FEDERAL ELECTION COMMISSION

LEGISLATIVE RECOMMENDTIONS

1993

LEGISLATIVE RECOMMENDATIONS - NEW OR REVISED - 1993

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LEGISLATIVE RECOMMENDATIONS - NEW AND REVISED - 1993

PUBLIC FINANCING

Presidential Election Campaign Fund (revised 1993)
Section: 26 U.S.C. §6096

Recommendation: Without Congressional action, there will be a shortfall in the Presidential Election Campaign Fund in 1996. There will be no money available for primary candidates and less than a full entitlement for the general election candidates. If Congress wishes to preserve the Presidential public funding system, a legislative remedy is essential.

In addition, Congress may want to examine the priorities for distributing public funds among the party nominating conventions, the general election nominees and the primary election candidates.

Explanation: Although the Fund did not experience a shortfall during the 1992 Presidential year,1/ the Commission has informed Congress that a serious public funding shortage is assured in 1996. One of the reasons for this is a structural flaw in the checkoff program. The payout to candidates and parties (for their conventions) is indexed to inflation, but the dollar checkoff is not. Spending limits are increased each election cycle to reflect the change in the cost-of-living index. In 1974, the statutory spending limit for the general election was established at $20 million. This year, each party nominee received over $55 million, representing a 280 percent increase over the 1974 amount. Thus, as the consumer price index increases, the Fund needs more and more checkoff dollars to make the appropriate payments to qualified candidates and parties. If the checkoff amount had been increased at the same rate as the payments, there would be no shortfall in 1996.

Another reason for the shortfall is the shrinking participation of taxpayers in the checkoff program. After peaking at 28 percent in 1980, the percentage of tax forms on which the taxpayer checked yes has fallen to approximately 19 percent.

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

Without a legislative remedy, the FEC predicts that the shortfall in 1996 will be a serious problem. The law requires that priority be given first to party nominating conventions, then to general election nominees and last to primary election candidates. There will not be enough money in the Fund to cover all phases. We estimate that $124 million will have accumulated in the fund through 1996. This amount will only fully fund the two major party conventions, at about $12 million each. The two general election nominees, who will be entitled to more than $60 million each, will not be fully funded. There will be no money for the primary candidates. Consequently, the shortfall will force candidates to become more dependent on large contributions from individuals and groups and, ultimately, defeat the purpose of the public funding process.

Primary Election Audits (1993)
Section: 26 U.S.C. §§9032, 9033, 9035, 9038, 9039(a)(1)

Recommendation: Congress may want to eliminate the requirement under the Presidential Primary Matching Payment Account Act that matching funds be used only for "qualified campaign expenses" and substitute instead specific criteria to be used in Commission audits of publicly funded primary candidates.

Explanation: To carry out the current requirement contained in 26 U.S.C. §9038(a), the Commission has had to determine, through audits, whether campaigns were using public funds to make qualified campaign expenses or unqualified campaign expenses. That determination has required considerable government resources. Additionally, the effort has resulted in prolonged audits, whose results have often not been published until 4 years after the election was over. One way of reducing the time and expense of these complex audits would be to eliminate the requirement that the Commission determine which disbursements were "qualified campaign expenses" and which were not. The test for whether or not a candidate used his or her public funds for legitimate campaign purposes would be based, instead, on the public's judgment. In order to make that judgment, full disclosure of campaign finance operations would be required. All disbursements, including their purpose, would be disclosed in full. With that information, the public would express its judgment, through the ballot box, on whether the candidate had spent the funds wisely and fairly.

The Commission would continue, however, to audit campaigns to ensure that they complied with the Federal Election Campaign Act and the Presidential Primary Matching Payment Account Act, including provisions on expenditure limits2/ and the limits and prohibitions on contributions. Additionally, the audits would be conducted to ensure that campaigns did not use funds for any

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2/ This proposal assumes that Congress would also repeal the state-by-state expenditure limits, leaving only a national expenditure limit for the Commission to enforce.

illegal purpose, that campaigns did not convert excess campaign funds to personal use, that matching funds were used only for expenses incurred during the candidate's period of eligibility, and that all contributions were properly matched. Any surplus funds would have to be repaid to the U.S. Treasury, as now required under the law. Similarly, campaigns would be required to make repayments if the Commission determined that they had not complied with the campaign laws or had used funds for illegal purposes.

Supplemental Funding for Publicly Funded Candidates (1993)
Section: 26 U.S.C. §§9003 and 9004

Recommendation: Congress may wish to consider whether publicly funded candidates should receive additional public funds when a nonpublicly funded candidate exceeds the spending limit.

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.

State Expenditure Limits for Publicly Financed Presidential Primary Campaigns (revised 1993)
Section: 2 U.S.C. §441a

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

Explanation: The Commission has now administered the public funding program in 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.

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

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

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

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

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. Since the Commission has not yet completed its administration of this Presidential cycle, the full impact of these changes is not yet clear. 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.

Compliance Fund (1993)
Section: 2 U.S.C. §441a(b)(1)(B); 26 U.S.C. §§9002(11), 9003(b) and (c), 9004(c)

Recommendation: Congress may wish to clarify what funds Presidential Election Campaign Fund recipients may utilize to meet the accounting and compliance requirements imposed upon them by the Federal Election Campaign Act. If private funds are not to be used, Congress may wish to either raise the spending limits to accommodate such costs or establish a separate fund of the Treasury to be used for this purpose.

Explanation: Through regulation, the Commission has provided for the establishment by presidential committees of a General Election Legal and Accounting Compliance Fund (GELAC fund) consisting of private contributions otherwise within the limits acceptable for any other Federal election. The GELAC funds, which supplement funds provided out of the U.S. Treasury, may be used to pay for costs related to compliance with the campaign laws. Determining which costs may be paid is sometimes difficult and complex. Contributions to the GELAC fund are an exception to the general

rule that publicly funded Presidential general election campaigns may not solicit or accept private contributions. Congress should clarify whether GELAC funds are appropriate and, if not, specify whether additional federal grants are to be used. If GELAC funds are appropriate, Congress should provide guidelines indicating which compliance costs are payable from such funds.

Applicability of Title VI to Recipients of Payments from the Presidential Election Campaign Fund (1993)
Sections: 26 U.S.C. §§9006(b), 9008(b)(3) and 9037.

Recommendation: Congress should 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. Federal Election Commission, No. 92-153 (CRR) (D.D.C. April 7, 1992), appeal pending, No. 92-5214 (D.C. Cir.). 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 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." Slip op. at 6. The court gave the Freedom Republicans the opportunity to reassert their other claims after the Commission promulgates rules. Slip op. at 10.

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 might overrule 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.

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."

Deposit of Repayments
Section: 26 U.S.C. §9007(d)

Recommendation: Congress should revise the law to state that: All payments received by the Secretary of the Treasury under subsection (b) shall be deposited by him or her in the Presidential Election Campaign Fund established by section 9006(a).

Explanation: This change would allow the Fund to recapture monies repaid by convention-related committees of national major and minor parties, as well as by general election grant recipients. Currently the Fund recaptures only repayments made by primary matching fund recipients.

Enforcement of Nonwillful Violations
Section: 26 U.S.C. §§9012 and 9042

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

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

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

Eligibility Requirements for Public Financing (revised 1993)
Section: 26 U.S.C. §§9002, 9003, 9032 and 9033

Recommendation: Congress should amend the eligibility requirements for publicly funded Presidential candidates to make clear that candidates who have been convicted of a willful violation of the

laws related to the public funding process or who are not eligible to serve as President will not be eligible for public funding.

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

Eligibility Threshold for Public Financing
Section: 26 U.S.C. §§9003 and 9033

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

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

Contributions to Presidential Nominees Who Receive Public Funds in the General Election (revised 1993)
Section: 26 U.S.C. §9003

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

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 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.

REGISTRATION AND REPORTING

Candidates and Principal Campaign Committees (1993)
Section: 2 U.S.C. §§432(e)(1) and 433(a)

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

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

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.

Candidate Leadership PACs (1993)
Section: 2 U.S.C. §441a(a)

Recommendation: Congress should consider whether leadership PACs should be deemed affiliated with the candidate's principal campaign committee.

Explanation: A number of candidates for federal office and incumbent federal officeholders have established leadership PACs in addition to their principal campaign committees. Under current law, the leadership PACs generally are not considered authorized committees. Therefore, they may accept funds from individuals up to the $5000 limit permitted for unauthorized committees in a calendar year and may make contributions of up to $5000 per election to other federal candidates once they achieve multicandidate status. In contrast, authorized committees may not accept more than $1000 per election from individuals and may not make contributions in excess of $1000 to other candidates.

The existence of leadership PACs 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 leadership 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 leadership PACs, 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.

Campaign-Cycle Reporting
Section: 2 U.S.C. §434

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

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

Monthly Reporting for Congressional Candidates
Section: 2 U.S.C. §434(a)(2)

Recommendation: The principal campaign committee of a Congressional candidate should have the option of filing monthly reports in lieu of quarterly reports.

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

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

Reporting Deadlines for Semiannual, Year-End and Monthly Filers (revised 1993)
Section: 2 U.S.C. §§434(a)(3)(B) and (4)(A) and (B)

Recommendation: Congress should 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.

Require Monthly Filing for Certain Multicandidate Committees (1993)
Section: 2 U.S.C. §434(a)(4)

Recommendation: Multicandidate committees which have raised or spent, or which anticipate raising or spending, over $100,000 should be required to file on a monthly basis during an election year.

Explanation: Under current law, multicandidate committees 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 Last-Minute Contributions by Party Committees (1993)
Section: 2 U.S.C. §434(a)(6)

Recommendation: Congress should require party committees to file 48-hour notices, as now required of principal campaign committees at 2 U.S.C. §434(a)(6)(A), for the receipt of contributions of $1,000 or more received shortly before an election.

Explanation: Contributions made to political parties at the last minute often make the difference in close races and should be subject to the same public scrutiny as is applied to contributions to candidates.

Reporting of Last-Minute Independent Expenditures (1993)
Section: 2 U.S.C. §434(c)

Recommendation: Congress should 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.

Facsimile Machines (1993)
Section: 2 U.S.C. §§434(b)(6)(B)(iii) and 434(c)(2)

Recommendation: Congress should 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.

Waiver Authority (revised 1993)
Section: 2 U.S.C. §434

Recommendation: Congress should 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 1992 October Monthly report was due 2 days before the 12-Day Pre-General Election Report; however the Pre-General Election Report had to be mailed first. A waiver authority would have enabled the Commission to eliminate the requirement to file the monthly report, as long as the committee included the activity in the Pre-General Election Report and filed the report on time. The same disclosure would have been available before the election, but the committee would have only had to file one report.

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.

Reporting and Recordkeeping of Payments to Persons Providing Goods and Services (revised 1993)
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." Congress should clarify whether this is meant, in all instances, to require reporting committees to disclose only the payments made by the committee or whether 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), para. 5742 (Dec. 22, 1983) (Presidential candidate's committee not required to disclose the names, addresses, dates or amounts of payments made by a general media consultant retained by the committee); Advisory Opinion 1984-8, 1 Fed. Election Camp. Fin. Guide (CCH), para. 5756 (Apr. 20, 1984) (House candidate's committee only required to itemize payments made to the candidate for travel and subsistence, not the payments made by the candidate to the actual providers of services); Financial Control and Compliance Manual for 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.

Incomplete or False Contributor Information (revised 1993)
Section: 2 U.S.C. §434

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

Explanation: There has recently been heightened concern expressed by the Commission, the public, and the press about the failure of candidates and political committees to report the addresses and occupations of many of their contributors. Some press reports have suggested that this requirement sometimes is deliberately evaded in order to obfuscate the special-interest origins of contributions.

The prospect of post-election enforcement action will not ensure that this information is obtained and disclosed to the public in a timely fashion. In those cases where contributor information is inadequate, the law states that committees will be in compliance if they make "best efforts" to obtain the information. Current Commission regulations interpret this as a requirement to make one oral or written request for the information. Legislative history indicates that a single request for the

information (which can be made in the original solicitation) may suffice. In the Commission's experience, however, a single request has been inadequate. In addition, determining what efforts were made to obtain this information and demonstrating that a campaign failed to make its "best efforts" to obtain it are difficult at best.

In those cases where committees fail to receive complete information from their contributors, committees should be required to make an additional request after the contribution is received, either orally or in writing. The Commission recently published a Notice of Proposed Rulemaking seeking comment on proposals to require such additional requests and to provide to the Commission all information in the possession of the treasurer.

An inducement to campaigns and political committees to fulfill this responsibility would be to prohibit the acceptance and/or expenditure of contributions until the contributor information is obtained and recorded in the committee's records. This would have an immediate effect upon a committee's ability to effectively campaign before the election, which would be a powerful inducement to campaigns and political committees to obtain the information promptly. Moreover, violations would be relatively easy to detect and prove by reviewing the committee's disclosure reports.

Finally, Congress may wish to add other mechanisms for improving disclosure. Congress should make clear that the contributor or committee is liable for submitting information known by the provider of the information to be false. Taken together, these measures should improve efforts to achieve full disclosure.

Excluding Political Committees from Protection of the Bankruptcy Code (revised 1993)
Section: 2 U.S.C. §433(d)

Recommendation: Congress should 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 (Bkrptcy. 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 has recently 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.

USE OF CAMPAIGN FUNDS

Disposition of Excess Campaign Funds (1993)

Section: 2 U.S.C. §439a

Recommendation: In those cases where a candidate has largely financed his campaign with personal funds, Congress may want to 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.

Candidate's Use of Campaign Funds (1993)

Section: 2 U.S.C §439a

Recommendation: Congress may wish to re-examine the appropriate use of campaign funds during or after the course of a campaign, specifically the ban on the personal use of excess campaign funds. Congress should define what would constitute "personal use" of those funds and what is meant by excess campaign funds.

Explanation: Under section 439a of the Act, excess campaign campaign funds cannot be converted by any person to personal use. If Congress intends to restrict the use of campaign funds by banning personal use of the funds, some guidance as to what constitutes "personal use" is necessary. In the past, some have argued before the Commission, to cite a few examples, that campaign expenditures rightfully include candidate salaries, automobiles, meals, per diems and mortgage payments.

If Congress does not intend to restrict the use of funds during the campaign, but wishes to restrict only the use of leftover campaign funds, then it should so specify.

CONTRIBUTIONS AND EXPENDITURES

Contributions and Expenditures to Influence Federal and Nonfederal Elections (revised 1993)
Section: 2 U.S.C. §§441 and 434

Recommendation: Congress may wish to consider whether new legislation is needed to regulate the use of "soft money" in federal elections.
Explanation: The law requires that all funds spent to influence federal elections come from sources that are permissible under the limitations and prohibitions of the Act. Problems arise with the application of this provision to committees that engage in activities that support both federal and nonfederal candidates. The Commission attempted to deal with this problem by promulgating regulations that required such committees to allocate disbursements between federal and nonfederal election activity. The focus of these regulations was on how the funds were spent. The public, however, has been equally concerned about the source of money that directly or indirectly influences federal politics. Much discussion has centered on the perception that soft money is being used to gain access to federal candidates. ("Soft money" is generally understood to mean funds that do not comply with the federal prohibitions and limits on contributions.) Even if soft money is technically used to pay for the nonfederal portion of shared activities (federal and nonfederal), the public may perceive that the contributors of soft money have undue influence on federal candidates and federally elected officials. In light of this public concern, Congress should consider amending the law in this area as it affects the raising of soft money. Such changes could include any or all of the following: (1) more disclosure of nonfederal account receipts (as well as "building fund" proceeds exempted under 2 U.S.C. §431(8)(B)(viii)); (2) limits on nonfederal account donations coupled with tighter affiliation rules regarding party committees; (3) prohibiting non-federal accounts for certain types of committees; (4) prohibiting the use of a federal candidate's name or appearance to raise soft money; and (5) confining soft money fundraising to non-federal election years.

In addition, further restrictions on the spending of soft money should be considered such as: (1) requiring all party committees to disclose all non-federal activity that is not exclusively related to non-federal candidate support and expressly preempting duplicative state reporting requirements; (2) requiring that all party activity which is not exclusively on behalf of non-federal candidates be paid for with federally permissible funds; and (3) limiting the use of soft money to non-federal election year activity.

Broader Prohibition Against Force and Reprisals (1993)
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 con-

tribution or expenditure on behalf of any candidate or political committee.

Explanation: Current section 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, Congress should include language to cover situations where the funds are solicited on behalf of and given directly to candidates.

Use of Free Air Time (1993)
Section: 2 U.S.C. §§431(9)(B)(i) and 441b

Recommendation: Congress should revise the FECA to indicate whether an incorporated broadcaster may donate free air time to a candidate or political committee and, if so, under what conditions and restrictions.

Explanation: The Federal Election Campaign Act prohibits a corporation from providing "anything of value" to a candidate without full payment. However, Sections 312(a)(7) and 315(b) of the Communications Act require that broadcast stations provide "reasonable access" to federal candidates, and prohibit stations from charging candidates more than the "lowest unit charge" for the same class and amount of time in the same time period. Under FCC rules, broadcasters may satisfy their "reasonable access" obligations by providing free air time to candidates, although the Federal Communications Commission does not require them to provide free time. Therefore, the question has been raised as to whether the donation of free air time by an incorporated broadcaster is a prohibited corporate contribution under the FECA, or whether such a donation comes within the exemption for news stories, commentaries and editorials. The Commission has twice considered and been unable to resolve this issue. Hence, Congress may want to consider offering guidance on whether donations of free air time are permissible under the FECA and, if so, under what conditions and restrictions.

Distinguishing Official Travel from Campaign Travel (1993)
Section: 2 U.S.C. §431(9)

Recommendation: The FECA should be amended 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 (1993)
Section: 2 U.S.C. §441a(d)

Recommendation: 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, and that these expenditures are in addition to the normal party contributions permissible under the FECA. 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.

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 (1993)
Section: 2 U.S.C. §§431(8)(x) and (xii)

Recommendation: Congress should 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?

Colleges and Universities (1993)
Section: 2 U.S.C. §§441a and 441b

Recommendation: Congress may wish to consider amending the FECA to spell out the circumstances in which colleges, universities and other educational institutions may engage in political activities such as sponsoring candidate appearances and candidate debates, and conducting voter registration drives.

Explanation: Under 2 U.S.C. §441b, incorporated private educational institutions, like other corporations, are prohibited from making contributions in connection with any Federal election. Similarly, state-operated educational institutions, if unincorporated, are "persons" and thus subject to the contribution limitations of 2 U.S.C. §441a. Within the existing framework of the FECA, the Commission is currently considering the conditions under which an educational institution may sponsor a candidate appearance or candidate debate or conduct a voter drive, and the conditions under which such activities will constitute in-kind contributions. However, Congress may wish to consider whether the important educational role these institutions play in the democratic process warrants treating them differently from the way other corporations are treated with respect to these or other forms of political activities. The Commission notes that safeguards against certain political activities already exist. For example, under the Internal Revenue Code, private schools that qualify as nonprofit corporations under §501(c)(3) of the Internal Revenue Code may not participate or intervene in political campaigns. Similarly, state-operated schools may be required to ensure that state funds are not used for political purposes.

Direction or Control (1993)
Section: 2 U.S.C. §441a(a)(8)

Recommendation: Congress should consider whether the Act's provisions regarding earmarked contributions should incorporate the concept in the legislative history that contributions count toward a conduit's or intermediary's contribution limits when the conduit or intermediary exercises direction or control over them. If Congress does determine that such contributions count toward a

conduit's or intermediary's contribution limit, then Congress should also include a definition of what constitutes direction or control.

Explanation: Under 2 U.S.C. §441a(a)(8), contributions made by any person which are earmarked through a conduit or intermediary to a particular candidate are treated as contributions from that person to the candidate. The Commission has seen an increase in conduit activity in recent years.

Congress has indicated that "if a person exercises any direct or indirect control over the making of a contribution, then such contribution shall count toward the limitation imposed with respect to such person [under current 2 U.S.C. §441a], but it will not count toward such a person's contribution limitation when it is demonstrated that such person exercised no direct or indirect control over the making of the contribution involved." H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 16 (1974). The Commission believes that the FECA should be amended to expressly reflect Congressional intent that contributions count toward a conduit's limits if the conduit exercises direction or control over the making of those earmarked contributions. In addition, determining what actions on the part of a conduit or intermediary constitute direction or control has presented difficulties for the Commission. Therefore, an amendment to the Act should also include standards for determining when "direction or control" has been exercised over the making of a contribution.

Nonprofit Corporations (revised 1993)
Section: 2 U.S.C. §441b

Recommendation: In light of the decision of the U.S. Supreme Court in Federal Election Commission v. Massachusetts Citizens for Life, Inc. (MCFL), Congress should consider amending the provision prohibiting corporate and labor spending in connection with federal elections in order to incorporate in the statute the text of the court's decision. 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 also indicated that the prohibition on corporate expenditures for communications is limited to communications expenditures containing express advocacy. Since that time, the Commission has published an Advance Notice of Proposed Rulemaking, and has conducted hearings on whether regulatory changes are needed as a result of the Court's decision. The Commission sought a second round of public comment following the Court's related decision in Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990). More recently, the Commission published a Notice of Proposed Rulemaking and held a second hearing on these issues.

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.

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

Transfer of Campaign Funds from One Committee to Another (1993)
Section: 2 U.S.C. §441a(a)(1) and (5)(C)

Recommendation: Congress may wish to consider requiring contributors to redesignate contributions before they are transferred from one federal campaign to another federal campaign of the same candidate, and clarify whether such contributions count against the contributors' limits for the transferee committee.

Explanation: The Commission has traditionally permitted a committee to transfer funds from one campaign to another (e.g., from a 1992 election to a 1994 election committee) without the original contributor's redesignation of the contribution or approval of the transfer. Congress may wish to re-examine whether such transfers are acceptable, and if so, how should they affect the original contributor's contribution limit vis-a-vis both committees.

Contributions from Minors (1993)
Section: 2 U.S.C. §441a(a)(1)

Recommendation: Congress should establish a minimum age for contributors.

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, 93rd Cong., 2nd Sess., 58 (1974) and Buckley v. Valeo, 424 U.S. 1, 51 (footnote 57)(1976).) This limitation has caused the Commission

substantial problems in attempting to implement and enforce the contribution limitations.4/

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

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

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

Lines of Credit and Other Loans Obtained by Candidates (1993)
Section: 2 U.S.C. §431(8)(B)(vii)

Recommendation: Congress should 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

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

an entity that is not a federally insured lending institution. Congress should clarify whether these alternative sources of financing are permissible and, if so, should specify standards to ensure that these advances are commercially reasonable extensions of credit.

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

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

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

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

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

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

Explanation: Section 44la(a)(3) now provides that a contribution to a candidate made in a nonelection year counts against the individual donor's limit for the year in which the candidate's election is held. This provision has lead to some confusion among contributors. For example, a contributor wishing to support Candidate Smith in an election year contributes to her in November of the year before the election. The contributor assumes that the contribution counts against his limit for the year in which he contributed. Unaware that the contribution actually counts against the year in which Candidate Smith's election is held, the contributor makes other contributions during the election year and inadvertently exceeds his $25,000 limit. By requiring contributions to count against the limit of the calendar year in which the donor contributes, confusion would be eliminated and fewer contributors would inadvertently violate the law. The change would offer the added advantage of enabling the Commission to better monitor the annual limit. Through the use of our data base, we could more easily monitor contributions made by one individual regardless of whether they were given to retire the debt of a candidate's previous campaign, to support an upcoming election (two, four or six years in the future) or to support a PAC or party committee. Such an amendment would not alter the per candidate, per election

limits. Nor would it affect the total amount that any individual could contribute in connection with federal elections.

Election Period Limitations
Section: 2 U.S.C. §441a

Recommendation: The Commission recommends that limits on contributions to candidates be placed on an election-cycle basis, rather than the current per-election basis.

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

Acceptance of Cash Contributions
Section: 2 U.S.C. §441g

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

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

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

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

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

Recommendation: Congress should consider amending the definition of principal campaign committee to clarify whether these committees may make independent expenditures on behalf of other principal campaign committees.

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

Certification of Voting Age Population Figures and Cost-of-Living Adjustment
Section: 2 U.S.C. §§441a(c) and (e)

Recommendation: Congress should consider removing the requirement that the Secretary of Commerce certify to the Commission the voting age population of each Congressional district. At the same time, Congress should establish a deadline of February 15 for supplying the Commission with the remaining information concerning the voting age population for the nation as a whole and for each state. In addition, the same deadline should apply to the Secretary of Labor, who is required under the Act to provide the Commission with figures on the annual adjustment to the cost-of-living index.

Explanation: In order for the Commission to compute the coordinated party expenditure limits and the state-by-state expenditure limits for Presidential candidates, the Secretary of Commerce certifies the voting age population of the United States and of each state. 2 U.S.C. §441a(e). The certification for each Congressional district, also required under this provision, is not needed.

In addition, under 2 U.S.C. §441a(c), the Secretary of Labor is required to certify the annual adjustment in the cost-of-living index. In both instances, the timely receipt of these figures would enable the Commission to inform political committees of their spending limits early in the campaign cycle. Under present circumstances, where no deadline exists, the Commission has sometimes been unable to release the spending limit figures before June.

COMPLIANCE

Persons Who Can Be Named As Respondents (1993)
Section: 2 U.S.C. §§434(a)(1), 441a(f), 441b and 441f

Recommendation: Congress should consider amending the Enforcement provisions of the Act to include a section that makes it a violation for anyone to actively assist another party in violating the Act.

Explanation: Many sections of the Act specifically list the parties that can be found in violation of those sections. See, e.g. 2 U.S.C. §§434(a)(1), 441a(f), 441b, 441f. Oftentimes, however, parties other than those listed are actively involved in committing the violations. For example, section 441b makes it illegal for an officer or director of a corporation, national bank or labor union to consent to the making of a contribution prohibited under that section. The Commission has seen many instances where these types of organizations have made prohibited contributions which were consented to by individuals who have the authority to approve the making of the contributions, even though those individuals did not hold the titles listed in the statute.

This issue has also been addressed on a limited basis in the context of 2 U.S.C. §441f. That section prohibits anyone from making or knowingly accepting a contribution made in the name of another, or from knowingly allowing his/her name to be used to effect such a contribution. In many situations involving this section, there are additional parties, not specified in the statute, who are actively involved in carrying out the violation. Without an "assisting" standard, those active participants cannot be found to have violated that section. The court has recognized such a standard with regard to section 441f, FEC v Rodriguez, No. 86-687 Civ-T-10(B) (M.D. Fla. May 5, 1987)(unpublished order denying motion for summary judgment), and the Commission has reflected that decision in its regulations at 11 CFR §110.4.

Although these actions have provided a basis for pursuing additional violators in a limited context, the preferable approach would be to codify the explicit statutory authority to pursue those who actively assist in carrying out all types of violations.

Enhancement of Criminal Provisions (1993)
Section: 2 U.S.C. §§437g(a)(5)(C) and 437g(d)

Recommendation: The Commission should 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 section 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 section 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.5/ 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 empowering the Commission to refer apparent criminal FECA violations to the Department at any stage in the enforcement process.

Audits for Cause (1993)
Section: 2 U.S.C. §438(b)

Recommendation: Congress should 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.

Random Audits (revised 1993)
Section: 2 U.S.C. §438(b)

Recommendation: Congress should 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 concerned that this change has weakened its ability to deter abuse of the election law. Random audits can be an effective tool for promoting voluntary compliance with the Act and, at the same time, reassuring the public that committees are complying with the law. Random audits performed by IRS offer a good model. As a result of random tax audits, most taxpayers try to file accurate returns on time. Tax audits have also helped create the public perception that tax laws are enforced.

There are many ways to select committees for a random audit. One way would be to randomly select committees from a pool of all types of political committees identified by certain threshold

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5/ The 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 section 437g, section 437d(a)(9) has been interpreted by the Commission to refer to violations of law unrelated to the Commission's FECA jurisdiction.

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.

Modifying Standard of "Reason to Believe" Finding (revised 1993)
Section: 2 U.S.C. §437g

Recommendation: Congress should 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.

Expedited Enforcement Procedures and Injunctive Authority (revised 1993)
Section: 2 U.S.C. §437g

Recommendation: Congress should consider whether the FECA 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.6/

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

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6/ Commissioner Elliott filed the following dissent:

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

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

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

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

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

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

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 that the Commission has little if any discretion to deviate from the administrative procedures of the statute. In re Carter-Mondale Reelection Committee, Inc., 642 F.2d 538 (D.C. Cir. 1980); Common Cause v. Schmitt, 512 F. Supp. 489 (D.D.C. 1980), aff'd by an equally divided court, 455 U.S. 129 (1982); Durkin for U.S. Senate v. FEC, 2 Fed. Elec. Camp. Fin. Guide (CCH) para. 9147 (D.N.H. 1980). 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.

Protection for Those Who File Complaints or Give Testimony
Section: 2 U.S.C. §437g

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

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

the employment relationship, Congress has made it unlawful to discriminate against employees for filing charges or giving testimony under the statute. See, e.g., 29 U.S.C. §158(a)(4) (National Labor Relations Act); 29 U.S.C. §215(3) (Fair Labor Standards Act); 42 U.S.C. §2000e-3(a) (Equal Employment Opportunities Act). Congress should consider including a similar provision in the FECA.

LITIGATION

Ensuring Independent Authority of FEC in All Litigation (revised 1993)

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. Two clarifications would help solidify that structure:

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

Explanation: With regard to the first of these recommendations, most district courts have rules requiring that all litigants be represented by counsel located within the district. The Commission, which conducts all of its litigation nationwide from its offices in Washington, D.C., is unable to comply with those rules without compromising its independence by engaging the local United States Attorney to assist in representing it in courts outside of Washington, D.C. Although most judges have been willing to waive applying these local counsel rules to the Commission, some have insisted that the Commission obtain local representation. An amendment to the statute specifying that such local counsel rules cannot be applied to the Commission would eliminate this problem.

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

DISCLAIMERS

Fundraising Projects Operated by Unauthorized Committees (revised 1993)

Section: 2 U.S.C §432(e)

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

Explanation: Unauthorized committees are not permitted to use the name of a federal candidate in their name. 2 U.S.C. §432(e)(4). Unauthorized committees, however, frequently feature the name of candidates in their fundraising projects, such as "Citizens for Smith." Contributors may be confused, believing that they are contributing to the candidate's authorized committee when they make checks payable to these project names. This confusion sometimes leads to requests for refunds, allegations of coordination and inadequate disclaimers, and inability to monitor contributor limits. Contributor awareness might be enhanced if Congress were to modify the statute, for example, by requiring that all checks intended for an unauthorized committee be made payable to the registered name of the unauthorized committee and prohibiting unauthorized committees from accepting checks payable to these project names. Alternatively, Congress might consider amending the statute to prohibit an unauthorized committee from using the name of any candidate in the name of a "project" or other fundraising activity. Or, Congress might combine these two alternatives. The Commission recently promulgated new rules that prohibit an unauthorized committee from using a candidate's name in the name of a special project or other committee activity. However, changes to the law would give the Commission broader authority to address this ongoing problem.

Disclaimer Notices (revised 1993)

Section: 2 U.S.C. §441d

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

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

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

Most of these problems would be eliminated if the language of 2 U.S.C. §441d were simplified to require a registered committee to display a disclaimer notice whenever it communicated to the public, regardless of the purpose of the communication and the means of preparing and distributing it. The Commission would no longer have to examine the content of communications or the manner in which they were disseminated to determine whether a disclaimer was required.

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

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. A provision should be added to this section prohibiting persons from fraudulently misrepresenting themselves as representatives of candidates or political parties for the purpose of soliciting contributions which are not forwarded to or used by or on behalf of the candidate or party.

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

PUBLIC DISCLOSURE

Computer Filing of Reports (1993)

Section: 2 U.S.C. §432(g)

Recommendation: Congress may want to consider developing guidelines for when committees should file reports via computer technology. For example, Congress could require that committees maintaining their records on computer make them available to the Commission on suitable computer disk, tape or other appropriate electronic form.

Explanation: While some small committees do not maintain computerized reporting due to the expense, the vast majority facilitate their reporting obligations with computers. Direct transfer of these reports to the Commission would provide a financial savings to the Commission because less staff time would be needed to input the campaign finance information. At the same time, it would ensure full disclosure.

Congress should consider, however, that the Clerk of the House and the Secretary of the Senate are the points of entry for House and Senate reports. Currently, none of the entry points are capable of accepting electronic filings. Should this recommendation be adopted, the Clerk of the House and the Secretary of the Senate, in addition to the Commission, would be required to purchase this technology. Alternatively, the Commission would have to be made the point of entry for such filers.

Commission as Sole Point of Entry for Disclosure Documents (revised 1993)

Section: 2 U.S.C. §432(g)

Recommendation: The Commission recommends that it be the sole point of entry for all disclosure documents filed by federal candidates and political committees. This would affect the House and Senate candidate committees only. Under current law, those committees

alone file their reports with the Clerk of the House and the Secretary of the Senate, respectively, who then forward microfilmed copies to the FEC.

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

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

Should Congress decide to codify the previous recommendation on computerized reports, the Commission should become the sole point of entry to process these reports, avoiding the need for all three offices to obtain the technology necessary to accept electronic filings.

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

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

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

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

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

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

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

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

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

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

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

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

The second alternative is to require that reports filed with the states contain all summary pages and only those receipts and disbursements schedules that show transactions pertaining to the state in which a report is filed. This alternative would reduce filing and storage burdens on Presidential candidate committees and states. It would also make state filing requirements for Presidential candidate committees similar to those for unauthorized political committees. Under this approach, any person still interested in obtaining copies of a full report could do so by contacting the Public Disclosure Division of the FEC.

AGENCY FUNDING

Budget Reimbursement Fund (revised 1993)

Section: 2 U.S.C. §438

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

Explanation: At the present time, copies of reports, microfilm, and computer tapes are sold to the public at the Commission's cost. However, instead of the funds being used to reimburse the Commission for its expenses in producing the materials, they are credited to the U.S. Treasury. The effect on the Commission of selling materials is thus the same as if the materials had been given away. The Commission absorbs the entire cost. In FY 1992, in return for services and materials it offered the public, the FEC collected and transferred $143,306 in miscellaneous receipts to the Treasury. During the first two months of FY 1993, $31,177 was transferred to the Treasury. Establishment of a reimbursement fund, into which fees for such materials would be paid, would permit this money to be applied to further dissemination of information. Note, however, that a reimbursement fund would not be applied to the distribution of FEC informational materials to candidates and registered political committees. They would continue to receive free publications that help them comply with the federal election laws.

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

Statutory Gift Acceptance Authority
Section: 2 U.S.C. §437c

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

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

MISCELLANEOUS

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

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

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

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

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