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## AGENDA ITEM

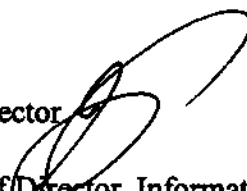
For Meeting of: 04-09-03



**SUBMITTED LATE**

April 4, 2003

### MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon, Staff Director 

FROM: Greg J. Scott, Assistant Staff Director, Information   
George Smaragdis, Sr. Public Affairs Specialist, Information 

SUBJECT: Legislative Recommendations 2003

Attached for the Commission's consideration are 11 draft legislative recommendations for 2003.

In order to categorize the recommendations according to the Commissioners' preferences, and to identify any that might be deleted, we informally canvassed the Commissioners' offices. There was consensus among Commissioners to reduce the number of recommendations, including only high priority recommendations with broad Commission support. As a result, the attached draft represents a significant reduction in the number of recommendations submitted to Congress and the President.

We have updated the language in the *Averting Impending Shortfall* recommendation to include a more up-to-date shortfall projection; this represents the only substantive change to the drafts.

The Information Division recommends that the Commission approve the attached package of legislative recommendations for transmittal to Congress and the President. Should any recommendations included in this draft fail to garner support from a majority of Commissioners, we recommend that they be removed from the package.

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<b>2003 LEGISLATIVE RECOMMENDATIONS</b>	<b>1</b>
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# 1 ***2003 Legislative Recommendations***

## 2 **Compliance**

### 3 ***Making Permanent the Administrative Fine Program for Reporting*** 4 ***Violations (2003)***

5 *Section: 2 U.S.C. §437g*

6 *Recommendation:* The Commission recommends that Congress make permanent the  
7 Commission's authority to assess administrative fines for straightforward violations of  
8 the law requiring timely reporting of receipts and disbursements. The Commission's  
9 current Administrative Fine Program only covers violations that relate to reporting  
10 periods through December 31, 2003.

11  
12 *Explanation:* On November 12, 2001, President Bush signed the Fiscal Year 2002  
13 Treasury and General Government Appropriations Act, which extended the  
14 Administrative Fine Program to cover violations of 2 U.S.C. § 434(a) that relate to  
15 reporting periods through December 31, 2003. Since the Administrative Fine program  
16 was implemented with the 2000 July Quarterly report, the Commission has processed and  
17 made public 519 cases, with \$722,221 in fines collected. The Administrative Fine  
18 Program has been remarkably successful: over the course of the program, the number late  
19 and nonfiled reports has generally decreased. As a result, the Administrative Fine  
20 Program has become an integral part of the Commission's mission to administer and  
21 enforce the Act. By making the program permanent, Congress would ensure that the  
22 Commission would not lose one of the most cost-effective and successful programs in its  
23 history.

24  
25 Under the Administrative Fine Program, the Commission considers reports to be filed  
26 late if they are received after the due date, but within 30 days of that due date. Election-  
27 sensitive reports are considered late if they are filed after their due date, but at least five  
28 days before the election. (Election sensitive reports are those filed immediately before an  
29 election and include pre-primary, pre-special, pre-general, October quarterly and October  
30 monthly reports). Committees filing reports after these dates are considered nonfilers.  
31 Civil money penalties for late reports are determined by the amount of activity on the  
32 report, the number of days the report was late and any prior penalties for violations under  
33 the administrative fine regulations. Penalties for nonfiled reports are also determined by  
34 the amount of activity on the report and any prior violations. Committees have the option  
35 to either pay the civil penalty assessed or challenge the Commission's finding and/or  
36 proposed penalty.

1 **Ethics**

2 ***Allowing the FEC to Restrict the Political Activities of its Employees***  
3 ***(2003)***

4 *Section:* 2 U.S.C. §437c(f), 5 U.S.C. §7323(b)(1)

5 *Recommendation:* The Commission recommends that Congress amend the Act, by  
6 adding a new subsection (f)(5) to 2 U.S.C. §437c, which would prohibit an FEC  
7 Commissioner or employee from publicly supporting or opposing a candidate, political  
8 party or political committee subject to the FEC's jurisdiction, regardless of whether the  
9 activity is performed in concert with a political party, partisan political group or a  
10 candidate for partisan public office.

11  
12 *Explanation:* In 1993, the enactment of the Hatch Reform Act (Pub. L. 103-94) lifted  
13 many of the original Hatch Act's restrictions on many Federal employees with regard to  
14 participation in political campaigns. The Hatch Reform Act places special limitations on  
15 Commission employees, prohibiting them from requesting or receiving political  
16 contributions from, or giving political contributions to, an employee, a Member of  
17 Congress or an officer of a uniformed service, as well as from taking an active part in  
18 political management or political campaigns. 5 U.S.C. §§7323(b)(1) and 7323(b)(2).

19  
20 The Hatch Reform Act specifically states, "employees should be encouraged to exercise  
21 fully, freely, and without fear of penalty or reprisal, and to the extent not expressly  
22 prohibited by law, their right to participate or to refrain from participating in the political  
23 processes of the nation." 5 U.S.C. §7321. It also provides that "[a]n employee retains  
24 the right to vote as he chooses and to express his opinion on political subjects and  
25 candidates." 5 U.S.C. §7323(c). OPM has authority to issue regulations regarding the  
26 Hatch Reform Act. See 5 U.S.C §1103(a)(5) and 5 U.S.C. §7325. With regard to  
27 agencies such as Commission whose employees are limited in their political activity,  
28 OPM regulations allow such employees to "[e]xpress his or her opinion as an individual  
29 privately and publicly on political subjects and candidates." 5 CFR 734.402. The OPM  
30 regulations provide that such activity may not be done "in concert with a political party,  
31 partisan political group or a candidate for partisan political office."

32  
33 There are no provisions in the Hatch Reform Act that empower any agency other than  
34 OPM to interpret its provisions, and there is currently no provision in FECA that directly  
35 refers to the Hatch Reform Act or previous Hatch restrictions. OPM has issued  
36 regulations expressly limiting the extent to which the political activities of employees  
37 may be limited beyond the restrictions in the Hatch Reform Act. See 11 CFR 734.104.  
38 These OPM regulations, as well as the Commission's current lack of independent  
39 statutory authority, could be read to block any additional regulatory restrictions that the  
40 Commission might wish to place on the political activities of Commission employees.  
41 See Statement of Basis and Purpose for 11 CFR 734.104, 59 Fed. Reg. 48765. The Hatch  
42 Reform Act and the OPM regulatory regime also raises questions regarding the viability

1 of the foundation for Commission's current regulations on the political activity of  
2 Commissioners and Commission employees at 11 CFR 7.11. These questions could be  
3 resolved if the Commission's regulatory restrictions on political activity of employees  
4 could be explicitly based on independent statutory authority in FECA.

5 Given its role in the political process, the Commission believes that public support of, or  
6 opposition to, any candidate, political party or political committee subject to its  
7 jurisdiction by Commissioners or employees could seriously harm its credibility as a  
8 nonpartisan agency and thus its ability to fulfill its mission. Therefore, to provide an  
9 independent statutory basis for regulating the political activities of its employees beyond  
10 the Hatch Reform Act, the Commission recommends that Congress enact a new statutory  
11 provision, as part of 2 U.S.C. §437c(f), to prohibit an FEC Commissioner or employee  
12 from publicly supporting or opposing a candidate, political party or political committee  
13 subject to the FEC's jurisdiction, regardless of whether the activity is performed in  
14 concert with a political party, partisan political group or a candidate for partisan public  
15 office.

## 17 **Disclosure**

### 18 ***Increasing and Indexing all Registration and Reporting Thresholds for*** 19 ***Inflation (2003)***

20 *Section:* 2 U.S.C. §§431 and 434

21  
22 *Recommendation:* The Commission recommends that Congress increase and index for  
23 inflation all registration and reporting thresholds.

24  
25 *Explanation:* Most of the Act's registration and reporting thresholds were set in 1974 and  
26 1979. Because over twenty years of inflation had effectively reduced the Act's  
27 contribution limits in real dollars, the BCRA increased some contribution limits to  
28 partially adjust for inflation, and then indexed those limits: contributions to candidates  
29 and national party committees by individuals and non-multicandidate committees, the  
30 biennial aggregate contribution limit for individuals and the limit on contributions to  
31 Senate candidates by certain national party committees. The Commission proposes  
32 extending this approach to all registration and reporting thresholds, which have similarly  
33 been effectively reduced as a result of inflation.

34  
35 Increasing and then indexing these thresholds would ease the registration and reporting  
36 burdens on smaller political committees who, in some cases, are unaware of the Act's  
37 registration and reporting provisions. Moreover, by increasing and then indexing the  
38 thresholds for inflation, Congress would help to ensure that some committees and persons  
39 who lack the resources and technical expertise to comply with the Act's registration and  
40 reporting requirements would not have to do so. Finally, because of the effect of  
41 inflation, increasing and then indexing the registration and reporting thresholds would

1 continue to capture the significant financial activity envisioned when Congress enacted  
2 the FECA.

3  
4 ***Electronic Filing of Senate Reports***

5 *Section:* 2 U.S.C. §§432(g) and 434(a)(11)

6 *Recommendation:* The Commission recommends that Congress require:

- 7 • Mandatory electronic filing, at a date to be determined by Congress, for those persons  
8 and political committees filing designations, statements, reports or notifications  
9 pertaining only to Senate elections if they have, or have reason to expect to have,  
10 aggregate contributions or expenditures in excess of \$50,000 in a calendar year.
- 11 • Electronically filed designations, statements, reports or notifications pertaining only  
12 to Senate elections to be forwarded to the Commission within 24 hours of receipt and  
13 to be made accessible to the public on the Internet, if Congress does not change the  
14 point of entry for filings pertaining only to Senate elections.

15  
16 *Explanation:* Public Law 106-58 required, among other things, that the Commission  
17 make electronic filing mandatory for political committees and other persons required to  
18 file with the Commission who, in a calendar year, have, or have reason to expect to have,  
19 total contributions or total expenditures exceeding a threshold set by the Commission.  
20 The Commission set this threshold at \$50,000 and, in the Commission's experience, that  
21 threshold has worked well. Extending electronic filing to political committees and  
22 persons who file designations, statements, reports or notifications pertaining only to  
23 Senate elections would standardize the information received, thereby enhancing public  
24 disclosure of campaign finance information. Additionally, data from electronically filed  
25 reports is received, processed and disseminated more easily and efficiently, resulting in  
26 better use of resources.

27  
28 Electronic filing (by means other than diskette) is also unaffected by disruptions in the  
29 delivery of first class mail, such as those arising from the terrorist attacks on the U.S.  
30 Postal Service. As a result of these disruptions, some amendments to Senate campaign  
31 reports that were filed via regular mail in late 2001 took months to arrive at the Secretary  
32 of the Senate (and the FEC), delaying disclosure. In contrast, amendments electronically  
33 filed during the same time period by other types of filers were received and processed in  
34 a timely manner.

35  
36 ***Filing Reports Using Overnight Delivery, Priority or Express Mail***

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

38 *Recommendation:* The Commission recommends that Congress amend 2 U.S.C.

1 §§434(a)(2)(A)(i), (a)(4)(A)(ii) and (a)(5) to offer filers additional means of ensuring  
2 timely filing of designations, reports, and statements. Specifically, the Commission  
3 recommends that Congress equate the date of receipt by one of the following delivery  
4 services with the registered or certified mail postmark dates currently set forth in section  
5 434:

- 6 • Overnight delivery with an on-line tracking system that allows delivery status to be  
7 verified; and
- 8 • Priority Mail or Express Mail with U.S. Postal Service delivery confirmation.

9 *Explanation:* Section 434 of the Act permits committees that do not file electronically to  
10 rely upon a registered or certified mail postmark as evidence that their designations,  
11 reports and statements were filed on time. For example, quarterly, monthly, semiannual  
12 and post-general election reports must be postmarked by the due date, and pre-primary  
13 and pre-general election reports must be postmarked 15 days before the election.

14 Overnight delivery, Priority Mail and Express Mail were not widely used when the  
15 registered or certified mail provisions were adopted as part of the 1979 amendments to  
16 the FECA. Since that time, these services have come into wide use and are frequently  
17 used by political committees to file their FEC designations, reports and statements.  
18 Equating the date of receipt by one of these services with the registered or certified mail  
19 date would aid the regulated community in its efforts to comply with the Act's reporting  
20 requirements.

21 Overnight delivery, Priority Mail and Express Mail ensure that there is written evidence  
22 that a package was mailed and received. Additionally, due to their reliability and speed,  
23 the Commission's ability to collect, process and disseminate information would be  
24 improved if Congress were to amend 2 U.S.C. §§434(a)(2)(A)(i), (a)(4)(A)(ii) and (a)(5)  
25 to include these services.  
26

### 27 ***Waiver Authority***

28 *Section:* 2 U.S.C. §434

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

32 *Explanation:* In cases where reporting requirements are excessive or unnecessary, it  
33 would be helpful if the Commission had authority to suspend the reporting requirements  
34 of the Act. For example, the Commission has encountered several problems relating to  
35 the reporting requirements of authorized committees whose respective candidates were  
36 not on the election ballot. The Commission had to consider whether the 12-day pre-  
37 election reporting requirements and 48-hour notice requirements for large last-minute  
38 contributions were fully applicable to candidate committees operating under one of the

1 following circumstances:

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

7 Unauthorized committees also face unnecessary reporting requirements. For example, the  
8 Act requires monthly filers to file reports on the 20th day of each month. If sent by  
9 certified mail, the report must be postmarked by the 20th day of the month. The Act also  
10 requires monthly filers to file a Pre-General election report 12 days before the general  
11 election. If sent by certified or registered mail, the Pre-General report must be  
12 postmarked by the 15th day before the election. As a result of these specific due dates  
13 mandated by the law, the 2004 October Monthly report, covering September, will be  
14 required to be postmarked by October 20th. Meanwhile, the 2004 Pre-General report,  
15 covering October 1 -13, will be required to be postmarked by October 18th, two days  
16 before the October Monthly. A waiver authority would enable the Commission to  
17 eliminate the requirement to file the monthly report, as long as the committee includes  
18 the activity in the Pre-General Election Report and files the report on time. The same  
19 disclosure would be available before the election, but the committee would only have to  
20 file one of the two reports.

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

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

### 32 ***Commission as Sole Point of Entry for Disclosure Documents***

33 *Section:* 2 U.S.C. §432(g)

34 *Recommendation:* The Commission recommends that it be the sole point of entry for all  
35 disclosure documents filed by federal candidates and political committees. This would  
36 primarily affect Senate candidate committees, but would also apply to the Republican and  
37 Democratic Senatorial Campaign Committees. Under current law, those committees

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<sup>1</sup> This recommendation was also made by Pricewaterhouse Coopers LLP in its *Technology and Performance Audit and Management Review of the Federal Election Commission*, pages 4-37 and 5-2.



1 alone file their reports with the Secretary of the Senate, who then forwards copies to the  
2 FEC.

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

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

13 Public Law 104-79 also authorized the electronic filing of disclosure reports with the  
14 FEC. As of January 1997, political action committees, political party committees (except  
15 for the Senatorial Campaign Committees), House campaigns and Presidential campaigns  
16 all could opt to file FEC reports electronically. Moreover, Public Law 106-58, section  
17 639, mandated electronic filing for committees who meet certain thresholds as specified  
18 by the Commission. Senate candidates and the Senatorial Campaign Committees,  
19 however, do not have the official authority to file electronic reports because the point of  
20 entry for their reports is the Secretary of the Senate (not the FEC). It should be noted,  
21 however, that such committees may file unofficial electronic copies of their reports with  
22 the FEC. It is also important to note that the FEC has worked closely with the Secretary  
23 of the Senate to improve disclosure within the current law. For example, the FEC and the  
24 Secretary of the Senate have worked together to have Senate digitized images on the FEC  
25 web site. The FEC has also proposed assisting the Secretary in developing the capacity  
26 of the Secretary's office to accept electronically filed reports. While these measures have  
27 undoubtedly improved disclosure, absent mandatory electronic filing for Senate  
28 campaigns and Senatorial Campaign Committees, a single point of entry remains  
29 desirable. It is important to note as well that, if the Congress adopted mandatory  
30 electronic filing for Senate campaigns and Senatorial Campaign Committees, the  
31 recommendation to change the point of entry for Senate filers would be rendered moot,  
32 except for remaining paper filers.

33 We also reiterate here the statement we have made in previous years because it remains  
34 valid. A single point of entry for all disclosure documents filed by political committees  
35 would eliminate any confusion about where candidates and committees are to file their  
36 reports. It would assist committee treasurers by having one office where they would file  
37 reports, address correspondence and ask questions. At present, conflicts may arise when  
38 more than one office sends out materials, makes requests for additional information and  
39 answers questions relating to the interpretation of the law. A single point of entry would  
40 also reduce the costs to the federal government of maintaining two different offices,  
41 especially in the areas of personnel, equipment and data processing.

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

## 9 **Contribution Limits**

### 10 ***Harmonize the Biennial Aggregate Contribution Limit and Inflation*** 11 ***Indexing (2003)***

12 *Section:* 2 U.S.C. §441a(c)(1)(C)

13  
14 *Recommendation:* The Commission recommends that effective date for any increase in  
15 the biennial aggregate contribution limit due to inflation be changed to January 1 of odd-  
16 numbered years so that it will coincide with the beginning of a biennial period.

17  
18 *Explanation:* BCRA replaced the annual limits on aggregate contributions from  
19 individuals with biennial limits on such contributions. Calendar years are used to mark  
20 the biennial period during which an individual's contributions are aggregated toward the  
21 limitation, so that the relevant periods begin on January 1 of odd-numbered years and end  
22 on December 31 of the following even-numbered years. 2 U.S.C. §441a(a)(3). However,  
23 the inflation increases to this limit are to take effect on the first day following the date of  
24 the last general election and end on the date of the next general election. 2 U.S.C.  
25 § 441a(c)(1)(C). Congress should change the effective date of the increase in the limit to  
26 coincide with the beginning of a biennial period.

## 29 **Public Financing**

### 30 ***Averting Impending Shortfall in Presidential Public Funding Program*** 31 ***(revised 2003)***

32 *Section:* 26 U.S.C. §§6096, 9008(a) and 9037(a)

33 *Recommendation:* The Commission strongly recommends that Congress take immediate  
34 action to avert a projected impending shortfall in the Presidential public funding program  
35 in the 2004 election year.

36 *Explanation:* The Presidential public funding program experienced a shortfall for the  
37 election of 2000 because participation in the check-off program is declining and the  
38 checkoff is not indexed to inflation while payouts are indexed. This shortfall impacted

1 foremost upon primary candidates. In January 2000, when the U.S. Treasury made its  
2 first payment for the 2000 election, it was only able to provide approximately 50 percent  
3 of the public funds that qualified Presidential candidates were entitled to receive.  
4 Specifically, only \$16.9 million was available for distribution to qualified primary  
5 candidates on January 1, 2000, after the Treasury paid the convention grants and set aside  
6 the general election grants.<sup>2</sup> However, the entitlement (i.e., the amount that the qualified  
7 candidates were entitled to receive) on that date was \$34 million, twice as much as the  
8 amount of available public funds. By January 2001, total payments made to primary  
9 candidates was in excess of \$61 million.

10  
11 The Commission projects the temporary shortfall in matching funds that has occurred in  
12 the past two presidential elections may recur in 2004. Under the most realistic  
13 assumptions, it appears that the January 2004 payout may be only about 53 cents on the  
14 dollar. The funds considered 'available' by the Department of Treasury will be about  
15 \$19.3 million, the funds to which candidates will be entitled will be about \$36.6 million,  
16 and the payouts therefore will have to be reduced accordingly. February and March  
17 payouts also will be less than 100%, but by the April 2004 payouts, the temporary  
18 shortfall will have been cured under this projection. This is because the check-off  
19 proceeds flowing into Treasury Department accounts will be adequate to make up the  
20 earlier deficiencies.

21  
22 The Commission recommends several specific legislative changes. First, the statute  
23 should be revised so that Treasury will be able to rely on *expected* available proceeds  
24 from the voluntary checkoff, rather than relying solely on actual proceeds *on hand* as of  
25 the dates of the matching fund payments. Since large infusions of voluntary checkoff  
26 proceeds predictably occur in the first few months of the election year, including such  
27 estimated proceeds in the calculation of funds available for matching fund payouts would  
28 virtually eliminate the shortfall in the near future. Because estimates for expected  
29 payouts are an acceptable part of the calculations (e.g., setting aside sufficient funds to  
30 cover general election payouts), estimates of the checkoff proceeds could be  
31 incorporated, as well. A very simple change in the wording of 26 U.S.C. §9037 would  
32 accomplish this: changing "are available" to "will be available." Expected payments  
33 should be based on sound-statistical methods to produce a cautious, conservative estimate  
34 of the funds that will be available to cover convention and general election payments.

35  
36 A second revision in the statute would further the long-term stability of the presidential  
37 public funding program: indexing the voluntary checkoff amount to inflation. Although  
38 the checkoff amount was increased from \$1 to \$3 beginning with 1993 returns, there was  
39 no indexing built in to account for further inflation thereafter. Since the payments are  
40 indexed to inflation, the statute all but assures a permanent shortfall.

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<sup>2</sup> The Commission certified a total of \$28.9 million in convention grants, and \$147.2 million was set aside for use by general election candidates.

1 ***Qualifying Threshold for Eligibility for Primary Matching Funds***

2 *Section:* 26 U.S.C. §9033

3 *Recommendation:* The Commission recommends that Congress raise the qualifying  
4 threshold for eligibility for publicly funded Presidential primary candidates and make it  
5 adjustable for inflation.

6 *Explanation:* The present law sets a very low bar for candidates to qualify for federal  
7 primary matching funds: \$100,000 in matchable contributions (\$5,000 in each of at least  
8 20 states from individual donations of \$250 or less). In other words, to qualify for  
9 matching funds, a candidate needs only 400 individual contributors, contributing \$250  
10 each. The threshold was never objectively high; now, a quarter century of inflation has  
11 effectively lowered it yet by two thirds. Congress needs to consider a new threshold that  
12 would not be so high as to deprive potentially late blooming candidates of public funds,  
13 nor so low as to permit individuals who are clearly not viable candidates to exploit the  
14 system.

15 Rather than establishing a new set dollar threshold, which would eventually require  
16 additional inflationary adjustments, Congress may wish to express the threshold as a  
17 percentage of the previous Presidential primary election spending limit, which itself is  
18 adjusted for inflation. For example, a percentage of 5% of the 2000 spending limit would  
19 have computed to a threshold of almost \$1.7 million. In addition, the test for broad  
20 geographic support might be expanded to require support from at least 30 states, as  
21 opposed to 20, along with an increase in the amount to be raised from within each state,  
22 which is the current statutory requirement.

23 ***State Expenditure Limits for Publicly Financed Presidential Primary***  
24 ***Campaigns***

25 *Section:* 2 U.S.C. §441a(b)(1)(A)

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

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

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

36 With an increasing number of primaries vying for a campaign's limited resources,  
37 however, it would not be possible to spend very large amounts in these early primaries  
38 and still have adequate funds available for the later primaries. Thus, the overall national

1 limit would serve as a constraint on state spending, even in the early primaries. At the  
2 same time, candidates would have broader discretion in the running of their campaigns.

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

9 Finally, the allocation of expenditures to the states has proven a significant accounting  
10 burden for campaigns and an equally difficult audit and enforcement task for the  
11 Commission. For all these reasons, the Commission decided to revise its state allocation  
12 regulations for the 1992 Presidential election. Many of the requirements, such as those  
13 requiring distinctions between fundraising and other types of expenditures, were  
14 eliminated. However, the rules could not undo the basic requirement to demonstrate the  
15 amount of expenditures relating to a particular state. Given our experience to date, we  
16 believe that this change to the Act would still be of substantial benefit to all parties  
17 concerned.

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