

Federal Election Commission

Annual Report 1996



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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OFFICE OF THE CHAIRMAN

June 1, 1997

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

Dear Mr. President, Senators and Representatives:

We are pleased to submit for your information the 22nd Annual Report of the Federal Election Commission, pursuant to 2 U.S.C. §438(a)(9). The Annual Report 1996 describes the activities performed by the Commission in the last calendar year. The report also includes the legislative recommendations the Commission recently adopted and transmitted to the President and the Congress for consideration. Most of these have been recommended by the Commission in previous years. It is our belief that these recommendations, if enacted, would assist the Commission in carrying out its responsibilities in a more efficient and effective manner.

This report documents the rapidly increasing demands on the Commission's limited resources brought about by record numbers of federal candidates and campaign finance activities. Despite new Commission initiatives—including computerized ones—to handle filings, audits and enforcement matters more efficiently and timely, the Commission remains overwhelmed by a growing enforcement case load and massive amounts of data generated from record-level election finance activity.

The current law of reporting requirements and contribution prohibitions and limitations, and the resulting audit and enforcement mechanisms required to administer these provisions, are complex. The Commission remains in urgent need of additional resources to meet those statutory responsibilities.

Respectfully,

A handwritten signature in black ink, reading "John Warren McGarry".

John Warren McGarry
Chairman

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Introduction

During 1996, the Federal Election Commission encountered a number of challenges in its effort to administer and enforce the federal election laws. Against a backdrop of unprecedented campaign activity, Congress budgeted less money for the FEC than the agency had requested, the President left vacant one seat on the Commission and the courts rejected several FEC regulations and challenged the application of other provisions. The smaller budget required staffing reductions, curtailed the Commission's enforcement capacity and delayed the review of campaign finance reports. The vacant seat on the Commission meant that a near-unanimous decision (4 out of 5 votes) was required for every agency action. The court decisions led to increased election-related spending by corporations and unions, and—for the first time—permitted party committees to make unlimited independent expenditures.

The workings of the Presidential Election Campaign Fund presented yet another challenge to the agency. For the first time in the program's 20-year history, a temporary funding shortfall resulted in partial payments to primary election candidates. The shortfall affected payments during the first five months of the year; subsequent tax checkoff receipts and repayments from previous elections closed the gap. In another first for the public funding program, Reform Party nominee Ross Perot qualified for a \$29 million general election grant, based on his vote percentage in the 1992 Presidential election.

Despite these challenges, the Commission successfully administered the election law. The agency streamlined many operations by completing, in 1996, the conversion from a terminal-based computer system to a PC-based system. Further, the Commission was ready at year's end to implement a new voluntary electronic filing program mandated by Congress. The Commission also improved its customer service by doubling the capacity of its automated flashfax system, expanding its digital imaging system for viewing reports filed by House candidates, PACs and party committees and by launching its own home page on the worldwide web. Both the flashfax system and the web site offered customers direct access to a wealth of FEC information, including campaign finance data on

candidates and committees, publications and press releases. Underlying all these endeavors was the agency's ongoing audit and enforcement program. The FEC completed audits on 24 committees and brought 204 enforcement matters to conclusion.

The material that follows details the Commission's 1996 activities.

Chapter One

Keeping the Public Informed

Since its inception, the Commission has disclosed campaign finance data and provided information on the election law to both the general public and the regulated community. Doing so helps to create an educated electorate, and it promotes compliance with the campaign finance law.

Both the public disclosure program and the agency's educational outreach efforts promote compliance. Public scrutiny of campaign finance records encourages the regulated community to comply with the law, while educational outreach to the regulated community helps promote compliance by fostering understanding of the law. The Commission's public disclosure and educational outreach programs are described below.

Public Disclosure

Disclosing the sources and amounts of funds spent on federal campaign activity continued to be the centerpiece of the Commission's work during 1996. This process is complex, as it involves receiving the reports filed by committees, reviewing them, entering the data into the FEC's computer database and making the reports and database available to the public. Changes in filing requirements, increased use of computer technology, and greater staff efficiency enhanced the Commission's disclosure program during the year.

Kent C. Cooper, the FEC's Assistant Staff Director for Disclosure, received the 1996 Council on Governmental Ethics Laws (COGEL) Award for Distinguished Achievement. The award honored his work in creating and directing the FEC's Public Disclosure Office, which is considered a model for other agencies implementing public disclosure mandates.

Point of Entry, Data Imaging and Electronic Filing

On April 15, 1996, as a result of a 1995 legislative change, House candidates began filing campaign finance reports directly with the FEC, rather than with the Clerk of the House. The change in point of entry improved both the timeliness and quality of the Commission's public disclosure process. Under the old system, the Commission had received copies of the reports filed with the Clerk. Under the new system,

House candidate committees filed the original report with the Commission. As a result, reports were available sooner to the public and were easier to read.

The new point of entry also allowed the Commission to expand its digital imaging program. Now, the public can access digitized copies of the actual reports filed by House candidates, PACs and party committees. (Senate candidates continue to file with the Secretary of the Senate, so their reports are not available on the digital imaging system.) The Commission has installed 13 imaging stations in its Public Disclosure Division, and—thanks to a newly installed high-speed communications link—three viewing stations in the office of the Clerk of the House. Soon, digital imaging will also be available to state filing offices that wish to participate.

The Commission also took steps during 1996 to implement an electronic filing system that will allow committees to file reports via computer disk or other electronic format on a voluntary basis. The Commission adopted interim rules defining the format and verification requirements for filings, and hired a contractor to develop and operate the system. (For details on the interim rules, consult the November 1996 issue of the FEC newsletter, the *Record*.) That system went into operation January 2, 1997.

In addition to these high-tech advances, the Commission's Disclosure Division added a night shift to speed the processing of reports, and extended its public-access hours during the weeks preceding the November election. The Disclosure office also began accepting Visa and Mastercard as payment for FEC materials in 1996. While most materials are available free of charge, some are sold, including financial statistical reports, candidate indexes and PAC directories. Since the FEC cannot fill an order until it has received payment, credit card customers received items 4 to 5 days sooner than those paying by check. Credit cards also reduced the costs and paperwork associated with check processing, enabling FEC staff to better serve walk-in visitors.

Review of Reports

The Commission's Reports Analysis Division also contributes to the agency's disclosure program. Analysts review all reports to ensure that the public record

provides a full and accurate portrayal of campaign finance activity. If an analyst finds that a report contains errors or suggests violations of the law, he/she sends the reporting committee a request for additional information. The committee treasurer can then make additions or corrections to the report. Apparent violations, however, may lead to an enforcement action.

Campaign finance activity increased during 1996 due to the Presidential and Congressional elections. As the number and length of reports increased, so did reports analysts' workload. To handle its burgeoning workload, reports analysis staff utilized the Commission's electronic imaging system to view reports at their own desks and used refined computer programming tools that helped them identify possible compliance problems more quickly.

Processing Campaign Finance Data

The Commission codes and enters information from campaign finance reports into the agency's disclosure database, which contains data from 1977 to the present.

Information is coded so that committees are identified consistently throughout the database. Consistency is crucial to maintaining records of which committees received contributions from individuals and which PACs made contributions to a specific candidate. For example, if a PAC's report states that it made a contribution to the Smith for Congress committee with a Washington address, staff must determine which candidate committee, among those with the same name, the report referred to.

Despite the increased workload, data staff improved the timeliness of its data entry and coding. In the past, it took up to 45 days to enter, code and disseminate all of the detailed information from reports. During 1996, staff completed that process within 30 days.

CHART 1-1 Size of the Detailed Database

Election Cycle	No. of Detailed Entries*
1986	526,000
1987	262,000
1988	698,000
1989	308,000 [†]
1990	767,000
1991	444,000 [‡]
1992	1,400,000
1993	472,000
1994	1,364,000
1995	570,000
1996	1,887,160

* Numbers are cumulative for each two-year election cycle.

[†] The entry threshold for individual contributions was dropped from \$500 to \$200 in 1989.

[‡] Nonfederal account data was first entered in 1991.

Public Access to Campaign Data

The Commission opened a new avenue of public access to campaign finance data with the February 14 launch of its home page on the World Wide Web. Visitors to www.fec.gov could peruse a variety of statistical summaries and download data to their own computers via the Commission's FTP site. The FEC home page attracted more than 2 million hits during its first ten months of operation.

The Commission's disclosure database, which contains millions of transactions, enabled researchers to select information in a flexible way. For example, the database can instantly produce a profile of a committee's financial activity for each election cycle. As another example, researchers can customize their searches for information on contributions by using a variety of elements (e.g., donor's name, recipient's name, date, amount or geographic location).

During 1996, visitors to the Public Records Office used computer terminals to access the disclosure database and more than 25 different campaign finance indices that organize the data in different ways. Those outside Washington, DC, could order such information using the Commission's toll-free number.

Visitors could also inspect images of committee reports on the electronic imaging system installed on the personal computers in the Public Records Office.

Reports filed by House and Presidential candidates, party committees and PACs were available for viewing.

The Public Records Office continued to make available microfilmed copies of all campaign finance reports, paper copies of reports from 1996 Congressional candidates and Commission documents such as press releases, audit reports, closed enforcement cases (MURs) and agenda documents.

The FEC also continued to offer on-line computer access to the disclosure database to 1,241 subscribers to the eleven-year-old Direct Access Program (DAP) for a small fee. Subscribers included journalists, political scientists, campaign workers and other interested citizens. DAP saved time and money for the Commission because providing information on line is more efficient than processing phone orders for data. During 1996, the Commission's State Access Program gave 31 state election offices free access to the database. In return, state offices helped the Commission track candidate committees that had failed to file copies of their FEC reports with the appropriate state, as required under federal law.

Educational Outreach

Despite budget cuts in 1996, the Commission continued to educate committees about the law's requirements, thereby helping them avoid violations.

Home Page (www.fec.gov)

For the first time, the Commission used the World Wide Web for educational outreach. In addition to the statistical data described above, visitors could access brochures on a variety of topics, read agency press releases, look up reporting dates and download reporting forms, copies of the *Record* newsletter and the Campaign Guides for PACs, parties and candidates. The *Record* was placed on the Commission's home page the same day that copy was sent to the printer. This meant that the public could access the newsletter a full week before the printed copy was available.

Telephone Assistance

A committee's first contact with the Commission

is often a telephone call to the agency's toll-free information hotline. In answering questions about the law, staff will research relevant advisory opinions and litigation, as needed. Callers receive, at no charge, FEC documents, publications and forms. In 1996, the Information Division responded to 34,152 callers with compliance questions.

Flashfax

When committees need a publication or other document—including informational brochures, texts of regulations, reporting forms, and texts of advisory opinions—they can call the agency's automated "Flashfax" system at any time and quickly receive the information by fax. Use of this free service grew rapidly in 1996 as 7,729 callers sought information and received 12,206 documents. In response to the high demand, the Commission doubled the system's capacity in 1996.

Reporting Assistance

During 1996, reports analysts, assigned to review committee reports, were also available to answer complex reporting and compliance-related questions from committees calling on the toll-free line.

The Commission continued to encourage timely compliance with the law by mailing committees reminders of upcoming reporting deadlines three weeks before the due dates. The *Record*, the Commission's newsletter, and the FEC's web site also listed reporting schedules and requirements.

Assistance to Presidential Campaigns

FEC auditors assigned to Presidential committees helped them understand the requirements of the public funding law. In 1996, the Commission published new primary and general election compliance manuals for these committees.

Conferences

The Commission conducted a regional conference in Chicago to help the regulated community prepare for the 1996 elections. Conference participants attended workshops for candidate committees, party committees and corporate and labor PACs and their sponsoring organizations.

The agency also hosted two Washington, DC conferences. These conferences were tailored to meet the needs of specific audiences. The first was geared toward membership organizations and trade associations, and the second was designed for candidate committees.¹

For the second consecutive year, budget constraints prevented the agency from continuing its informal outreach program whereby one or two staff members met with candidates, parties and PACs in different cities.

Tours and Visits

Visitors to the FEC during 1996, including 37 student groups and 67 foreign delegations, listened to presentations about the campaign finance law and, in some cases, toured the agency's Public Records office.

Media Assistance

The Commission's Press Office continued to field questions from the press and navigate reporters through the FEC's vast pool of information. Press Office staff answered 23,459 calls from media representatives and prepared 139 news releases. These releases alerted reporters to new campaign finance data, illustrating the statistics in tables and graphs.

Publications

During 1996, the Commission published several documents to help committees, the press and the general public understand the law and find information about campaign finance.

In August, the Commission published a brand new edition of its *Campaign Guide for Political Party Committees*. The guide offers a clear explanation of the laws applicable to party committees and demonstrates how to fill out reports.

The *Combined Federal/State Disclosure Directory 1996* directs researchers to federal and state offices that provide information on campaign finance, candidates' personal finances, lobbying, corporate registration and election results. The 1996 directory was

available both in print and on computer disks formatted for popular hardware and software.

The Commission also published a new edition of *Pacronyms*, an alphabetical list of acronyms, abbreviations, common names and locations of federal PACs. The publication lists PACs' connected, sponsoring or affiliated organizations and helps researchers identify PACs and locate their reports.

Office of Election Administration

In 1996, the Office of Election Administration (OEA)—formerly the Clearinghouse on Election Administration—continued to help states implement and refine various provisions of the National Voter Registration Act of 1993 (NVRA)—the “Motor Voter Law.” OEA also provided the National Voter Registration Form to organizations conducting voter registration drives on both the local and national level.

Typical of a Presidential election year, staff answered numerous questions from the public on voting and registration, voting equipment and methods, the Presidential election process and the U.S. political system. OEA staff spoke about the American political process to foreign political figures, election officials, journalists and others from the many emerging democracies in Eastern Europe and Africa.

In addition, the OEA released several publications this year, including updates to *Campaign Finance Law* and *Federal Election Law* and the first edition of the *FEC Journal of Election Administration* since 1989. The OEA added three new titles to its Innovations in Election Administration series. The new volumes focused on simplifying election forms and language, recruiting poll workers and ensuring the accessibility of the election process to the disabled.

Finally, OEA staff worked with the Commission, the Staff Director and the International Foundation for Election Systems (IFES) to organize the third Trilateral Meeting of federal election officials from Canada, Mexico and the United States, held in Washington, DC, in May.

¹ The Commission had already conducted a conference for corporations and labor organizations in December 1995.

Chapter Two Presidential Public Funding

The 1996 election marked the twentieth anniversary of the Presidential public funding program. Since 1976, the program has provided nearly \$900 million to qualified Presidential candidates for their primary and general election campaigns and to parties for their Presidential nominating conventions. The program is funded by the \$3 tax checkoff, and administered by the Federal Election Commission. The Commission certifies payments to qualified candidates and committees; the U.S. Treasury makes those payments.

Shortfall in Fund

A long-predicted shortfall in the Presidential Election Campaign Fund resulted in partial matching fund payments to Presidential primary candidates during the first five months of 1996.

The Fund's overall balance in January 1996 was \$146.9 million—enough to cover the \$37.4 million in first-round matching fund certifications to the 10 candidates participating in the program at that time. However, the U.S. Treasury required that \$124 million be set aside to cover the grants to general election candidates and the payments to party nominating conventions, leaving only \$22.4 million available for matching funds at the start of 1996. As a result, the participating candidates received a pro rata amount—roughly 60 cents on the dollar—in January. Partial payments continued through May, with the U.S. Treasury adding unscheduled payouts to lessen the impact of the shortfall. The partial payments were:

- February 2: \$198,013 in matching funds to 10 certified Presidential candidates, representing less than 1 percent of each candidate's unpaid entitlement as of that day.
- February 13: \$550,538 in matching funds to 10 certified Presidential candidates, representing 3 percent of each candidate's unpaid entitlement as of that day.
- March 15: \$7,072,308 in matching funds to 11 certified Presidential candidates, representing 35 percent of each candidate's unpaid entitlement as of that day.

Tax checkoff receipts and repayments from past Presidential campaigns totaled \$16,459,323 for the month of March, exceeding the payout demand of \$16,043,920 by a little more than \$400,000. As a result, certified candidates received their full entitlements on April 15, including amounts that had been owed to them from previous matching fund certifications. Another temporary shortfall occurred on May 1 when the Commission certified \$4,613,827 for payment before the April deposits had been made. The April deposits closed the gap, and all certified candidates received their full entitlements on May 15.

Three principal factors led to the shortfall:

- Treasury regulations require that funds be set-aside for convention and general election funding;
- The number of candidates and the amount of early 1996 primary fundraising were unprecedented (\$37 million in entitlements for January 1996 compared with \$6 million for January 1992); and
- The taxpayer checkoff increase from \$1 to \$3 did not take effect until 1994.

During the shortfall period, one candidate requested an advisory opinion (AO) on how his campaign could remedy the cash-flow problem. In AO 1996-4, the Commission determined that Lyndon LaRouche's campaign could:

- Pledge future matching funds to obtain a bridge loan from a qualified lending institution, and repay the loan by instructing the Treasury to disburse the committee's matching funds directly to the lender;
- Assure repayment of the loan with delayed matching funds—even if Mr. LaRouche lost eligibility—by obtaining the loan while still eligible for matching funds; and
- Transfer money as a loan from Mr. LaRouche's 1992 Presidential campaign to his 1996 campaign.

Since payments from the Presidential fund are indexed to inflation but the tax checkoff that finances the program is not, a future shortfall is inevitable. With participation in the checkoff declining from a high of 28.7 percent on 1980 tax returns to 13 percent on 1995 returns, that shortfall could come as soon as the election in 2000.

Certification of Matching Funds

To qualify for primary matching funds, Presidential candidates must submit copies of contributor checks and other documentation showing that they raised more than \$5,000 in matchable contributions in each of at least 20 states (i.e., over \$100,000). The FEC reviews this threshold submission to determine whether the candidate has met the eligibility requirements. The candidate must also agree to comply with the law in a letter of agreement and certification. Once candidates satisfy these criteria, the Commission declares them eligible to receive matching federal dollars for a portion of the contributions they raise. The federal government will match up to \$250 per contributor, but only contributions from individuals qualify for matching.

Presidential candidates may establish their eligibility during the year before the election (i.e., in 1995 for the 1996 primaries) and, once eligible, may submit additional contributions for matching funds (called matching fund submissions) on specified dates.

In AO 1996-7, Harry Browne, a candidate for the Libertarian party's 1996 Presidential nomination, asked the Commission if he could be certified as being eligible to receive matching funds without actually accepting the money. The Commission determined it could not certify Mr. Browne as eligible because he would not have signed the required candidate agreements or agreed to the post-election audits.

Chart 2-1 lists the 1996 Presidential primary candidates who qualified for matching funds and the total amount of matching funds certified and paid to each.

CD ROM Technology

Before certifying matching funds, the Commission reviews each submission to verify that the contributions qualify for matching funds and are properly documented. (The agency uses a statistical sampling technique to select contributions for review.) In 1996, CD ROM technology accelerated the review process for matching fund requests submitted on CD ROM disks by the Clinton, Dole and Buchanan campaigns. The disks contained images of the contribution checks submitted for matching funds and the other required documents.

CHART 2-1

Matching Fund Certifications and Payments

Candidate Amount	Amount Certified (millions of dollars)	Paid
Lamar Alexander (R) *	4.6	4.6
Pat Buchanan (R)	11.0	11.0
Bill Clinton (D)	13.4	13.4
Bob Dole (R)	13.5	13.5
Phil Gramm (R) *	7.4	7.4
John Hagelin (NLP) †	.5	.5
Alan Keyes (R)	1.7	1.7
Lyndon LaRouche (D)	.6	.6
Richard Lugar (R) *	2.7	2.7
Arlen Specter (R) **	1.0	1.0
Pete Wilson (R) ‡	1.7	1.7

* Senator Gramm, Senator Lugar and Governor Alexander withdrew from the race in February 1996.

† Natural Law Party.

** Senator Specter withdrew from the race in November 1995.

‡ Governor Wilson withdrew from the race in September 1995.

For the FEC, receiving submissions on CD ROMs saved time. The time savings largely resulted from faster searches for particular contribution checks. A manual search through approximately 40,000 checks included in a typical monthly submission—some 20 boxes—could take several minutes. Using CD ROMs, staff could access an image of a check in 3 seconds.

While submitting matching fund information on CD ROM is voluntary, it is expected to become more popular with campaigns in future Presidential elections. The technology will vastly decrease the amount of paper needed in the submission and review process. During the 1992 election cycle, the FEC accumulated 5 tons of paper records in processing \$42 million in matching funds.

Certification of Convention Funding

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

In 1995, the Commission certified the Democratic and Republican convention committees as being eligible initially to receive \$12.024 million each in public funds. The Department of Treasury made the payments in July 1995, and in 1996 the Department made an additional cost-of-living payment (\$340,000), bringing to \$12,364,000 the total amount certified to each convention committee.

Certification of General Election Funds

The Presidential nominee of each major party may become eligible for a public grant of \$20 million (plus a cost-of-living adjustment (COLA)) for the general election campaign. Minor and new party candidates may qualify for partial general election funding based on their party's electoral performance. Minor party candidates (nominees of parties whose Presidential candidates received between 5 and 25 percent of the vote in the preceding election) may receive public funds based on the ratio of their party's vote in the preceding Presidential election to the average vote for the major party candidates in that election. New party candidates may receive public funds after the election if they receive 5 percent or more of the vote. The amount is based on the ratio of the new party candidate's vote to the average vote for the two major party candidates in the election.

In 1996—for the first time in the 20-year history of public funding—a non-major party Presidential candidate qualified for general election funding before the election. The Commission certified Reform Party

nominee Ross Perot as being eligible for roughly \$29 million on August 22.

The Commission had addressed Mr. Perot's potential eligibility in AO 1996-22. In that opinion, the Commission concluded that, if Mr. Perot became the Reform Party's Presidential nominee, he would be eligible for pre-election public funding because he had received 19 percent of the popular vote in 1992.

Questions on whether a Reform Party nominee other than Mr. Perot would have been eligible for pre-election public funding and whether the Reform Party could have received public funds for its convention were left unanswered. Those questions hinged on whether the Reform Party qualified as a minor party. Additionally, for convention funding, the Reform Party would have had to demonstrate that it qualified as a national party committee under 26 U.S.C. §9008. Since, at the time AO 1996-22 was issued, the Reform Party had not been formed, the questions of whether it qualified as a minor party or as a national committee were hypothetical, and the Commission deemed it premature to address them.

Requests to Deny Funding

During 1996, the Commission denied requests to stop matching fund payments to the Clinton and Dole Presidential campaigns, and to withhold the Perot campaign's general election funding.

In June, the Democratic National Committee requested that the agency suspend matching fund payments to Dole for President, Inc., alleging that the committee had forfeited its entitlement to the funds because it had overspent the \$37.1 million limit on primary spending.

In July, the Dole Committee requested the suspension of matching funds to the Clinton/Gore '96 Primary Committee on the grounds that the committee had exceeded the spending limit.

In both cases, the FEC said that the allegations were too speculative to meet the strict standard in these cases: information demonstrating that a candidate has knowingly and substantially exceeded the expenditure limit. 11 CFR 9033.3.

Similarly, in October, the Commission rejected a request by Herb Rosenberg, of New York, to deny gen-

eral election funding to Mr. Perot, based on numerous alleged campaign irregularities, including excessive expenditures and possible disenfranchisement of Reform Party members. The FEC determined that the allegations were speculative and did not satisfy the standard that must be met to withhold general election funds, namely, patent irregularities suggesting the possibility of fraud.

In all three cases, the Commission will be able to determine whether the allegations were accurate when it conducts its mandatory audits of the public funding recipients.

Qualified Campaign Expenses

FEC regulations require publicly funded Presidential campaigns to spend campaign funds on “qualified campaign expenses” only. 26 U.S.C. §§9033, 9038 and 9042 and 11 CFR 9032.9(a)(2). Two 1996 advisory opinions addressed this requirement.

In AO 1995-45, the Commission determined that Dr. John Hagelin—a publicly funded candidate seeking the Natural Law Party’s nomination—could use campaign funds to pay for his ballot access efforts, including petition drives. Such payments were seen as qualified campaign expenses since the process by which a non-major party candidate gets on the general election ballot serves a purpose similar to a primary election. Further, payments made by Dr. Hagelin to get his party’s name on the ballot would also be qualified campaign expenses where doing so would be the more cost effective means of securing his ballot position as the party’s nominee.

Documenting qualified campaign expenses was the focus of AO 1996-12. The Lenora B. Fulani for President ’96 committee asked the Commission if additional documentation would be required to demonstrate that disbursements made to vendors with whom the candidate had a close relationship were qualified campaign expenses. (In its audit of Dr. Fulani’s 1992 campaign, the Commission determined that certain disbursements to vendors closely associated with the Fulani campaign were not qualified campaign expenses. See page 11.)

The Commission concluded that the 1996 Fulani campaign’s plan to hire close associates to provide

campaign services would not, in itself, cause the campaign to be held to a higher standard than other publicly funded committees. However, the campaign would have to abide by the same documentation requirements for campaign expenses as all other publicly funded committees. As such, the committee’s disbursements to vendors would be considered qualified campaign expenses as long as Dr. Fulani could demonstrate that they represented the usual and normal charge for campaign-related services actually rendered.

Reporting by Presidential Campaigns

Under 2 U.S.C. §434(a)(3)(A), Presidential candidate committees that exceed \$100,000 in contributions or expenditures must file FEC reports on a monthly basis. Another provision—2 U.S.C. §434(a)(6)(A)—requires candidate committees to notify the Commission, within 48 hours, of contributions of \$1,000 or more received between the 20th day and 48 hours before any election.

In AO 1995-44, the Commission clarified that Presidential candidate committees filing monthly FEC reports would not be required to file 48-hour notices during the Presidential primary season. Since such Presidential candidates are typically active in a number of primary elections, requiring them to abide by these provisions would have required nearly constant filing.

The Commission concluded that Presidential candidate committees filing monthly provided sufficient disclosure to exempt them from the 48-hour filing provisions during the Presidential primary season.

Presidential Debates

On October 4, 1996, the U.S. Court of Appeals for the District of Columbia Circuit upheld a lower court ruling that dismissed lawsuits against the Federal Election Commission (FEC) and the Commission on Presidential Debates (CPD). The suits had been filed by two Presidential hopefuls who, among other things, sought to participate in the Presidential debates.

Reform Party candidate Ross Perot and Natural Law Party (NLP) nominee John Hagelin filed the suits in U.S. District Court for the District of Columbia after the CPD excluded them from a list of participants for three nationally televised debates. In September, a few days before filing their suits, Perot and the NLP had filed administrative complaints with the FEC, but, because of procedures set forth in the Federal Election Campaign Act (the FECA or the Act), resolution of those complaints was not possible before the debates started in October.

District Court Decision

The court combined the suits for oral argument and dismissed both cases on October 1, 1996, concluding that it had no jurisdiction in the matter. First, as mandated by Congress, the FEC has exclusive jurisdiction to hear complaints alleging violation of the Act, and the plaintiffs have no private right of action against the CPD. Second, the FEC has 120 days to act on an administrative complaint before the court may become involved. 2 U.S.C. §437g.

The court also upheld FEC regulations at 11 CFR 110.13(a) that allow nonprofit, nonpartisan corporations to stage debates in certain circumstances and, under 11 CFR 114.4(f), to accept contributions from corporations to put on such events.

Appeals Court Decision

The appeals court expedited the appeals and heard the case two days after the district court handed down its ruling. The appeals court affirmed the lower court's decision that it lacked jurisdiction to take action on the alleged violations of the Act or to order the FEC to resolve the complaints prior to the CPD-sponsored debate on October 6.

With regard to Mr. Perot's challenge to the debate regulations themselves, the appeals court observed that the district court had not had the benefit of the administrative record and that the issue had not been fully briefed. Consequently, the appeals court vacated the district court's decision upholding the regulation and remanded the claim to the district court with instructions to dismiss without prejudice. (Mr. Perot would then be free to file a new suit on the same issue.)¹

Repayment of Public Funds

Committees receiving matching funds are subject to an FEC audit to determine whether they must repay public funds to the Treasury. Public funds must be repaid if, for example, the campaign incurred nonqualified expenses, received more than its entitlement or had surplus funds remaining at the end of the campaign.

At a February 7, 1996, public hearing, 1992 candidate Dr. Lenora B. Fulani contested the FEC's August 1995 initial determination that her campaign committee repay \$612,557 to the U.S. Treasury. The FEC had based this repayment determination on its investigation into charges made by former campaign worker Kellie Gasink in January 1994.

Ms. Gasink had alleged that during the 1992 campaign Dr. Fred Newman, Dr. Fulani's campaign manager, had used a network of vendors to funnel campaign funds to himself. Ms. Gasink had claimed that these vendors billed expenses to the committee that were either inflated or fabricated. Additionally, Ms. Gasink had alleged that Dr. Newman embezzled campaign funds by reporting that certain individuals had received salary payments and reimbursements when actually they had not.

The Fulani committee disputed the repayment determination and provided additional materials to support its view. The FEC will decide what action to take after considering Dr. Fulani's presentation and all the documentation submitted by her committee. (For additional information, consult the April 1996 issue of the FEC newsletter, the *Record*.)

¹ On February 12, 1997, Dr. Hagelin and the Natural Law Party filed a petition for a writ of certiorari.

Chapter Three Interpretation and Enforcement of the Law

As part of its mission to administer and enforce the Federal Election Campaign Act, the Commission promulgates regulations and issues advisory opinions to promote voluntary compliance with the law. The regulations explain the law in detail, often incorporating conclusions reached in previous advisory opinions. Advisory opinions, in turn, clarify how the statute and regulations apply to real-life situations. In 1996, for example, several advisory opinions dealt with questions concerning the new rules on the personal use of campaign funds.

The agency's enforcement actions also promote compliance by correcting past violations and demonstrating to the regulated community that violations can result in civil penalties and remedial action.

Regulations

The rulemaking process generally begins when the Commission votes to seek public comment on proposed rules by publishing the rules in the Federal Register. The agency may also invite those making written comments to testify at a public hearing. The Commission considers all comments when deliberating on the final rules in open meetings. Once approved, the text of the final regulations and the explanation and justification are published in the Federal Register and sent to the U.S. House and Senate. The Commission publishes a notice of effective date after the final rules have been before Congress for 30 legislative days.

Rulemakings Completed in 1996

New and revised rules in the following areas became effective in 1996:

- New regulations implementing the point-of-entry change for reports filed by House candidates took effect February 1 and 16.
- New and revised rules on corporate/labor communications and the use of corporate/labor facilities and resources took effect March 13. (These rules were summarized in the *Annual Report 1995*.)
- Revised rules on candidate debates and news stories staged, produced or distributed by cable television organizations took effect June 21. (See page 26.)

- Interim rules governing the Commission's voluntary electronic filing program took effect January 1, 1997. (See page 3.)

Other Rulemakings in Process

In addition to completing the above rules, the Commission also:

- Initiated a rulemaking on independent expenditures by party committees, in light of the Supreme Court's decision in *Colorado Republican Federal Campaign Committee v. FEC*. (See page 20.)
- Sought comments on two aspects of its "best efforts" regulations: one in response to the court decision in *Republican National Committee v. FEC*; the other, to clarify the rule's application to separate segregated funds. (See page 25.)

Advisory Opinions

The Commission responds to questions about how the law applies to specific situations by issuing advisory opinions. When the Commission receives a valid request for an advisory opinion, it generally has 60 days to respond. The Office of General Counsel prepares a draft opinion, which the Commissioners discuss and vote upon during an open meeting. A draft opinion must receive at least four favorable votes to be approved.

The Commission issued 51 advisory opinions in 1996. Of that number, 5 dealt with the status of party committees, 13 dealt with application of personal use rules and 3 dealt with the Act's news story exemption. These and other 1996 advisory opinions are discussed in Chapter Four, "Legal Issues."

Enforcement

The Enforcement Process

The Commission learns of possible violations in three ways. The first is the agency's monitoring process—potential violations are discovered through a review of a committee's reports or through a Commission audit. The second is the complaint process—anyone may file a complaint, which alleges violations and explains the basis for the allegations. The third is

the referral process—possible violations discovered by other agencies are referred to the Commission.

Each of these can lead to the opening of a Matter Under Review (MUR). Internally generated cases include those discovered through audits and reviews of reports and those referred to the Commission by other government agencies. Externally generated cases spurred by a formal, written complaint receive a MUR number once the Office of General Counsel determines whether the document satisfies specific criteria for a proper complaint.

The General Counsel recommends whether there is “reason to believe” the respondents have committed a violation. If the Commission finds there is “reason to believe,” it sends letters of notification to the respondents and investigates the matter. The Commission has authority to subpoena information and can ask a federal court to enforce a subpoena. At the end of an investigation, the General Counsel prepares a brief which states the issues involved and recommends whether the Commission should find “probable cause to believe” a violation has occurred. Respondents may file briefs supporting their positions.

If the Commission finds “probable cause to believe” the respondents violated the law, the agency attempts to resolve the matter by entering into a conciliation agreement with them. (Some MURs, however, are conciliated before the “probable cause” stage.) If conciliation attempts fail, the agency may file suit in district court. A MUR remains confidential until the Commission closes the case and releases the information to the public.

Prioritization

To ensure that its limited resources are devoted to the most significant enforcement matters, the Commission has instituted a “prioritization system” to help manage its caseload.

Now in its third year of operation, the prioritization system has helped the Commission manage its heavy caseload involving thousands of respondents and complex financial transactions. The Commission believed it would never have enough resources to pursue all enforcement matters, so it adopted formal criteria to decide which cases to pursue. Among those criteria are: the presence of knowing and willful intent,

the apparent impact the alleged violation had on the electoral process, the amount of money involved, the age and timing of the violation, and whether a particular legal area needs special attention.

In 1996, the FEC pursued cases in several enforcement areas, including: contributions by minors, contributions in the name of another, foreign contributions and reporting violations.

Civil Penalties

The Commission continued to impose significant civil penalties for serious violations of the law. In 1996, penalties from conciliation agreements totaled \$1,229,754.

Chart 3-1 (page 15) compares civil penalties negotiated in 1996 conciliation agreements with those of previous years. In Chart 3-2, the median civil penalty negotiated in 1996 is compared with the median civil penalty of previous years. Chart 3-3 tracks the number of complaints filed during the months preceding the last several federal elections.

CHART 3-1
Conciliation Agreements
by Calendar Year

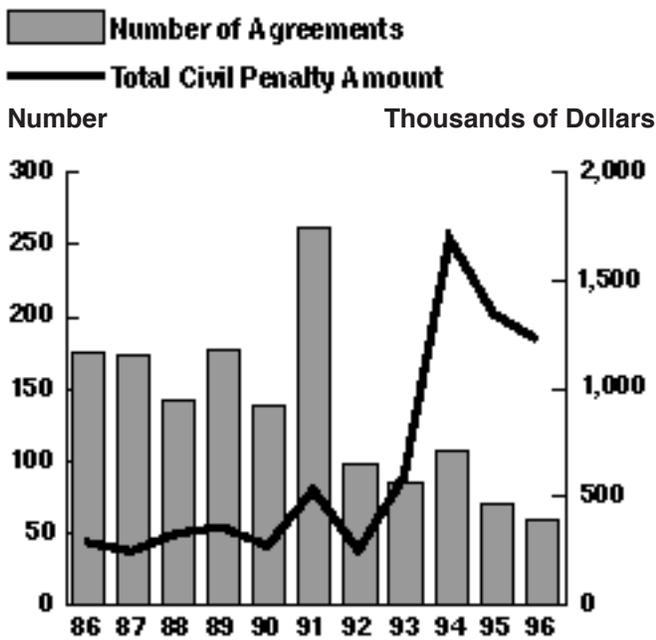


CHART 3-2
Median Civil Penalty
by Calendar Year

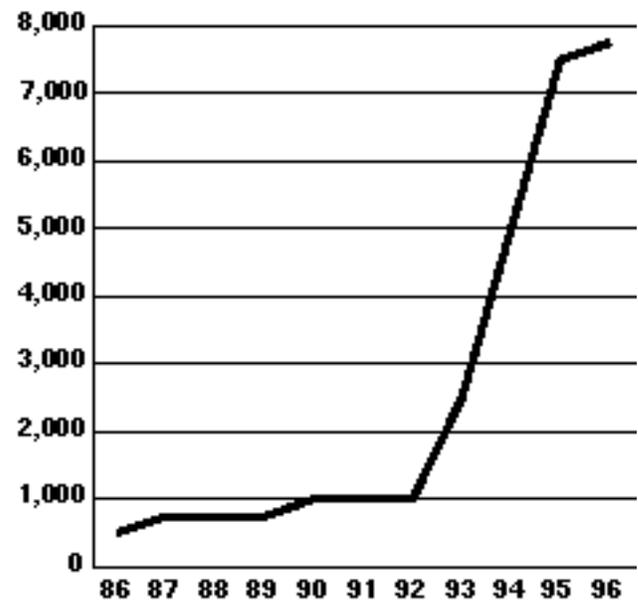
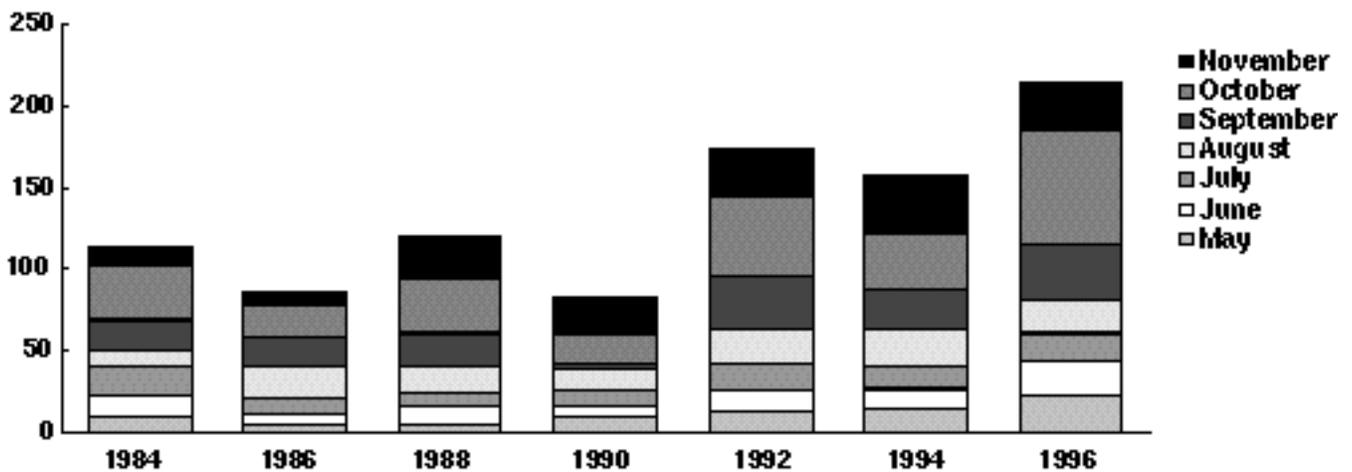


CHART 3-3
Complaints Filed May-November of Election Year



Chapter Four Legal Issues

As the independent regulatory agency responsible for administering and enforcing the Federal Election Campaign Act (the Act), the Federal Election Commission must “[safeguard] the integrity of the electoral process without...impinging upon the rights of individual candidates and citizens to engage in political debate.” *Buckley v. Valeo*. To that end, the Commission promulgates regulations explaining the Act’s requirements, issues advisory opinions that apply the law to specific situations, handles civil enforcement of the Act and defends the statute against legal challenges. This chapter examines major legal issues the Commission confronted during 1996. Many of those issues touch upon the core tension between valid governmental interests and the Constitutional freedoms of speech and association.

Corporate/Labor Communications

Corporations and labor organizations are prohibited from using their treasury funds to make contributions or expenditures in connection with federal elections. 2 U.S.C. §441b. The statute and FEC regulations contain several exceptions that permit corporations and unions to form PACs and otherwise communicate their views. Several 1996 court decisions and FEC advisory opinions explored the parameters of the corporate/labor prohibition and its exceptions.

MCFL Nonprofits

In its 1986 *FEC v. Massachusetts Citizens for Life (MCFL)* decision, the Supreme Court created an exception to §441b that exempts certain nonprofit corporations from the prohibition on corporate independent expenditures. In response to that ruling, the Commission prescribed new regulations, which were successfully challenged on Constitutional grounds in 1996.

The *MCFL* Court, citing First Amendment concerns, had concluded that independent expenditures made by MCFL were not subject to the ban because MCFL had the following essential features:

- It was formed to promote political ideas and did not engage in business activities;
- It did not have shareholders or other persons who had a claim on its assets or earnings, or who had

other disincentives to disassociate themselves from the organization; and

- It was not established by a business corporation or labor union and it had a policy of not accepting donations from such entities.

In 1995, the FEC promulgated regulations at 11 CFR 114.10 to incorporate the *MCFL* decision into its regulatory framework. These regulations establish a test to determine whether a corporation qualifies for exemption from the Act’s prohibition against corporate independent expenditures.

Minnesota Citizens Concerned for Life (MCCL), a nonprofit corporation, immediately brought suit to challenge the constitutionality of these regulations. MCCL alleged that it did not qualify to make independent expenditures under the regulations because:

- It engaged in business activities (sold advertising space in its newsletter, rented its membership list and engaged in fundraisers that were not expressly described as requests for donations to be used for political purposes);
- It issued affinity credit cards to its members (impermissible under 11 CFR 114.10(c)(3)(ii) because the credit cards created a disincentive for members to disassociate themselves from MCCL); and
- It accepted corporate contributions.

On April 19, 1996, the U.S. District Court for the District of Minnesota ruled that the FEC’s regulations defining and governing qualified nonprofit corporations (11 CFR 114.10) were unconstitutional on First Amendment grounds.

The court based its ruling on a decision by the U.S. Court of Appeals for the Eighth Circuit that addressed a similar Minnesota state law. In that opinion, the appeals court rejected the argument that the *MCFL* language served as a bright-line test for determining which corporations were entitled to make independent expenditures. *Day v. Holahan* (34 F.3d 1356 (8th Cir., 1994)). The *Day* decision concluded that Minnesota’s regulations were too restrictive and not narrowly tailored to serve a compelling governmental interest because they disqualified from the independent-expenditure exemption those nonprofit, membership corporations that engaged in some business activities and/or accepted some corporate donations, but not in significant amounts.

The district court in the MCCL case also found that the FEC's definition of a qualified nonprofit corporation at 114.10(c) was not severable from the rest of 114.10; consequently, the court rejected the entire provision.¹ This decision is pending on review before the Eighth Circuit.

Express Advocacy

In addition to creating the nonprofit exemption, the MCFL decision limited the scope of the §441b prohibition based on the nature of the corporate or labor spending. In response to this decision, the Commission prescribed a regulation defining express advocacy. And, once again, a successful challenge to that regulation was mounted in 1996.

The Supreme Court, again citing First Amendment concerns, had held that the ban on corporate and labor organization independent expenditures could only be constitutionally applied in instances where the money was used to expressly advocate the election or defeat of a clearly identified candidate for federal office. The Court's landmark *Buckley v. Valeo* decision listed examples of phrases that constitute express advocacy: "vote for," "elect," "support," "cast your ballot for," "vote against," "defeat," "reject."

The FEC incorporated this list into its definition of express advocacy at 11 CFR 100.22(a). Subpart (b) of 11 CFR 100.22 is based, inter alia, on the decision of the Court of Appeals for the Ninth Circuit in *FEC v. Furgatch*. The court of appeals held that language may be said to expressly advocate a candidate's election or defeat if, when taken in context and with limited reference to external events, it can have no other reasonable interpretation.

A nonprofit corporation immediately challenged the new definition, and the courts responded quickly. On October 18, 1996, the U.S. Court of Appeals for the First Circuit summarily upheld a district court ruling in *Maine Right to Life v. FEC* that subpart (b) of the

regulatory definition exceeded the FEC's statutory authority because it broadened the definition of express advocacy beyond the Supreme Court's interpretation.

The district court concluded that the Supreme Court's MCFL decision and a decision of the Court of Appeals for the First Circuit in *Faucher v. FEC* supported using *Buckley's* list of phrases as a bright-line test to detect express advocacy. The rigid approach of a bright-line test, noted the court, avoided the chilling of speech that occurs when the communicator is uncertain about whether or not his or her message contains express advocacy. Further, the court said, the idea that the content of a message might become express advocacy as an election nears adds to the chilling effect of 11 CFR 100.22(b) on free speech.

In its opinion, the district court had explicitly recognized the difficulty the FEC faced in crafting a regulation that effectively defines express advocacy, but noted that the *Buckley*, *Faucher* and MCFL decisions required the court to safeguard issue advocacy over the interest of keeping corporate and labor organization money out of the electoral process. Based on these precedents, therefore, the courts ruled that 11 CFR 100.22(b) was invalid because it defined express advocacy in broader terms than did the *Buckley*, MCFL and *Faucher* decisions.

The appeals court also cited *FEC v. Christian Action Network (CAN)*, where a district court—in a decision summarily affirmed this year by the Court of Appeals for the Fourth Circuit—ruled that CAN's television and newspaper ads purchased with corporate funds were not prohibited by §441b because they contained no express advocacy. The ads, which ran during the weeks leading up to the 1992 Presidential general election, assailed Bill Clinton and Al Gore for their alleged position on homosexual rights issues. (For more information on the district court decision, see *Annual Report 1995*.)

On December 17, 1996, the Court of Appeals for the First Circuit declined to rehear *Maine Right to Life v. FEC*.

Coordination with Candidates

Among the statutory exceptions to §441b are provisions that permit specific types of corporate/labor communications. Generally, corporations and unions

¹ A regulation that contains unconstitutional provisions must be stricken in its entirety unless that which remains after the unconstitutional provisions are excised is fully operative as law and the body enacting the regulation would have enacted the constitutional provisions even in the absence of those which are unconstitutional.

may spend treasury funds to expressly advocate the election or defeat of candidates when they communicate with their corporate executives and stockholders or, in the case of a union, with their members. FEC regulations that took effect in 1996 flesh out this statutory provision.

In addition to clarifying that corporate and labor communications to the general public that contain express advocacy are considered prohibited expenditures, these regulations make clear that, generally, when corporations and unions coordinate their communications with specific candidates, they are making prohibited in-kind contributions to the candidates. These regulations are based on *Buckley* and later opinions, which held that “controlled or coordinated expenditures are treated as contributions rather than expenditures under the Act.” The regulations, in certain instances, clarify what constitutes impermissible coordination with candidates. For example, specific regulations at 11 CFR 114.4(c)(4) and (5) make it illegal for a corporation or labor organization to distribute voting records or voter guides to the general public if, among other things, the organization consults or coordinates with candidates concerning the content or distribution of such materials. At 11 CFR 114.4(c)(5) (ii), the FEC lists specific restrictions for voter guides produced with corporate or union treasury funds for distribution to the public, such as prohibiting a corporate or labor organization from contacting a candidate (except through written questions to which a candidate may respond in writing) and requiring the organization to give all candidates for a particular office an equal opportunity to respond.

Two 1996 court cases addressed these rules: *Clifton v. FEC* and *FEC v. Christian Coalition*.

The U.S. District Court for the District of Maine in *Clifton* concluded that the FEC had based its voter guide regulations on too broad an interpretation of the §441b prohibition on corporate expenditures. The court said that the regulations mistakenly hinge on whether a corporation has had any contact with a candidate rather than on whether the voter guide conveys issue advocacy on behalf of a candidate (which the court found would be an acceptable interpretation).

In concluding that the FEC had overstepped its authority in promulgating 11 CFR 114.4(c)(4) and (5), the

court pronounced that, “as long as the Supreme Court holds that expenditures for issue advocacy have broad First Amendment protection, the FEC cannot use the mere act of communication between a corporation and a candidate to turn a protected expenditure for issue advocacy into an unprotected contribution to the candidate.”

The Commission has appealed the decision.

In the *Christian Coalition* case, the FEC asked the district court to find that the Coalition, a corporation, had made prohibited in-kind contributions and independent expenditures on behalf of Republican candidates during the 1990, 1992 and 1994 election cycles (in violation of §441b) and had failed to report the independent expenditures (in violation of 2 U.S.C. §434(c)). Specifically, the FEC alleged that the Christian Coalition:

- Made prohibited in-kind contributions by coordinating, cooperating or consulting with candidates when making expenditures for voter identification drives, get-out-the-vote drives and voter guides;
- Made prohibited in-kind contributions by coordinating with the National Republican Senatorial Committee when making expenditures for voter guides distributed in several states;
- Made a prohibited and unreported independent expenditure by expressly advocating the defeat of a candidate at a conference; and
- Made prohibited and unreported independent expenditures for direct mailings whose content—cover letters and scorecards rating incumbents on their House and Senate votes—constituted express advocacy on behalf of candidates receiving high scores and against candidates receiving low scores.

The Commission also asked the court to enjoin the Christian Coalition from violating §§441b and 434(c) and to assess an appropriate civil penalty for each violation.

The case was pending at year’s end.

Corporate Communications to Restricted Class

The Commission addressed another facet of corporate/labor communications in two 1996 advisory opinions—the aforementioned exception that allows corporations and unions to send corporate executives and stockholders or union members (the so-called “re-

stricted class”) communications that expressly advocate the election or defeat of a clearly identified candidate and that solicit contributions to be sent directly to the candidate. 11 CFR 114.1(j) and 114.2(f)(4)(ii). The regulations make clear that such communications may not, in any way, facilitate the making of contributions. 11 CFR 114.2(f) and 114.3. Examples of illegal corporate facilitation include acting as a conduit for contributions or providing potential contributors with stamps and envelopes addressed to political committees other than the corporation’s own PAC. Although the corporation may not provide addressed envelopes, it may provide contributors with the addresses of political committees.

In AO 1996-1, the Commission concluded that the Association of Trial Lawyers of America (ATLA) could communicate its endorsement of candidates to its members (its restricted class) and encourage them to support the ATLA-endorsed candidates by bestowing honorific designations on generous contributors.

Two characteristics of ATLA’s proposed communications were key to this determination: ATLA’s program did not facilitate the making of contributions and ATLA members would not suffer adverse effects if they decided not to participate in the program.

Corporate coordination with candidates was also an issue in the ATLA opinion. As part of its effort, ATLA planned to communicate with candidates before endorsing them to determine, for instance, their stand on certain issues. The Commission said that if ATLA’s communication with a candidate’s campaign included a discussion of the candidate’s plans, projects or needs, ATLA’s ability to make political communications to the general public would be compromised. Communicating with the candidate beyond what is permitted by 11 CFR 114.3 might be considered evidence of coordination that would negate the independence of future election communications to the general public. 11 CFR 109.1(b)(4) and 114.2(c).

Coordination would also be presumed in the case of an expenditure made by or through an ATLA member who was or had been an officer of a candidate’s committee, or who was or had received compensation or reimbursement from a candidate, a candidate’s committee or an agent of a committee. 11 CFR 109.1(b)(4). Further, coordination would be presumed

if an ATLA member who held a significant position in a candidate’s campaign were also either a member of ATLA’s executive committee, an ATLAPAC officer or were otherwise involved in the planning or execution of ATLA’s or ATLAPAC’s political programs.

The Commission reached a similar conclusion in AO 1996-21, ruling that the Business Council of Alabama (BCA) could send to its individual members and to the official representatives of its organizational members (its restricted class) communications that endorsed and/or opposed federal candidates or that solicited contributions on behalf of the favored candidates.

BCA’s proposed communications avoided facilitation problems and were otherwise consistent with the above-described legal guidelines. BCA also had to ensure that contributions were made voluntarily, that a BCA member would not be penalized for not making contributions, and that contributions were made by individuals from their personal funds or by another person who was a lawful source of contributions.

Independent Expenditures by Party Committees

Issues of coordination and express advocacy also affected the activities of party committees in 1996. On June 26, the U.S. Supreme Court ruled that the First Amendment precludes application of the Act’s party expenditure limits (2 U.S.C. §441a(d)) to independent campaign expenditures by political parties. The Court’s decision in *FEC v. Colorado Republican Federal Campaign Committee* reversed the Commission’s long-held view that a party could not make electoral expenditures “independently” of its own candidates since a party’s principal function is to elect its candidates to public office.

The Court decided not to address a constitutional challenge to the application of §441a(d) to coordinated expenditures by party committees. Instead, the Court chose to “defer consideration of the broader issues until the lower courts have reconsidered the question in light of our current opinion.” The case was remanded to the lower courts for further proceedings consistent with this decision.

Background

At 2 U.S.C. §441a(d), the Act permits political party committees to make expenditures up to specified amounts “in connection with the general election campaign of candidates for Federal office.” During the 1986 U.S. Senate race in Colorado, the Colorado Republican committee assigned its entire expenditure authority under §441a(d) to the National Republican Senatorial Committee, but then spent \$15,000 for a radio advertisement critical of the campaign statements of then-Representative Tim Wirth, who was seeking the Democratic Senate nomination.

The ad was broadcast throughout the state several months after Representative Wirth had registered as a candidate with the FEC, but before the Colorado primary election. At the time the ad was aired, three candidates were seeking the Republican nomination.

In its campaign finance reports, the Colorado Republican committee characterized the ad as a generic voter education expense that was not subject to the §441a(d) limit. The FEC, however, acting in response to an administrative complaint, viewed the ad as a coordinated party expenditure in connection with the Colorado Senate election. After unsuccessful efforts to reach a negotiated settlement, the Commission filed suit against the committee for violating the Act’s party expenditure limits and the corresponding reporting requirements.

The FEC alleged that the ad was subject to the §441a(d) limits because it contained an “electioneering message” about a clearly identified candidate. AOs 1984-15 and 1985-14.

The committee argued that the ad did not contain express advocacy and was therefore not subject to the §441a(d) limits. Further, it counterclaimed with a First Amendment challenge to the constitutionality of the §441a(d) limits.

Lower Court Decisions

The U.S. District Court for the District of Colorado held that only communications containing express advocacy counted towards the §441a(d) spending limits. Since, in its view, the ad did not contain express advocacy, it declined to address the constitutional question.

The U.S. Court of Appeals for the 10th Circuit

reversed, upholding the FEC’s “electioneering message” standard as applied to the ad, as well as the constitutionality of these spending limits.

Supreme Court Decision

In its landmark *Buckley* decision, and successor cases, the Supreme Court distinguished between independent expenditures, which it held cannot in most instances be constitutionally limited, and contributions (including expenditures coordinated with candidates), which can be limited.

The FEC had presumed—and had codified in its regulations—that party expenditures on behalf of candidates were “coordinated” with candidates and thus subject to limits. The Supreme Court disagreed, stating that there was no evidence that the anti-Wirth ad had actually been coordinated between the committee and the three candidates who were then seeking the Republican Senate nomination. Rather, the ad “was developed by the Colorado Party independently and not pursuant to any general or particular understanding with a candidate.” The Court also found that the potential for, or appearance of, corruption, which the *Buckley* Court found sufficient to justify limiting contributions, was not present to the extent that would justify limiting such independent spending by political parties on behalf of their candidates. Accordingly, the Court held that the First Amendment precluded application of the spending limit in §441a(d) to independent expenditures by party committees. Four justices would have found the statutory limit unconstitutional as applied to coordinated expenditures. However, there were not enough votes to take this step, and the plurality opinion concluded that it was premature to consider that issue on the record before the Court. Accordingly, the case was remanded to the lower court for further proceedings on that question.

Party Response to Ruling

In light of the Court’s decision, the Democratic Senatorial Campaign Committee (DSCC) and the Democratic Congressional Campaign Committee (DCCC) asked the FEC to revise its rules to explain how party committees, with their traditionally close contacts with candidates, could make independent expenditures. The Commission initiated a rulemaking, but acknowl-

edged that it could not revise the rules in time for the November election. The committees also submitted an advisory opinion request (AOR 1996-30) on the subject. The Commission failed to approve the General Counsel's draft advisory opinion by the required four-vote majority. As a result, the Democratic committees filed a lawsuit asking the District Court for the District of Columbia for guidance. (*DSCC v. FEC*) On October 9, 1996, the court dismissed the case citing the FEC's jurisdiction in the area.

Reports filed by the Republican and Democratic national committees indicate that both made independent expenditures in connection with the 1996 elections. The Republican committees reported approximately \$9.9 million in independent spending, and the Democrats disclosed about \$1.4 million.

State/National Committee Status

The Commission considered the status of particular party organizations in several 1996 advisory opinions. Three opinions addressed "state party committee" status, and one examined the qualifications for "national party committee" status. These designations are important because only qualified state and national committees may make coordinated party expenditures in support of their general election nominees. (See previous section.) In addition, the Act affords national party committees a higher limit on contributions received and the opportunity to qualify for public funding of their Presidential nominating conventions.

State Party Status

Under the Act and Commission regulations, a "state committee" is defined as an organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operations of the party at the state level, as determined by the Commission.

In AO 1992-30, the Commission established two criteria necessary to qualify as a state committee of a political party. First, the organization must have a state affiliate agreement that delineates activities that "are commensurate with" the day-to-day operations of a party at a state level. Second, the state affiliate must gain ballot access for its Federal candidates.

The Commission applied these criteria in three

advisory opinions issued in 1996. In AO 1995-49 the Commission determined that the Natural Law Party of Texas (Texas Party) was not a state party committee of the Natural Law Party of the United States of America (the Natural Law Party - National) because it had not secured ballot access in the State of Texas for its Presidential and other federal candidates. On the other hand, in AOs 1996-27 and 1996-43, the Commission concluded that the Libertarian Party of Illinois and the Green Party of New York did qualify as state committees because they met both of the established requirements.

National Committee Status

In AO 1996-35, the Commission determined that the Greens/Green Party USA (G/GPUSA) did not conduct enough national political campaign activity to qualify as a national party committee.

The Act defines a national party committee as the organization that, by virtue of a party's bylaws, is responsible for the day-to-day operations of that party at the national level. The Commission relies on several criteria to determine whether a political party has demonstrated sufficient activity on the national level to qualify. Those criteria include:

- Nominating candidates for President and various Congressional offices in numerous states;
- Engaging in certain activities—such as voter registration and get-out-the-vote drives—on an ongoing basis;
- Publicizing the party's supporters and primary issues throughout the nation;
- Holding a national convention;
- Setting up a national office; and
- Establishing state affiliates.

A party cannot qualify for national committee status if its activity is focused only on the Presidential and Vice Presidential election, if the activity is limited to one state or if the party has only a few federal candidates on a limited number of state ballots. On the other hand, ballot access for Presidential candidates is a prerequisite for any organization trying to attain national committee status.

In the 1996 election cycle, the G/GPUSA mounted a presidential campaign with Ralph Nader as its candidate, and ran eight candidates for congressional

seats in five states. It also claimed 14 state affiliates, published a party journal, held party conventions and maintained a website on the internet.

Although Mr. Nader appeared on the ballot as the Green Party presidential nominee in 16 states, he apparently did not qualify as a candidate under the Act. In an effort to avoid the FEC's registration and reporting requirements, Mr. Nader had said that he would campaign for the presidency without meeting the Act's definition of a candidate. The Commission, therefore, could not consider Mr. Nader a candidate in evaluating G/GPUSA's status as a national committee. That fact, combined with the party's limited success in achieving ballot access for congressional candidates, led the Commission to conclude that G/GPUSA's 1996 activity was insufficient to qualify it for national committee status.

Major-Purpose Test

The Act defines a political committee as any group of persons that either receives contributions or makes expenditures exceeding \$1,000 per year for the purpose of influencing a federal election. 2 U.S.C. §431(4). In applying this definition, the Commission has considered an additional factor—whether a group's major purpose is the nomination or election of candidates.

The major-purpose test was the subject of both litigation and an advisory opinion in 1996.

GOPAC Case

Through the course of an enforcement investigation (MUR), the Commission determined that GOPAC first qualified as a political committee in 1989 when it raised and spent more than \$1,000 for the purpose of overturning the Democratic majority in the House of Representatives, and as such was required to register and file with the FEC from that point forward. GOPAC argued that it did not qualify as a political committee under the Act until 1991, at which time it did register with the FEC, because before that time its major purpose was not to influence the election of federal candidates.

The major-purpose test dates back to the Supreme Court's *Buckley v. Valeo* decision in which the Court

ruled that the definition of political committee “need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.” The FEC contended that the *Buckley* decision did not require that a group provide direct support to a specific federal candidate in order for the group to be considered a political committee under the major purpose test. Instead, the FEC argued that *Buckley's* definition of “political committee” encompassed groups organized to engage in partisan electoral politics or electoral activity, once they crossed the \$1,000 statutory threshold of federal contributions or expenditures. Accordingly, the FEC argued that if GOPAC's major purpose was to advocate the election of Republicans as a class of candidates, then the purpose of its activities was by definition campaign related. And if its expenditures, or the contributions it received, to influence the election of federal candidates exceeded \$1,000, it qualified as a political committee under the Act.

The court disagreed because it found the term “partisan electoral politics” to be vague and therefore to have a chilling effect on the First Amendment rights of issue advocacy groups. In its February 28, 1996, opinion, the court quoted the *Buckley* decision: “. . . the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application.”

The court reasoned that a bright-line test was therefore required. The court concluded that the appropriate bright line was provided by limiting the definition of political committee to groups whose major purpose was the election of a particular federal candidate or candidates. The court said that this test drew two relatively clear lines: it distinguished between federal and nonfederal candidates; and it distinguished between groups that support particular federal candidates and those that lend general party support.

The court noted that the FEC conceded that there was no evidence of direct GOPAC support to specific federal candidates in 1989 and 1990. The record indicated that GOPAC developed and distributed materials espousing a set of ideas for Republican candidates, including federal candidates. GOPAC also targeted cash contributions to local and state candidates in areas where it hoped this support might

indirectly influence the election of other candidates, including federal candidates, on the Republican ticket. GOPAC also provided assistance to Congressman Newt Gingrich in 1989 and 1990. Based on these facts, the Commission concluded that GOPAC's major purpose was the election of candidates. However, the court found it critical that GOPAC's support appeared to have been limited to state and local candidates, to general nationwide dissemination of ideological materials and to Congressman Gingrich in his role as GOPAC chairman and not as a federal candidate. The court therefore ruled in GOPAC's favor and dismissed the FEC's complaint. The Commission deadlocked 3-2 on the staff's recommendation to appeal the decision.

Akins v. FEC

On December 6, 1996, the U.S. Court of Appeals for the District of Columbia Circuit, sitting en banc (i.e., with all active judges present), ordered the Commission to reconsider its dismissal of a complaint alleging that the American Israel Public Affairs Committee (AIPAC) had violated the Act by failing to register as a political committee. The court said the Commission should review the complaint based solely on the Act's definition of political committee, and not the major purpose test.

The ruling reversed both the district court's decision and the initial ruling of a three-judge panel of the court of appeals in the case. In district court, the FEC had successfully argued that precedents in *Buckley v. Valeo* and *FEC v. MCFL* held that an organization that receives contributions or makes expenditures in excess of \$1,000 becomes a political committee only if its major purpose is influencing federal elections. The appeals court panel affirmed the lower court ruling, but the en banc court decided to rehear the case before all of the active judges of the D.C. Circuit.

Upon rehearing, the appeals court found that the FEC erred in its interpretation of *Buckley* and *MCFL* as they relate to the definition of political committee. The court said that both *Buckley* and *MCFL* invoked the major purpose test only with reference to independent expenditures. Since AIPAC's activities involved coordinated expenditures (considered to be in-kind contributions), the court concluded that the major

purpose precedents did not apply, and that any group must be considered a political committee if it makes coordinated expenditures (or any other type of contribution) exceeding \$1,000 in a calendar year.

Advisory Opinion

The major-purpose test was also central to an advisory opinion issued in 1996, which ran contrary to the court's later decision in *Akins*. In AO 1996-3, the Commission determined that the Breeden-Schmidt Foundation was not a political committee because influencing federal elections was not its major purpose.

The Foundation appeared, at first glance, to be a "political committee" under 2 U.S.C. §431(4)(A) because its contributions to federal candidates exceeded \$1,000 in a calendar year. However, the Foundation also made disbursements of significant amounts for nonelection purposes.

In fact, except for the Foundation's first year of operation (1990), when its disbursement programs were not yet fully developed, contributions to federal, state and local candidates constituted no more than 10 percent of the Foundation's total outlays for any one calendar year, and the total contributions for each of the six succeeding years remained under \$5,000 per year. None of the other disbursements made by the Foundation was in any way related to election campaigns.

Apart from the contributions, there was no indication that the Foundation's disbursements were related to election campaigns. For example, the Foundation did not appear to distribute materials featuring candidates or members of Congress, recruit candidates for public office or solicit people to assist campaigns for public office.

Best Efforts

The Federal Election Campaign Act (the Act) requires political committees to report names, addresses, occupations and employers of people who contribute more than \$200 in a year to committee coffers. When reported information on a contributor is incomplete, a committee will be in compliance with the law if it can demonstrate that "best efforts" were used to obtain and report the information. See 2 U.S.C.

§§431(13), 432(i) and 434(b)(3)(A).

In 1994, the FEC revised its rules at 11 CFR 104.7 to explain the minimum steps a committee had to take in order to demonstrate best efforts. Under the rules, a committee had to place the following statement conspicuously on solicitation materials: “Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.” Committees also had to make a stand-alone, follow-up request for contributor information in instances where the contributor failed to respond to the original request or provided incomplete information.

Shortly after the Commission promulgated these rules, the Republican National Committee (RNC), National Republican Senatorial Committee (NRSC) and the National Republican Congressional Committee (NRCC) filed a lawsuit challenging their constitutionality. The district court upheld the rules, noting that they “merely [provide] a ‘safe harbor’ for any committee that is unable to obtain all of the required information” and impose a “minimal burden” on committees given the strong governmental interest in disclosure of contributor information. (See *Annual Report 1994*.) The plaintiff committees appealed the decision.

On February 20, 1996, the U.S. Court of Appeals for the District of Columbia Circuit affirmed most of the district court’s decision,² finding only the particular wording of the mandatory language prescribed in the regulation to be misleading and therefore contrary to law. The language was inaccurate, the court said, because the Act does not require committees to report full contributor information for each donor; rather, it only requires them to undertake “best efforts” to obtain and report it. The court found that 11 CFR 104.7(b) had the effect of forbidding a more accurate paraphrasing of the law, such as: “Federal law requires us to use our best efforts to collect the information.”

Additionally, the mandatory language was misleading, the court said, because it led readers to infer that

federal law required contributors to disclose this information. In fact, neither the Act nor any other federal law requires contributors to do so.

In light of the court’s decision, the Commission published a Notice of Proposed Rulemaking on October 9, 1996, seeking comments on proposed revisions to its best efforts regulations. The revisions would require committees to include an accurate statement of the law’s requirements in all solicitations. The Notice offered two examples that would satisfy the notice requirement and sought comment on whether it would be preferable to require political committees to use one or the other. The examples were:

- “Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 in a calendar year.”
- “To comply with Federal law, we must use best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 per calendar year.”

Committees could substitute their own wording for the “best efforts” statement as long as it complied with federal guidelines.

Another proposed change to the regulations would clarify that, in the event that a separate segregated fund (SSF) had incomplete contributor information, it would be expected to report contributor information that its connected organization already had.

Personal Use of Campaign Funds

The Federal Election Campaign Act prohibits the use of excess campaign funds to pay for personal expenses. 2 U.S.C. §439a. During 1996, the Commission received a number of advisory opinion requests concerning the personal use of campaign funds, following the Commission’s promulgation of regulations on this matter in 1995. The Commission had revised its rules to clarify what is meant by “personal use” of campaign funds. The regulations differentiate cam-

² On January 6, 1997, the Supreme Court denied a petition for certiorari submitted by the party committees.

campaign and officeholder expenses from unlawful personal use expenses.

Under 11 CFR 113.1(g), the personal use ban applies to expenses that would exist irrespective of the campaign or officeholder duties. The regulations list specific expenses that are considered *per se* (or automatic) personal use expenses, which cannot be defrayed with campaign funds. The rules state that the Commission will address payments for legal services, meals, travel, vehicles and mixed-used expenses on a case-by-case basis. The requests for advisory opinions fell within these areas.

Advisory Opinions

In response to these requests, the Commission issued numerous advisory opinions that clarified how the personal use rules applied to specific situations:

- A candidate could use campaign funds to pay travel costs, including those of his/her family and chief of staff, to attend a Presidential nominating convention, where those persons would be participating in campaign-related activities. AOs 1995-47; 1996-19; 1996-20; and 1996-34.
- An incumbent could use campaign funds to pay child care expenses while attending a campaign event with his wife. AO 1995-42.
- A campaign could purchase and distribute copies of the candidate's autobiography. AO 1995-46.
- A campaign could transfer funds to a state party for construction of a library to house the candidate's papers. AO 1996-9.
- A retiring Congressman could use campaign funds to move his belongings home from Washington, DC, or to move office furnishings and memorabilia from a state office to DC. AOs 1996-14 and 1996-44.
- A candidate could use campaign funds for legal work conducted to refute press allegations adverse to his campaign. AO 1996-24.
- Campaign funds could defray travel expenses associated with a seminar hosted by a Congresswoman in her official capacity. AO 1996-45.

News Story Exemption

As explained earlier in this chapter, corporations are prohibited from making contributions or expendi-

tures in connection with a federal election. 2 U.S.C. §441b. But the FECA exempts from this prohibition those disbursements that are made for "any news story, commentary, or editorial distributed through the facilities of any broadcasting station...unless such facilities are owned or controlled by any political party, political committee, or candidate." 2 U.S.C. §431(9)(B)(i). Thus, a bona fide news entity is free to publish or broadcast candidate-related material contained in news stories and editorials as long as it is not owned or controlled by a party, a political committee or a candidate. In 1996, the Commission promulgated new regulations to clarify that the news story exemption also applies to cable television organizations. (The rules also permit cable stations to stage candidate debates.)

In three 1996 advisory opinions, the Commission determined that the requesting organizations were eligible for the news story exemption, but in a fourth opinion, the requester did not qualify.

In AO 1996-16, the Commission determined that the on-line, television and radio entities of Bloomberg, L.P., qualified as press entities. As such, they were entitled to the news story exemption at 2 U.S.C. §431(9)(B)(i) and could conduct their proposed Electronic Town Meetings with Presidential candidates.

Similarly, in AO 1996-41, the Commission permitted A.H. Belo Corporation, in conjunction with PBS affiliate stations, to produce and broadcast television programs that featured candidates for federal and state office.

Belo owned seven television stations in six states and, in conjunction with PBS affiliates in each of the areas, proposed to feature congressional and gubernatorial candidates who were running in districts that encompassed viewing audiences of the various stations. Belo satisfied the basic criteria for the news exemption. It was a bona fide press entity as described in FEC regulations. None of Belo's seven television stations was owned by a political party, committee or candidate, and all appeared to be actively involved in local news coverage. And Belo's proposal constituted valid activity as a press entity.

The Commission reached the same conclusion in AO 1996-48. The National Cable Satellite Corporation's (NCSC) two cable television networks—C-

SPAN and C-SPAN 2—qualified for the news story exemption and could, as a result, air candidate biographies and campaign commercials as part of their regular programming to cover the campaigns. The Commission found that NCSC qualified as a broadcaster within the meaning of the press exemption and did not appear to be controlled by any party, political committee or candidate.

In a somewhat different situation, the Commission determined in AO 1996-2 that Compuserve's plan to provide free on-line accounts to federal candidates would constitute an illegal corporate contribution. While the news story exemption was not the focal point of the Commission's analysis, the opinion noted that Compuserve would not qualify as a bona fide news entity for purposes of the news story exemption. (Compuserve's plan also fell outside the exemption for corporate discounts made in the ordinary course of business, since that exemption does not permit corporations to provide valuable goods and services free of charge.)

Application of Contribution Limits

In AOs 1996-36 and 1996-37, the Commission addressed questions concerning the application of contribution limits to elections held in Congressional districts redrawn by court order during the course of the campaign.

On August 5, 1996, the United States District Court for the Southern District of Texas redrew the boundaries of 13 Congressional districts due to a previous court decision that three of those districts were the result of racial gerrymandering. *Vera v. Bush*. The court ordered that special general elections—open to all candidates—be held on November 5 in those districts. If no candidate received a majority of the votes in the November 5 special election, a special runoff election would be held in that district on December 10, 1996, between the top two vote-getters in the November 5 election.

In response to requests from candidates running in the special election, the Commission identified four separate sets of contribution limits that might apply to a given candidate. Separate limits would apply to: (1)

the March 12 primary; (2) a “defunct” general election campaign that ended August 5 (the date of the court decision); (3) a November 5 special general election (open to all candidates, not just March 12 primary winners); and (4) a December 10 runoff (if the candidate participated in a runoff). Coordinated party expenditures made on or before August 5 would not count against the \$30,910 limit for the November 5 special general election in each district. There would not be a separate coordinated party expenditure limit for the December 10 runoff.

Sale or Use Ban

Under 2 U.S.C. §438(a)(4), the FEC must make disclosure reports and other statements filed with it available for public inspection and copying within 48 hours of receipt. The Act also requires political committees to identify each individual whose aggregate contributions exceed \$200 in a calendar year by listing their name, mailing address, occupation and employer. 2 U.S.C. §434(b)(3)(A).

The statute tries to balance the public disclosure of campaign finance information against the need to protect the privacy of individual contributors. To that end, any information pertaining to the names and addresses of individual contributors that is taken from the reports or other statements filed with the Commission may not be sold or used for the purpose of soliciting contributions or for commercial purposes. 2 U.S.C. §438(a)(4).

D.H. Blair & Co. Inc., a New York City brokerage firm, agreed to pay a \$100,000 civil penalty after some of its employees used political committee contributor lists for commercial purposes. MUR 4320. The lists were used as a source for making “cold calls” to potential clients, in violation of the Act's “sale and use restriction.”

Background

Beginning in late 1994, an employee of the FEC's Public Disclosure Division noticed an unusual pattern of telephone requests from brokerage firm employees for lists of individual contributors. The Disclosure Division referred the matter to the Office of General

Counsel, and the Commission voted to conduct an investigation.

Prior to the Commission's finding probable cause to believe the law had been violated, Blair agreed to enter into a conciliation agreement with the Commission. In addition to paying the civil penalty, Blair agreed to:

- Notify all of its employees that commercial use of contributor lists obtained from the FEC was prohibited by law and make such information part of regular employee training;
- Post notices in offices and "cold calling" areas advising employees of the law;
- Amend its training and personnel manuals to include a statement about the prohibitions on contributor lists; and
- Sanction any employee who violates the prohibition on contributor lists.

In an effort to educate the brokerage community, the Commission also approved sending informational letters about the sale and use restriction in the Act to three organizations with oversight over the securities industry—the Securities and Exchange Commission, NASD Regulation Inc. and the New York Stock Exchange—and to four brokerage firms where employees were identified as having requested contributor lists from the FEC's Public Records Office.

Enforcement Process

During 1996, the Commission faced several court challenges pertaining to its enforcement activity. Most concerned the timeliness of FEC actions.

Under 2 U.S.C. §437g(a)(8)(A), anyone who files a complaint with the FEC may seek court intervention if the FEC fails to complete action on the complaint within 120 days. On April 17, 1996, the U.S. District Court for the District of Columbia ruled that the FEC acted contrary to law when, pursuant to its enforcement priority system, it allowed nearly 600 days to pass without taking any meaningful action on an administrative complaint filed by the Democratic Senatorial Campaign Committee (DSCC).

The court reasoned that while FEC decisions con-

cerning whether to conduct an investigation were entitled to judicial deference, the agency's failure to consider a complaint for nearly 600 days was subject to judicial review.

The criteria the court used to review the FEC's inaction are outlined in *Rose v. FEC* (1984) and *Telecommunications Research & Action Center v. FCC* (1984); they are:

- The credibility of the allegation;
- The nature of the threat posed;
- The resources and information available to the agency;
- The novelty of the issues involved;
- The time it takes for the agency to make decisions;
- Whether Congress mandated a timetable for the agency to take action on such matters as the one at hand;
- The nature of the matter (for instance, delayed agency action on matters affecting human health and welfare are less tolerable than those in the sphere of economic regulation);
- The effect that court-ordered expedited action on the matter would have on agency activities of a higher or competing priority;
- The nature and extent of the interest prejudiced by the agency's delay in acting on the matter; and
- The fact that the court need not "find any impropriety lurking behind agency lassitude in order to hold that agency action is 'unreasonably delayed.'"

Based on its analysis of the factors listed above, the court ruled that the FEC's failure to consider the DSCC's complaint for nearly 600 days was contrary to law. The court noted, however, that while this litigation was pending, the FEC had moved forward with respect to the DSCC's complaint. The court warned that should the FEC stall on this matter again, "the need for additional judicial intervention may well be compelling."

In September, the DSCC sought additional judicial intervention, asking the court again to order the FEC to complete the consideration of its complaint within 30 days or give the DSCC the authority to file a civil action against the NRSC.

On November 25, 1996, the court denied the request, concluding that the FEC's actions did not yet

constitute a failure to act that was contrary to law. The court based its ruling, in part, on the FEC's considerable work load, lack of resources and competing priorities.

The court noted that the statute of limitations period in which the Commission could file an enforcement suit on some of the violations alleged in the DSCC's administrative complaint was coming to a close. As a result, the court ordered the FEC to file status reports on its progress on the complaint every 30 days and scheduled a March status conference for the FEC and the DSCC in the event that the matter had not been resolved by then.

In another case, a U.S. District Court in Texas dismissed Congressman Stephen E. Stockman's claim that the FEC had unreasonably delayed its investigation into his 1994 campaign (MUR 3847).

The court considered several facts in reaching this decision:

- The FEC is not required to resolve MURs within a statutory deadline.
- The agency's delay in MUR 3847 did not risk human health and welfare.
- The time the FEC had taken to investigate the MUR was reasonable considering that similar MURs had taken the agency between 3 and 4 and a half years to resolve.
- If the court were to force the FEC to take immediate action, the agency would have to divert scarce resources from matters of equal or higher priority.
- The plaintiffs provided no real evidence that the delay had caused them any injury.
- The issues presented in MUR 3847 were novel and would likely require substantially more time to consider than issues more frequently investigated.

In granting summary judgment to the FEC, the court said that the agency's delay in resolving MUR 3847 was not unreasonable. Moreover, the court said, "There is no evidence showing that the time spent to investigate this matter is a product of anything other than the excessive demands on a strapped federal agency."

Another enforcement-related case involved the 60-day period in which a complainant may petition for judicial review of an FEC decision to dismiss an administrative complaint. 2 U.S.C. §437g(a)(8)(B).

The U.S. Court of Appeals for the District of Columbia Circuit found that Absalom Jordan did not file his petition within that time frame, and remanded the case to district court for dismissal. Mr. Jordan did not file suit with the district court until 63 days after the FEC had voted to dismiss his complaint.

Chapter Five The Commission

Commissioners

During 1996, Lee Ann Elliott served as Chairman of the Commission, and John Warren McGarry served as Vice Chairman.

One seat on the Commission remained vacant throughout 1996, and two other Commissioners whose terms expired in April 1995—Joan D. Aikens and Vice Chairman McGarry—continued to serve. Under the law, Commissioners may continue to hold office until new appointments are made by the President and confirmed by the Senate. In the absence of new appointments, Commissioners Aikens and McGarry continued to sit on the Commission. The vacant seat had been occupied by Trevor Potter, who resigned in October 1995 to return to his law firm.

On December 12, 1996, the Commission elected Mr. McGarry to be its 1997 Chairman and Mrs. Aikens to be its 1997 Vice Chairman. For biographies of the Commissioners and statutory officers, see Appendix 1.

EEO and Special Programs

During 1996, the Office of Equal Employment Opportunity and Special Programs administered the agency's EEO complaint and special emphasis programs, and offered additional programs designed to improve employees' professional and personal lives. These programs included cultural diversity training, luncheon meetings for managerial women and support staff, guest speakers and panel discussions on a variety of topics, "Knowledge at Noon" education sessions and a Thanksgiving food drive for needy employees.

In addition, the EEO Director briefed agency staff on the EEO complaint process and Early Intervention Program. As a result of this informal complaint resolution program, only two formal EEO complaints were filed during 1996.

The EEO Director also spoke and conducted EEO training at other government agencies, and—as part of an agreement of reciprocity—provided counseling services to employees at the U.S. Soldiers and Airmen's Home.

Also, the EEO office handles the agency's annual Combined Federal Campaign and U.S. Savings Bond Drive.

Ethics

The ethics staff provided ethics orientation to all new employees and published an intraagency newsletter to further advise all staff on the standards of ethical conduct. Staff also administered the Commission's public and confidential financial disclosure report system, which helps ensure that employees remain impartial in the performance of their official duties. Finally, the ethics staff submitted required reports with the Office of Government Ethics, including the annual agency ethics report, the financial disclosure reports filed by Presidential and Vice Presidential candidates and semiannual travel payment reports.

Inspector General

Under the Inspector General Act, the Commission's Office of the Inspector General (OIG) is authorized to conduct audits and investigations of FEC programs to find waste, fraud and abuse. The OIG audited several facets of Commission operations in 1996, including travel and compliance with the Freedom of Information Act (FOIA) and Government in Sunshine Act. The OIG also conducted an unannounced count of the agency's imprest fund.

Computer Upgrade

During 1996, the agency completed its conversion from network-based computer terminals to personal computers. The project involved improving the agency's computer infrastructure so that it had adequate space to store both new documents and those created on the old network. By the end of the year, every staff member slated to receive a PC had one.

The FEC's Budget

Budget constraints hampered the Commission's ability to oversee the unprecedented level of campaign activity associated with the 1996 elections. Appropriations for both the 1996 and 1997 fiscal years were well below what the Commission had identified as being necessary to effectively administer and enforce the law.

Fiscal Year 1996

The FEC's FY 1996 appropriation was \$26.5 million, \$2.5 million less than OMB had recommended and a nominal \$800,000 above the agency's FY 1995 appropriation. Of the \$26.5 million budgeted for the 1996 fiscal year, Congress mandated that \$1.5 million be set aside for computer enhancements, electronic filing and point-of-entry costs. (See Chapter 1 for details.)

In light of these constraints, the Commission instituted a partial hiring freeze and cut certain non-personnel expenses, such as training and outreach programs. Staffing levels ranged from a high of 318 full time equivalents (FTE) at the beginning of the fiscal year to a low of 288.9 FTE by the close of the fiscal year. The cumulative FTE for the entire year was 308.5.

Fiscal Year 1997

The FEC's \$28.165 million FY 1997 appropriation fell \$1.2 million short of the President's proposal and \$2.7 million shy of the Commission's request. The agency had asked for \$30.877 million and 331.5 FTE, which would have maintained the Commission's "standard performance level," avoided backlogs caused by surges in workload and funded the FEC's ongoing computerization initiatives. The President's request would have represented a "reduced performance level" of funding and 313.5 FTE. As a result of its actual appropriation, the Commission was forced to reduce its FY 1997 operations even more than what had been planned in either proposal.

In justifying its original budget request, the Commission had noted the explosive growth in campaign activity over the last few election cycles. Political-committee spending increased from about \$1.75

billion during the 1994 election cycle to about \$2.5 billion during the 1996 election cycle, and the number of registered committees grew from 10,974 in 1994 to 11,227 in 1996. These increases generated more questions for the FEC to answer, more transactions to process, more pages of documents to review and more audit and enforcement matters for the FEC to address.

Despite the increased use of new technology such as the automated flashfax system, direct computer access to the FEC database and a home page on the Internet, the budget cuts hampered the Commission's performance. Informational and educational programs suffered staffing cuts and reductions in outreach efforts, and informational publications were cut back. The Office of Election Administration reduced its research projects designed to assist state and local election officials in the performance of their oversight and administrative functions in federal elections. Although the Commission maintained the timeliness of its data entry of itemized information, the review of reports was delayed and Title 2 audits were reduced below desired levels. In addition, the Commission was forced to dismiss more enforcement cases with no findings in order to focus its limited resources on more significant compliance actions; and a larger percentage of complaints remained on hold because of insufficient staff.

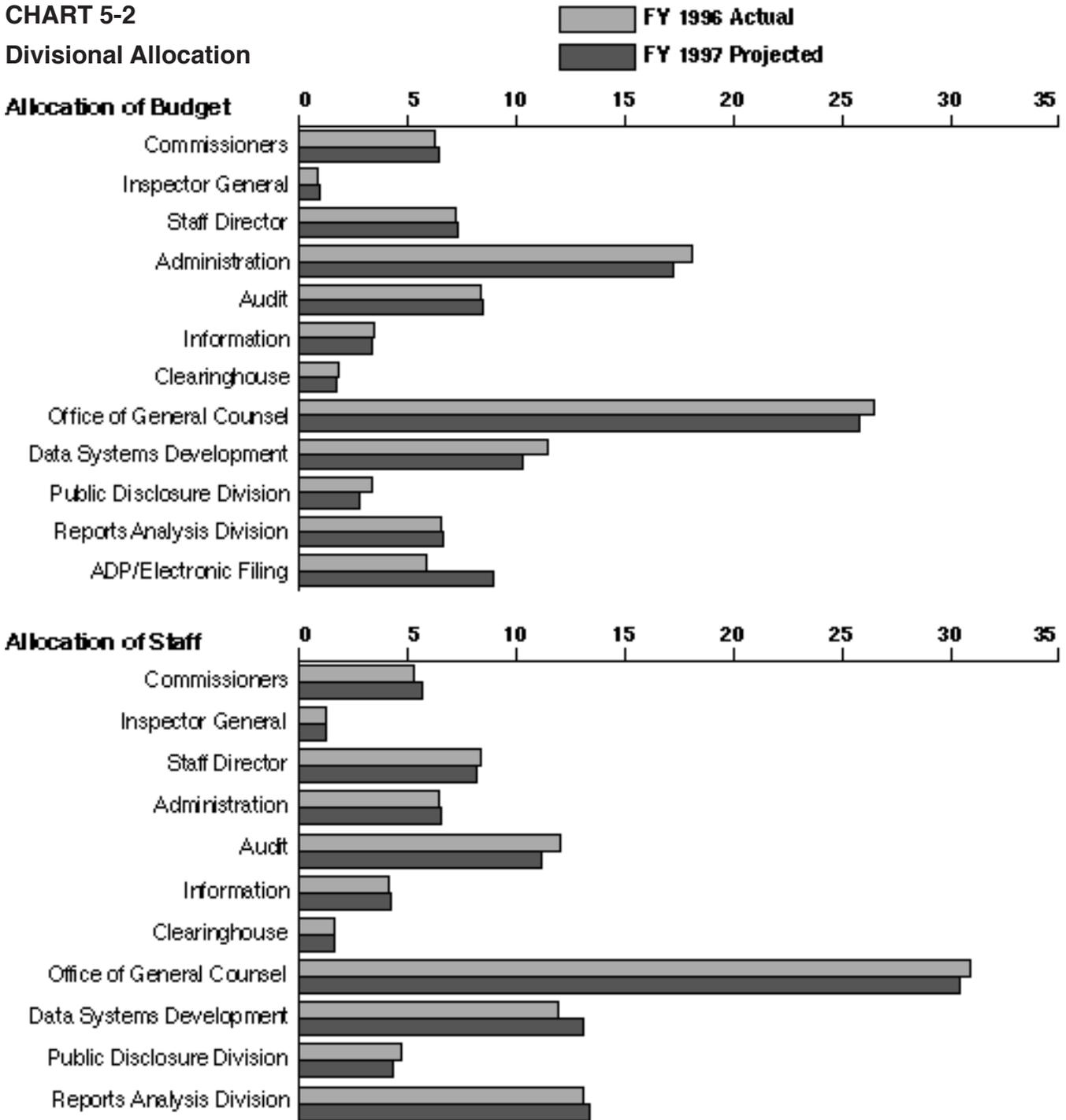
Budget Allocation: FYs 1996 and 1997

Budget allocation comparisons for FYs 1996 and 1997 appear in the table and charts that follow.

CHART 5-1
Functional Allocation of Budget

	FY 1996	FY 1997
Personnel	\$18,926,472	\$19,969,500
Travel/Transportation	162,061	231,000
Space Rental	2,551,669	2,561,000
Phones/Postage	499,583	490,500
Printing	322,836	328,000
Training/Tuition	54,950	60,000
Contracts/Services	1,215,988	846,520
Maintenance/Repairs	384,052	407,580
Software/Hardware	209,169	735,000
Federal Agency Service	298,892	282,500
Supplies	496,023	285,000
Publications	250,554	257,500
Equipment Purchases	1,103,941	1,710,900
Total	\$26,476,190	\$28,165,000

CHART 5-2
Divisional Allocation



* The Administrative Division pays for agency-wide housekeeping expenses such as telephones, photocopies and office supplies.

Chapter Six

Legislative Recommendations

On February 19, 1997, the Commission submitted 57 legislative recommendations to the President and Congress in a three-part package. The first part, entitled “Legislative Recommendations to Improve the Efficiency and Effectiveness of Current Law,” contained 23 administrative recommendations designed to ease the burden on political committees and streamline the administration of current law. The second part, “General Legislative Recommendations,” contained 24 recommendations concerning areas of the law which have been problematic. In each case, the Commission described the problem and asked Congress to consider clarification or more comprehensive reform of the law.

Finally, the third part, “Conforming Legislative Recommendations,” contained 10 additional recommendations that seek to correct outdated or inconsistent portions of the law.

The complete set of recommendations follows. As in the past, each recommendation is followed by an explanation of the need for and expected benefits from the change. Parenthetical references to 1997 indicate new recommendations or recommendations that were revised in 1997.

Part I

Legislative Recommendations to Improve Efficiency and Effectiveness of Current Law

Disclosure

Electronic Filing Threshold (1997)

Section: 2 U.S.C. §434(a)

Recommendation: The Commission recommends that Congress give the FEC authority to require committees with a certain level of financial activity to file FEC reports electronically.

Explanation: Public Law 104-79, effective December 28, 1995, authorized the electronic filing of disclosure reports with the FEC. Starting January 1997, political

committees (except for Senate campaigns) may opt to file FEC reports electronically.

The FEC has created the electronic filing program and is moving towards providing software to committees in order to assist committees that wish to file reports electronically. To maximize the benefits of electronic filing, Congress should consider requiring committees that meet a certain threshold of financial activity to file reports electronically. The FEC would receive, process and disseminate the data from electronically filed reports more easily and efficiently, resulting in better use of Commission resources. Moreover, information in the FEC’s database would be standardized for committees at a certain threshold, thereby enhancing public disclosure of campaign finance information. In addition, committees, once participating in the electronic filing program, should find it easier to complete and file reports.

Filing Reports Using Registered or Certified Mail (1997)

Section: 2 U.S.C. §434(a)(2)(A)(i), (a)(4)(A)(ii) and (a)(5)

Recommendation: The Commission recommends that Congress delete the option to file campaign finance reports via registered or certified mail when the report is postmarked by a specific date. Instead, Congress should consider simply requiring political committees to file their reports with the Commission (or the Secretary of the Senate) by the due date of the report.

Explanation: Section 434 of the Act permits committees to file their reports by registered or certified mail, provided that the report is postmarked by a certain date. (In the cases of a quarterly, monthly, semi-annual or post general report, the report must be postmarked by the due date if sent by registered or certified mail. In the case of a pre-primary or pre-general election report, the report must be postmarked 15 days before the election.)

In the 1996 election cycle, because of the extra handling required, the Postal Service often delivered

reports filed via registered or certified mail to the FEC more than a week after the report's due date. The delayed delivery presented an obstacle to full public disclosure of campaign finances immediately before the the 1996 election. Moreover, there is little likelihood of improvement in future election cycles because of continuing staff reductions within the Postal Service.

To minimize this delay in disclosure, Congress should eliminate the option in the law that allows committees to rely on the postmark of a registered or certified mailed report. Instead, Congress should simply require that reports be filed with the FEC (or the Secretary of the Senate) by the due date specified in the law. This approach would result in more effective public disclosure of campaign finance information, because reports would be available for review at an earlier point before the election. It would also simplify the law and eliminate confusion about the appropriate due date for a report.

Waiver Authority (revised 1997)

Section: 2 U.S.C. §434

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

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

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

- The candidate is unchallenged and his or her name does not appear on the election ballot.

Unauthorized committees also face unnecessary reporting requirements. For example, the Act requires monthly filers to file Monthly reports on the 20th day of each month. If sent by certified mail, the report must be postmarked by the 20th day of the month. The Act also requires monthly filers to file a Pre-General election report 12 days before the general election. If sent by certified or registered mail, the Pre-General report must be postmarked by the 15th day before the election. As a result of these specific due dates mandated by the law, the 1996 October Monthly report, covering September, was required to be postmarked October 20. Meanwhile the 1996 Pre-General report, covering October 1 -16, was required to be postmarked October 21, one day after the October Monthly. A waiver authority would enable the Commission to eliminate the requirement to file the monthly report, as long as the committee includes the activity in the Pre-General Election Report and files the report on time. The same disclosure would be available before the election, but the committee would only have to file one of the two reports.

In other situations, disclosure would be served if the Commission had the authority to adjust the filing requirements, as is currently allowed for special elections. For example, runoff elections are often scheduled shortly after the primary election. In many instances, the close of books for the runoff pre-election report is the day after the primary—the same day that candidates find out if there is to be a runoff and who will participate. When this occurs, the 12-day pre-election report discloses almost no runoff activity. In such a situation, the Commission should have the authority to adjust the filing requirements to allow for a 7-day pre-election report (as opposed to a 12-day report), which would provide more relevant disclosure to the public.

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

Campaign-Cycle Reporting

Section: 2 U.S.C. §434

Recommendation: The Commission recommends that Congress 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, authorized committees must track contributions received in two different ways. First, to comply with the law's reporting requirements, the committee must track

donations on a calendar year basis. Second, to comply with the law's contribution limits, the committee must track contributors' donations on a per-election basis. Simplifying the law's reporting requirement to allow reporting on a campaign-to-date basis would make the law's recordkeeping requirements less burdensome to committees. (Likewise, the Commission recommends that contribution limits be placed on a campaign-cycle basis as well. See the recommendation entitled "Election Period Limitations.")

This change would also benefit public disclosure of campaign finance activity. Currently, contributions from an individual are itemized only if the individual donates more than \$200 in the aggregate during a calendar year. Likewise, disbursements are itemized only if payments to a specific payee aggregate in excess of \$200 during a calendar year. Requiring itemization once contributions from an individual or disbursements to a payee aggregate in excess of \$200 during the campaign would capture information of interest to the public that is currently not available. Moreover, to determine the actual campaign finance activity of a committee, reporters and researchers must compile the total figures from several year-end reports. 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 Commission recommends that the principal campaign committee of a Congressional candidate have the option of filing monthly reports in lieu of quarterly reports.

Explanation: Political committees, other than principal campaign committees, may choose under the Act to file either monthly or quarterly reports during an election year. Committees choose the monthly option when they have a high volume of activity. Under those circumstances, accounting and

reporting are easier on a monthly basis because fewer transactions have taken place during that time. Consequently, the committee's reports will be more accurate.

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

Reporting Deadlines for Semiannual, Year-End and Monthly Filers

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

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

Explanation: Committees are often confused because the filing dates vary from report to report. Depending on the type of committee and whether it is an election year, the filing date for a report may fall on the 15th, 20th or 31st of the month. Congress should require that monthly, quarterly, semiannual and year-end reports are due 15 days after the close of books of each report. In addition to simplifying reporting procedures, this change would provide for more timely disclosure, particularly in an election year. In light of

the increased use of computerized recordkeeping by political committees, imposing a filing deadline of the fifteenth of the month would not be unduly burdensome.

**Commission as Sole Point of Entry
for Disclosure Documents (revised 1997)**

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 Senate candidate committees only. Under current law, those committees alone file their reports with the Secretary of the Senate, who then forwards microfilmed copies to the FEC.

Explanation: The Commission has offered this recommendation for many years. Public Law 104-79, effective December 28, 1995, changed the point of entry for reports filed by House candidates from the Clerk of the House to the FEC. However, Senate candidates still must file their reports with the Secretary of the Senate, who then forwards the copies on to the FEC. A single point of entry is desirable because it would conserve government resources and promote public disclosure of campaign finance information.

For example, Senate candidates sometimes file reports mistakenly with the FEC, rather than with the Secretary of the Senate. Consequently, the FEC must ship the reports back to the Senate. Disclosure to the public is delayed and government resources are wasted.

Public Law 104-79 also authorized the electronic filing of disclosure reports with the FEC. Starting January 1997, political action committees, political party committees, House campaigns and Presidential campaigns all may opt to file FEC reports electronically. This filing option is unavailable to Senate campaigns, though, because the point of entry for their reports is the Secretary of the Senate.

In addition, Public Law 104-79 eliminated the requirements for a candidate to file copies of FEC reports with his or her State, provided that the State has

electronic access to reports and statements filed with the FEC. In order to eliminate the State filing requirement for Senate candidates, it would be necessary for a State to have electronic access to reports filed with the Secretary of the Senate, as well as to reports filed with the Federal Election Commission. In other words, unless the FEC becomes the point of entry for reports filed by Senate candidates, either the States will need to have the technological and financial capability to link up electronically with two different federal offices, or Senate candidates must continue to file copies of their reports with the State.

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 two different offices, especially in the areas of personnel, equipment and data processing.

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

Finally, the Commission notes that the report of the Institute of Politics of the John F. Kennedy School of

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

Facsimile Machines

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

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

Explanation: Independent expenditures that are made between 20 days and 24 hours before an election must be reported within 24 hours. The Act requires that a last-minute independent expenditure report must include a certification, under penalty of perjury, stating whether the expenditure was made “in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee.” This requirement appears to foreclose the option of using a facsimile machine to file the report. The next report the committee files, however, which covers the reporting period when the expenditure was made, must also include the certification, stating the same information. Given the time constraint for filing the report, the requirement to include the certification on the subsequent report, and the availability of modern technology that would facilitate such a filing, Congress should consider allowing such filings via telephonically transmitted facsimiles (“fax” machines). This could be accomplished by allowing the committee to fax a copy of the schedule disclosing the independent expenditure and the certification. The original schedule would be filed with the next report. Acceptance of such a filing method would facilitate timely disclosure and simplify the process for the filer.

State Filing for Presidential Candidate Committees

Section: 2 U.S.C. §439

Recommendation: The Commission recommends that Congress 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.

Contributions and Expenditures

Election Period Limitations for Contributions to Candidates

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 Commission has had to adopt several rules to clarify which contributions are attributable to which election and to assure that contributions are reported and used for the proper election. Many enforcement cases have been generated where contributors’ donations are excessive *vis-a-vis* a particular election, but not *vis-a-vis* the \$2,000 total that could have been contributed for the cycle. Often this is due to donors’ failure to fully document which election was intended. Sometimes the apparent “excessives” for a particular election turn out to be simple reporting errors where the wrong box was checked on the reporting form. Yet, substantial resources must be devoted to examination of each transaction to determine which election is applicable. Further, several enforcement cases have been generated based on the use of general election contributions for primary election expenses or *vice versa*.

Most of these complications would be eliminated with adoption of a simple “per cycle” contribution limit. 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. The Commission and committees could get out of the business of determining whether contributions are properly attributable to a particular election, and the difficulty of assuring that particular contributions are used for a particular election could be eliminated.

It would be advisable to clarify that if a candidate has to participate in more than two elections (e.g., in a post-primary runoff as well as a primary and general), the campaign cycle limit would be \$3,000. In addition, because at the Presidential level candidates might opt to take public funding in the general election and thereby be precluded from accepting contributions, the \$1,000/5,000 “per election” contribution limits should be retained for Presidential candidates.

A campaign cycle contribution limit may allow donors to target more than \$1,000 toward a particular primary or general election, but this would be tempered by the tendency of campaigns to plan their fundraising and manage their resources so as not to be left without fundraising capability at a crucial time.

Application of \$25,000 Annual Limit

Section: 2 U.S.C. §441a(a)(3)

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

Explanation: Section 441a(a)(3) now provides that a contribution to a candidate made in a nonelection year counts against the individual donor’s limit for the year in which the candidate’s election is held. This provision has led to some confusion among contributors. For example, a contributor wishing to support Candidate Smith in an election year contributes to her in November of the year before the election. The contributor assumes that the contribution counts against his limit for the year in which he contributed. Unaware that the contribution actually counts against the year in which Candidate Smith’s election is held, the contributor makes other contributions during the election year and inadvertently exceeds his \$25,000 limit. By requiring contributions to count against the limit of the calendar year in which the donor contributes, confusion would be eliminated and fewer contributors would inadvertently violate the law. The change would offer the added advantage of enabling the Commis-

sion 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.

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

Section: 2 U.S.C. §441a(c) and (e)

Recommendation: The Commission recommends that Congress 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.

Enforcement

Fines for Reporting Violations (1997)

Section: 2 U.S.C. §437g

Recommendation: The Commission recommends that Congress consider granting the Commission authority to assess fines on a published schedule for straightforward violations relating to the reporting of receipts and disbursements.

Explanation: In maintaining a regulatory presence covering all aspects of the Act, even the most simple and straightforward strict liability disclosure violations, e.g., the late filing or non-filing of required reports, may be addressed only through the existing enforcement process at 2 U.S.C. §437g. The enforcement procedures provide a number of procedural protections, and the Commission has no authority to impose penalties. Instead, the Commission can only seek a conciliation agreement, and without a settlement can only pursue a *de novo* civil action in federal court. This process can be unnecessarily time and resource consuming for all parties involved when applied to ministerial-type civil violations that are routinely treated via published fines by many other states and federal regulatory agencies. Non-deliberate and straightforward reporting violations would not have to be treated as full blown enforcement matters if the Commission had authority to assess fines for such violations under a published fine schedule, subject to a reasonable appeal procedure. Congress could authorize the Commission to promulgate a fine schedule that would consider a number of factors (e.g., the election sensitivity of the report and the previous compliance record of the committee). Addition of such authority would introduce greater certainty to the regulated community about the consequences of noncompliance with the Act's filing requirements, as well as lessen costs and lead to efficiencies for all parties, while maintaining the Commission's emphasis on the Act's disclosure requirements. The Commission would attempt to implement this on a trial basis.

Expedited Enforcement Procedures and Injunctive Authority (1997)

Section: 2 U.S.C. §437g

Recommendation: The Commission recommends that Congress consider whether the Act should provide for expedited enforcement of complaints filed shortly before an election, permit injunctive relief in certain cases, and allow the Commission to adopt expedited procedures in such instances.¹

¹ 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 recommendations. 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 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 the Act.

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

Even when the evidence of a violation has been clear and the potential impact on a campaign has been substantial, without the authority to initiate a civil suit for injunctive relief, the Commission has been unable to act swiftly and effectively in order to prevent a violation. The Commission has felt constrained from seeking immediate judicial action by the requirement of the statute that conciliation be attempted before court action is initiated, and the courts have indicated the Commission has little if any discretion to deviate from the administrative procedures of the statute. *Perot '96 and Natural Law Party v. FEC et al.*, Nos. 96-2196 and 96-2132 (D.D.C. 1996), *aff'd*, 97 F.3d 553, (D.C. Cir. 1996); *RNC v. DNC and FEC*, No. 96-2494 (D.D.C. 1996); *In re Carter-Mondale Reelection Committee, Inc.*, 642 F.2d 538 (D.C. Cir. 1980); *Common Cause v. Schmitt*, 512 F.Supp. 489 (D.D.C. 1980), *aff'd by an equally divided court*, 455 U.S. 129 (1982); *Durkin for U.S. Senate v. FEC*, 2 Fed. Election Camp. Fin. Guide (CCH) ¶9147 (D.N.H. 1980).

If Congress allows for expedited handling of compliance matters, it should authorize the Commission to implement changes in such circumstances to expedite its enforcement procedures. As part of this effort, Congress should consider whether the Commission should be empowered to promptly initiate a civil suit for injunctive relief in order to preserve the status quo when there is clear and convincing evidence that

a substantial violation of the Act is about to occur. Congress should consider whether the Commission should be authorized to initiate such civil action in a United States District Court, under expressly stated criteria, without awaiting expiration of the 15-day period for responding to a complaint or the other administrative steps enumerated in the statute. The person against whom the Commission brings the action would enjoy the procedural protections afforded by the courts.

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

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

Subpoena and Reason-to-Believe Notification Signature Authority (1997)

Sections: 2 U.S.C. §§437d(a)(3) and 437g(a)(2)

Recommendation: The Commission recommends that Congress clarify these provisions to permit any member of the Commission to sign duly-authorized subpoenas and notifications of findings of reason-to-believe, rather than limiting signature authority to the Chairman and Vice Chairman.

Explanation: Section 437d(a)(3) grants the Commission the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary evidence. This provision specifies that subpoenas be signed by the Chairman or Vice Chairman of the agency. In those instances where the Commission has duly authorized the issu-

ance of a subpoena, but neither the Chairman nor the Vice Chairman are available to sign, the subpoena is delayed. Providing for the signature of another member of the Commission would enable subpoenas to be issued in a more timely manner.

Likewise, §437g(a)(2) requires that the Commission, through its Chairman or Vice Chairman, notify respondents of a finding of reason-to-believe in an enforcement matter. For the reasons listed above, it would be beneficial to allow other Members of the Commission to sign such notifications when neither the Chairman nor the Vice Chairman are available.

Ensuring Independent Authority of FEC in All Litigation

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

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

1. Congress should clarify that the Commission is explicitly authorized to petition the Supreme Court for *certiorari* under Title 2, i.e., to conduct its Supreme Court litigation.
2. 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.
3. 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.
4. Congress should require the United States Marshal's Service to serve process, including summonses and complaints, on behalf of and at no expense to the Federal Election Commission.

Explanation: The first recommendation states explicitly that the Commission is authorized to petition the Supreme Court for a writ of *certiorari* in cases relating to the Commission's administration of Title 2 and to independently conduct its Supreme Court litigation under that Title. The Commission explicitly has this authority under Title 26 and had a long-standing practice of doing so under Title 2, until the Supreme Court ruled that Title 2 does not grant the Commission such authority. See *FEC v. NRA Political Victory Fund, cert. dismissed for want of jurisdiction*, 115 S.Ct. 537 (December 6, 1994). Under this ruling, the Commission must now obtain permission from the Solicitor General before seeking *certiorari* in a Title 2 case. The Solicitor General may decline to authorize this action in cases where the Commission believes Supreme Court review is advisable. Even where acting in accordance with the Commission's recommendation to seek *certiorari* in a given case, the Solicitor General would still control the position taken in the case and the arguments made on behalf of the Commission. This transfer of the Commission's Supreme Court litigation authority to the Solicitor General, who is an appointee of and subject to removal by the President, misconstrues Congressional intent in establishing the Commission as a bipartisan and independent civil enforcement agency. Pertinent provisions of Title 2 should be revised to clearly state the Commission's exclusive and independent authority on all aspects of Supreme Court litigation in all cases it has litigated in the lower courts.

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

Concerning the final recommendation, prior to its amendment effective December 1, 1993, Rule 4(c) (B) of the Federal Rules of Civil Procedure provided that a summons and complaint shall be served by the United States Marshal's Service on behalf of the United States or an officer or agency of the United States. Rule 4, as now amended, requires all plaintiffs, including federal government plaintiffs such as the Commission, to seek and obtain a court order directing that service of process be effected by the United States Marshal's Service. Given that the Commission must conduct litigation nationwide from its offices in Washington, D.C., it is burdensome and expensive for it to enlist the aid of a private process server or, in the alternative, seek relief from the court, in every case in which it is a plaintiff. Returning the task of serving process for the Commission to the United States Marshal's Service would alleviate this problem and assist the Commission in carrying out its mission.

Enhancement of Criminal Provisions

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

Recommendation: The Commission recommends that it have the ability to refer appropriate matters to the

Justice Department for criminal prosecution at any stage of a Commission proceeding.

Explanation: The Commission has noted an upsurge of §441f contribution reimbursement schemes, that may merit heavy criminal sanction. Although there is no prohibition preventing the Department of Justice from initiating criminal FECA prosecutions on its own, the vehicle for the Commission to bring such matters to the Department's attention is found at §437g(a)(5) (C), which provides for referral only after the Commission has found probable cause to believe that a criminal violation of the Act has taken place.² Thus, even if it is apparent at an early stage that a case merits criminal referral, the Commission must pursue the matter to the probable cause stage before referring it to the Department for criminal prosecution. To conserve the Commission's resources, and to allow the Commission to bring potentially criminal FECA violations to the Department's attention at the earliest possible time, the Commission recommends that consideration be given to explicitly empower the Commission to refer apparent criminal FECA violations to the Department at any stage in the enforcement process.

Random Audits

Section: 2 U.S.C. §438(b)

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

Explanation: In 1979, Congress amended the FECA to eliminate the Commission's explicit authority to conduct random audits. The Commission is con-

cerned 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 the IRS offer a good model. As a result of random tax audits, most taxpayers try to file accurate returns on time. Tax audits have also helped create the public perception that tax laws are enforced.

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

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

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

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

Public Financing

State Expenditure Limits for Publicly Financed Presidential Primary Campaigns (revised 1997)

Section: 2 U.S.C. §441a

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

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

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

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

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.

Finally, the allocation of expenditures to the states has proven a significant accounting burden for campaigns and an equally difficult audit and enforcement task for the Commission. For all these reasons, the Commission decided to revise its state allocation regulations for the 1992 Presidential election. Many of the

requirements, such as those requiring distinctions between fundraising and other types of expenditures, were eliminated. However, the rules could not undo the basic requirement to demonstrate the amount of expenditures relating to a particular state. Given our experience to date, we believe that this change to the Act would still be of substantial benefit to all parties concerned.

Fundraising Limitation for Publicly Financed Presidential Primary Campaigns

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

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

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

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

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

Eligibility Threshold for Public Financing

Section: 26 U.S.C. §9033

Recommendation: The Commission recommends that Congress raise the eligibility threshold for publicly funded Presidential primary candidates.

Explanation: The Federal Election Commission has administered the public funding provisions in five Presidential elections. The statute provides for a cost-of-living adjustment (COLA) of the overall primary spending limitation. There is, however, no corresponding adjustment to the threshold requirement. It remains exactly the same as it was in 1974. An adjustment to the threshold requirement would ensure that funds continue to be given only to primary candidates who demonstrate broad national support. To reach this higher threshold, the Commission recommends increasing 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.

Eligibility Requirements for Public Financing

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

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

Explanation: Neither of the Presidential public financ-

ing 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. See *LaRouche v. FEC*, 992 F.2d 1263 (D.C. Cir. 1993) *cert. denied*, 114 S. Ct. 550 (1993). In addition, Congress should make it clear that eligibility to serve in the office sought is a prerequisite for eligibility for public funding.

Deposit of Repayments

Section: 26 U.S.C. §9007(d)

Recommendation: The Commission recommends that Congress 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 §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.

Part II: General Legislative Recommendations

Disclosure

Candidates and Principal Campaign Committees

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

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

Explanation: An individual becomes a candidate under the FECA once he or she crosses the \$5,000 threshold in raising contributions or making expenditures. The candidate has 15 days to file a statement designating the principal campaign committee, which will subsequently disclose all of the campaign's financial activity. This committee, in turn, has 10 days from the candidate's designation to register. This schedule allows 25 days to pass before the committee's reporting requirements are triggered. Consequently, the financial activity that occurred prior to the registration is not disclosed until the committee's next upcoming report. This period is too long during an election year. For example, should a report be due 20 days after an individual becomes a candidate, the unregistered committee would not have to file a report on that date and disclosure would be delayed. The next report might not be filed for 3 more months. By requiring simultaneous registration, the public would be assured of more timely disclosure of the campaign's activity.

PACs Created by Candidates

Section: 2 U.S.C. §441a(a)

Recommendation: The Commission recommends that Congress consider whether PACs created by candidates should be deemed affiliated with the candidate's principal campaign committee.

Explanation: A number of candidates for federal office,

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

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

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

Require Monthly Filing for Certain Multicandidate Committees

Section: 2 U.S.C. §434(a)(4)

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

Explanation: Under current law, multicandidate com-

mittees have the option of filing quarterly or monthly during an election year. Quarterly filers that make contributions or expenditures on behalf of primary or general election candidates must also file pre-election reports.

Presidential candidates who anticipate receiving contributions or making expenditures aggregating \$100,000 or more must file on a monthly basis. Congress should consider applying this same reporting requirement to multicandidate committees which have raised or spent, or which anticipate raising or spending, in excess of \$100,000 during an election year. The requirement would simplify the filing schedule, eliminating the need to calculate the primary filing periods and dates. Filing would be standardized—once a month. This change would also benefit disclosure; the public would know when a committee's report was due and would be able to monitor the larger, more influential committees' reports. Although the total number of reports filed would increase, most reports would be smaller, making it easier for the Commission to enter the data into the computer and to make the disclosure more timely.

Reporting of Last-Minute Independent Expenditures

Section: 2 U.S.C. §434(c)

Recommendation: The Commission recommends that Congress clarify when last-minute independent expenditures must be reported.

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

(fax) machine. (See Legislative Recommendation titled "Facsimile Machines.") Clarification by Congress would be very helpful.

Reporting and Recordkeeping of Payments to Persons Providing Goods and Services

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

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

Explanation: The Commission has encountered on several occasions the question of just how detailed a committee's reporting of disbursements must be. See, e.g., Advisory Opinion 1983-25, 1 Fed. Election Camp. Fin. Guide (CCH), ¶ 5742 (Dec. 22, 1983) (Presidential candidate's committee not required to disclose the names, addresses, dates or amounts of payments made by a general media consultant retained by the committee); Advisory Opinion 1984-8, 1 Fed. Election Camp. Fin. Guide (CCH), ¶ 5756 (Apr. 20, 1984) (House candidate's committee only required to itemize payments made to the candidate for travel and subsistence, not the payments made

by the candidate to the actual providers of services); Financial Control and Compliance Manual for Presidential Primary Election Candidates Receiving Public Financing, Federal Election Commission, pp. 123-130 (1992) (distinguishing committee advances or reimbursements to campaign staff for travel and subsistence from other advances or reimbursements to such staff and requiring itemization of payments made by campaign staff only as to the latter). Congressional intent in the area is not expressly stated, and the Commission believes that statutory clarification would be beneficial. In the area of Presidential public financing, where the Commission is responsible for monitoring whether candidate disbursements are for qualified campaign expenses (see 26 U.S.C. §§9004(c) and 9038(b)(2)), guidance would be particularly useful.

Excluding Political Committees from Protection of the Bankruptcy Code

Section: 2 U.S.C. §433(d)

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

Explanation: In 2 U.S.C. §433(d), the Commission is given authority to establish procedures for "the determination of insolvency" of any political committee, the "orderly liquidation of an insolvent political committee," the "application of its assets for the reduction of outstanding debts," and the "termination of an insolvent political committee after such liquidation..." However, the Bankruptcy Code, 11 U.S.C. §101 *et seq.*, generally grants jurisdiction over such matters to the bankruptcy courts, and at least one bankruptcy court has exercised its jurisdiction under Chapter 11 of the Bankruptcy Code to permit an ongoing political committee to compromise its debts with the intent thereafter to resume its fundraising and contribution and expenditure activities. *In re Fund for a Conservative Majority*, 100 B.R. 307 (Bankr. E.D.Va. 1989). Not only does the exercise of such jurisdiction by the

bankruptcy court conflict with the evident intent in 2 U.S.C. §433(d) to empower the Commission to regulate such matters with respect to political committees, but permitting a political committee to compromise debts and then resume its political activities can result in corporate creditors effectively subsidizing the committee's contributions and expenditures, contrary to the intent of 2 U.S.C. §441b(a). The Commission promulgated a regulation generally prohibiting ongoing political committees from compromising outstanding debts, 11 CFR 116.2(b), but the continuing potential jurisdiction of the bankruptcy courts over such matters could undermine the Commission's ability to enforce it. Accordingly, Congress may want to clarify the distribution of authority between the Commission and the bankruptcy courts in this area. In addition, Congress should specify whether political committees are entitled to seek Chapter 11 reorganization under the Bankruptcy Code.

Fundraising Projects Operated by Unauthorized Committees

Section: 2 U.S.C. §432(e)

Recommendation: The Commission recommends that Congress 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.

Explanation: Unauthorized committees are not permitted to use the name of federal candidate in their name or in the name of a fundraising project they sponsor unless, in the case of a fundraising project, the name selected clearly indicates opposition to the named candidate(s). The Commission adopted this latter prohibition after a rulemaking where the record clearly established that contributors were sometimes confused or misled into believing that they were contributing to a candidate's authorized committee (when, for example, the project's name was "Citizens for X"), when in fact they were giving to the nonauthorized committee that sponsored the event. This confusion

sometimes led to requests for refunds, allegations of coordination, inadequate disclaimers, and inability to monitor contribution limits. While recent revisions to the Commission's rules at 11 CFR 102.14(b)(3) have now reduced this possibility, the Commission believes that contributor awareness might be further enhanced if Congress were to modify the statute by requiring that all checks intended for an unauthorized committee be made payable to the registered name of the unauthorized committee, and by prohibiting unauthorized committees from accepting checks payable to any other name.

Disclaimer Notices (revised 1997)

Section: 2 U.S.C. §441d

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

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

First, the statutory language requiring the disclaimer notice refers specifically to "expenditures," possibly leading to an interpretation 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). Believing that Congress intended such activities to be exempt only from the definitions of "contribution" and "expenditure," the Commission amended its rules at 11 CFR 110.11 to require that covered "exempt activity" com-

munications include a statement of who paid for the communication. However, it would be helpful if Congress were to clarify that all types of communications to the public should 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.

The Commission considered expanding the general disclaimer requirements in the course of the rulemaking; however, this was not included in the final rules, which rather clarify the scope of some of the subordinate requirements. 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 general public would benefit by being aware of who has paid for a particular communication. Moreover, political committees and the Commission would benefit because they 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.

Fourth, Congress might want to consider adding disclaimer requirements for so-called "push poll" activity. This term generally refers to phone bank activities or written surveys that seek to influence voters, such as by providing false or misleading information about a candidate. This practice appears to be growing. The Commission has considered requiring disclaimers on push poll communications, but has declined to do so for a number of reasons, including difficulty in defining

push polls and the fact that many such polls do not appear to expressly advocate the election or defeat of a clearly identified candidate. If Congress enacted the general disclaimer requirement proposed above, this would encompass push poll communications by political committees. Congress might also wish to require disclosure by other groups engaging in this practice.

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

Fraudulent Solicitation of Funds

Section: 2 U.S.C. §441h

Recommendation: The current §441h prohibits fraudulent misrepresentation such as speaking, writing or acting on behalf of a candidate or committee on a matter which is damaging to such candidate or committee. It does not, however, prohibit persons from fraudulently soliciting contributions. The Commission recommends that a provision 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 di-

verted 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. The contributors' funds were used in a manner 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.

Draft Committees

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

Recommendation: The Commission recommends that Congress 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 of 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.

Contributions and Expenditures

Issue Advocacy Advertising (1997)

Sections: 2 U.S.C. §§431(8)(A)(i) and (9)(A)(i); 441d

Recommendation: The Commission recommends that Congress consider when “issue advocacy” advertising by corporations, labor organizations, political parties, and other organizations is an in-kind contribution because it is coordinated with a candidate or a candidate’s campaign.

Explanation: The 1996 election cycle saw an explosion in “issue advocacy” advertising. Such advertising explores an officeholder’s, a party’s or a candidate’s stand on a particular issue, but does not expressly advocate the election or defeat of a clearly identified candidate or party. Courts have ruled that the Act’s prohibition on expenditures by corporations and labor organizations does not extend to issue advocacy that does not contain express advocacy. See *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986); *FEC v. Christian Action Network*, 894 F.Supp. 946 (W.D. Va. 1995), *aff’d*, 92 F.3d 1178 (4th Cir. 1996); *Clifton v. FEC*, 927 F.Supp. 493 (D.Me. 1996) and *Maine Right to Life v. FEC*, 914 F. Supp. 8 (D.Me. 1996), *aff’d*, 98 F.3d 1 (1st Cir. 1996).

The Act defines the term “contribution” to include funds that are spent “for the purpose of influencing an election.” Although advertisements devoted solely to issue advocacy do not contain express advocacy, such advertising may benefit or harm a candidacy and consequently influence the election process, particularly if the communication is coordinated with a candidate or his/her campaign. In a series of cases, the Supreme Court has viewed public communications coordinated with campaigns as in-kind contributions. As contributions, such communications were subject to the Act’s limitations and prohibitions, but were not subject to the same level of First Amendment protection as expenditures. See *Buckley v. Valeo*, 424 U.S. 1 (1976); *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986); and *Colorado Republican Federal Campaign Committee v. FEC*, 116 S.Ct. 2309 (1996).

In accordance with these rulings, Congress should stipulate when coordination of an issue advocacy advertisement with a candidate or campaign would be considered an in-kind contribution. Additionally, Congress should state that coordination of such a public communication with a corporation or a labor organization would be prohibited activity. Such a prohibition would help the Commission address the public’s concern about the use of soft money— funds that are raised or spent outside the prohibitions of the Act (such as corporate or union treasury funds)—to influence federal elections.

Candidate's Use of Campaign Funds (revised 1997)

Section: 2 U.S.C. §439a

Recommendation: Congress may wish to examine whether the use of campaign funds to pay a salary to the candidate is considered to be a "personal use" of those funds.

Explanation: Under §439a of the Act, excess campaign funds cannot be converted by any person to personal use. The Commission has promulgated final rules on what would constitute "personal use" of excess funds. See 11 CFR 113.1(g). It was unable, however, to decide whether excess campaign funds may be used to pay a salary to the candidate. In the past, some have argued before the Commission that candidate salary payments are legitimate campaign expenditures, while others have felt that such payments constitute a personal use of excess funds prohibited by §439a. Congressional guidance on this issue would be helpful.

Disposition of Excess Campaign Funds

Section: 2 U.S.C. §439a

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

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

Distinguishing Official Travel from Campaign Travel

Section: 2 U.S.C. §431(9)

Recommendation: The Commission recommends that

Congress amend the FECA to clarify the distinctions between campaign travel and official travel.

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

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

Coordinated Party Expenditures

Section: 2 U.S.C. §441a(d)

Recommendation: The Commission recommends that Congress clarify the number of coordinated party expenditure limits that are available to party committees during the election cycle.

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

Explanation: Section 441a(d) provides that national and state party committees may make expenditures in connection with the general election campaigns of the party's nominees for House and Senate. The national party committees may also make such expenditures on behalf of the party's general election Presidential and Vice Presidential nominees. The Commission

has interpreted these provisions to permit party committees to make nearly any type of expenditure they deem helpful to their nominees short of donating the funds directly to the candidates. Expenditures made under §441a(d) are subject to a special limit, separate from contribution limits.

The Commission has been faced several times with the question of whether party committees have one or two coordinated party expenditure limits in a particular election campaign. In particular, the issue has been raised in special election campaigns. Some state laws allow the first special election either to narrow the field of candidates, as a primary would, or to fill the vacancy if one candidate receives a majority of the popular vote. If a second special election becomes necessary to fill the vacancy, the question has arisen as to whether the party committees may spend against a second coordinated party expenditure limit since both special elections could have filled the vacancy. In a parallel manner, the Commission has been faced with the question of whether party committees have one or two coordinated party expenditure limits in a situation that includes an election on a general election date and a subsequent election, required by state law, after the general election. Although in the latter situation, a district court has concluded that only one coordinated party expenditure limit would apply (see *Democratic Senatorial Campaign Committee v. FEC* (No. 93-1321) (D.D.C., November 14, 1994)), broader Congressional guidance on this issue would be helpful.

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

When deciding, in advisory opinions and enforcement matters, whether an activity is a §441a(d) expenditure or a generic activity, the Commission has considered the timing of the expenditure, the language of the communication, and whether it makes reference only to candidates seeking a particular office or to all the party's candidates, in general. However, the Commission still has difficulty determining, in certain

situations, when a communication or other activity is generic party building activity or a coordinated party expenditure. Congressional guidance on this issue would be helpful.

Volunteer Participation in Exempt Activity

Section: 2 U.S.C. §§431(8)(B)(x) and (xii); 431(9)(B)(viii) and (ix)

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

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

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

Contributions from Minors

Section: 2 U.S.C. §441a(a)(1)

Recommendation: The Commission recommends that Congress establish a presumption that contributors below age 16 are not making contributions on their own behalf.

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

Application of Contribution Limitations to Family Members

Section: 2 U.S.C. §441a

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

Explanation: Under the current posture of the law, a family member is limited to contributing \$1,000 per election to a candidate. This limitation applies to spouses and parents, as well as other immediate family members. (See S. Conf. Rep. No. 93–1237, 93d Cong., 2d 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.

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

Lines of Credit and Other Loans Obtained by Candidates

Section: 2 U.S.C. §431(8)(B)(vii)

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

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

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

Enforcement

Audits for Cause

Section: 2 U.S.C. §438(b)

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

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

Modifying Standard of “Reason to Believe” Finding

Section: 2 U.S.C. §437g

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

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

Commission to evaluate the validity of the facts as alleged.

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

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

Protection for Those Who File Complaints or Give Testimony (revised 1997)

Section: 2 U.S.C. §437g

Recommendation: The Commission recommends that the Act 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 §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 retaliation for filing complaints, Congress has made it unlawful to discriminate against employees or other individuals for filing charges or giving testimony under the statute. *See, e.g.,* 29 U.S.C. §158(a)(4) (National Labor Relations Act); 29 U.S.C. §215(3) (Fair Labor Standards Act); 42 U.S.C. §2000e-3(a) (Equal Employment Opportunity Act); 42 U.S.C. §3617 (Fair Housing Act). The Commission recommends that Congress consider including a similar provision in the FECA.

Public Financing

Supplemental Funding for Publicly Funded Candidates

Section: 26 U.S.C. §§9003 and 9004

Recommendation: The Commission recommends that Congress consider whether to modify the general election Presidential public funding system in instances where a nonpublicly funded candidate exceeds the spending limit for publicly funded candidates.

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

mission to have more control in structuring and conducting these activities and avoid the expenditure of government funds for these activities. If this proposal were adopted, however, the Commission would not accept funds from organizations that are regulated by or have financial relations with the Commission.

Miscellaneous

Funds and Services from Private Sources

Section: 2 U.S.C. §437c

Recommendation: The Commission recommends that Congress 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 Com-

Part III Conforming Legislative Recommendations

Disclosure

Definition of Political Committee (1997)

Section: 2 U.S.C. §431(4)(A)

Recommendation: The Commission recommends that Congress revise the definition of political committee to incorporate “major purpose” as the test recognized by the courts.

Explanation: Section 431(4)(A) of the Act defines a political committee as a group which raises or spends in excess of \$1,000 during a calendar year. In *Buckley v. Valeo*, the Supreme Court, citing First Amendment concerns, ruled that the definition of political committee “need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.” Subsequent court rulings have cited the Buckley case in interpreting the statute to include “major purpose” as the test. See *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986) and *FEC v. GOPAC, Inc.*, 917 F.Supp. 851 (D.D.C. 1996).

Recently, however, an appeals court has interpreted the wording of the statute narrowly, ruling that the \$1,000 threshold is the only applicable factor in determining if an organization is a political committee. See *Akins v. FEC*, No. 92-1864(JLG) (D.D.C. 1994); *aff'd*, 66 F.3d 348 (D.C. Cir. 1995, *appeal vacated and reh'g en banc granted*, 74 F.3d 287 (D.C. Cir. 1996), *rev'd*, (D.C. Cir. 1996).

Congress should amend the statute to rectify the conflicting court rulings and to clarify Congressional intent regarding the meaning of “major purpose.”

Point of Entry for Pseudonym Lists

Section: 2 U.S.C. §438(a)(4)

Recommendation: The Commission recommends that Congress make a technical amendment to section 438(a)(4) by deleting the reference to the Clerk of the House.

Explanation: Section 438(a)(4) outlines the processing of disclosure documents filed under the Act. The section permits political committees to “salt” their disclosure reports with 10 pseudonyms in order to detect misuse of the committee’s FEC reports and protect individual contributors who are listed on the report from unwanted solicitations. The Act requires committees who “salt” their reports to file the list of pseudonyms with the appropriate filing office.

Public Law No. 104-79 (December 28, 1995) changed the point of entry for House candidate reports from the Clerk of the House to the FEC, effective December 31, 1995. As a result, House candidates must now file pseudonym lists with the FEC, rather than the Clerk of the House. To establish consistency within the Act, the Commission recommends that Congress amend section 438(a)(4) to delete the reference to the Clerk of the House as a point of entry for the filing of pseudonym lists.

Contributions and Expenditures

Broader Prohibition Against Force and Reprisals

Section: 2 U.S.C. §441b(b)(3)(A)

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

Explanation: Current §441b(b)(3)(A) could be interpreted to narrowly apply to the making of contributions or expenditures by a separate segregated fund

which were obtained through the use of force, job discrimination, financial reprisals and threats. Thus, Congress should clarify that corporations and labor organizations are prohibited from using such tactics in the solicitation of contributions for the separate segregated fund. In addition, the FEC has recently revised its rules to clarify that it is not permissible for a corporation or a labor organization to use coercion, threats, force or reprisal to urge any individual to contribute to a candidate or engage in fundraising activities. See 60 FR 64260 (December 14, 1995). However, Congress should include language to cover such situations.

Nonprofit Corporations and Express Advocacy

Section: 2 U.S.C. §441b

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

Explanation: In the Court's decision of December 15, 1986, the Court held that the Act's prohibition on corporate political expenditures was unconstitutional as applied to independent expenditures made by a narrowly defined type of nonprofit corporation. The Court 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. The Court also indicated that the prohibition on corporate expenditures for communications is limited to communications expenditures containing express advocacy.

Since the Court decision and subsequent related decisions (e.g., *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990)), the Commission has

concluded a rulemaking proceeding to implement changes necessitated by the current case law. See 60 FR 35293 (July 6, 1995). However, the Commission believes that statutory clarification would also be beneficial.

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

Honorarium

Section: 2 U.S.C. §431(8)(B)(xiv)

Recommendation: The Commission recommends that 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 §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, the Commission recommends that Congress make a technical change to §431(8)(B)(xiv) deleting the reference to honorarium as defined in former §441i. This would delete honorarium from the list of definitions of what is not a contribution.

Acceptance of Cash Contributions

Section: 2 U.S.C. §441g

Recommendation: The Commission recommends that Congress 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., §§ 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.

Public Financing

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

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

Recommendation: The Commission recommends that Congress clarify that committees receiving public financing payments from the Presidential Election

Campaign Fund are exempt from the requirements of Title VI of the Civil Rights Act of 1964, as amended.

Explanation: This proposed amendment was prompted by the decision of the U.S. District Court for the District of Columbia in *Freedom Republicans, Inc., and Lugenia Gordon v. FEC*, 788 F. Supp. 600 (1992), *vacated*, No. 92-5214 (D.C. Cir. January 18, 1994). The Freedom Republicans' complaint asked the district court to declare that the Commission has jurisdiction to regulate the national parties' delegate selection process under Title VI. It also requested the court to order the Commission to adopt such regulations, direct the Republican Party to spend no more of the funds already received for its 1992 national nominating convention, and seek refunds of moneys already disbursed if the Republican Party did not amend its delegate selection and apportionment process to comply with Title VI. The district court found that the Commission "does have an obligation to promulgate rules and regulations to insure the enforcement of Title VI. The language of Title VI is necessarily broad, and applies on its face to the FEC as well as to both major political parties and other recipients of federal funds." 788 F. Supp. at 601.

The Commission appealed this ruling on a number of procedural and substantive grounds, including that Title VI does not apply to the political parties' apportionment and selection of delegates to their conventions. However, the court of appeals overruled the district court decision on one of the non-substantive grounds, leaving the door open for other lawsuits involving the national nominating conventions or other recipients of federal funds certified by the Commission. No. 92-5214, slip op. at 15.

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

campaigns. The recommended clarification would help forestall such a possibility.

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

Enforcement of Nonwillful Violations

Section: 26 U.S.C. §§9012 and 9042

Recommendation: The Commission recommends that Congress 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 §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.

Contributions to Presidential Nominees Who Receive Public Funds in the General Election

Section: 26 U.S.C. §9003

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

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

Miscellaneous

Ex Officio Members of Federal Election Commission

Section: 2 U.S.C. §437c(a)(1)

Recommendation: The Commission recommends that Congress amend section 437c by removing the Secretary of the Senate, the Clerk of the House, and their designees from the list of the members of the Federal Election Commission.

Explanation: In 1993, the U.S. Court of Appeals for the District of Columbia ruled that the ex officio membership of the Secretary of the Senate and the Clerk of the House on the Federal Election Commission was unconstitutional. (*FEC v. NRA Political Victory Fund*, 6 F.3d 821 (D.C. Cir. 1993), *cert. dismissed for want of jurisdiction*, 115 S. Ct. 537 (12/6/94).) This decision was left in place when the Supreme Court dismissed the FEC’s appeal on the grounds that the FEC lacks standing to independently bring a case under Title 2.

As a result of the appeals court decision, the FEC reconstituted itself as a six-member body whose mem-

bers are appointed by the President and confirmed by the Senate. Congress should accordingly amend the Act to reflect the appeals court's decision by removing the references to the ex officio members from section 437c.

Chapter 7 Campaign Finance Statistics

CHART 7-1
Number of PACs, 1974-1996

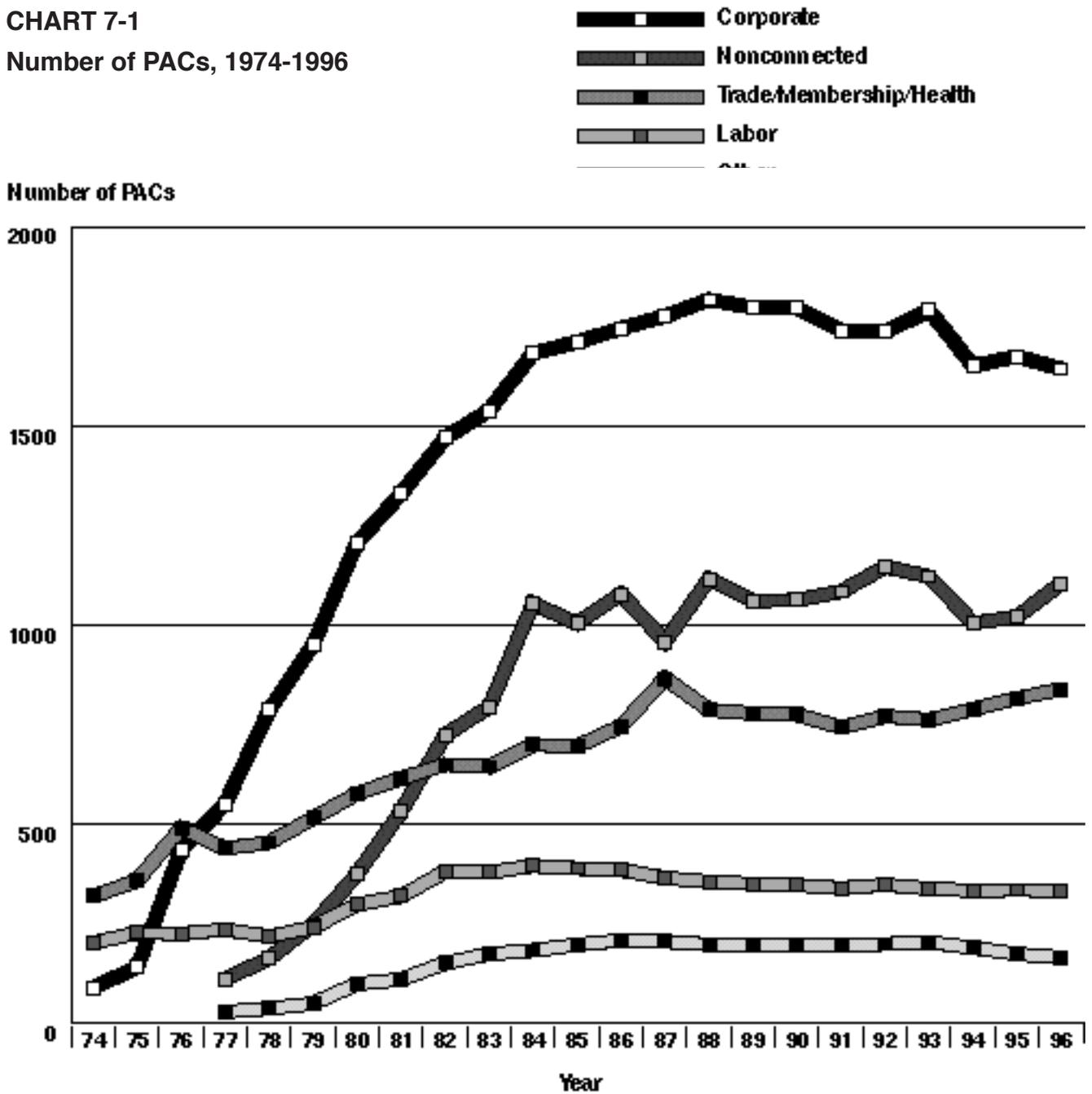
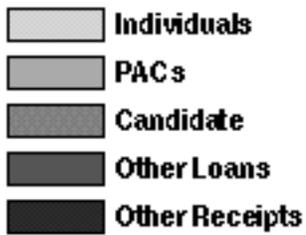
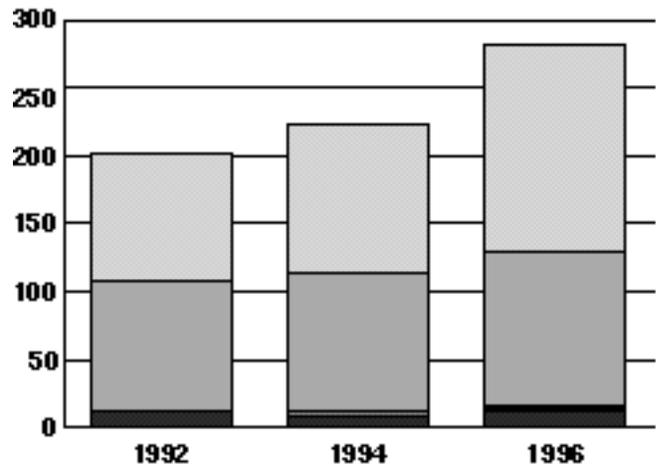


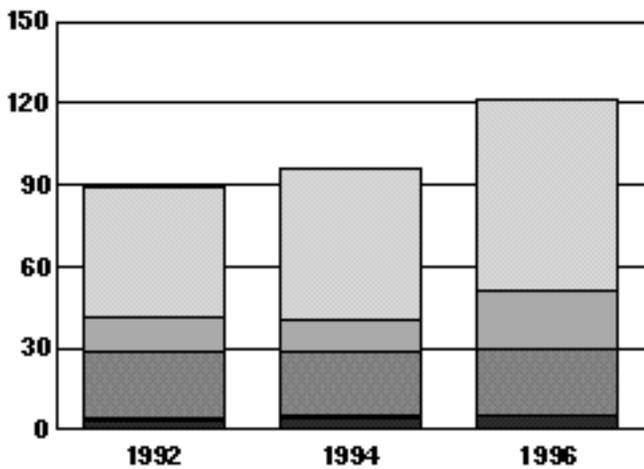
CHART 7-2
House Candidates'
Sources of Receipts:
Two-Year Election Cycle



Incumbents
Millions of Dollars



Challengers
Millions of Dollars



Open Seat Candidates
Millions of Dollars

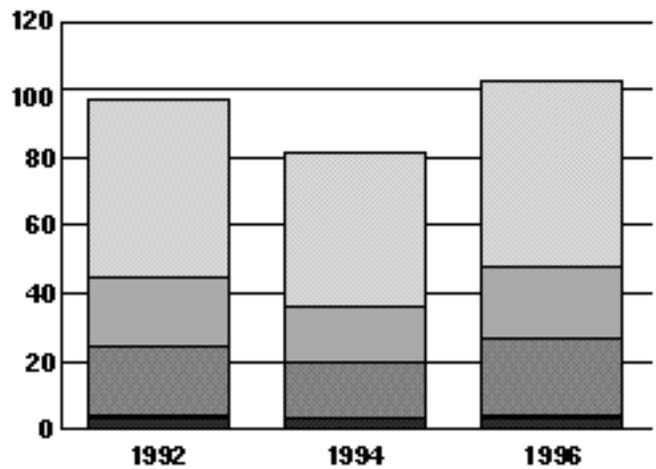
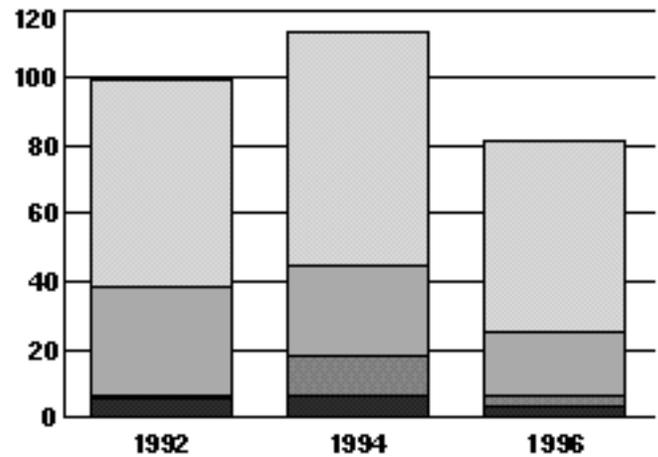


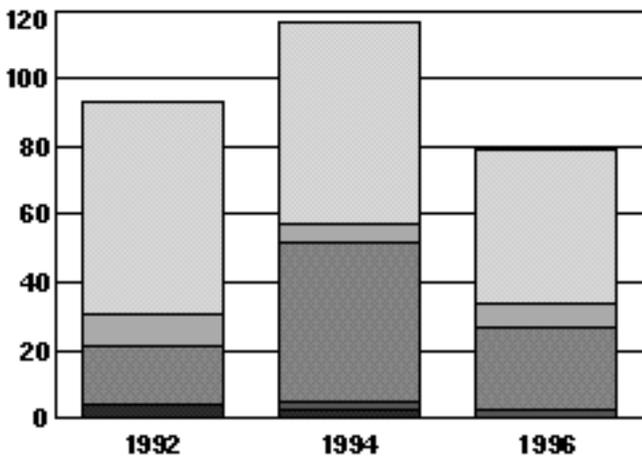
CHART 7-3
Senate Candidates'
Sources of Receipts:
Two-Year Election Cycle

-  Individuals
-  PACs
-  Candidate
-  Other Loans
-  Other Receipts

Incumbents
Millions of Dollars



Challengers
Millions of Dollars



Open Seat Candidates
Millions of Dollars

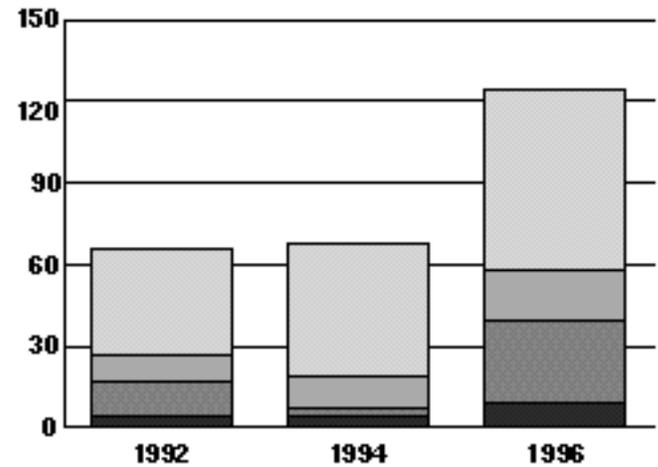


CHART 7-4
House and Senate Activity
by Election Cycle

Receipts
Disbursements

Millions of Dollars

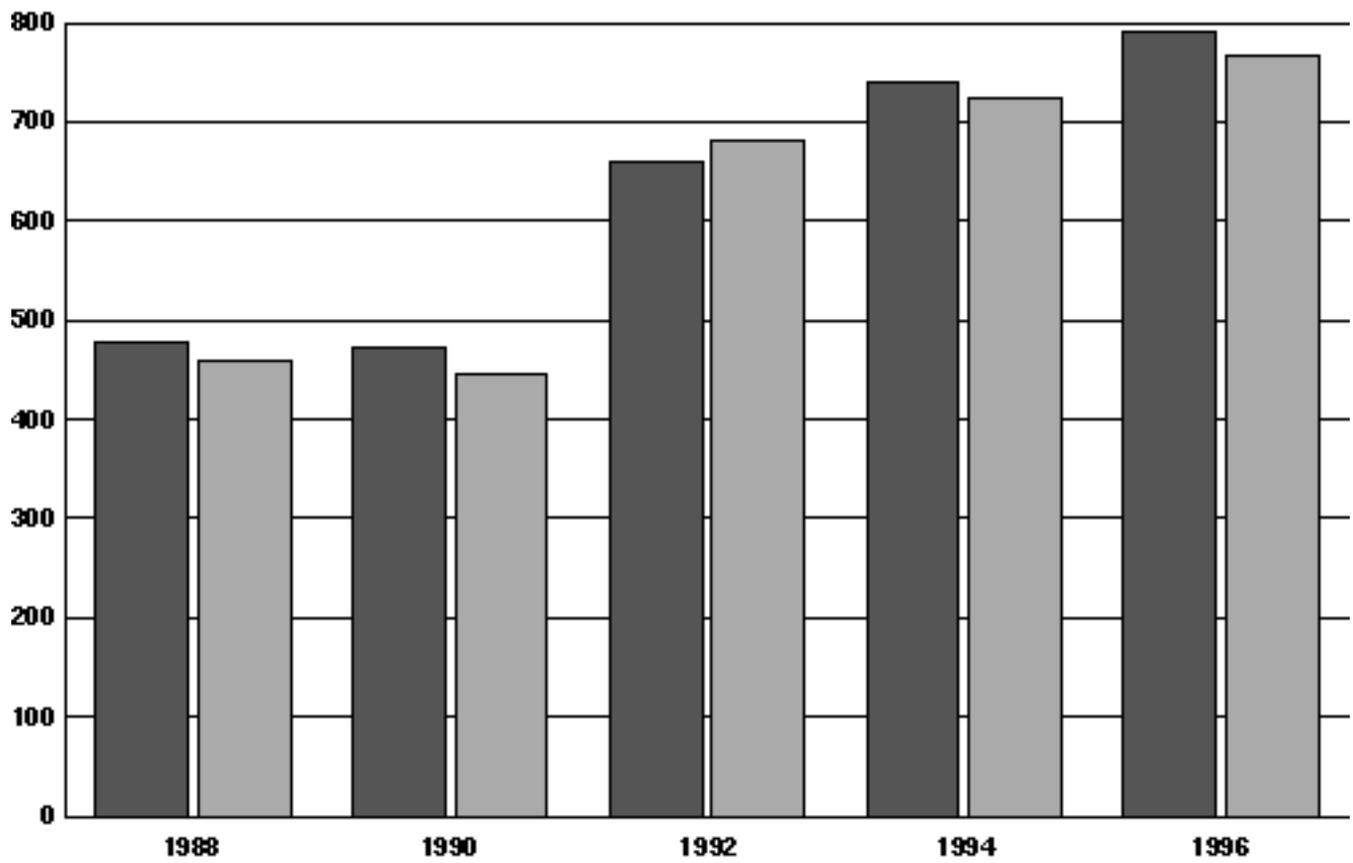


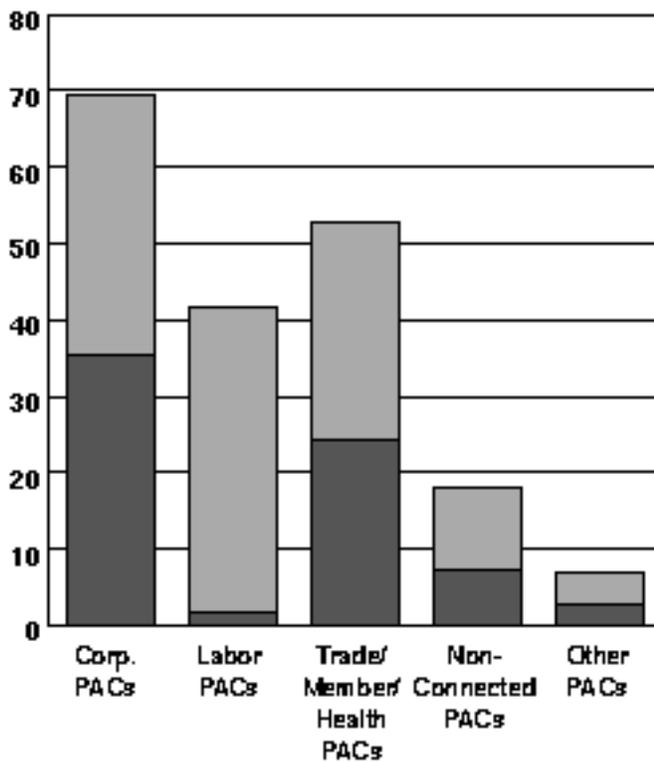
CHART 7-5

PAC Contributions to Candidates by Party and Type of PAC

Democratic Candidates
 Republican Candidates

1994 Election Cycle

Millions of Dollars



1996 Election Cycle

Millions of Dollars

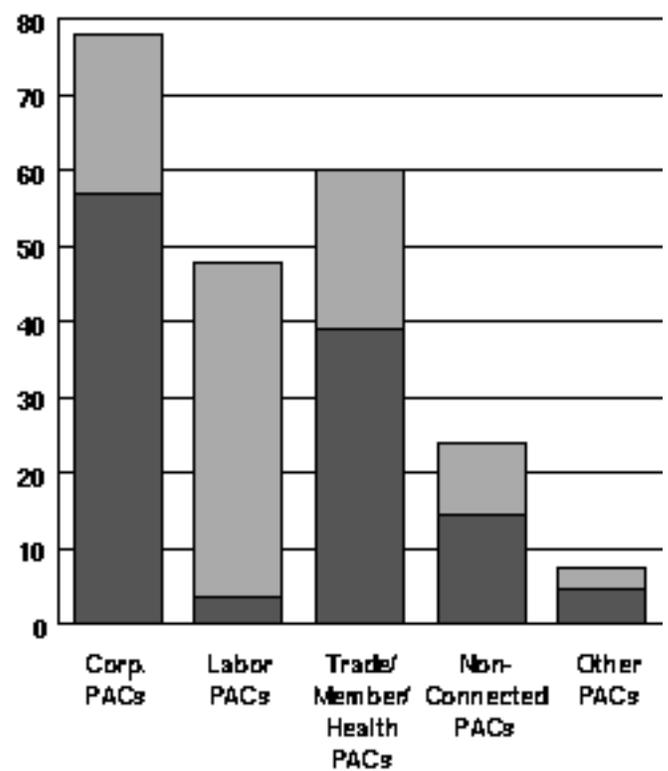


CHART 7-6
PAC Contributions to House and Senate Candidates by Party and Candidate Status

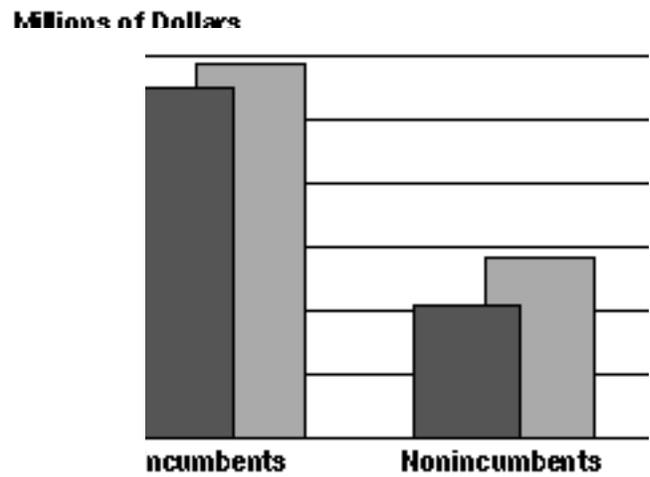
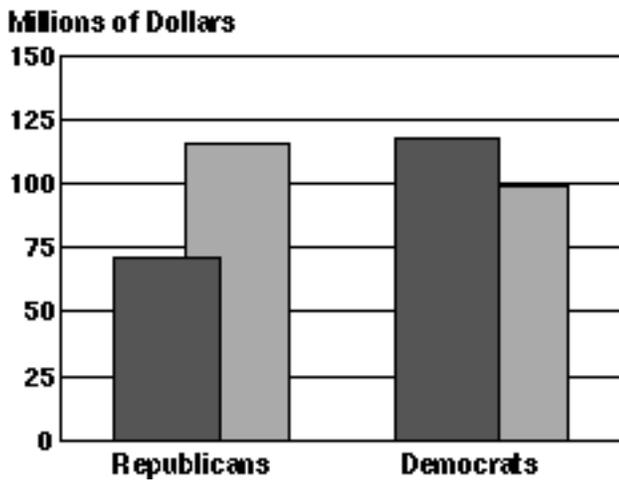


CHART 7-7
PAC Contributions to House Candidates by Type of PAC and Candidate Status

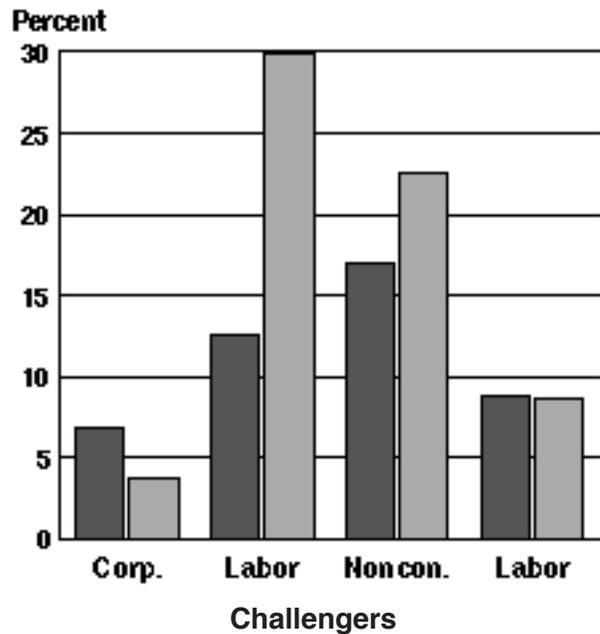
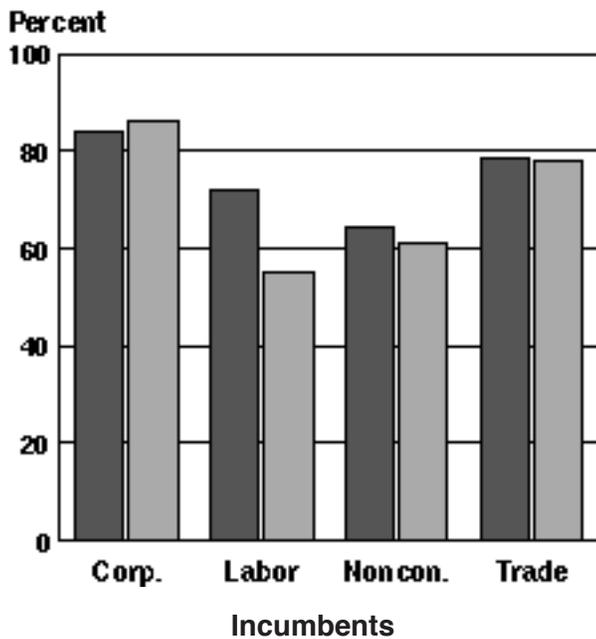


CHART 7-8
Presidential Election Campaign Fund:
1996 Payments and Funds Available

- 1993-1996 Receipts
- 1992 Balance
- Primary Matching Funds
- General Election Grants
- Convention Grants

Millions of Dollars

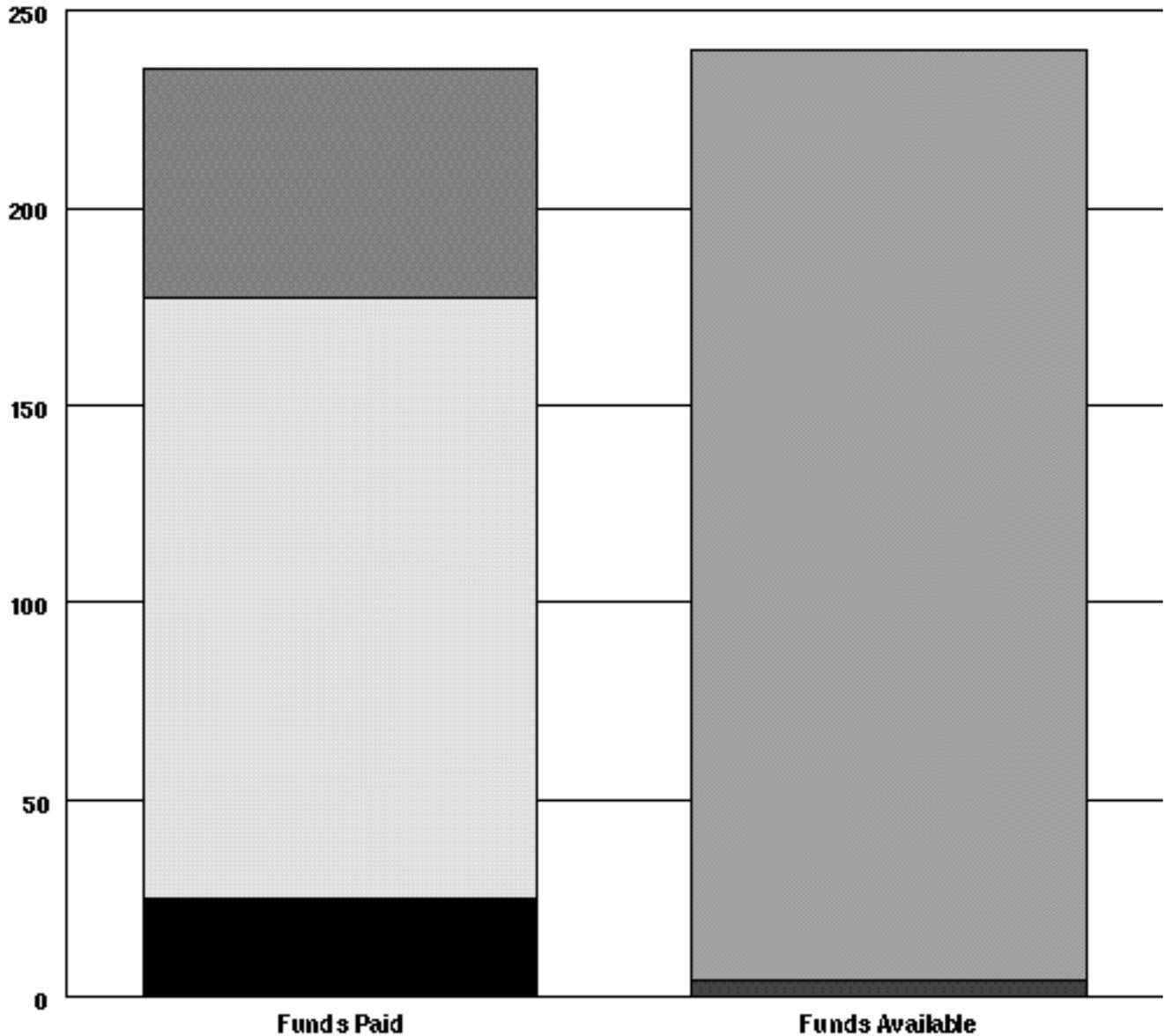


CHART 7-9
Presidential Election Campaign Fund
1996 Balance by Month

■ Total
 —■ Available for Primary Matching Funds

Millions of Dollars

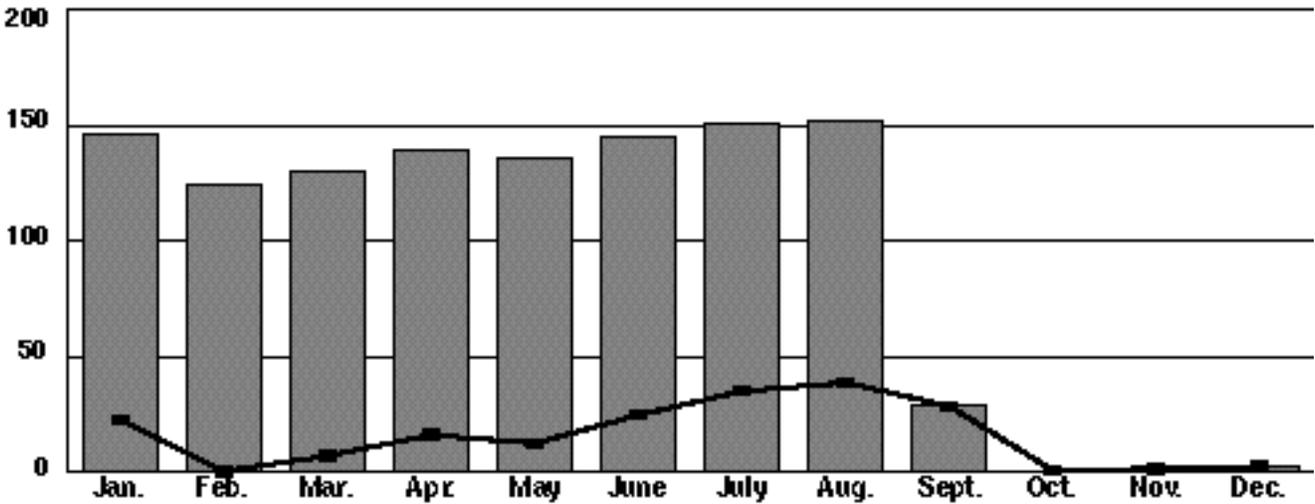


CHART 7-10
Revenue and Payments from the
Presidential Election Campaign Fund

■ Convention
 ■ General
 ■ Primary
 —■ Funds Raised in Cycle

Millions of Dollars

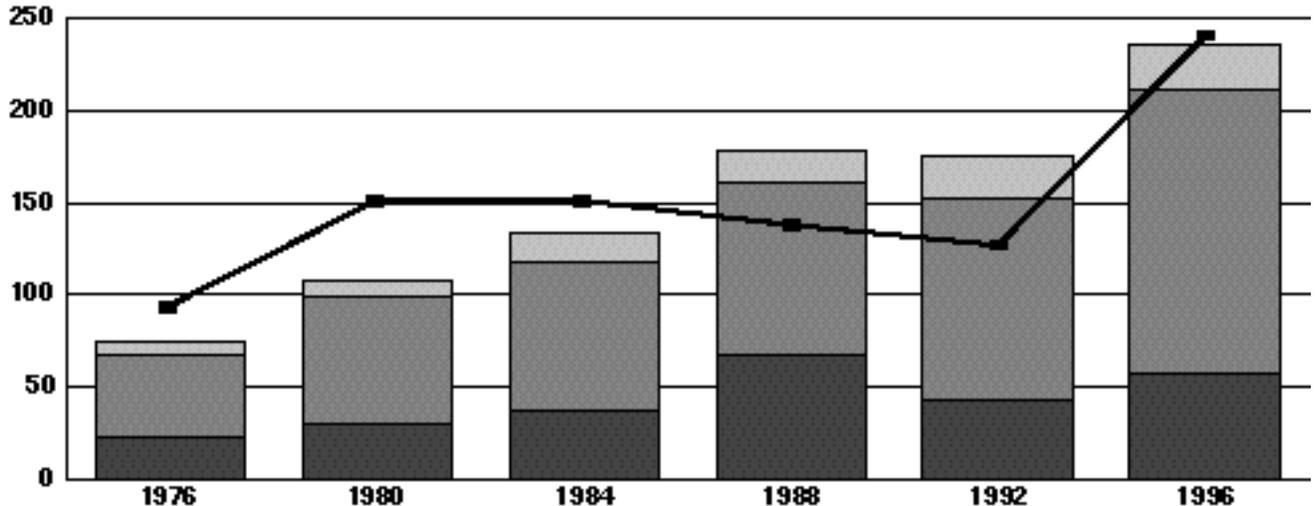


CHART 7-11
Receipts of Presidential Primary
Campaigns by Source

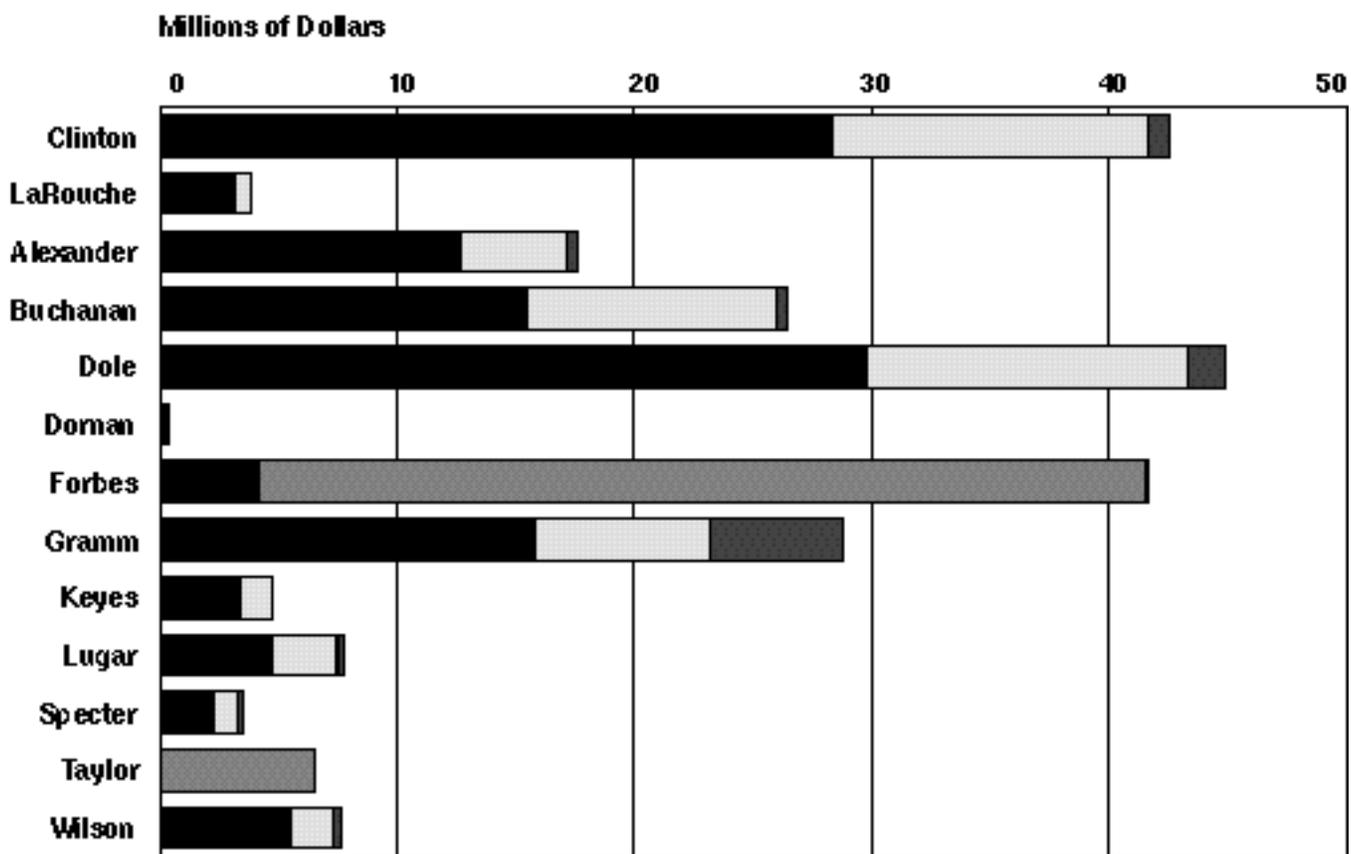
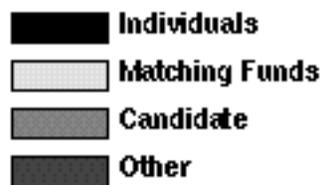


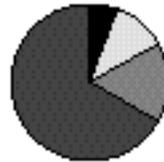
CHART 7-12
Individual Contributions
to Presidential Primary Campaigns
By Size of Contribution



Clinton
\$28.3 million



LaRouche
\$3.2 million



Alexander
\$12.6 million



Buchanan
\$15.5 million



Dole
\$29.8 million



Doman
\$0.3 million



Forbes
\$4.2 million



Gramm
\$15.9 million



Keyes
\$3.4 million



Lugar
\$4.8 million



Specter
\$2.3 million



Taylor
\$0.04 million



Wilson
\$5.6 million

CHART 7-13
Presidential Spending by 1996
General Election Campaigns

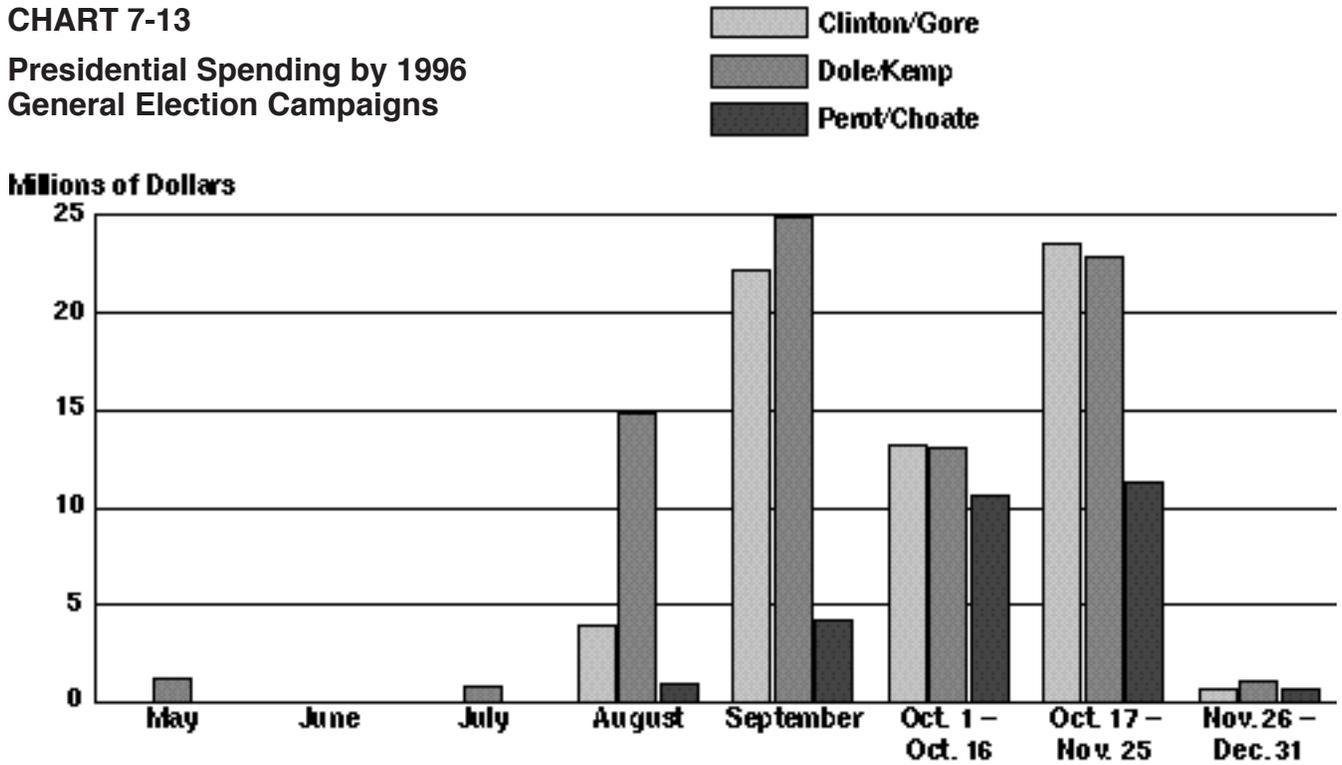


CHART 7-14
1996 General Election:
Funding Sources

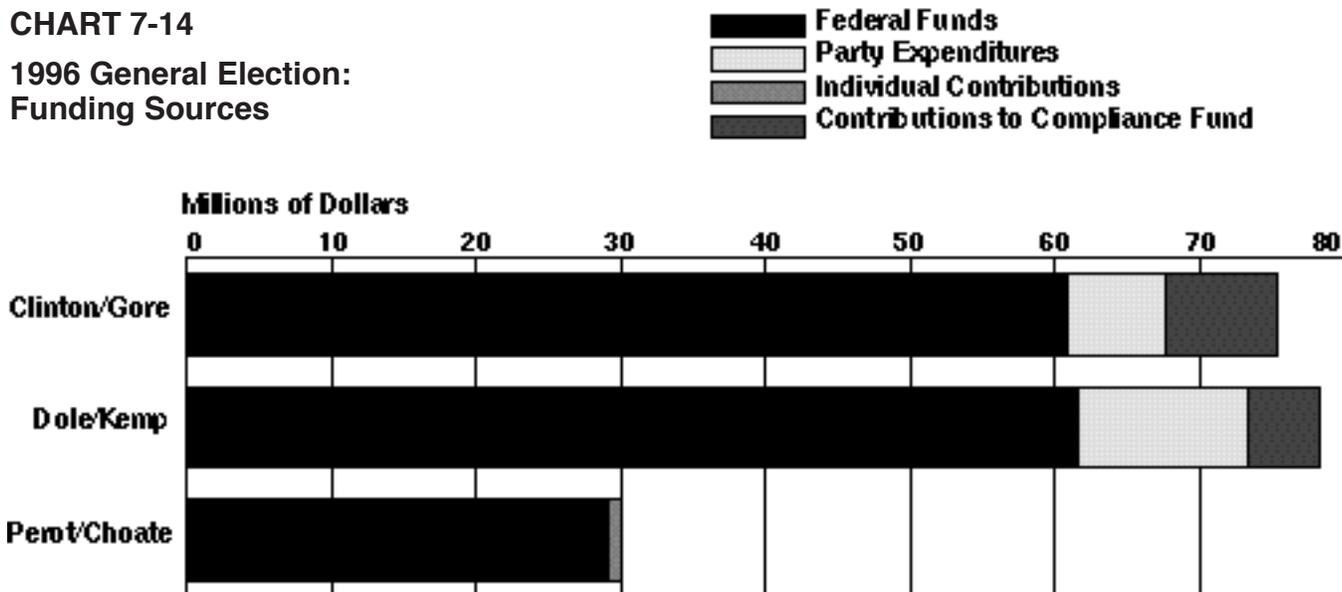
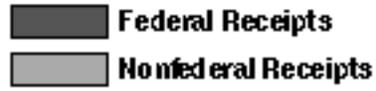
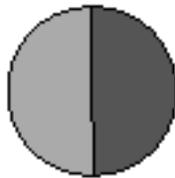


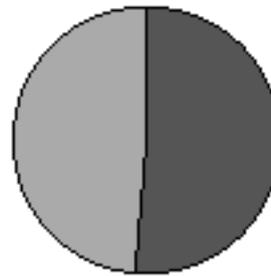
CHART 7-15
Party Federal
Nonfederal R



Democratic National Committee (DNC)



1993-94
\$83.86 million



1995-96
\$210.3 million

Republican National Committee (RNC)



1993-94
\$132.27 million

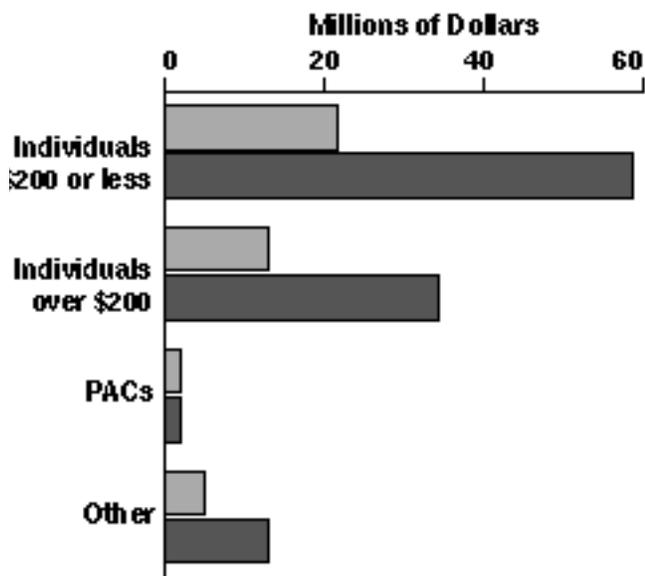


1995-96
\$306.1 million

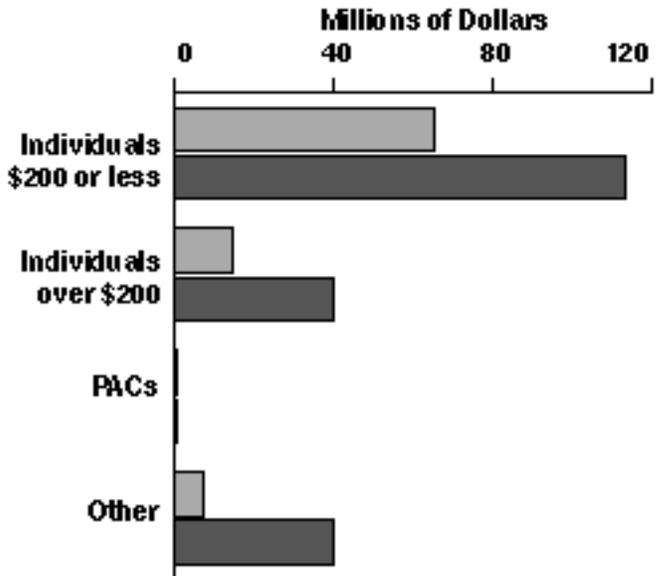
CHART 7-16
Sources of Party Receipts

1994
1996

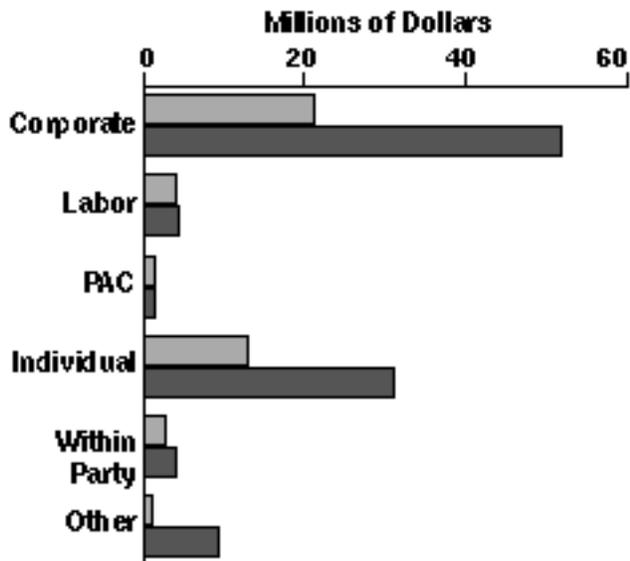
DNC Federal Receipts by Source



RNC Federal Receipts by Source



DNC Nonfederal Receipts by Source



RNC Nonfederal Receipts by Source

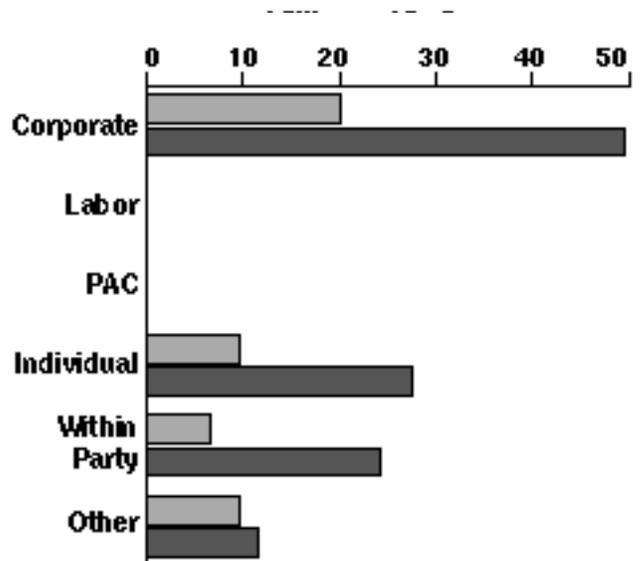
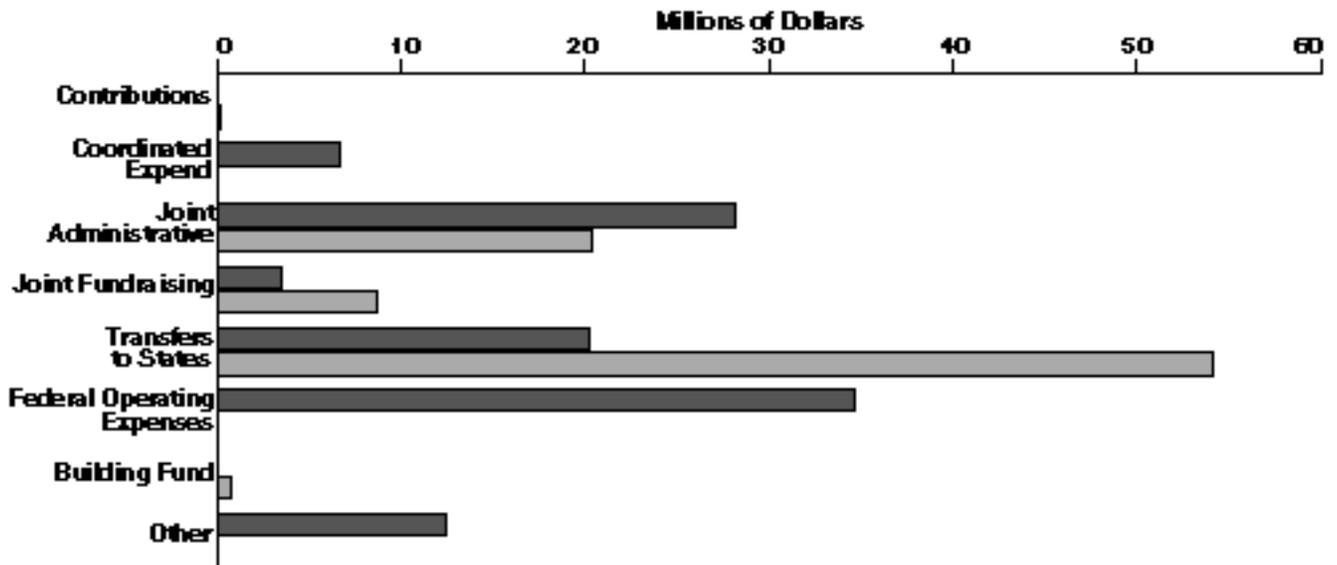


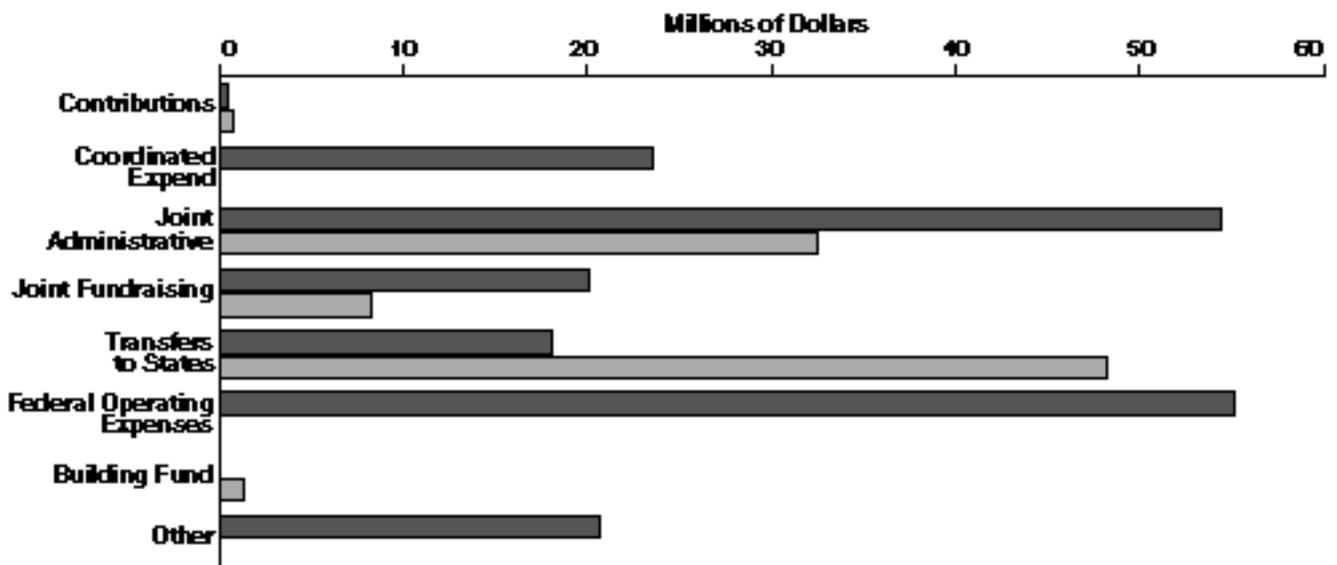
CHART 7-17
Party Federal and
Nonfederal Disbursements - 1996

Federal
Nonfederal

Democratic National Committee



Republican National Committee



Appendix 1

Biographies of Commissioners and Officers

Commissioners

Lee Ann Elliott, Chairman **April 30, 1999¹**

Commissioner Elliott was first appointed in 1981 and reappointed in 1987 and 1994. She previously served as Chairman in 1984 and 1990. Before her first appointment, Commissioner Elliott was vice president of a political consulting firm, Bishop, Bryant & Associates, Inc. From 1961 to 1979, she was an executive of the American Medical Political Action Committee. Commissioner Elliott was 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.

John Warren McGarry, Vice Chairman **April 30, 1995**

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

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

Joan D. Aikens **April 30, 1995**

One of the original members of the Commission, Commissioner 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 Commissioner 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, Commissioner Aikens was reappointed by President Bush in 1989. She served as FEC Chairman in 1978, 1986 and 1992.

Before her 1975 appointment, Commissioner 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, Commissioner Aikens has been active in a variety of volunteer organizations and was a member of the Commonwealth Board of the Medical College of Pennsylvania and a past President of Executive Women in Government. She is currently a member of the board of directors of Ursinus College, where she received her B.A. degree and an honorary Doctor of Law degree.

Danny L. McDonald **April 30, 1999**

Now serving his fourth term as Commissioner, Mr. McDonald was first appointed to the Commission in 1981 and was reappointed in 1987 and 1994. 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

¹ Term expiration date.

Clearinghouse on Election Administration.

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

Scott E. Thomas
April 30, 1997

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

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

Statutory Officers

John C. Surina, Staff Director

Before joining the Commission in 1983, John 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 Univer-

sity. He also attended East Carolina University and American University.

Lawrence M. Noble, General Counsel

Lawrence 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

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

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

Appendix 2

Chronology of Events

January

- 1 — Chairman Lee Ann Elliott and Vice Chairman John Warren McGarry begin their one-year terms of office.
- 5 — FEC releases audit report on Committee to Elect Michael Patrick Flanagan.
- 11-12 — FEC holds membership/trade conference in Washington, DC.
- 23 — Commission releases 1995 year-end PAC count.
- 25 — FEC releases audit report on Jude for Congress.
- 31 — 1995 year-end report due.

February

- 9 — Regulations on public funding of Presidential campaign take effect.
- 12 — FEC releases audit report on Minnesota Democratic Farmer Labor Party.
- 13 — Alan Keyes declared eligible for matching funds.
- 14 — FEC launches home page on World Wide Web.
- 15 — U.S. district court invalidates regulatory definition of express advocacy. (*Maine Right to Life v. FEC*)
- 20 — U.S. appeals court affirms most of district court's decision upholding best efforts regulations. (*RNC v. FEC*)
- 28 — U.S. district court dismisses *FEC v. GOPAC*.

March

- 8 — FEC holds candidate conference in Washington, DC.
- 12 — FEC releases audit report on Citizens for Jack Metcalf.
- 13 — Regulations on corporate/labor communications and facilities take effect.
 - FEC releases statistics on Congressional candidate and national party activity during 1995.
- 15 — Commission approves additional \$340,000 cost-of-living payments for national nominating conventions.
 - FEC announces 1996 Presidential spending limits and 441a(d) limits.

- 20 — Open hearing on proposed rules on the staging of candidate debates by cable television stations.
- 21 — Commission votes to seek \$30.8 million FY 1997 appropriation.

April

- 1 — FEC publishes 1996 Combined Federal/State Disclosure Directory.
 - FEC releases audit report on Montana State Democratic Central Committee.
- 2 — FEC releases audit report on Nevada State Democratic Party.
- 4 — Commission sends 50 recommendations for legislative change to President and Congress.
 - FEC releases statistics on 1995 PAC activity.
- 9 — FEC releases audit report on Bob Barr for Congress '94.
- 11-12 — FEC holds regional conference in Chicago.
- 15 — Quarterly report due.
- 16 — Commissioner Scott E. Thomas testifies before House Appropriations Subcommittee on \$30.87 million FY 1997 budget request.
- 18 — FEC releases audit report on West Virginia State Democratic Executive Committee.
- 19 — U.S. district court finds regulations on qualified nonprofit corporations unconstitutional. (*Minnesota Citizens Concerned for Life v. FEC*)
- 24 — FEC releases audit report on The Friends of Conrad Burns.

May

- 1 — Office of Election Administration publishes *Campaign Finance Law 96*.
- 6 — FEC releases audit report on Carol Moseley Braun for U.S. Senate.
- 8 — FEC releases 15-month report on national party finances.
- 17 — FEC releases audit report on United Republican Fund of Illinois.
- 20 — U.S. district court invalidates rules on voting records and voter guides. (*Clifton v. FEC*)

- 23 — FEC releases 15-month Congressional election figures.

June

- 1 — FEC issues 21st annual report.
 7 — FEC releases 15-month PAC statistics.
 10 — FEC releases audit report on San Bernardino County Republican Central Committee.
 — FEC releases audit report on American Hospital Association Political Action Committee.
 21 — Regulations on cable television debates and news stories take effect.
 26 — Supreme Court rules political party may make independent expenditures. (*FEC v. Colorado Republican Campaign Committee*)

July

- 1 — Office of Election Administration publishes *Federal Election Law 96*.
 11 — FEC releases semiannual PAC count.
 15 — Quarterly report due.

August

- 1 — FEC publishes new edition of *Campaign Guide for Political Party Committees*.
 — Office of Election Administration publishes *Simplifying Election Forms and Materials*.
 2 — U.S. appeals court upholds district court's dismissal of *FEC v. Christian Action Network*.
 — FEC releases audit report on Idaho Republican Party Federal Campaign Account.
 — FEC releases audit report on Abraham for Senate.
 6 — FEC releases 18-month report on Congressional candidate activity.
 7 — In response to *Colorado Republicans* decision, FEC deletes rule banning independent expenditures by parties.
 — FEC releases audit report on Republican Campaign Committee of New Mexico.
 — FEC releases 18-month report on party finances.
 12 — FEC releases audit report on Republican

Party of Dade County.

- 15 — FEC certifies \$61.82 million payment of public funds to Dole/Kemp campaign.
 — FEC publishes final rules on electronic filing.
 22 — FEC certifies \$29.055 million payment of public funds to Perot/Choate campaign.
 23-24 — FEC Election Administration Advisory Panel meets in Washington, DC.
 30 — FEC certifies \$61.82 million payment of public funds to Clinton/Gore campaign.

September

- 11 — FEC releases audit report on Democratic State Central Committee of California-Federal.
 27 — FEC releases 18-month PAC statistics.

October

- 1 — FEC denies requests to suspend matching fund payments to Clinton and Dole campaigns.
 — Office of Election Administration publishes *Journal of Election Administration, Election Directory 96, Ensuring Accessibility of the Election Process and Recruiting Poll Workers*.
 2 — FEC publishes list of Presidential candidates on state ballots.
 4 — U.S. appeals court upholds district court's dismissal of suits challenging Presidential debates. (*Perot and Natural Law Party v. FEC and the Commission on Presidential Debates*)
 15 — Quarterly report due.
 17 — FEC denies request to suspend public funding payments to Perot/Choate campaign.
 18 — U.S. appeals court upholds district court decision invalidating regulatory definition of "express advocacy." (*Maine Right to Life Committee v. FEC*)
 24 — Pre-general election report due.
 29 — FEC releases pre-general election statistics on political party activity.

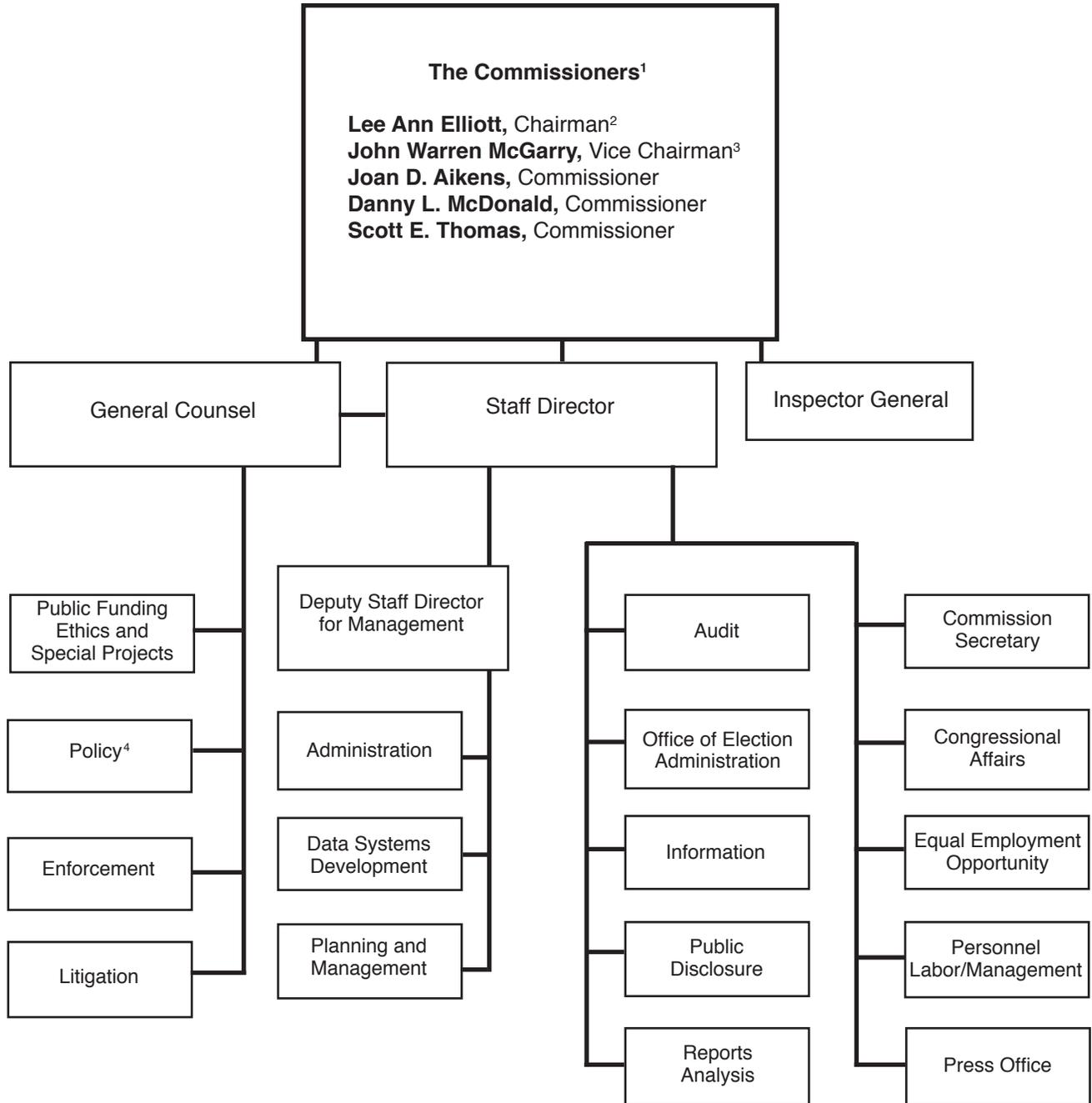
November

- 1 — FEC releases statistics on 1996 House and Senate campaign spending.
- 5 — General Election.

December

- 3 — FEC releases audit report on North Carolina Democratic Victory Fund (1993).
 - FEC releases audit report on North Carolina Democratic Victory Fund (1995)
- 4 — FEC releases audit report on Massachusetts Republican State Committee.
- 5 — Post-general election report due.
- 9 — FEC releases audit report on Dan Hamburg for Congress.
- 10 — FEC releases audit report on Friends of Franks.
- 12 — FEC elects John Warren McGarry and Joan D. Aikens as 1997 Chairman and Vice Chairman.

Appendix 3 FEC Organization Chart



¹ One seat on the Commission remained vacant throughout 1996.

² John Warren McGarry was elected 1997 Chairman.

³ Joan D. Aikens was elected 1997 Vice Chairman.

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 202-219-3420.

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, telecommunications, 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.

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.

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

Congressional, Legislative and Intergovernmental Affairs

This office serves as primary liaison with Congress and Executive Branch agencies. The office is responsible for keeping Members of Congress informed about Commission decisions and, in turn, for keeping the agency up to date on legislative developments. Local phone: 202-219-4136; toll-free 800-424-9530.

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 information into the FEC database 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 limits. The indexes are available online through the Data Access Program (DAP), a subscriber service managed by the division. The division also publishes the *Reports on Financial Activity* series of periodic studies on campaign finance and generates statistics for other publications.

Among its duties related to internal operations, the division provides computer support for the agency's automation systems and for administrative functions

such as management information, document tracking, personnel and payroll systems as well as the MUR prioritization system.

Local phone: 202-219-3730; toll-free phone: 800-424-9530.

Equal Employment Opportunity (EEO) and Special Programs

The EEO Office advises the Commission on the prevention of discriminatory practices and manages the agency's EEO Program.

The office is also responsible for: developing a Special Emphasis Program tailored to the training and advancement needs of women, minorities, veterans, special populations and disabled employees; and recommending affirmative action recruitment, hiring, and career advancement. The office encourages the informal resolution of complaints during the counseling stage.

Additionally, the office develops and manages a variety of agency-wide special projects. These include the Combined Federal Campaign, the U.S. Savings Bonds Drive, and workshops intended to improve employees' personal and professional lives.

General Counsel

The General Counsel directs the agency's enforcement activities, represents and advises the Commission in any legal actions brought before it and serves as the Designated Agency Ethics Official. The Office of General Counsel handles all civil litigation, including Title 26 cases that 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

In an effort to promote voluntary compliance with the law, the Information Division provides technical assistance to candidates, committees and others

involved in elections through the world wide web, letters, phone conversations, publications and conferences. Responding to phone and written inquiries, members of the staff provide information 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: 202-219-3420; toll-free phone: 800-424-9530 (press 1 on a touch-tone phone).

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 materials on campaign finance reform, election law and current political activity. Visitors to the law library can use its computers to access the Internet. The librarian and legal staff also maintain computer indices of enforcement proceedings (MURs) and advisory opinions, which may be searched in the Law Library or the Public Disclosure Division. Local phone: 202-219-3312; toll-free: 800-424-9530.

Office of Election Administration

The Office of Election Administration (OEA), located on the second 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 OEA

answers questions from the public and briefs foreign delegations on the U.S. election process, including voter registration and voting statistics.

Local phone: 202-219-3670; toll-free phone: 800-424-9530 (press 4 on a touch-tone phone).

Personnel and Labor/Management Relations

This office provides policy guidance and operational support to managers and staff in a variety of human resource management areas. These include position classification, training, job advertising, recruitment and employment. The office also processes personnel actions such as step increases, promotions, leave administration, awards and discipline, performs personnel records maintenance and offers employee assistance program counseling. Additionally, Personnel administers the Commission's labor-management relations program and a comprehensive package of employee benefits, wellness and family-friendly programs.

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: 202-219-4155; toll-free 800-424-9530.

Public Disclosure

The Public Disclosure Division processes incoming campaign finance reports from political committees and candidates involved in federal elections and makes their reports available to the public. Located on the first floor, the division's Public Records Office has a library with ample work space and knowledgeable staff to help researchers locate documents and computer data. The FEC encourages the public to review the many resources available, which also include computer indexes, advisory opinions and closed MURs.

The division's Processing Section receives incoming reports and processes them for formats which can be easily retrieved. These formats include paper, microfilm and electronic computer images that can be easily accessed from the library's terminals and those of agency auditors.

The Public Disclosure Division also manages Flashfax, an automated faxing service for ordering FEC documents, forms and publications, available 24 hours a day, 7 days a week.

Local phone: 202-219-4140; toll-free phone: 800-424-9530 (press 3 on a touch-tone phone); Flashfax: 202-501-3413.

Reports Analysis

Reports analysts assist committee officials in complying with reporting requirements and conduct detailed examinations of the campaign finance reports filed by political committees. If an error, omission or prohibited activity (e.g., an excessive contribution) is discovered in the course of reviewing a report, the analyst sends the committee a letter which requests that the committee either amend its reports or provide further information concerning a particular problem. By sending these letters (RFAs), the Commission seeks to ensure full disclosure and to encourage the committee's voluntary compliance with the law. Analysts also provide frequent telephone assistance to committee officials and encourage them to call the division with reporting questions or compliance problems. Local phone: 202-219-3580; toll-free phone 800-424-9530 (press 2 on a touch-tone phone).

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 1996	Filers Terminated as of 12/31/96	Continuing Filers as of 12/31/96	Number of Reports and Statements in 1996	Gross Receipts in 1996	Gross Expenditures in 1996
Presidential Candidate Committees	584	197	387	1,210	329,202,706	336,327,854
Senate Candidate Committees	921	381	540	2,798	248,306,429	280,628,524
House Candidate Committees	3,854	660	2,438	15,192	394,597,294	424,113,242
Party Committees	669	97	572	4,196	854,435,118	897,891,296
Federal Party Committees	581	97	484	3,699	615,628,163	641,133,265
Reported Nonfederal Party Activity	88	0	88	497	238,806,955	256,758,031
Delegate Committees	80	70	10	41	478,595	475,123
Nonparty Committees	4,528	479	4,049	31,188	250,265,328	287,759,044
Labor Committees	358	26	332	2,840	56,702,520	69,260,266
Corporate Committees	1,836	209	1,627	14,259	71,875,183	80,457,367
Membership, Trade and Other Committees	2,334	244	2,090	14,089	121,687,625	138,041,411
Communication Cost Filers	223	0	223	116	N/A	7,033,199
Independent Expenditures by Persons Other Than Political Committees	371	9	362	248	N/A	521,759

Divisional Statistics for Calendar Year 1996

	Total
Reports Analysis Division	
Documents processed	89,538
Reports reviewed	32,246
Telephone assistance and meetings	12,244
Requests for additional information (RFAs)	10,371
Second RFAs	3,137
Data coding and entry of RFAs and miscellaneous documents	18,807
Compliance matters referred to Office of General Counsel or Audit Division	30
Data Systems Development Division*	
Documents receiving Pass I coding	69,369
Documents receiving Pass III coding	50,343
Documents receiving Pass I entry	74,364
Documents receiving Pass III entry	49,869
Transactions receiving Pass III entry	
• In-house	169,333
• Contract	1,287,359
Public Records Office	
Campaign finance material processed (total pages)	1,987,733
Requests for campaign finance reports	10,786
Visitors	15,770
Total people served	26,556
Information telephone calls	21,153
Computer printouts provided	72,400
Total income (transmitted to U.S. Treasury)	101,086
Cumulative total pages of documents available for review	14,143,048
Contacts with state election offices	2830
Notices of failure to file with state election offices	302
Flashfax requests	7729

*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
Administrative Division	
Contracting and procurement transactions	1,816
Publications prepared for print	46
Pages of photocopying	8,968,700
Information Division	
Telephone inquiries	34,152
Information letters	731
Distribution of FEC materials	12,745
Prior notices (sent to inform filers of reporting deadlines)	40,309
Other mailings	118,969
Visitors	218
Public appearances by Commissioners and staff	218
State workshops	0
Publications	26
Press Office	
News releases	139
Telephone inquiries from press	23,459
Visitors	1,842
Freedom of Information Act (FOIA) requests	696
Fees for materials requested under FOIA (transmitted to U.S. Treasury)	91,431
Office of Election Administration	
Telephone inquiries	9,953
National Surveys Conducted	10
Individual Research Requests	266
Materials Distributed *	14,395
Election Presentations/Conferences	29
Foreign briefings	87
Publications	7

* Figure includes National Voter Registration Act materials.

	Total
Office of General Counsel	
Advisory opinions	
Requests pending at beginning of 1996	10
Requests received	52
Issued	51
Not Issued*	5
Pending at end of 1996	6
Compliance cases [†]	
Pending at beginning of 1996	251
Opened	314
Closed	204
Pending at end of 1996	361
Litigation	
Cases pending at beginning of 1996	47
Cases opened	23
Cases closed	26
Cases pending at end of 1996	44
Cases won	18
Cases lost	5
Cases settled	3
Law Library	
Telephone inquiries	689
Visitors	1361

* One advisory opinion request was withdrawn, three did not receive the required four-vote majority for passage and one was not issued due to litigation.

[†]In annual reports previous to 1994, the category "compliance cases" included only Matters Under Review (MURs). As a result of the enforcement prioritization system, the category has been expanded to include internally-generated matters in which the Commission has not yet made reason to believe findings.

Audit Reports Publicly Released

Year	Title 2*	Title 26 [†]	Total
1976	3	1	4
1977	6	6	12
1978	98 [‡]	10	108
1979	75 [‡]	9	84
1980	48 [‡]	11	59
1981	27 [‡]	13	40
1982	19	1	20
1983	22	0	22
1984	15	2	17
1985	4	9	13
1986	10	4	14
1987	12	4	16
1988	8	0	8
1989	2	7	9
1990	1	6	7
1991	5	8	13
1992	9	3	12
1993	10	2	12
1994	5	17	22
1995	12	0	12
1996	23	0	23
Total	414	113	527

Audits Completed by Audit Division, 1975–1996

	Total
Presidential	93
Presidential Joint Fundraising	11
Senate	22
House	146
Party (National)	46
Party (Other)	132
Nonparty (PACs)	77
Total	527

* **Audits for cause:** The FEC may audit any registered political committee: 1) whose reports do not substantially comply with the law; or 2) if the FEC has found reason to believe that the committee has committed a violation. 2 U.S.C. §§438(b) and 437g(a)(2).

[†]**Title 26 audits:** The Commission must give priority to these mandatory audits of publicly funded committees.

[‡]**Random audits:** Most of these audits were performed under the Commission's random audit policy (pursuant to the former 2 U.S.C. §438(a)(8)). The authorization for random audits was repealed by Congress in 1979.

Status of Audits, 1996

	Pending at Beginning of Year	Opened	Closed	Pending at End of Year
Presidential	0	10	0	10
Presidential Joint Fundraising	0	0	0	0
Senate	3	0	3	0
House	6	0	6	0
Party (National)	0	0	0	0
Party (Other)	17	0	13	4
Nonparty (PACs)	2	1	2	1
Total	28	11	24	15

Appendix 6

1996 Federal Register Notices

1996-1

Filing Dates for California Special Election, 37th District (61 FR 1933, January 24, 1996)

1996-2

11 CFR 100, 110 and 114: Candidate Debates and News Stories (staged by cable television stations); Notice of Proposed Rulemaking (61 FR 3621, February 1, 1996)

1996-3

11 CFR 100, 104, 105, 109, 110 and 114: Document Filing Point-of-Entry Technical Amendments; Final Rule (61 FR 3549, February 1, 1996)

1996-4

Filing Dates for Maryland Special Elections (61 FR 4666, February 7, 1996)

1996-5

11 CFR 9034 and 9038: Public Financing of Presidential Primary and General Election Campaigns; Final Rule, Correcting Amendments and Announcement of Effective Date (61 FR 4849, February 9, 1996)

1996-6

11 CFR 100 and 108: Point of Entry; Final Rule; Technical Amendments (61 FR 6095, February 16, 1996)

1996-7

Computerized Magnetic Media Requirements for Presidential Committees (61 FR 6245, February 16, 1996)

1996-8

Filing Dates for the Oregon Special Elections (61 FR 6837, February 22, 1996)

1996-9

11 CFR 100, 102, 109, 110 and 114: Corporate and Labor Organization Activity, Express Advocacy and Coordination with Candidates; Announcement of Effective Date (61 FR 10269, March 13, 1996)

1996-10

11 CFR 104: Electronic Filing of Reports by Political Committee; Notice of Proposed Rulemaking (61 FR 13465, March 27, 1996)

1996-11

11 CFR 110: Candidate Debates and News Stories (staged by cable television stations); Final Rule (61 FR 18049, April 24, 1996)

1996-12

11 CFR 110: Candidate Debates and News Stories (produced by cable television organizations); Announcement of Effective Date (61 FR 31824, June 21, 1996)

1996-13

Filing Dates for Kansas Special Election (61 FR 33508, June 27, 1996)

1996-14

11 CFR Part 110: Coordinated Party Expenditures; Technical Amendment; Final Rule (61 FR 40961, August 7, 1996)

1996-15

Rulemaking Petition: Democratic Senatorial Campaign Committee and Democratic Congressional Campaign Committee; Notice of Availability (61 FR 41036, August 7, 1996)

1996-16

11 CFR Part 104: Electronic Filing of Reports by Political Committees; Final Rules; Transmittal to Congress (61 FR 42371, August 15, 1996)

1996-17

Filing Dates for Missouri Special Election (61 FR 45426, August 29, 1996)

1996-18

Filing Dates for Texas Special Elections (61 FR 50298, September 25, 1996)

1996-19

11 CFR Part 104: Recordkeeping and Reporting by Political Committees: Best Efforts; Notice of Proposed Rulemaking (61 FR 52901, October 9, 1996)

1996-20

11 CFR Part 104: Electronic Filing of Reports by Political Committees; Interim Rules (61 FR 58460, November 15, 1996)

1996-21

Best Efforts; Extension of Comment Period (61 FR 68688, December 30, 1996)

1996-22

Examinations and Audits; Correcting Amendments (61 FR 69020, December 31, 1996)