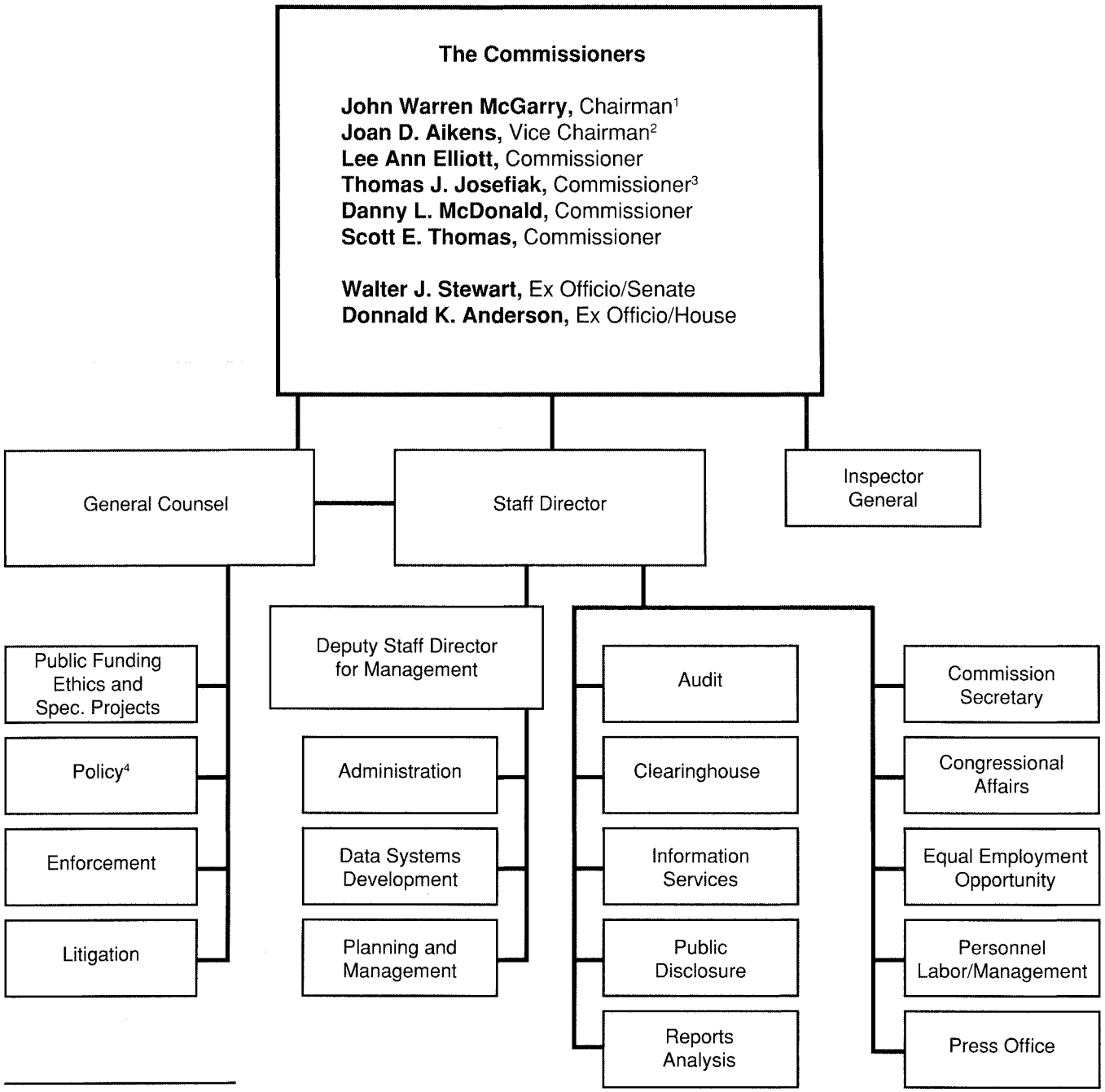
November

5—Pennsylvania special elections for vacant Senate and 2nd Congressional District seats.
—Virginia special election for vacant 7th Congressional District seat.
6—FEC releases final audit report on Bush-Quayle 88; George Bush for President, Inc./ Compliance Committee.
—Gephardt committee responds to audit report.
—Effective date for rules on: matching fund submission and certification procedures; public financing of Presidential primary and general election candidates; and use of excess funds.
13—FEC announces submission and certification dates for 1992 Presidential candidates.
14-15—FEC conducts conference in Chicago.
20—FEC declares Paul E. Tsongas eligible to receive primary matching funds.
22—Senate confirms appointment of Trevor Potter and reappointment of Scott E. Thomas as Commissioners.
27—FEC declares George Bush, Bill Clinton, Tom Harkin, Bob Kerrey and Douglas Wilder eligible to receive primary matching funds.

December

2—FEC declares Edmund G. Brown, Jr., eligible to receive primary matching funds.
3—FEC releases final audit report on Dukakis/ Bentsen for President Committee, Inc.; Dukakis/Bentsen General Election Legal and Compliance Fund.
5—FEC declines Common Cause rulemaking petition on use of corporate airplanes.
10—FEC releases final statistics on 1989-90 election cycle.
17—FEC releases final audit report on Dukakis for President Committee, Inc.
19—Commission elects Joan D. Aikens as 1992 Chairman and Scott E. Thomas as 1992 Vice Chairman.
—FEC denies Lyndon LaRouche's eligibility to receive primary matching funds.
20—FEC sends final bank loan rules to Congress.

Appendix 3
FEC Organization Chart



[1]Joan D. Aikens was elected 1992 Chairman.

[2]Scott E. Thomas was elected 1992 Vice Chairman.

[3]Although his term expired in April 1991, Commissioner Josefiak continued to serve until succeeded by Commissioner Trevor Potter.

[4]Policy covers regulations, advisory opinions, legal review and administrative law.

Appendix 4
FEC Offices

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

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

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

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

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

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

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

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

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

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.

Equal Employment Opportunity Programs (EEOP)

The EEOP office advises the Commission on the prevention of discriminatory practices. The EEO Officer manages the Commission s Equal Employment Opportunity Program and develops plans to improve the Commission s equal employment opportunities.

The office is also responsible for administering the discrimination complaint system; overseeing the Special Emphasis Program; training Commission staff on the EEO Program; and reporting on the status of the Commission s EEO program.

General Counsel

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

Information Services

In an effort to promote voluntary compliance with the law, the Information Services Division provides technical assistance to candidates, committees and others involved in elections. Responding to phone and written inquiries, members of the staff conduct research based on the statute, FEC regulations, advisory opinions and court cases. Staff also direct workshops on the law and produce guides, pamphlets and videos on how to comply with the law. Located on the second floor, the division is open to the public. Local phone: 219-3420; toll-free phone: 800-424-9530.

Inspector General

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

Law Library

The Commission law library, part of the Office of General Counsel, is located on the eighth floor and is open to the public. The collection includes basic legal research tools and materials dealing with political campaign finance, corporate and labor political activity and campaign finance reform. The library staff prepares 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: 219-3312.

Personnel and Labor/Management Relations

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

Planning and Management

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

Press Office
Staff of the Press Office are the Commission s official media spokespersons. In addition to publicizing Commission actions and releasing statistics on campaign finance, they respond to all questions from representatives of the print and broadcast media. Located on the first floor, the office also handles requests under the Freedom of Information Act. Local phone: 219-4155.

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

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

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

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

Appendix 5
Statistics on Commission Operations

Summary of Disclosure Files

	Total Filers Existing in 1991	Filers Terminated as of 12/31/91	Continuing Filers as of 12/31/91	Number of Reports and Statements in 1991	Gross Receipts in 1991	Gross Expenditures in 1991
Presidential Candidate Committees	**364**	**6**	**358**	**746**	**$25,156,086**	**$15,934,837**
Senate Candidate Committees	**540**	**23**	**517**	**1,242**	**$106,521,936**	**$65,667,431**
House Candidate Committees	**2,615**	**184**	**2,431**	**5,548**	**$99,315,323**	**$72,483,510**
Party Committees	**434**	**26**	**408**	**1,240**	**$234,975,806**	**$211,377,183**
Delegate Committees	**78**	**1**	**77**	**3**	**$0**	**$0**
Nonparty Committees	**4,308**	**214**	**4,094**	**15,847**	**$173,925,812**	**$140,545,610**
Labor committees	348	10	338	1,611	$43,314,200	$33,191,911
Corporate committees	1,817	79	1,738	7,966	$55,241,993	$43,047,399
Membership, trade and other committees	2,143	125	2,018	6,270	$75,369,619	$64,306,300
Communication Cost Filers	**185**	**0**	**185**	**41**	**$0**	**$338,124**
Independent Expenditures by Persons Other Than Political Committees	**154**	**1**	**153**	**44**	**$0**	**$54,459**

Divisional Statistics for Calendar Year 1991

	Total
Reports Analysis Division	
Documents processed	36,202
Reports reviewed	41,097
Telephone assistance and meetings	6,914
Requests for additional information (RFAIs)	7,082
Second RFAIs	5,108
Data coding and entry of RFAIs and miscellaneous documents	13,762
Compliance matters referred to Office of General Counsel or Audit Division	249
Data Systems Development Division	
Documents receiving Pass I coding*	34,030
Documents receiving Pass III coding*	30,843
Documents receiving Pass I entry	34,030
Documents Receiving Pass III entry	31,225
Transactions receiving Pass III entry	
• In-house	106,540
• Contract	198,084
Public Records Office	
Campaign finance material processed (total pages)	677,911
Requests for campaign finance reports	8,289
Visitors	12,975
Total people served	21,264
Information telephone calls	18,599
Computer printouts provided	75,472
Total income (transmitted to U.S. Treasury)	$73,856
Cumulative total pages of documents available for review	9,885,855
Contacts with state election offices	2,689
Notices of failure to file with state election offices	482

	Total
Administrative Division	
Contracting and procurement transactions	2,048
Pieces of outgoing mail processed	78,004
Publications prepared for print	33
Pages of photocopying	8,050,477
Information Services Division	
Telephone inquiries	67,325
Information letters	87
Distribution of FEC materials	8,094
Prior notices (sent to inform filers of reporting deadlines)	15,828
Other mailings	28,853
Visitors	104
Public appearances by Commissioners and staff	103
State workshops	9
Publications	29
Press Office	
Press releases	132
Telephone inquiries from press	13,817
Visitors to Press Office	3,783
Freedom of Information Act (FOIA) requests	318
Fees for materials requested under FOIA (transmitted to U.S. Treasury)	$20,073
Clearinghouse on Election Administration	
Telephone inquiries	2,596
Information letters	103
Visitors	64
State workshops	8
Publications	3
Project conferences	22
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.

	Total
Office of General Consel	
Advisory opinions	
Requests pending at beginning of 1991	5
Requests received	40
Issued	35
Requests closed or withdrawn*	3
Pending at end of 1991	7
Compliance cases (MURs)	
Pending at beginning of 1991	237
Opened	257
Closed	296
Pending at end of 1991	198
Litigation	
Cases pending at beginning of 1991	49
Cases opened	19
Cases closed	22
Cases pending at end of 1991	46
Cases won	18
Cases lost	4
Cases voluntarily dismissed	—
Cases dismissed as moot	—
Law Library	
Telephone inquiries	1,798
Visitors served	896

* Two opinion requests were withdrawn by the requesters; and one opinion request was closed without issuance of an opinion.

Audits Completed by Audit Division, 1975-1991

Presidential	72
Presidential Joint Fundraising	10
Senate	15
House	122
Party (National)	46
Party (Other)	111
Nonparty (PACs)	71
Total	**447**

Appendix 6
1991 Federal Register Notices

1991-1
Filing Dates for Massachusetts Special Elections (56 FR 9359, March 6, 1991)

1991-2
11 CFR Part 110: Honoraria; Final Rule; Technical Amendment (56 FR 9275, March 6, 1991)

1991-3
Filing Dates for Texas Special Election (56 FR 12732, March 27, 1991)

1991-4
Filing Dates for Illinois Special Elections (56 FR 12731, March 27, 1991)

1991-5
11 CFR Parts 107, 114 and 9008: Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions; Suspension of Rulemaking (56 FR 14319, April 9, 1991)

1991-6
11 CFR Parts 102 and 113: Use of Excess Funds; Notice of Proposed Rulemaking (56 FR 18777, April 24, 1991)

1991-7
11 CFR Parts 104 and 106: Rulemaking Petition: Association of State Democratic Chairs; Notice of Availability (56 FR 18780, April 24, 1991)

1991-8
Filing Dates for Pennsylvania Special Elections (56 FR 22719, May 16, 1991)

1991-9
Filing Dates for Arizona Special Elections (56 FR 23902, May 24, 1991)

1991-10
11 CFR Parts 9034, 9036 and 9037: Matching Fund Submission and Certification Procedures for Presidential Primary Candidates; Notice of Proposed Rulemaking (56 FR 29392, June 26, 1991)

1991-11
11 CFR Parts 100, 102, 106, 110, 116, 9001-9007, 9012 and 9031-9039: Public Financing of Presidential Primary and General Election Candidates; Final Rule and Transmittal to Congress (56 FR 35898, July 29, 1991)

1991-12
11 CFR Parts 102 and 113: Use of Excess Funds; Final Rule and Transmittal to Congress (56 FR 34124, July 25, 1991)

1991-13
11 CFR Parts 9034, 9036 and 9037: Matching Fund Submission and Certification Procedures for Presidential Primary Candidates; Final Rule and Transmittal to Congress (56 FR 34130, July 25, 1991)

1991-14
Filing Dates for Virginia Special Elections (56 FR 36153, July 31, 1991)

1991-15
Rulemaking Petition: Common Cause; Notice of Availability (56 FR 41496, August 21, 1991)

1991-16
Filing Dates for Pennsylvania Special Election (56 FR 51896, October 16, 1991)

1991-17
11 CFR Parts 9034, 9036 and 9037: Matching Fund Submission and Certification Procedures for Presidential Primary Candidates; Final Rule: Announcement of Effective Date (56 FR 56570, November 6, 1991)

1991-18
11 CFR Parts 100, 102, 106, 110, 116, 9001-9007, 9012 and 9031-9039: Public Financing of Presidential Primary and General Election Candidates; Final Rule: Announcement of Effective Date (56 FR 56570, November 6, 1991)

1991-19
11 CFR Parts 102 and 113: Use of Excess Funds; Final Rule: Announcement of Effective Date (56 FR 56570, November 6, 1991)

1991-20
Schedule of Matching Fund Submission Dates and Certification Dates for 1992 Presidential Candidates (56 FR 57644, November 13, 1991)

1991-21
11 CFR Part 106: Allocation of Federal and Nonfederal Expenses; Notice of Proposed Rulemaking (56 FR 57864, November 14, 1991)

1991-22
11 CFR Part 114: Rulemaking Petition: Common Cause; Notice of Disposition (56 FR 64566, December 11, 1991)

1991-23
Rulemaking Petition: Congressman Thomas; Notice of Availability (56 FR 66866, December 26, 1991)

1991-24
11 CFR Parts 100 and 104: Loans from Lending Institutions to Candidates and Political Committees; Final Rule and Transmittal to Congress (56 FR 67118, December 27, 1991)