

FEDERAL ELECTION COMMISSION

RECORD

March 1990

999 E Street NW

Washington DC

20463

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aggregating \$1,000 or more and made between 20 days and 24 hours before an election day begins must be reported within 24 hours after the expenditures are made.

REPORTS DUE IN APRIL

Reporting requirements for reports due in April are described below. All registered committees expected to file reports in April are automatically mailed forms. For additional forms or other information on reporting requirements, call the FEC at 800/424-9530 or 202/376-3120.

Quarterly Reports

All political committees filing on a quarterly schedule during 1990 must file a quarterly report by April 15. The report should cover all activity from January 1 (or from the closing date of the last report filed, or from the date of the committee's first activity, whichever is later) through March 31.

Monthly Reports

Those committees filing on a monthly schedule during 1990 must file reports by April 20. The report should cover all activity from March 1 (or the closing date of the last report filed, whichever is later) through March 31.

Pre-Primary Reports

Pre-primary reports, covering activity from the close of books of the last report filed through 20 days before the primary election, are due 12 days prior to the election. Only committees making contributions and expenditures in connection with primaries are required to file pre-primary reports.

If sent by registered or certified mail, the report must be postmarked no later than the 15th day before the election. See the January 1990 Record for a state-by-state list of pre-primary filing dates.

Independent Spenders

Any independent expenditures

Last-Minute Contributions

A candidate's principal campaign committee or any other authorized committee must file special notices on contributions of \$1,000 or more received after the 20th day and more than 48 hours before an election in which the candidate is running. 11 CFR 104.5(f) Within 48 hours after receiving the contribution, the committee must deliver the following

(continued)

TABLE OF CONTENTS

- 1 APRIL REPORTS
- 4 NEW YORK SPECIAL ELECTION
- PARTY ACTIVITIES
- 5 1990 Party Spending Limits
- 800 LINE
- 6 Coordinated Party Expenditures
- PUBLICATIONS
- 7 Updated Party Guide Available
- 9 ADVISORY OPINIONS
- 10 AUDIT: Friends of Gary Hart-1988
- COURT CASES
- 11 Common Cause v. FEC (89-0524(GAG))
- 13 COMPLIANCE: Released MUR Files
- CLEARINGHOUSE
- 15 Voting System Standards Approved
- 16 STAFF: Inspector General Appointed
- STATISTICS
- 16 1989 Special Elections
- 19 PAC Growth
- 20 INDEX

information in writing to the Clerk of the House or the Secretary of the Senate, as appropriate:

- o The candidate's name and the office that he or she is seeking;
- o The identification of the contributor; and
- o The amount and date of receipt of the contribution.

Changing Filing Schedule

PACs and party committees supporting candidates in several 1990 elections may wish to file monthly reports in order to avoid filing frequent pre-primary reports. A committee that wishes to change its filing schedule (e.g., from quarterly to monthly) must notify the Commission in writing when it files a report under its current schedule. A committee may not change its filing schedule more than once in a calendar year. 11 CFR 104.5(c).

The FEC requests that Presidential committees also inform the Commission in writing when they decide to change their filing schedule.

Late Filing

The Federal Election Campaign Act does not permit the Commission to grant extensions on filing deadlines under any circumstances. Failure to file on time could result in enforcement action by the FEC.

Where Reports Are Filed

Committees must file all reports simultaneously with the federal and state officials, as explained below. 11 CFR 108.3 and 108.5. Addresses for federal offices can be found on the back of FEC Forms 3 and 3X.

Filing with the Federal Government

- o **House Candidates:** Principal campaign committees and committees supporting or opposing only House

candidates file with the Clerk of the House.

- o **Senate Candidates:** Principal campaign committees and committees supporting or opposing only Senate candidates file with the Secretary of the Senate
- o **All Others:** PACs, party committees and principal campaign committees of Presidential candidates file with the Federal Election Commission.

Filing with State Governments

- o **House and Senate Candidates:** The principal campaign committees of Congressional candidates must file a copy of every report and statement with the Secretary of State (or other election official, as appropriate) of the state in which the candidate is seeking office. 11 CFR 108.3.
- o **Presidential Candidates:** The principal campaign committees of Presidential candidates must file copies of reports and statements with the Secretary of State or the appropriate elections official of the state in which the committee makes campaign expenditures. These reports must contain all financial transactions pertaining to that state during the reporting period covered. 11 CFR 108.2
- o **All Others:** PACs and party committees making contributions or expenditures in connection with House and Senate races file reports and statements in the state in which the candidate seeks election. The law requires a copy of only that portion of the report applicable to the candidates who seek election from that state. Committees supporting Presidential candidates must file in the states in which the Presidential committee and donor committee have their respective headquarters.

FEDERAL ELECTION COMMISSION

999 E Street, N.W.

Washington, DC 20463

800/424-9530

202/376-3120

202/376-3136(TDD)

Lee Ann Elliott, Chairman
 John Warren McGarry, Vice Chairman
 Joan Aikens
 Thomas J. Josefiak
 Danny L. McDonald
 Scott E. Thomas

Walter J. Stewart, Secretary of the Senate, Ex Officio
 Donald K. Anderson, Clerk of the House of Representatives, Ex Officio

APRIL REPORTING SCHEDULE

Type of Filer	Report		
	Quarterly April 15	Pre-Primary	Monthly April 20
Congressional Candidate Committees, 1990	✓	✓	
Congressional Candidate Committees, Other Years	No reports required in April		
PAC/Party Committees: Quarterly Filers	✓	✓ ¹	
PAC/Party Committees: Monthly Filers ²			✓
Presidential Candidate Committees: Quarterly Filers	✓		
Presidential Candidate Committees: Monthly Filers ³			✓
Corporate/Labor/Membership Organizations: Reports of Partisan Communications ⁴	✓		

1. Required only if the committee makes previously undisclosed contributions or expenditures on behalf of primary candidates.
2. All corporate and labor PACs, nonconnected committees and party committees are required to file on either a monthly or a quarterly schedule in 1990.
3. Presidential committees must file on either a monthly or a quarterly schedule in 1990.
4. Reports required if an organization's aggregate costs for internal communications expressly advocating the election or defeat of a 1990 candidate in a primary held before April 1 exceed \$2,000. For more information, see page 23 of the FEC's Campaign Guide for Corporations and Labor Organizations.

SPECIAL ELECTIONS

NEW YORK SPECIAL ELECTION

New York will hold a special election on March 20 to fill vacant House seats in the 14th and 18th Congressional Districts. Nominees for those races are selected by the parties and through the petitioning process; all known nominees are automatically sent forms for filing the necessary pre- and post-election reports.

Committees supporting candidates in the special election must file pre- and post-election reports according to the schedule below; all other committees should consult the article on April reporting, above, for applicable filing requirements.

Authorized Committees

Authorized committees of candidates who participate in this election must file reports according to the schedule given in the table.

Note that an authorized committee must also file notices of last-minute contributions received between March 1 and March 17, as explained on page 1.

PACs and Party Committees

PACs and party committees active in the New York special election may also have to file special election reports, depending on whether they file on a quarterly or a monthly schedule. Additionally, PACs--including monthly filers--may have to file last-minute reports on independent expenditures made in

connection with the special election.

Quarterly Filers

PACs and party committees that report on a quarterly basis during 1990 may have to file pre- and post-election reports. A filing requirement for a special election report is triggered if:

- o The committee makes contributions or expenditures in connection with a special election during the coverage dates shown in the tables; and
- o The committee has not previously disclosed the special election activity in an earlier report. 11 CFR 104.5(c)(1)(ii) and (h).

Monthly Filers

PACs and party committees that file monthly during 1990 do not have to file pre- and post-election reports for the special election.

PAC Reports on Independent Expenditures

Any PAC (including a monthly filer) that makes independent expenditures in connection with a special election may have to file a last-minute report. Independent expenditures aggregating \$1,000 or more that are made between March 1 and March 18 must be reported within 24 hours after the expenditure is made. 11 CFR 104.4(b) and (g).

Where to File

Authorized committees of candidates file simultaneously with the Clerk of the House and the New York State Board of Elections, One Commerce Plaza, Albany, NY 12260.

NEW YORK SPECIAL ELECTION: REPORTING SCHEDULE

Report	Period Covered ¹	Reg./Cert. Mailing Date ²	Filing Date
Pre-General	1/1 - 2/28	3/5	3/8
April Quarterly	3/1 - 3/31	4/15	4/15
Post-General	4/1 - 4/9	4/19	4/19

1. The period begins with the close of books of the last report filed. If no previous reports have been filed, the period begins with the date of the committee's first activity.

2. Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, reports must be received by the filing date.

PARTY ACTIVITIES

COORDINATED PARTY

EXPENDITURES: 1990 LIMITS

Party committees may make limited expenditures on behalf of House and Senate candidates in the 1990 general elections. These "coordinated party expenditures" are subject to limits separate from the limits on contributions to candidates. 2 U.S.C. §441a(d) and 11 CFR 110.7. Although commonly referred to as "coordinated" expenditures--meaning that they are usually undertaken with the cooperation or consent of the candidate--only the party committee making the expenditures (not the candidate) reports them, using Schedule F of FEC Form 3X.

The National Committee of each party has its own spending limits for Senate and House candidates in the general election. State party committees are subject to separate spending limits. Within each state, all expenditures incurred on behalf of one candidate by the state party committee or any subordinate party committee (e.g., county, district or local) are subject to the state committee's spending limit. 11 CFR 110.7(c).

The formula for determining the party spending limits for Senate candidates is generally based on the state's voting age population (VAP), as calculated by the Department of Commerce. Spending limits are then increased by a cost-of-living adjustment (COLA) based on the annual change in the Consumer Price Index, as certified by the Secretary of Labor. In states with more than one Congressional district, the limit on party spending for House candidates is \$10,000, multiplied by COLA. The 1990 COLA is 2.514. The House and Senate party spending limits for 1990 are as follows:

o **House, in States with More Than One Member:** For House candidates in states with more than one district, the 1990 party spending limit is \$25,140. This limit also applies to candidates for Delegate seats in the House from the District of Columbia, American Samoa, Guam, Puerto Rico and the Virgin Islands.

o **House, in States With Only One Member:** Parties supporting House candidates in states with only one Representative in the House (i.e., Alaska, Delaware, North Dakota, South Dakota, Vermont and Wyoming) may spend up to the limit for Senate candidates in those states, \$50,280.

o **Senate:** Party committees may spend up to \$50,280 on behalf of each Senate candidate or up to the 1989 VAP multiplied by \$0.02 and increased by the COLA, whichever is greater.

The chart below lists 1990 party spending limits for Senate candidates in the general election. As explained above, the Senate limit also applies to candidates for the House in those states entitled to only one Representative. In the chart, an asterisk (*) indicates those states having only one Member in the House of Representatives.

State	VAP (Thousands)	1990 Party Spending Limits
Alabama	3,010	\$ 151,342.80
Alaska*	362	50,280.00
Arizona	2,575	129,471.00
Arkansas	1,756	88,291.68
California	21,350	1,073,478.00
Colorado	2,453	123,336.84
Connecticut	2,479	124,644.12
Delaware*	504	50,280.00
Florida	9,799	492,693.72
Georgia	4,639	233,248.92
Hawaii	825	50,280.00
Idaho	710	50,280.00
Illinois	8,678	436,329.84
Indiana	4,133	207,807.24
Iowa	2,132	107,196.96
Kansas	1,854	93,219.12
Kentucky	2,760	138,772.80
Louisiana	3,109	156,320.52
Maine	917	50,280.00
Maryland	3,533	177,639.24
Massachusetts	4,576	230,081.28
Michigan	6,829	343,362.12
Minnesota	3,224	162,102.72
Mississippi	1,852	93,118.56
Missouri	3,854	193,779.12
Montana	588	50,280.00
Nebraska	1,187	59,682.36
Nevada	833	50,280.00
New Hampshire	828	50,280.00
New Jersey	5,903	296,802.84
New Mexico	1,074	54,000.72
New York	13,600	683,808.00
North Carolina	4,929	247,830.12

(continued)

North Dakota*	481	50,280.00
Ohio	8,090	406,765.20
Oklahoma	2,371	119,213.88
Oregon	2,123	106,744.44
Pennsylvania	9,199	462,252.72
Rhode Island	767	50,280.00
South Carolina	2,558	128,616.24
South Dakota*	519	50,280.00
Tennessee	3,685	185,281.80
Texas	12,038	605,270.64
Utah	1,076	54,101.28
Vermont*	425	50,280.00
Virginia	4,615	232,042.20
Washington	3,545	178,242.60
West Virginia	1,394	70,090.32
Wisconsin	3,612	181,611.36
Wyoming*	339	50,280.00

contribution. Other differences between contributions and party expenditures are:

- o Coordinated party expenditures may be made in connection with only the general election, while contributions may be made for any election.
- o Contributions count against contribution limits while coordinated party expenditures count against separate (and generally higher) limits.
- o Party expenditures are reported only by the party committee, while contributions are reported by both the committee making them and the committee receiving them.



COORDINATED PARTY EXPENDITURES

Section 441a of the election law limits certain types of support that parties may give to their candidates. In addition to limiting contributions to candidates, the provision limits the "coordinated party expenditures" made by national and state party committees in connection with the general election campaigns of their candidates. 2 U.S.C. §441a(d). These activities are called "coordinated expenditures" because they are usually undertaken with the consent or knowledge of the candidate.

This article explains the rules governing coordinated party expenditures. For further information on party activities, consult the FEC's Campaign Guide for Party Committees.

How do coordinated party expenditures differ from contributions? When a party makes a contribution to a candidate, money or something of value is given directly to the candidate or to his or her authorized committee. When a party makes a coordinated expenditure, the money is spent by the party to support the candidate's campaign. For example, as a coordinated expenditure, a party committee may write a check to a vendor to pay for services rendered to a candidate committee. If the party committee gives the candidate money to pay the bill, that money would be considered a

What are the limits on coordinated party expenditures? Coordinated party spending limits are calculated as follows:

- o **Senate Candidates:** State Voting Age Population (VAP) multiplied by \$0.02, increased by the cost-of living adjustment (COLA); or \$20,000, increased by the COLA; whichever is greater. 11 CFR 110.7(b)(2)(i) and 110.9(c). In 1990, effective spending limits for Senate nominees range from \$50,280 in small states, such as Alaska and Wyoming, to \$1,073,478 in the largest state, California.
- o **House Candidates:** \$10,000 increased by the COLA. Based on this formula, the 1990 limit on party spending is \$25,140. In states with only one Representative in the House, the limit is the same as the Senate limit. 11 CFR 110.7(b)(2) and 110.9(c).

The Commission publishes the limits for coordinated party expenditures each election year in the Federal Register, as well as in the Record. See page 5 of this issue.

May the National Committee make expenditures for House and Senate candidates? Yes. The National Committee has a coordinated party spending limit for each Senate and House candidate in the general election. 11 CFR 110.7(b)(1). The limit on the National Committee's spending is shared with the Congressional and Senatorial Campaign Committees. 11 CFR 110.7(a)(4).

How much support can a state party committee offer to the candidates it supports? A state committee has its own coordinated party spending limit--separate from the national committee's limit--for each House and Senate general election candidate affiliated with the party who is seeking election in the state. 11 CFR 110.7(b)(1).

Can spending limits be transferred between national and state committees? Yes. Although national and state party committees each have a limit on the amount of money they can spend for their candidates, the right to spend up to that limit can be transferred from one committee to the other. If, for example, the coordinated party spending limit for a Senate candidate in one state is \$75,000, the national committee may authorize the state committee to spend any portion of its \$75,000 limit (in addition to the state committee's own \$75,000 limit). Likewise, the state committee may authorize the national committee to make expenditures on behalf of the

candidate that count against the state committee's limit. 11 CFR 110.7(a)(4). The Commission recommends that, when one committee designates another to make coordinated party expenditures on its behalf, the designation should be in writing and include the authorized amount.

How about a local party group? Can it make these expenditures? A local party committee or a local party organization may make coordinated expenditures only if it has been designated (in advance) by the national or state committee.

Does a local party committee have a separate spending limit? No. Coordinated party expenditures by local organizations count against the limits of the designating state or national committee. 11 CFR 110.7(a)(4) and (c). A state party committee is responsible for monitoring the party expenditures of local committees to make sure its expenditure limits for House and Senate candidates are not exceeded. 11 CFR 110.7(c)(1) and (2).

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PUBLICATIONS

CAMPAIGN GUIDE FOR PARTY COMMITTEES UPDATED

The Commission recently published a revised Campaign Guide for Political Party Committees, a manual designed to help party committees understand and comply with the requirements of the federal election law.

Written in plain English, the guide provides instructions for each step of the election process--from registration to fundraising to winding down the campaign. Detailed information and illustrations are also included to help committees follow the recordkeeping and reporting rules.

Campaign Guides are also available for Congressional candidates, corporations and labor organizations and nonconnected PACs. To request copies, send the attached form to:

Federal Election Commission
Information Services Division
999 E Street, NW
Washington, DC 20463

CAMPAIGN GUIDE ORDER FORM

Name _____	
Organization _____	
Address _____	
City, State, Zip _____	
Campaign Guide	No. of Copies
Party Committees (new)	_____
Congressional Candidates	_____
Corporations/Labor Organizations	_____
Nonconnected Committees	_____

If a local party organization is not registered with the FEC, can it still make these expenditures? Yes, but party expenditures by a designated local organization must still be made with funds permissible under federal law. The expenditures could trigger federal registration requirements for the local organization, if that organization raises or spends over \$1,000 in connection with federal elections. 2 U.S.C. §431(4)(C); 11 CFR 100.5(c) and 102.5(b).

Does a party committee have a choice over whether to call a disbursement a coordinated party expenditure or an in-kind contribution? Yes. Depending on whether the party committee has exhausted its contribution limit or coordinated party expenditure limit for a general election candidate, the committee may choose to regard a disbursement made on behalf of a candidate as either a coordinated expenditure or a contribution. Note, however, that coordinated expenditures are reported only by the party committee, while contributions are reported by both the committee making the contributions and the candidates receiving them.

If a party expenditure supports several general election candidates, must it be allocated among them in the party committee's records and reports? Yes. If a party committee supports more than one candidate through a coordinated party expenditure, the disbursement must be allocated among the candidates on a reasonable basis. The amount attributed to each candidate as a party expenditure must reflect the benefit each receives. 11 CFR 104.10 and 106.1(a).

Are any party activities exempt from the expenditure limits? Yes, certain state and local party activities that support the party's general election nominees are exempt from the limits on coordinated party expenditures (as well as from the limits on contributions). These exempt activities include:

- o Payments for slate cards and sample ballots listing three or more candidates;
- o Costs of campaign materials (such as bumper stickers, buttons and posters) used in connection with

volunteer activity; and

- o Costs of voter registration and voter drives conducted on behalf of the Presidential nominee.

Funds used to make these payments must be lawfully solicited and received. Exempt activities may not be funded with contributions designated by their contributors to be used to support a particular candidate. 2 U.S.C. §431(8)(B)(v), (x) and (xii); 11 CFR 100.7(b)(9), (15) and (17).

May a party committee make independent expenditures? No. Because party committees, by nature, support the election campaigns of candidates, their efforts on behalf of candidates cannot be considered "independent" under the election law, which defines an independent expenditure, in part, as "made without cooperation or consultation with any candidate," and "not made in concert with or at the request or suggestion of any candidate." 2 U.S.C. §431(17). Instead, party committees may make limited coordinated expenditures on behalf of their candidates. 11 CFR 110.7(a)(5) and (b)(4); AO 1980-119.

PUBLIC APPEARANCES

- March 8-10 Council on Governmental Ethics Laws Steering Committee
Ft. Mitchell, KY
John Surina, Staff Director
- March 23 Simpson Timber and Simpson Paper Companies
Washington, D.C.
Chairman Lee Ann Elliott
- April 4 Society of Statesmen/Chowder and Marching Republican Clubs
Washington, D.C.
Chairman Lee Ann Elliott
- April 30 Missouri Optometric Association
Jefferson City, MO
Craig Engle, Executive Assistant to Chairman Lee Ann Elliott

ADVISORY OPINIONS

ADVISORY OPINION REQUESTS

The following chart lists recent requests for advisory opinions (AORs). The full text of any AOR is available for public inspection and comment from the FEC's Public Records Office.

AOR 1990-3

PAC's sale of advertisements in newsletter circulated to contributors. (Date made public: February 2, 1990; Length: 2 pages)

ALTERNATE DISPOSITION OF ADVISORY OPINION REQUESTS

AOR 1989-31

The Commission failed to approve a draft advisory opinion by the required four votes.

ADVISORY OPINION SUMMARY

AO 1989-28: Voter Guides Distributed by Nonprofit Corporation

Voter guides distributed to the general public by the Maine Right to Life Committee (MRLC), Inc., in the form of a newsletter must comply with FEC regulations on nonpartisan corporate voter guides, set forth at 11 CFR 114.4(b), if MRLC uses its general treasury funds to finance the production and distribution of the guides.

MCFL Question

MRLC does not qualify for the exemption granted to certain types of nonprofit corporations as a result of the Supreme Court's decision in FEC v. Massachusetts Citizens for Life, Inc., (MCFL).¹ The Court ruled that section 441b's prohibition against corporate expenditures in connection with federal elections was unconstitutional as applied to MCFL because that organization (1) was a corporation formed for political,

rather than commercial, purposes, (2) had no shareholders or other affiliated persons with a claim on its assets or earnings, and (3) was not established by a business corporation and accepted no corporate or labor contributions.

Unlike MCFL, MRLC solicits and accepts corporate funds in the form of advertising sales (for its newsletter) and direct corporate contributions. Thus, MRLC is not exempt from the law's restrictions on corporate spending.

Voter Guide Rules

While the election law prohibits corporations from using their general treasury funds to make expenditures in connection with federal elections, nonpartisan efforts to encourage voting are specifically excluded from the definition of "expenditure" and, thus, are not prohibited. 2 U.S.C. §441b(b)(2) and 431(9)(B)(ii). Corporations may spend their general treasury funds to produce nonpartisan voter guides that feature candidates' responses to questions. Such guides may not favor any candidate or party over another. 11 CFR 114.4(b)(5).

MRLC, which is a nonprofit corporation that is tax-exempt under 26 U.S.C. §501(c)(4), proposes to use its general treasury funds to finance voter guides. Since MRLC has established a separate segregated fund, MRLCPAC, the Commission considers the organization to be one that supports, endorses or opposes candidates. Therefore, its voter guides must comply with the specific criteria for nonpartisan communications set forth at 11 CFR 114.4(b)(5)(i)(A)-(D). These rules list certain factors to consider in deciding whether a voter guide is nonpartisan, including whether the wording of the guide does not suggest or favor any position on the issues covered. As another factor, the regulations provide that a nonpartisan voter guide may not express an editorial opinion concerning the issues presented or indicate any support or opposition to a candidate.

Prior to the 1984 general election MRLC produced a newsletter/voter guide that was nonpartisan according to these criteria. The 1984 guide, financed with MRLC's general treasury

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1. FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238 (1986). See the February 1987 Record for a summary.

funds, included questions that were not worded in such a way as to suggest a favored response on the part of the candidates surveyed. MRLC's presentation of the survey questions and the results did not instruct readers as to what MRLC-preferred responses should be. No responses from federal candidates were included in the 1984 guide; instead, the letters "NR" appeared next to each federal candidate named, with a note explaining that "NR" meant "no response." The newsletter/voter guide suggested that readers personally contact those candidates regarding their positions on the issues in the survey. 11 CFR 114.4(b)(5). Thus, a 1990 newsletter/voter guide that is materially indistinguishable from the 1984 guide would be permissible under the election law and FEC rules.

MRLC distributed another voter guide in 1988 which did not conform with FEC rules. The 1988 guide presented responses to questions posed in language explicitly favoring the organization's views. Each question was framed so that only a "yes" or "no" answer was expected. Four of six federal candidates listed in the guide were designated as making no response to the questionnaire; one candidate was shown as answering "yes" to each of the committee's questions. The guide stated that a "yes" response indicated agreement with MRLC's views. In addition, a cover feature on the 1988 Presidential election was replete with partisan editorial references to the candidates' known positions on abortion-related issues. MRLC, therefore, may not use its general treasury funds to produce a voter guide similar to its 1988 guide for distribution during the 1990 elections.

Press Exemption

MRLC's newsletter/voter guide is not eligible for the press exemption under section 431(9)(B)(i) of the election law. That provision excludes from the definition of "expenditure" news stories, commentaries and editorials broadcast or published in a newspaper, magazine or other periodical. The press exemption applies only to entities engaged in normal newsgathering activities and deriving their revenues from the sale of subscriptions (or single issues)

and advertising. MRLC is essentially a nonprofit, tax-exempt corporation, not a news media business, and therefore does not meet these standards.

Commissioners Aikens and Elliott plan to issue concurring opinions. (Date issued: February 14, 1989; Length: 10 pages)

AUDITS

FINAL AUDIT REPORT ON 1988 HART CAMPAIGN RELEASED

On January 25, 1990, the Commission released the final audit report on Friends of Gary Hart-1988, the publicly funded 1988 Presidential campaign of former Senator Gary Hart. The Commission's findings are described below.

Copies of final audit reports of 1988 Presidential campaigns are available from the Public Records Office.

Contributions in the Form of Checks Payable to 1984 Presidential Campaign

The audit of the 1988 Hart campaign uncovered \$13,606 in checks made payable to Americans With Hart (AWH), Mr. Hart's 1984 Presidential campaign committee, that were received and deposited by the 1988 committee. The committee forwarded \$530 to AWH, keeping the remaining \$13,076.

In response to the interim audit report, the Committee refunded two of the AWH contributions to their contributors, issued checks to AWH representing 130 of the contributions, and provided documentation for 12 other contributions showing that they were actually intended for the 1988 campaign. Satisfied with the Committee's efforts to clarify the designation of the AWH contributions, the Commission took no further action on the matter.

Insufficiently Documented Expenses

Travel and Subsistence Payments. Several disbursements for "travel and subsistence" appeared to be nonqualified campaign expenses because the committee failed to provide any receipts or vouchers demonstrating how

the funds were spent by their recipients. The Commission's Audit staff questioned \$279,608 in per diem payments the committee had made.

In response to the interim audit report, the Committee argued that the payments were made pursuant to a pre-established per diem policy in accordance with 11 CFR 9033.11(b)(1)(iv)(B). The Committee also provided supporting documentation for the travel and subsistence expenses, producing payroll records and affidavits regarding the intended and actual use of the money. (Some of the money was spent on termination and severance payments for Committee staff, not travel and subsistence.) The Committee also filed amended FEC reports.

The Commission concluded that the Committee had satisfied the documentation requirements.

Consulting Fees. The audit also identified payments to consultants that had not been sufficiently documented. Among these payments were \$11,000 paid on the Committee's behalf by a law firm. The law firm had paid the consultant with an unused portion of a retainer the Committee had previously paid. Subsequent documentation and amendments to reports filed by the the Committee provided sufficient clarification.

Media Purchases. At the time the Commission conducted its field audit, the Committee was unable to produce adequate documentation supporting a payment of \$26,092 to an advertising firm for media purchases. Eventually, the Committee produced copies of invoices from TV stations supporting the payments in question.

Surplus and Excess Matching Funds

The Commission made an initial determination that the Hart campaign had to repay \$29,036 to the U.S. Treasury, representing a prorated portion of surplus campaign funds that the committee had on hand when Mr. Hart withdrew from the Presidential race--i.e., Mr. Hart's "date of ineligibility." The Commission determined that an additional \$1,354 needed to be repaid, representing interest the Committee had earned on deposits of federal matching funds. 11 CFR 9038.3(c)(1) and 9034.4(a)(4).

The Commission also determined that the Committee must repay

\$5,399.68, representing the amount of matching funds received in excess of the candidate's entitlement. 26 U.S.C. §9038(b)(1). The Committee received the excessive matching payment prior to submitting its Statement of Net Outstanding Campaign Obligations (NOCO). Because the NOCO Statement showed that the candidate had surplus funds on his date of ineligibility, the Committee was not entitled to those matching funds.

The Committee made the required repayment prior to the Commission's adoption of the final audit report.

COURT CASES

COMMON CAUSE v. FEC (89-0524(GAG))

On January 24, 1990, the U.S. District Court for the District of Columbia found that the Commission's dismissal of a portion of an administrative complaint filed by Common Cause against the National Republican Senatorial Committee (NRSC) was arbitrary, capricious and contrary to law. The court reversed the FEC's partial dismissal of the complaint and remanded the matter back to the agency with directions to conform with the court's declaration.

Background

In its original complaint, Common Cause alleged that NRSC had made excessive contributions to 12 Senate candidates as a result of a 1986 "bundling" project.

The focus of Common Cause's complaint was a series of direct mail solicitations asking contributors to write checks to benefit Republican Senate candidates in four states. NRSC mailed different versions of the letter, varying the set of four states mentioned and the amount of the contributions requested according to geographic area of the recipients and their pattern of prior contributions. None of the 12 candidates involved in the Senate races was named in the letters. Recipients were asked to write checks payable to different accounts controlled by the Committee, such as "Inner Circle" or "Republican

(continued)

Presidential Task Force." The project raised more than \$2,800,000. In its FEC reports, NRSC reported most of these funds as earmarked contributions that were passed on to the 12 candidates. The Committee also provided the 12 campaigns with information to itemize the contributions in their own reports. 11 CFR 110.6(c).

Common Cause alleged that NRSC had exercised "direction or control" over the contributions received as a result of the mailing and that, therefore, the contributions should have been reported as contributions by NRSC to the candidates and counted against NRSC's limits. Alternatively, Common Cause alleged that the contributions had not been earmarked at all and that, therefore, the Commission should have viewed the transactions as contributions from the individual donors to NRSC and contributions by NRSC to the 12 candidates.

Under FEC rules, an earmarked contribution does not affect the contribution limits of the conduit or intermediary unless the intermediary has exercised direction or control over the choice of the candidate receiving the money.¹ 11 CFR 110.6(d) (1). In that situation, the limits of both the donor and the conduit or intermediary are affected.

The Commission pursued several reporting violations and excessive contributions of \$534,249 in connection with the "bundling" project. Concerning these matters, the Commission found probable cause and assessed a civil penalty of \$20,000 against NRSC. The Commissioners deadlocked, however, over the issue of whether the Committee had improperly treated \$2,718,814 collected from contributors as earmarked contributions and whether, instead, the Committee should have reported the money as its own contributions to the 12 candidates. Such a finding would have meant that NRSC had exceeded its contribution limits for the 12 candidates by \$3,485,467. The split 3-3 vote on this question resulted in the Commissioners' rejection of the General Counsel's recommendation that

they find probable cause to believe NRSC had failed to report the contributions passed on to the candidates and had exceeded the contribution limits by \$3,222,165 (rather than \$534,249 mentioned above).

Commissioner Josefiak, who voted to reject the General Counsel's recommendation regarding the earmarking question, issued a Statement of Reasons explaining his vote, with which Commissioners Aikens and Elliot filed a joint concurrence. Commissioners McDonald, McGarry and Thomas issued a joint Statement of Reasons explaining their votes to approve the General Counsel's recommendations.

District Court Decision

In finding that the Commission had acted contrary to law in dismissing part of the plaintiff's complaint, the court pointed out that, under FEC rules, a contribution is "earmarked" if it bears a designation, instruction or encumbrance which results in all or part of it being made to a clearly identified candidate. 11 CFR 110.6(b). In the court's view, the contributions resulting from NRSC's solicitation project were not "earmarked" under this definition because checks were payable to NRSC or some other entity controlled by the Committee and not to "specific candidates....[Furthermore,] the candidates who ultimately received these contributions were not 'clearly identified' in the mailings in that neither their names nor their pictures appeared in the mailings and their identities were not apparent to many contributors...." The court concluded, therefore, that the donors "did not make a meaningful designation, instruction or encumbrance on the NRSC's use of the contributed funds."

Supporting the conclusion that NRSC had exercised some direction or control over the contributions, the court noted evidence suggesting "that individual donors intended to give to the NRSC for use in its discretion." In addition, "NRSC chose twelve campaigns which were mentioned in the letters...chose which mailing lists, with which donation histories, would be used for each version of the letter. The contributions were to be made to the NRSC or an organization controlled by the NRSC, were deposited

1. The FEC recently promulgated revised rules concerning earmarked contributions. See the November 1989 Record for a summary of the changes.

in the NRSC's bank accounts, and were disbursed to the campaigns by the NRSC."

The court also pointed out that the Commission's decision concerning the "direction or control" issue was not mandated by prior FEC precedent, was effected by a 3-3 deadlock vote, was contrary to the General Counsel's recommendation, and "ignored the plain language of the applicable regulation." Thus, the court found that the FEC's action was arbitrary, capricious and contrary to law.

In reversing the Commission's action, the court remanded the case to the agency with instructions to conform with the court's declaration within 30 days. On February 15, 1990, consistent with the court's decision, the Commission reopened the enforcement proceedings.

Subject: Failure to refund or redesignate contribution on time; receipt of contribution from unregistered committee
Disposition: \$700 civil penalty

MUR 2729

Respondents: (a) M. Hanson (MN); (b) Hanson '88 Committee and treasurer (MN); (c) Minnesota State Democratic-Farmer-Labor Party and treasurer; (d) 7th Congressional District DFL Campaign Committee and treasurer
Complainant: J.R. Gaylord, Executive Director, National Republican Congressional Committee (DC)

Subject: Excessive contributions; affiliation; failure to register and report on time

Disposition: (a) No reason to believe; (b) and (c) Reason to believe but took no further action; (d) No probable cause

MUR 2741

Respondents: Manor Healthcare Federal PAC and treasurer (MD)

Complainant: FEC initiated

Subject: Transfer from nonfederal to federal account

Disposition: \$800 civil penalty

MUR 2770

Respondents: Alexander Campaign Committee and treasurer (AR)

Complainant: FEC initiated

Subject: Failure to report on time

Disposition: \$3,400 civil penalty

MUR 2793

Respondents: Jefferson County Republican Central Committee and treasurer (CO)

Complainant: FEC initiated

Subject: Failure to report on time

Disposition: \$2,000 civil penalty

MUR 2806

Respondents: Hartford National Corporation PAC and treasurer

Complainant: FEC initiated

Subject: Transfer from nonfederal to federal account

Disposition: \$1,200 civil penalty

MUR 2808

Respondents: (a) Democratic State Central Committee (of Colorado) and treasurer; (b) Gordon & Schwenkmeyer, Inc. (CA)

Complainant: FEC initiated

(continued)


MURS RELEASED TO PUBLIC

Publicly released MUR summary files, as announced in FEC press releases on January 16 and 25 and February 2, 1990, are listed below. Civil penalties resulted from conciliation agreements reached between the respondents and the Commission.

The summary file for each MUR is available from the FEC's Public Records Office.

MUR 2570

Respondents: (a) Citizens for Jack Kemp and treasurer (NY); (b) D.R. Corbin (CA); (c) M. Goland (CA); (d) R.D. Krotzer (NY); et al., (e)-(g)

Complainant: FEC initiated

Subject: Excessive and prohibited contributions

Disposition: (a) \$3,500 civil penalty; (b) \$250 civil penalty; (c), (e), (f) and (g), reason to believe but took no further action; (d) \$500 civil penalty

MUR 2697/2699

Respondents: J. Nixon for U.S. Senate Committee and treasurer (MO)

Complainant: T. Feather, Executive Director, Missouri Republican Party

Subject: Failure to designate campaign depository or file adequate disclosure documents

Disposition: (a) \$1,350 civil penalty; (b) No probable cause

MUR 2831

Respondents: Colorado Republican Federal Campaign Committee and treasurer

Complainant: FEC initiated

Subject: Transfer from nonfederal to federal account

Disposition: \$2,350 civil penalty

MUR 2853

Respondents: DeConcini '88 Committee and treasurer (AZ)

Complainant: Sua sponte

Subject: Disclaimer

Disposition: \$1,500 civil penalty

MUR 2886

Respondents: North Carolina Election Campaign Fund and treasurer

Complainant: FEC initiated

Subject: Failure to register and report on time and to report correct information

Disposition: \$5,000 civil penalty

MUR 2897

Respondents: (a) Congressman R.K. Arney (TX); (b) S. Arney (TX); (c) O.F. Henning, Jr. (TX); (d) Dick Arney Campaign and treasurer; (e) Policy Innovation PAC and treasurer

Complainant: J.W. Caton (TX)

Subject: Affiliation

Disposition: (a)-(e), no reason to believe

MUR 2898

Respondents: (a) Congressman R.K. Arney (TX); (b) S. Arney (TX); (c) O.F. Henning, Jr. (TX); (i) Dick Arney Campaign and treasurer; et al., (d)-(h) and (j)

Complainant: J.W. Caton

Subject: Use of conduit to evade contribution limits

Disposition: (a)-(c) and (i), took no action; (d)-(h) and (j), no reason to believe

MUR 2923

Respondents: Ravenscroft for Congress and treasurer (NY)

Complainant: FEC initiated

Subject: Failure to report on time

Disposition: \$300 civil penalty

MUR 2929

Respondents: Franco for Congress Committee and treasurer (CA)

Complainant: FEC initiated

Subject: Failure to report on time

Disposition: \$350 civil penalty

MUR 2930

Respondents: Republican National Committee-Contributions and treasurer

Complainant: FEC initiated

Subject: Excessive contributions

Disposition: \$1,750 civil penalty

MUR 2946

Respondents: Avon Products, Inc., Fund for Responsible Government and treasurer (NY)

Complainant: FEC initiated

Subject: Failure to report on time

Disposition: \$300 civil penalty

MUR 2955

Respondents: General Public Utilities Political Participation Association and treasurer (DC)

Complainant: FEC initiated

Subject: Failure to report on time

Disposition: \$375 civil penalty

MUR 2958

Respondents: International Brotherhood of Electrical Workers Local 98 COPE and treasurer (PA)

Complainant: FEC initiated

Subject: Failure to report on time

Disposition: \$600 civil penalty

MUR 2965

Respondents: National Telephone Cooperative Association Telephone Education Committee Organization and treasurer

Complainant: FEC initiated

Subject: Failure to report on time

Disposition: \$300 civil penalty

MUR 2971

Respondents: Senate Victory Fund PAC (FKA Cochran Committee) and treasurer (MS)

Complainant: FEC initiated

Subject: Failure to report on time

Disposition: \$350 civil penalty

MUR 2972

Respondents: St. Louisians for Better Government and treasurer

Complainant: FEC initiated

Subject: Failure to report on time

Disposition: \$500 civil penalty

MUR 2974

Respondents: Transamerica Life Companies PAC (TALCPAC) and treasurer (CA)

Complainant: FEC initiated

Subject: Failure to report on time

Disposition: \$1,200 civil penalty

MUR 2976

Respondents: Utah State Democratic Committee Federal and treasurer

Complainant: FEC initiated

Subject: Failure to report on time

Disposition: \$450 civil penalty

MUR 2977

Respondents: Women's Pro-Israel National PAC (WIN PAC) and treasurer (DC)

Complainant: FEC initiated

Subject: Failure to report on time

Disposition: \$1,000 civil penalty

MUR 2979

Respondents: Apartment Political Committee of the National Apartment Association and treasurer (DC)

Complainant: FEC initiated

Subject: Failure to report on time

Disposition: \$8,750 civil penalty

MUR 2980

Respondents: (a) D.K. McCloud (DC); (b) Robb for the Senate and treasurer (VA)

Complainant: B. Franklin (VA)

Subject: Breach of FECA confidentiality requirements

Disposition: (a) and (b), no reason to believe

CLEARINGHOUSE**COMPUTERIZED VOTING SYSTEM STANDARDS APPROVED**

In January, the Commission approved a final set of voluntary standards for computerized voting systems. The new standards are designed to help election officials and voting system vendors ensure the accuracy and reliability of computer-based vote counting systems. Seven states have already adopted portions of the standards program.

The standards establish minimum performance, testing and security requirements and cover punchcard, marksense and direct recording electronic systems.

In addition to the standards, the Commission approved three advisory plans addressing their implementation. The advisory plans focus on:

- o Issues and options to be considered in adopting and implementing the standards;
- o The escrow of voting system software and other system documentation; and
- o The evaluation and selection of independent test authorities that will test computerized voting systems against the performance standards.

(continued)

ELECTION LAW CONFERENCE SERIES

To receive a registration form for either of these conferences, call the FEC at 800/424-9530 or 202/376-3120.

Arizona Regional Conference

On March 8 and 9 the FEC and the Arizona Secretary of State's Office will hold a regional conference on campaign finance laws at the Safari Resort in Scottsdale, Arizona. The conference will include workshops on candidate campaigns, party and PAC activity, contributions and reporting. The \$50 registration fee includes all materials, lunch and refreshments.

Washington, D.C., Candidate Conference

On March 30, the Commission will host a conference at the Washington Court on Capitol Hill for candidates and staff members preparing for the 1990 elections. Workshops will be conducted by Commissioners and FEC staff members; a representative of the Internal Revenue Service will speak about election-related tax issues. The \$65 registration fee includes all materials, lunch and refreshments.

After Congress authorized the project in 1984, the FEC's National Clearinghouse on Election Administration organized the effort to develop the standards. The Commission published a notice in the Federal Register, in August 1989, requesting final comments on the proposed standards and three associated plans. See 54 Fed. Reg. 32479.

The final standards and companion guidelines incorporate numerous changes suggested in the responses received, and represent the culmination of eleven public meetings and input from more than 130 state and local election officials, independent technical experts, vendors, Congressional staff, members of the Commission and others. The Commission announced the issuance of the final standards and three associated plans in the Federal Register on February 5, 1990. See 55 Fed. Reg. 3764.

COMMISSION APPOINTS

PERMANENT INSPECTOR GENERAL

In February the Commission appointed Lynne McFarland as the agency's first permanent Inspector General (IG).

Charged with conducting audits and investigations to detect fraud, waste and abuse within the agency, the IG reports directly to the Commission. Ms. McFarland will also advise the Commissioners on ways to improve the economy and efficiency of the FEC's operations. Upon announcing the appointment, Chairman Lee Ann Elliott directed the agency's staff to provide the new IG with full cooperation and assistance in these efforts.

Ms. McFarland has been an FEC staff member since 1976, serving most recently in the Office of Planning and Management as a program analyst. She holds a B.S. in Sociology from Frostburg State College in Maryland.

1989 SPECIAL ELECTIONS

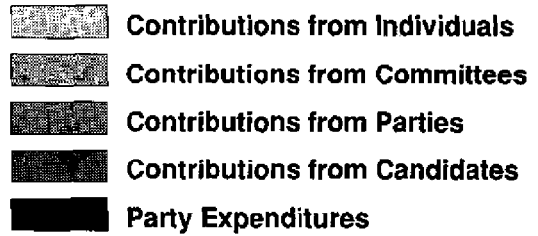
An FEC statistical study released in February showed that the 41 House candidates who ran in the eight special elections held in 1989 spent a total of \$10.9 million. Additionally, the Democratic and Republican parties spent \$592,303 on the 16 candidates who survived initial primary races for the vacant seats.

Special elections held during nonelection years focus national attention on a small number of Congressional districts. As a result, they often generate greater levels of spending than open-seat races held during regular elections. In 1989, median spending by the 16 major party finalists was \$551,852; by contrast, median spending by the 50 major party general election candidates for open seats during the 1988 campaigns was \$451,812.

The graph on the following page compares candidate contributions, by source, and coordinated party expenditures for the 16 finalists. Overall Republican party contributions and expenditures on behalf of candidates totaled \$754,330, while Democratic contributions and coordinated expenditures totaled \$440,283.

The FEC's survey of special election activity also showed an unprecedented level of interstate party activity. Several finalists received substantial amounts of contributions from state party committees outside of their own states. The graph on page 18 compares contributions from state party committees outside the home state that were received by the 1989 finalists, as disclosed in FEC reports.

**Resources of 1989
Special Election Candidates**



Indiana

(D) Long*

(R) Heath

Alabama

(D) Browder*

(R) Rice

Wyoming

(D) Vinich

(R) Thomas*

Florida

(D) Richman

(R) Ros-Lehtinen*

California

(D) Condit*

(R) Berryhill

Texas (12th)

(D) Geren*

(R) Lanier

Mississippi

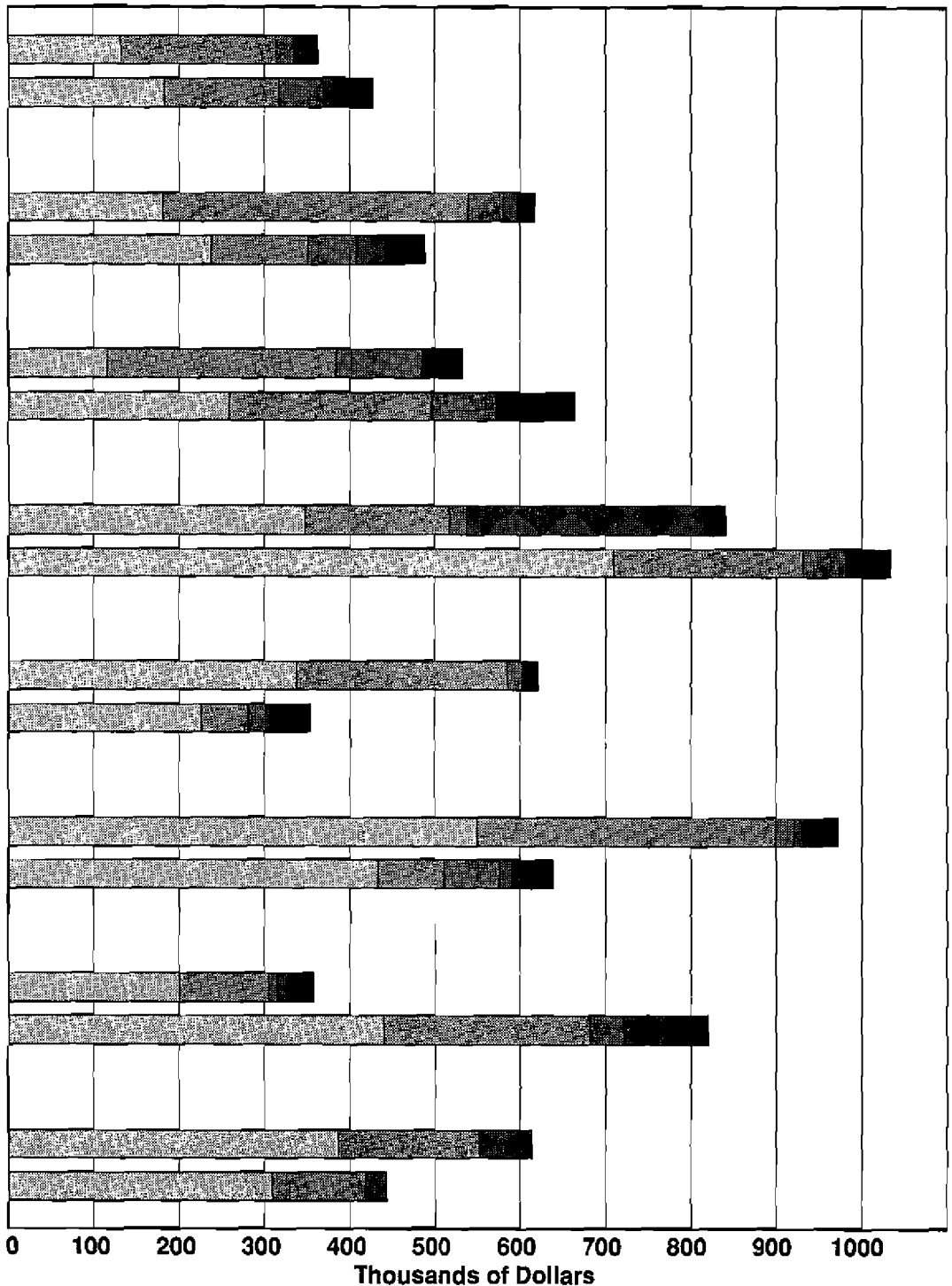
(D) Taylor*

(R) Anderson

Texas (18th)

(D) Washington*

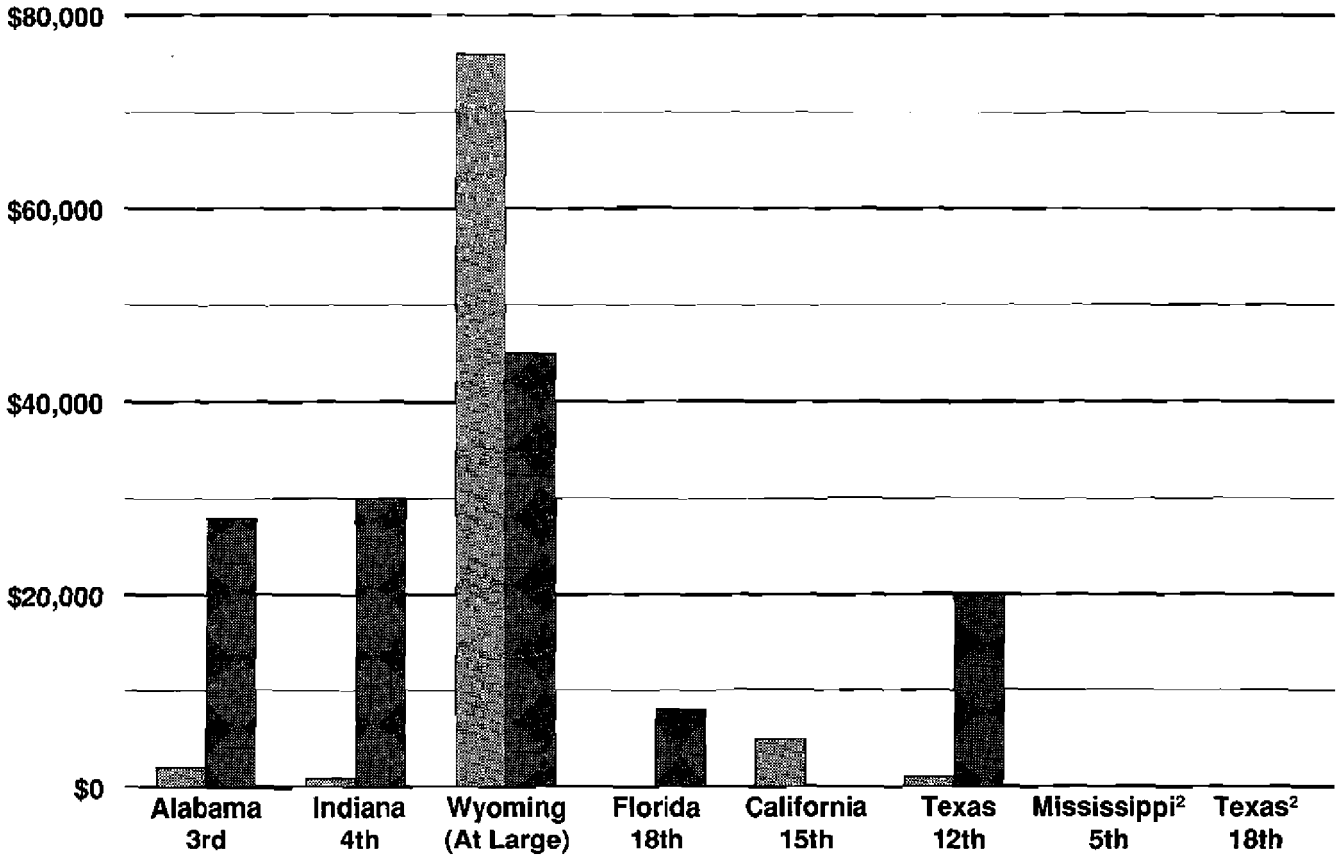
(D) Hall



*Candidate won the election.

**Contributions to 1989 Special Election
Candidates from State Parties
Outside the Home State¹**

■ Democrats
■ Republicans



¹The bars represent contributions from state party committees from the following states: Arkansas, California, Colorado, Florida, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Virginia, Washington and Wisconsin.

²No out-of-state party contributions were reported.

FEC REPORTS DECLINE IN PAC GROWTH

A recent FEC survey of PACs--i.e., noncandidate and nonparty political committees--showed the past decade's sharpest drop in the number of registered committees.

At the close of 1989, 4,178 PACs were registered, representing a decline of 90 PACs since December 1988, when registrations hit an all-time high.

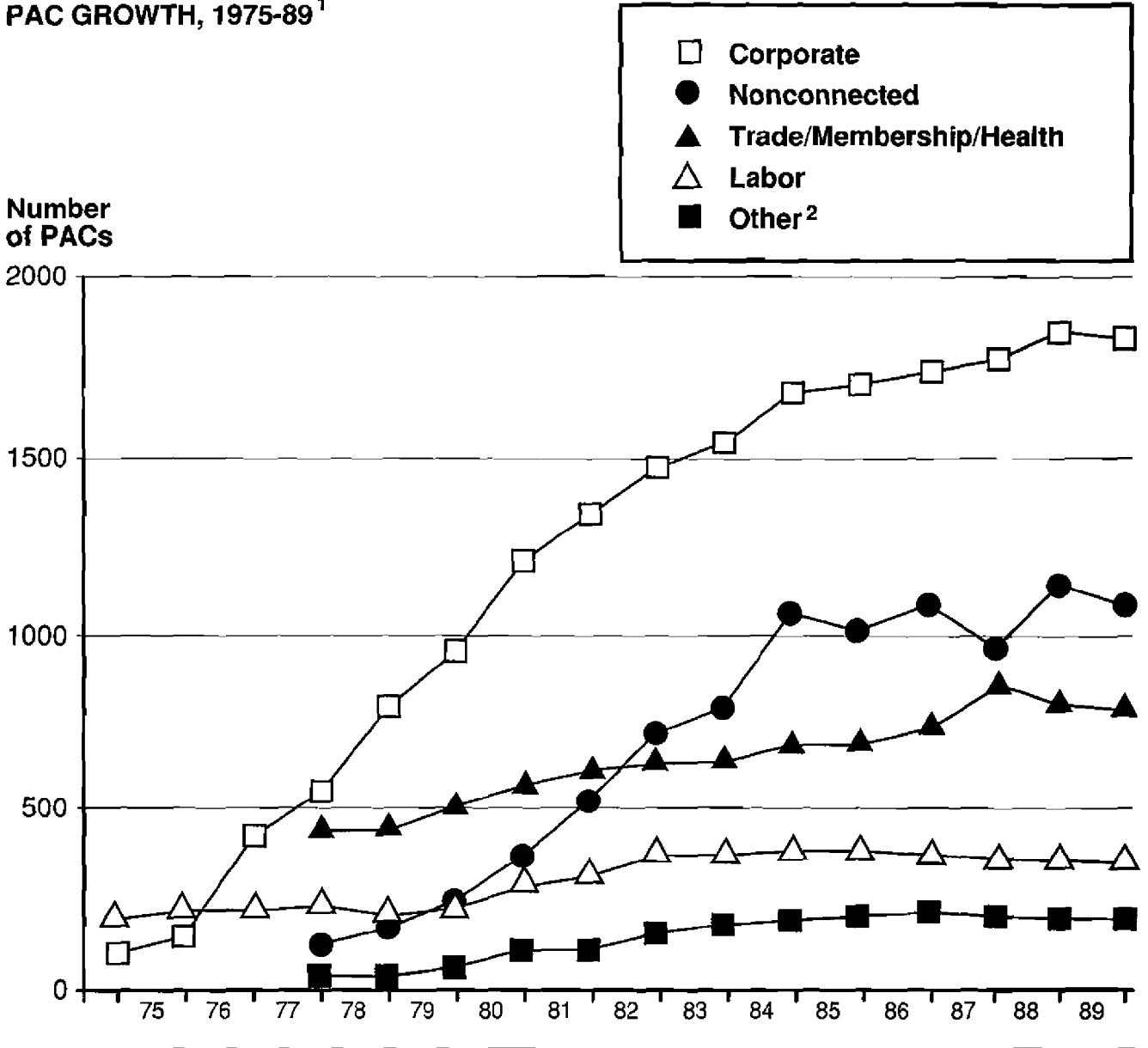
The rate of PAC growth has slowed considerably in the last five years. While PAC registrations more than

doubled between 1979 and 1984, registrations increased by only four percent between 1984 and 1989.

The chart below depicts changes in the numbers of registered committees in different categories of sponsorship. Registration does not necessarily imply financial activity.

For more information on PAC growth, request a statistical press release from the Commission's Public Records Office. Call 800/424-9530 or 202/376-3140.

PAC GROWTH, 1975-89¹



¹For the years 1974 through 1976, numbers are not available for Nonconnected PACs, Trade/Membership/Health PACs and PACs in the "Other" category.

²"Other" category includes PACs formed by corporations without capital stock and PACs formed by incorporated co-operatives.

This cumulative index lists summaries of advisory opinions, court cases, and MURs that have appeared in the Record during 1990, as well as 800 Line articles. The first number in each citation refers to the "number" (month) of the Record issue; the second number, following the colon, indicates the page number in that issue.

ADVISORY OPINIONS

- 1989-21: Fundraising by sole proprietor in cooperation with candidates, 1:9
- 1989-25: Preemption of state law limiting party spending on behalf of candidates, 1:10
- 1989-26: Automatic bank transfers from contributor's account to candidate committee's account, 1:11
- 1989-27: Act's preemption of state law governing solicitations by state employees, 2:2
- 1989-28: Voter guides distributed by nonprofit corporation, 3:9

- 1989-29: PAC established by company owned by foreign principal, 2:3
- 1989-30: Payment to Senator for teaching course, 2:4

COURT CASES

- FEC v.
 - Franklin, 1:13
 - Furgatch (83-0596-GT(M)), 2:7
- v. FEC
 - Common Cause (89-0524-GAG), 3:11
 - NRA (89-3011), 2:7

MUR SUMMARIES

- MUR 2823: Excessive contribution received by candidate committee, 2:4

800 LINE

- Combined dues/solicitation statements, 1:17
- Coordinated party expenditures, 3:6
- Designating a principal campaign committee, 1:19
- New treasurer, 2:9
- When reimbursements are required in SSF fundraising, 2:8

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