

RECORD

December 1986

999 E Street NW Washington DC 20463

Volume 12, Number 12

REGULATIONS**HEARING ON PUBLIC FINANCING RULES**

On December 3, 1986, the Commission will hold a public hearing on proposed rules governing the public financing of Presidential primary and general election campaigns. 11 CFR Parts 100, 106, 9001 through 9007 and 9031 through 9039. The deadline for submitting requests to testify at the public hearing was November 21, 1986.

On August 5, 1986, the Commission had published a notice in the Federal Register soliciting public comment on the proposed rules. See 51 Fed. Reg. 28154.

REPORTING REMINDER

Congressional candidates active in the 1986 general election are required to file a post-election report, due by December 4, 1986. PACs and party committees must also file the post-election report, regardless of their activity.

For reporting details, see page 1 of the October 1986 Record or call the FEC at 800/424-9530.

ADVISORY OPINIONS**AO 1986-31: Contributions to Candidate Running Simultaneously in Special and Regular Elections for Senate Seat**

On November 4, 1986, North Carolina held both a regularly scheduled general election for a U.S. Senate seat and a special election to fill the remainder of deceased Senator John East's term, which expires on January 3, 1987. The Democratic and Republican candidates who were nominated as their respective parties' candidates in the regular general election were also nominated by their parties' executive committees as candidates in the special election. Thus, the two North Carolina elections featured candidates who were running simultaneously for different terms of the same Senate seat.

The Democratic Senatorial Campaign Committee (DSCC), a national committee of the Democratic Party, posed several questions with regard to the Democratic Senatorial candidate's participation in the two elections. The Commission concluded that separate contribution limits applied to the candidate's special and regular general election campaigns, but that contributions made to either campaign could be used for either

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the special or regular general election.* Moreover, the Democratic Senatorial candidate could use the same principal campaign committee for both campaigns. (The Commission's conclusions with regard to the committee's treatment of contributions and expenditures for the two elections are detailed below.)

The Commission was unable, however, to reach a decision by an affirmative vote of four Commissioners on whether, in making coordinated party expenditures on behalf of the Democratic Senatorial nominee, a national Democratic party committee had a single spending limit for both elections or a separate limit for each. See 2 U.S.C. §441a(d). Similarly, the Commissioners were divided on whether the \$17,500 limit on national party contributions to Senate candidates and nominees applied collectively to the regular and special elections or to each election separately. See 2 U.S.C. §441a(h).

Separate Contribution Limits Apply for Each Election

Although the two North Carolina Senatorial elections were held on the same day for the same office, the elections constituted two separate general elections because voters selected an individual to fill two different terms of the office. The Commission stated in AO 1984-42 that, under these circumstances, the special and regular general elections constituted separate elections with separate contribution limits.* 2 U.S.C. §441a(a)(1) and (2). Thus, individuals and political committees contributing to the candidate's committee were each subject to a \$1,000 limit for each election. Qualified multicandidate PACs were subject to a \$5,000 limit for each election.

Use of Undesignated and Designated Contributions

Undesignated Contributions. Under FEC Regulations, undesignated contributions are normally considered contributions made for the next regularly scheduled election. 11 CFR 110.1(a)(2). Since, however, the North Carolina special and

regular general elections occurred at the same time and were the next regularly scheduled elections after the primary, the Democratic candidate's committee could treat undesignated contributions as contributions for either the special or general election. The committee could allocate a portion of an undesignated contribution to both the special and regular general elections, provided the allocation did not cause the contributor to exceed his/her limit for either election. If an allocation resulted in an excessive contribution to either campaign, the candidate's committee could reallocate the excessive portion of the contribution without requesting a redesignation from the contributor.

Designated Contributions. Similarly, contributions designated for either the special or the general election could be used for either campaign. Thus, the committee did not have to take any specific steps to ensure that contributions designated for one election were used solely for that election.

The Commission distinguished its conclusion in this opinion from its conclusion in Advisory Opinion 1986-17. In that opinion, the Commission said that contributions designated for a particular election had to be used solely for that election. However, AO 1986-17 concerned contributions accepted by the campaign of a candidate who had not yet established his candidacy in the general election. In this case, candidacy was established with regard to both the special and regular general elections.

Separate Campaign Accounts Not Required

The Democratic Senatorial candidate was not required to authorize separate campaign committees for the special and regular general elections. However, if he used the same campaign committee for both campaigns, the committee had to account separately for contributions made with respect to each election. 11 CFR 102.9(e). This dual accounting procedure would help the committee monitor the separate contribution limits applicable to each campaign.

The committee was not, however, required to advise its contributors of the procedure.

Special Reporting Requirements

In itemizing contributions on Schedule A of its FEC report, the Committee should indicate the election for which each contribution was made. (It could, however, use contributions in

*This interpretation of the contribution limits applies only to the limits mentioned in 2 U.S.C. section 441a(a). The Commission's decision does not address the issue of National party contributions to Senate candidates and nominees, contained in 2 U.S.C. section 441a(h).

The Record is published by the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. Commissioners are: Joan D. Aikens, Chairman; John Warren McGarry, Vice Chairman; Lee Ann Elliott; Thomas J. Josefiak; Danny Lee McDonald; Scott E. Thomas; Jo-Anne L. Coe, Secretary of the Senate, Ex Officio; Benjamin J. Guthrie, Clerk of the House of Representatives, Ex Officio. For more information, call 202/376-3120 or toll-free 800/424-9530.

either election.) On Schedule B, the committee need not identify the particular election for which an operating expenditure was made. Commissioner Thomas J. Josefiak filed a concurring opinion with which Chairman Joan D. Aikens and Commissioner Lee Ann Elliott agreed. (Date issued: October 14, 1986; Length: 14 pages, including concurrences.)

AO 1986-33: Single Campaign Depository for Three Corporate PACs Prohibited

The respective separate segregated funds of three corporations may not designate a single campaign account for their political activity, even though they are affiliated by virtue of ties between their parent corporations. (One of the corporations, Metropolitan Mortgage and Securities Co, Inc. owns most of the stock in Consumers Holding Group Co., Inc., which, in turn, wholly owns Western United Life Assurance Co. Moreover, the three corporations have the same chief executive officers and each corporation has employees who perform duties for the three corporations.) However, the three separate segregated funds may designate the same financial institution as their campaign depository. Each committee would then establish a separate campaign account with that financial institution.

Under the Act and FEC Regulations, affiliated separate segregated funds share a single contribution limit, but they are considered separate entities for purposes of registration and reporting. Each such committee must maintain a separate account. See 2 U.S.C. §432(h)(1); 11 CFR 103.2 and AO 1980-8. (Date issued: October 10, 1986; Length: 3 pages)

AO 1986-35: TV Station's Offer of Free Air Time to Candidates

The opinion summarized below (AO 1986-35) was vacated on October 23, 1986, after the Commission voted to reconsider it. On November 20, 1986, the Commission reconsidered advisory opinion request 1986-35 but was unable to approve a new opinion by the requisite four-vote majority.

Summary of Original Opinion Vacated by the Commission

Rep. Howard Coble may not accept free broadcast time from WGGT-TV for airing political ads prepared by his reelection campaign. Since the tv station is owned by a corporation, the acceptance of free broadcast time by the Coble campaign would constitute the receipt of a prohibited corporate contribution from the station. To avoid accepting a prohibited contribution, the

Coble campaign would have to pay WGGT-TV the usual and normal charge for the broadcast time.*

In offering equal amounts of free broadcast time to all the House candidates in Rep. Coble's Congressional district (i.e., eighteen 30-second slots to each candidate), WGGT-TV said that it hoped to increase voter awareness of 1986 federal elections and to combat voter apathy. The free time offered to the candidates, however, would be subject to immediate preemption by cash advertisers.

Under the Act and FEC Regulations, media corporations (as other corporations) are prohibited from making contributions to federal candidates. This prohibition applies to in-kind contributions made by corporations, such as providing services (free broadcast time) or goods. 2 U.S.C. §§441b, 441b(2) and 431(8)(A)(i).

Commission Regulations exempt from the definition of contribution any "cost incurred in covering or carrying a news story, commentary or editorial by any broadcast station... unless the facility is owned or controlled by any political party, political committee, or candidate." 11 CFR 100.7(b)(2); 2 U.S.C. §431(9)(B)(i). In this case, however, the tv station's offer of free broadcast time to federal candidates would not qualify as a legitimate press function. The time allotted to each candidate would come from time otherwise sold to commercial advertisers and could be preempted by them. Moreover, the 30-second political ads provided by the candidates would be the same as their paid ads aired over other stations.

Commissioner Thomas E. Harris filed a dissent. (Date issued: September 26, 1986; Length: 6 pages, including dissent)

AO 1986-36: Contributions to House Candidates by Committee of Incumbent Seeking House Committee Chairmanship

Congressman Charles E. Bennett's 1986 reelection campaign (the committee) may use its excess campaign funds to make contributions to other House candidates running in the 1986 general election. Since the committee is considered a "person" under the election law, it may give up to \$1,000** to each general election candidate. However, its total contributions to the House candidates would not be subject to an overall annual limit (i.e., \$25,000). That limit is imposed only on contributions from individuals, not committees.

*This means the campaign must pay the lowest unit rate, or comparable use rate, under 47 U.S.C. section 315(b) and its applicable rules and regulations.

**By contrast, a multicandidate committee that is not authorized by a candidate may give up to \$5,000 per candidate, per election.

Since Congressman Bennett is unopposed in the general election, he explains that "his campaign funds...will not be needed in any great extent this year...."

The Act states that a campaign may use its excess funds for "lawful purposes." 2 U.S.C. §439a; 11 CFR 113.2. In previous advisory opinions, the Commission concluded that a Congressional campaign's contributions to other federal candidates constituted a lawful use of the campaign's funds, provided its contributions complied with the Act's dollar limits. See AOs 1981-15, 1983-14 and 1985-13. The Commission noted that its conclusion was not affected by Congressman Bennett's candidacy for a House committee chairmanship. Commissioner Thomas J. Josefiak filed a concurring opinion. (Date issued: October 24, 1986; Length: 4 pages, including concurrence)

ADVISORY OPINION REQUESTS

The following chart lists recent requests for advisory opinions. The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject
1986-38	Individual's financing of media ads to promote conservative candidates. (Date made public: October 16, 1986; Length: 1 page, plus 1-page supplement)
1986-39	Excess campaign funds used to establish trust for minor. (Date made public: October 22, 1986; Length: 1 page)
1986-40	Building fund established by state party committee as separate federal account. (Date made public: October 30, 1986; Length: 1 page)
1986-41	Compensation of incorporated trade association's employees increased to encourage contributions to nonconnected PAC. (Date made public: October 31, 1986; Length: 2 pages)



FEC PUBLISHES NONFILERS

In late October, the Commission published the names of House and Senate campaigns that failed to file reports of financial activity due in October.

On October 30, the Commission published the names of five House campaigns that did not file the third quarter report due by October 15. House campaigns failing to meet the filing deadline were located in: Arizona (4th Congressional District); Kentucky (3rd Congressional District); Michigan (13th Congressional District); New York (6th Congressional District) and Texas (12th Congressional District).

On October 31, the Commission published the names of Congressional campaigns involved in the 1984 general election that did not file a pre-general election report. In addition to a New Hampshire Senate campaign, 20 House campaigns (listed below) failed to meet the October 23 deadline.

State	Congressional District
American Samoa	--
Arizona	4th
California	31st
Florida	18th
Illinois	7th
Kansas	2nd
Kentucky	3rd
Louisiana	3rd
Maryland	3rd
Michigan	13th
New Jersey	7th
New York	6th
New York	21st
New York	12th
New York	7th
New York	5th
New York	4th
Ohio	11th
South Carolina	6th
Texas	12th

The election law requires the agency to publish the names of nonfiling candidates. Compliance actions against nonfilers are decided on a case-by-case basis. The law gives the Commission broad authority to initiate enforcement actions resulting from infractions of the law, including civil enforcement and imposition of civil penalties.

MUR 2081: Extension of Credit Beyond Normal Business Practice

This MUR, resolved through conciliation, was triggered by the sale of books by a candidate committee to a political action committee (PAC) controlled by the same candidate. The transaction, which involved the extension of credit beyond the normal business practice, resulted in an excessive contribution by the candidate committee to the PAC.

Complaint

The MUR was internally generated by the Commission in the normal course of carrying out its administrative responsibilities. A review of the PAC's quarterly report indicated receipt of some books from the candidate committee. The PAC reported the transaction as an in-kind contribution from the candidate committee and as a debt owed to the candidate committee. The debt remained unpaid for more than ten months.

General Counsel's Report

The Commission's investigation indicated that a candidate committee paid \$23,336 for the printing of a book and subsequently gave many copies to a PAC controlled by the same candidate. The PAC reported the transaction as a \$5,000 in-kind contribution from the candidate committee and as an \$18,336 debt to the candidate committee for the remainder of the transaction. Subsequent reports filed by the PAC and the candidate committee indicated that the obligation remained unpaid with no evidence of any efforts by the candidate committee to collect the debt.

Under federal election law, a contribution is any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing an election for federal office. 2 U.S.C. §431(8)(A). Under the Commission's Regulations, extension of credit beyond normal business practice is considered a contribution. See 11 CFR 100.7(a)(4). The General Counsel regarded the debt as the extension of credit beyond normal business practice and, therefore, a contribution. Since the amount of the credit extension exceeded the contribution limit, the debt represented an excessive contribution. The General Counsel recommended, accordingly, that the Commission find reason to believe that:

- o The PAC had violated 2 U.S.C. §441a(f) by accepting an excessive contribution from the candidate committee;
- o The candidate committee, in turn, had violated 2 U.S.C. §441a(a)(1) by making an excessive contribution to the PAC; and
- o The candidate committee had violated 2 U.S.C. §434(b)(4)(G) by not reporting the book transaction until 10 months after it had occurred.

Commission Determination

The Commission voted to find reason to believe that both the PAC and the candidate committee had violated the Act, respectively, by accepting and making excessive contributions. Further, the Commission found reason to believe that the candidate committee had failed to file its report.

A conciliation agreement was concluded prior to the Commission's finding "probable cause to believe" the Act had been violated. In the agreement, the respondents each agreed to pay a civil penalty of \$2,750.

COURT CASES

NEW LITIGATION

Segeberblom v. FEC

Pursuant to 2 U.S.C. §437g(a)(8)(A), Mr. Richard Segeberblom asks the court to declare that the FEC acted contrary to law by failing to act on his administrative complaint within 120 days after he filed it.* The complaint concerned potential violations of the election law by James Santini and the Santini for Senate Committee (the Committee), Mr. Santini's principal campaign committee for his 1982 Senate bid.

In the complaint, Mr. Segeberblom claimed that the respondents had used contributions for Mr. Santini's general election campaign to pay expenses of his primary campaign. Mr. Segeberblom further alleged that the Committee had fraudulently reported: 1) refunds of these general election contributions and 2) a zero balance for both the primary and general election accounts of the Committee.

Mr. Segeberblom therefore asks the court to order the FEC to:

- o Complete an investigation of these alleged violations within 30 days; and
- o Issue certain discovery requests attached to the complaint.

U.S. District Court for the District of Columbia, Civil Action No. 86-2843, October 16, 1986. continued

*Mr. Segeberblom filed his original complaint with the FEC on March 28, 1986. On April 11, 1986, he filed a supplement to the complaint.

FEC v. Hayes for Congress Committee

The FEC asks the court to declare that the Hayes for Congress Committee (the Committee) and the Committee's treasurer, James L. Wright, violated the election law by accepting excessive contributions and failing to fully disclose certain bank loans. (The Committee served as Mr. Charles Hayes' principal campaign committee for the 1983 special election held to fill an Illinois House seat.)

Specifically, the FEC asks the court to declare that the Committee and its treasurer violated section 441a(f) of the election law by accepting excessive contributions from:

- o Citizens Action Non-Partisan Political Action Federal Campaign Committee of the Illinois Public Action Council (CANPAC*); and
- o Endorsers of two bank loans.** (One of the endorsers had also made a direct contribution to the campaign in excess of the limits.)

The FEC further asks the court to:

- o Declare that the defendants failed to report fully the amount and nature of the two bank loans and a personal loan from the candidate;
- o Permanently enjoin the defendants from further violations of the election law; and
- o Assess a civil penalty against the defendants amounting to the greater of \$5,000 per violation or an amount equal to 100 percent of the total violations.

U.S. District Court for the Northern District of Illinois, Civil Action No. 86C7865, October 16, 1986.

FEDERAL REGISTER

FEDERAL REGISTER NOTICE

Copies of this notice are available in the Public Records Office.

Notice Title

1986-10 11 CFR Part 100, 106, 9001 through 9007 and 9031 through 9039: Public Financing of Presidential Primary and General Election Candidates; Announcement of Public Hearing (51 Fed. Reg. 41110, November 13, 1986)

*Since CANPAC did not have multicandidate committee status, it was only eligible to contribute up to \$1,000 to the Committee.

**An endorsement or guarantee of a loan, like a regular loan, counts as a contribution from the endorser or guarantor to the extent of his/her portion of the outstanding balance of the loan. 11 CFR 100.7(a)(1)(i)(C).

STATISTICS

ACTIVITY OF MAJOR PARTIES' NATIONAL COMMITTEES

Figures released before the 1986 general election on the financial activity of the Republican and Democratic Parties' national committees* showed that the Republican national committees maintained a 5-1 lead over their Democratic counterparts in overall activity. However, in terms of support to candidates (both contributions and coordinated expenditures** on their behalf), the gap between the Republican and Democratic national committees had diminished. (See chart II on opposite page.)

From January 1, 1985, through October 15, 1986, Republican national committees reported receipts of \$190.9 million and disbursements of \$185.5 million.*** Their Democratic counterparts disclosed receipts and expenditures amounting to \$37.7 million.

The national committees of each party had a much lower cash balance remaining in mid-October 1986 than in mid-October 1984. Republican national committees reported total remaining funds of \$6.7 million, as compared with \$14.9 million in 1984. Democratic committees reported a cash-on-hand balance of \$754,516, as compared with the \$3.3 million balance they reported for 1984.

Chart I below shows total receipts for each party's national committees. Chart II depicts the committees' support of 1986 Congressional candidates.

More detailed information may be obtained on the activity of each major party's national committees from the FEC's October 29, 1986, press release. For copies of the release, contact the FEC's Public Records Office by calling 376-3140 locally or, toll free, 800/424-9530.

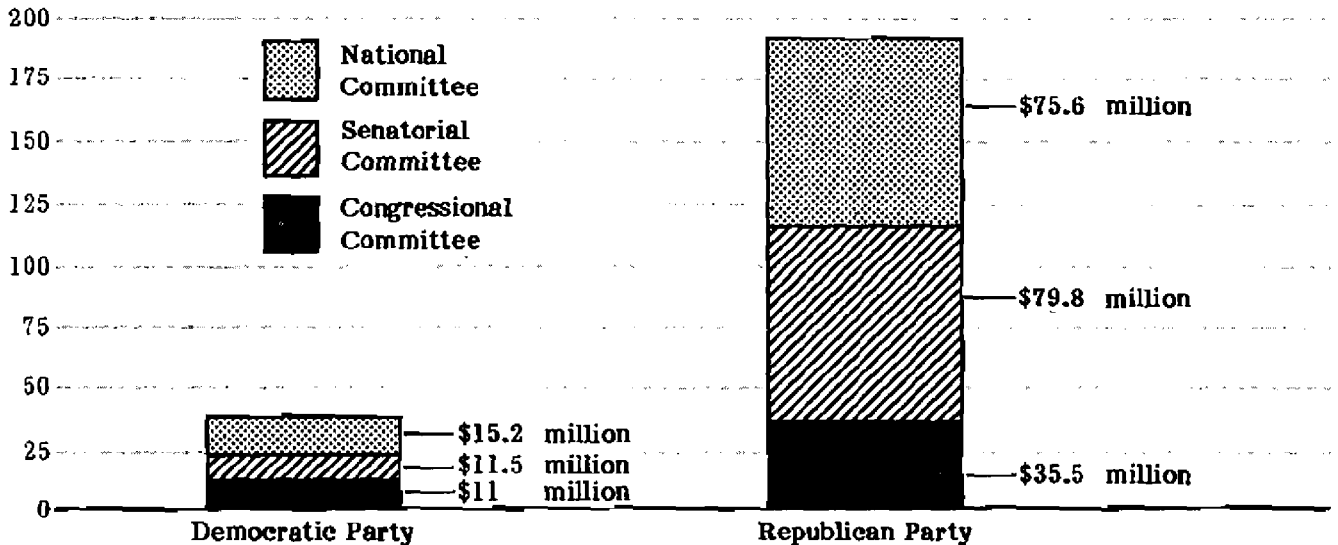
*The Democratic Party's national committees are: DNC Services, the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee. The Republican Party's national committees are: the Republican National Committee, the National Republican Senatorial Committee (NRSC) - Expenditures, the NRSC - Contributions, the National Republican Congressional Committee (NRCC) - Expenditures and the NRCC - Contributions.

**Limited expenditures made by party committees on behalf of federal candidates in general elections. See 2 U.S.C. section 441a(d).

***These figures do not include activity for the NRCC - Expenditures between October 1 and 15, 1986.

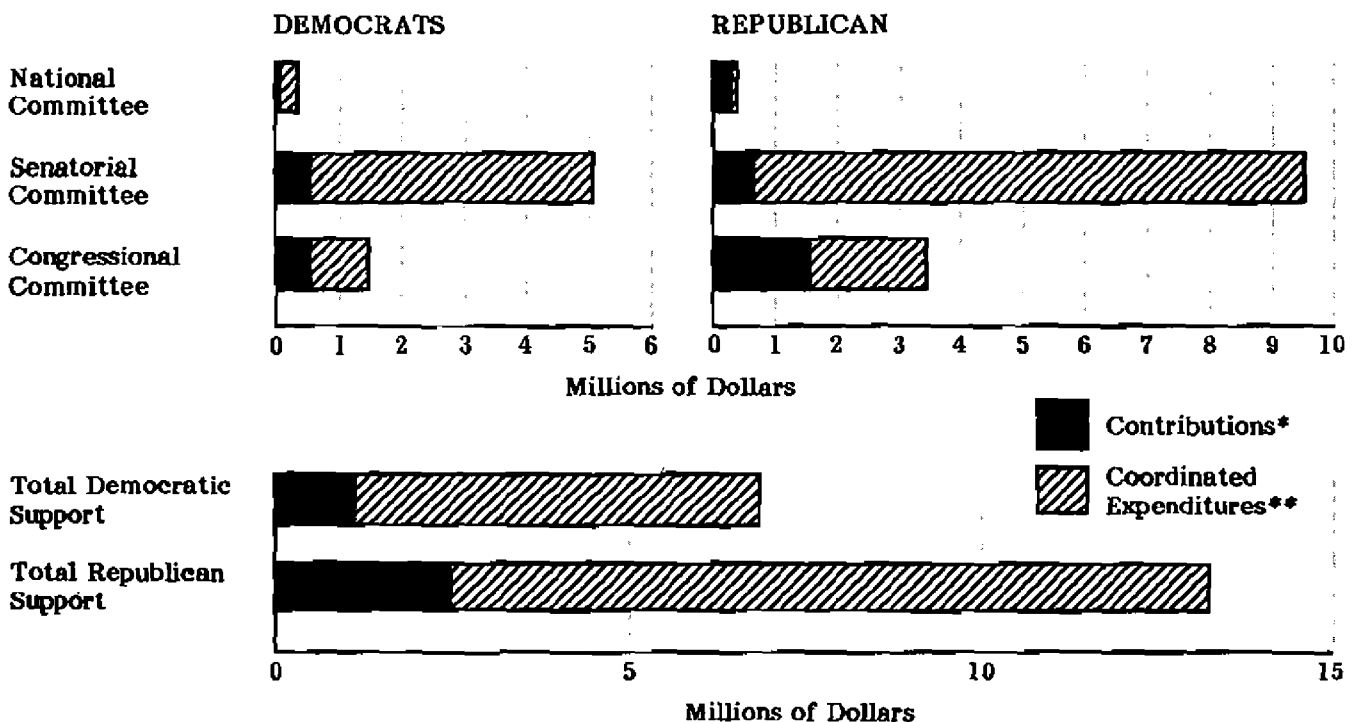
**CHART I
RECEIPTS* OF NATIONAL PARTY COMMITTEES, 1/1/85 - 10/15/86**

Millions of Dollars



*Includes total receipts minus transfers between each party's respective committees.

**CHART II
NATIONAL PARTY SUPPORT OF FEDERAL CANDIDATES, 1/1/85 - 10/15/86**



*Figures do not include contributions earmarked to candidates through national party committees.

**The Democratic National Committee made all its coordinated party expenditures for Walter Mondale's 1984 Presidential campaign.



vity involving a separate segregated fund, and section 102.17 refers to joint activity between other types of committees, including candidate and party committees.

**JOINT FUNDRAISING:
FURTHER CLARIFICATION**

In last month's Record article on joint fundraising, the following footnote appeared:

PACs established by corporations and labor organizations (i.e., separate segregated funds) may not engage in joint fundraising; nor may unregistered committees sponsored by corporations and unions. 11 CFR 102.17(a)(3). Corporate and labor separate segregated funds may, however, raise funds through collecting agents, following the rules at 11 CFR 102.6(b).

This statement does not suggest any recent change in Commission policy. Rather, the statement was intended to alert readers to the fact that a separate segregated fund which jointly raises funds with another person (for example, a federal PAC with an affiliated state PAC or a federal PAC with its parent organization) should be guided by the regulations at 11 CFR 102.6(b) -- the "collecting agent" regulations. These rules were written specifically to deal with issues unique to PACs established by corporations and labor organizations.

By contrast, the regulations contained in 11 CFR 102.17 -- referred to as the "joint fundraising" rules -- pertain to the joint solicitation of contributions by candidates, parties and other political committees.

In effect, then, two sections in the regulations pertain to joint activity with regard to raising funds. Section 102.6(b) treats joint acti-

PUBLIC APPEARANCES

12/2 and 1/27	University of Southern California Washington Public Affairs Center Washington, D.C. Vice Chairman John Warren McGarry Patricia Klein, Public Affairs Specialist
12/4	County Clerks Association of California Sacramento, California Penelope Bonsall, Director, National Clearinghouse on Election Administration
12/3-5	Council on Government Ethics Laws 8th Annual Conference Hartford, Connecticut Vice Chairman John Warren McGarry Charles N. Steele, General Counsel Lawrence Noble, Deputy General Counsel Kent Cooper, Assistant Staff Director for Public Disclosure Louise Wides, Assistant Staff Director for Information Services

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