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THE FEDERAL ELECTION COMMISSION

*Twenty Year  
Report*

APRIL 1995

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**FEDERAL ELECTION COMMISSION**

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# TABLE OF CONTENTS

|  |    |                                      |    |
|--|----|--------------------------------------|----|
| <b>Introduction</b>                                  | 1  | <b>Chapter 4</b>                     |    |
| <b>Chapter 1</b>                                     |    | <b>Continuing Debate Over Reform</b> | 25 |
| <b>Historical Context</b>                            | 2  | The Role of Political Parties        | 25 |
| Early Reform   | 2  | The Role of PACs                     | 27 |
| The 1971 Election Laws                               | 3  | The Cost of Campaigns                | 32 |
| 1974 Amendments                                      | 4  | <b>Conclusion</b>                    | 35 |
| Buckley v. Valeo                                     | 4  | <b>Appendices</b>                    |    |
| 1976 Amendments                                      | 5  | 1. FEC Commissioners and             |    |
| 1979 Amendments                                      | 5  | Officers 1975-1995                   | 36 |
| Subsequent Amendments                                | 5  | 2. FEC Budget and Staffing History   | 38 |
| <b>Chapter 2</b>                                     |    | 3. FEC Organization Chart            | 39 |
| <b>Administering and Enforcing the FECA</b>          | 6  |                                      |    |
| Customer Service                                     | 7  |                                      |    |
| Enforcement  | 10 |                                      |    |
| Presidential Public Funding                          | 12 |                                      |    |
| National Clearinghouse on<br>Election Administration | 15 |                                      |    |
| <b>Chapter 3</b>                                     |    |                                      |    |
| <b>Key Issues Before the Commission</b>              | 16 |                                      |    |
| Corporate Communications                             | 16 |                                      |    |
| Soft Money   | 19 |                                      |    |
| Personal Use of Campaign Funds                       | 22 |                                      |    |
| Best Efforts   | 23 |                                      |    |
| Foreign Nationals                                    | 23 |                                      |    |

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## TABLE OF CHARTS

|   |       |  |    |
|---|-------|--|----|
| <b>Chapter 2</b>  |       | <b>Chapter 4</b>   |    |
| <b>Administering and Enforcing the FECA</b>                                 |       | <b>Continuing Debate Over Reform</b>                       |    |
| 2-1: Overall Financial Activity Reported to the FEC                         | 6     | 4-1: Sources of Campaign Receipts                          | 26 |
| 2-2: Telephone Inquiries on the 800-line                                    | 7     | 4-2: Federal Spending by PACs and Parties                  | 27 |
| 2-3: Persons Served in Public Records                                       | 8     | 4-3: Number of PACs Registered with FEC                    | 29 |
| 2-4: Direct Access Usage by Month   | 9     | 4-4: PAC Contributions by Type of Campaign                 | 29 |
| 2-5: Number of Detailed Contribution and Expenditure Transactions Processed | 9     | 4-5: Contributions by the 50 Largest Committees            | 30 |
| 2-6: Number of Phone Calls to the Press Office                              | 9     | 4-6: Possible Effect of \$2,000 PAC Limit in 1992          | 31 |
| 2-7: Number of Reports Reviewed by the Reports Analysis Division            | 10    | 4-7: Congressional Campaign Activity                       | 32 |
| 2-8(a): Conciliation Agreements and Civil Penalties by Calendar Year        | 11    | 4-8: Comparison of Presidential and Congressional Spending | 33 |
| 2-8(b): Median Civil Penalty by Calendar Year                               | 11    |  |    |
| 2-9: Presidential Fund Income Tax Checkoff Status                           | 13-14 | <b>Appendix 2</b>  |    |
|   |       | <b>FEC Budget and Staffing History</b>                     | 38 |
| <br><b>Chapter 3</b>  |       |  |    |
| <b>Key Issues Before the Commission</b>                                     |       |  |    |
| 3-1(a): Party Federal and Nonfederal Receipts                               | 20    |  |    |
| 3-1(b): Sources of Party Receipts   | 21    |  |    |
| 3-1(c): Party Federal and Nonfederal Disbursements                          | 21    |  |    |

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# INTRODUCTION

Twenty years ago, Congress created the Federal Election Commission (FEC) to administer and enforce the Federal Election Campaign Act (FECA)—the statute that governs the financing of federal elections. The regulation of federal campaigns emanated from a congressional judgment that our representative form of government needed protection from the corrosive influence of unlimited and undisclosed political contributions. The laws were designed to ensure that candidates in federal elections were not—or did not appear to be—beholden to a narrow group of people. Taken together, it was hoped, the laws would sustain and promote citizen confidence and participation in the democratic process.

Guided by this desire to protect the fundamental tenets of democracy, Congress created an independent regulatory agency—the FEC—to disclose campaign finance information; to enforce the limits, prohibitions and other provisions of the election law; and to administer the public funding of Presidential elections.

Fulfilling that mission places the agency at the center of constitutional, philosophical and political debate. On one hand, the Commission must administer and enforce the FECA, which the Supreme Court has said serves a legitimate governmental interest. On the other hand, the Commission must remain mindful of the Constitutional freedoms of speech and association, and the practical implications of its actions. The Commission, of course, does not bear this responsibility alone. Congress and the courts must also balance these competing interests.

This tension between valid governmental interests and certain constitutional guarantees frames many of the issues discussed in this report. While the report commemorates the Commission's 20th anniversary, it does not chronicle the entire 20-year period. Instead, it offers a current snapshot of the agency, focusing on significant Commission actions of recent years.

Chapter 1 provides an historical context for the report.

Chapter 2 looks at the Commission's administration and enforcement of the FECA.

Chapter 3 examines some of the key issues the Commission is currently debating or has recently resolved.

Chapter 4 offers FEC statistics to supplement the continuing national debate on the role of PACs and parties, and the costs of political campaigns.

What emerges from this discussion is a portrait of an agency that has accomplished much, even as it has grappled with difficult issues whose resolution has helped define the proper balance between governmental interests and constitutionally-protected political activity. The Commission's administration and enforcement of the FECA have also helped ensure the continued legitimacy of our representative form of government.

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# CHAPTER 1

## HISTORICAL CONTEXT

The origins of campaign financing in the United States date back to 1791, when groups supporting and opposing Alexander Hamilton published competing newspapers designed to sway the electorate. These minimal expenditures set the tone for campaigns over the next several decades.

In the Presidential election of 1832, however, the financing of campaigns changed. The Bank of the United States, whose charter-renewal was threatened by President Andrew Jackson, spent heavily to elect Henry Clay, who supported renewal of the bank's charter. The bank's tactics backfired, however, when Jackson characterized it as a "money monster," and won reelection.

During the 1840s and 50s, the size of the electorate grew and so did the amount of campaign spending. Still, during the pre-Civil War period, "costs were relatively moderate, corruption...was the exception rather than the rule, fundraising was conducted in an amateur fashion, and the alliance between economic interests and politicians, though growing, was loose and flexible." (Thayer, *Who Shakes the Money Tree*, p. 35) By contrast, the post-war years have been called the most corrupt in U.S. history. Historian Eugene H. Roseboom describes financier Marcus A. Hanna's fundraising for President McKinley's 1896 campaign:

"For banks the [campaign finance] assessment was fixed at one quarter of one percent of their capital. Life insurance companies contributed liberally, as did nearly all the great corporations. The Standard Oil Company gave \$250,000 to Hanna's war

chest. The audited accounts of the national committee revealed collections of about \$3,500,000." (CQ, *Dollar Politics*, p. 3)

### *Early Reform*

The drive to institute comprehensive campaign finance reform began around the turn of the century, when the muckrakers revealed the financial misdeeds of the 1896 election.<sup>1</sup> Their stories of corporations financing candidates' campaigns in hopes of influencing subsequent legislation prompted President Theodore Roosevelt to proclaim: "All contributions by corporations to any political committee or for any political purpose should be forbidden by law." In 1907, Congress passed the Tillman Act, which prohibited corporations and national banks from contributing money to federal campaigns. Three years later, Congress passed the first federal campaign disclosure legislation. Originally, the law applied only to House elections, but Congress amended the law in 1911 to cover Senate elections as well, and to set spending limits for all Congressional candidates.

The Federal Corrupt Practices Act of 1925, which applied to general election activity only, strengthened disclosure requirements and increased expenditure limits. The Hatch Act of 1939 and its 1940 amendments asserted the right of Congress to regulate primary elections and included

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<sup>1</sup>The first campaign finance law actually predates these practices. Congress passed legislation in 1867 that prohibited Federal officers from soliciting Navy Yard workers for contributions.

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provisions limiting contributions and expenditures in Congressional elections. The Taft-Hartley Act of 1947 barred both labor unions and corporations from making expenditures and contributions in federal elections.

These legislative initiatives, taken together, sought to:

- Limit contributions to ensure that wealthy individuals and special interest groups did not have a disproportionate influence on federal elections;
- Prohibit certain sources of funds for federal campaign purposes;
- Control campaign spending, which tends to fuel reliance on contributors and fundraisers; and
- Require public disclosure of campaign finances to deter abuse and to educate the electorate.

None of these laws, however, created an institutional framework to administer the campaign finance provisions effectively. As a result, those provisions were largely ignored. The laws had other flaws as well. For example, spending limits applied only to committees active in two or more states. Further, candidates could avoid the spending limit and disclosure requirements altogether because a candidate who claimed to have no knowledge of spending on his behalf was not liable under the 1925 Act.

When Congress passed the more stringent disclosure provisions of the 1971 Federal Election Campaign Act (FECA), the shortcomings of the earlier laws became apparent. In 1968, still under the old law, House and Senate candidates reported spending \$8.5 million, while in 1972, after the passage of the FECA, spending reported by Congressional candidates jumped to \$88.9 million.<sup>2</sup>

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<sup>2</sup>*Congressional Quarterly Weekly Report*, Vol. xxvii, No. 49, December 5, 1969, p. 2435; Clerk of the House, “The Annual Statistical Report of Contributions and Expenditures Made During the 1972 Election Campaigns for the U.S. House of Representatives” (1974), p. 161; Secretary of the Senate, “The Annual Statistical Report of Receipts and Expenditures Made in Connection with Elections for the U.S. Senate in 1972” [undated], p. 33.

## The 1971 Election Laws

The Federal Election Campaign Act of 1971 (P.L. 92-225), together with the 1971 Revenue Act (P.L. 92-178), fundamentally changed the federal campaign finance laws. The FECA, effective April 7, 1972, not only required full reporting of campaign contributions and expenditures, but also limited spending on media advertisements and limited spending from candidates’ personal funds.<sup>3</sup> (These limits were later repealed to conform with judicial decisions.)

The FECA also provided the basic legislative framework for corporations and labor unions to establish separate segregated funds,<sup>4</sup> popularly referred to as PACs (political action committees). Although the Tillman Act and the Taft-Hartley Act of 1947 banned direct contributions by corporations and labor unions to influence federal elections, the FECA provided an exception whereby corporations and unions could use treasury funds to establish, operate and solicit voluntary contributions for the organization’s PAC. These voluntary donations from individuals could then be used to contribute to federal campaigns.

Under the Revenue Act—the first of a series of laws designed to implement federal financing of Presidential elections—citizens could check a box on their tax forms authorizing the federal government to use one of their tax dollars to finance Presidential campaigns in the general election.<sup>5</sup> Congress implemented the program in 1973 and, by 1976, enough tax money had accumulated to fund the 1976 Presidential election—the first publicly funded federal election in U.S. history.

Like its predecessors, the Federal Election Campaign Act of 1971 did not provide for a single, independent body to monitor and enforce the law. Instead, the Clerk of the House, the Secretary of the Senate and the Comptroller General of the United States, head of the General Accounting Office (GAO), monitored compliance with the FECA. The Justice Department was responsible for prosecuting violations of the law referred by the three su-

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<sup>3</sup>“Contribution” and “expenditure” are defined in 2 U.S.C. and 11 CFR.

<sup>4</sup>“Separate segregated fund” is described in 2 U.S.C. and 11 CFR.

<sup>5</sup>In 1966, Congress enacted a law to provide for public funding of Presidential elections, but suspended the law a year later. It would have included a taxpayers’ checkoff provision similar to that later embodied in the 1971 law.



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pervisory officials. Following the 1972 elections, however, the Justice Department prosecuted few of the 7,100 cases referred to it.<sup>6</sup>

## 1974 Amendments

In 1974, following the documentation of campaign abuses in the 1972 Presidential elections, a consensus emerged to create an independent body to ensure compliance with the campaign finance laws. Comprehensive amendments to the FECA (P.L. 93-443) established the Federal Election Commission, an independent agency to assume the administrative functions previously divided between Congressional officers and GAO. The Commission was given jurisdiction in civil enforcement matters, authority to write regulations and responsibility for monitoring compliance with the FECA. Additionally, the amendments transferred from GAO to the Commission the function of serving as a national clearinghouse for information on the administration of elections.

Under the 1974 amendments, the President, the Speaker of the House and the President pro tempore of the Senate each appointed two of the six voting members of the newly created Commission. The Secretary of the Senate and the Clerk of the House were designated as nonvoting, *ex officio* Commissioners. The first Commissioners were sworn in on April 14, 1975.

The 1974 amendments also expanded the public funding system for Presidential elections. The amendments provided for partial federal funding, in the form of matching funds, for Presidential primary candidates and also extended public funding to political parties to finance their Presidential nominating conventions.

Complementing these provisions, Congress also enacted strict limits on both contributions and expenditures. These limits applied to all candidates for federal office and to political committees influencing federal elections.<sup>7</sup>

Another amendment relaxed the prohibition on contributions from federal government contractors. The FECA, as amended, permitted corporations and unions with federal contracts to establish and operate PACs.

## *Buckley v. Valeo*

The constitutionality of key provisions of the 1974 amendments was immediately challenged in a lawsuit filed by Senator James L. Buckley (Conservative Party, New York) and Eugene McCarthy (former Democratic Senator from Minnesota) against the Secretary of the Senate, Francis R. Valeo. The Supreme Court handed down its ruling on January 30, 1976. *Buckley v. Valeo*, 424 U.S. 1 (1976).

In its decision, the Court upheld contribution limits because they served the government's interest in safeguarding the integrity of elections by preventing even the appearance of corruption of public officials. However, the Court overturned the expenditure limits, stating: "It is clear that a primary effect of these expenditure limitations is to restrict the quantity of campaign speech by individuals, groups and candidates. The restrictions...limit political expression at the core of our electoral process and of First Amendment freedoms." Acknowledging that both contribution and spending limits had First Amendment implications, the Court stated that the new law's "expenditure ceilings impose significantly more severe restrictions on protected freedoms of political expression and association than do its limitations on financial contributions." The Court implied, however, that the expenditure limits placed on publicly funded candidates were constitutional because Presidential candidates were free to disregard the limits if they chose to reject public financing; later, the Court affirmed this ruling in *Republican National Committee v. FEC*. 445 U.S. 955 (1980).

The Court also sustained other public funding provisions and upheld disclosure and recordkeeping requirements. However, the Court found that the method of appointing FEC Commissioners violated the constitutional principle of separation of powers, since Congress, not the President, appointed four of the Commissioners, who

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<sup>6</sup>Comptroller General of the United States, "Report of the Office of Federal Elections of the General Accounting Office in Administering the Federal Election Campaign Act of 1971" (February 1975). pp. 23 and 24.

<sup>7</sup>"Political committee" is defined in 2 U.S.C. and 11 CFR.



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exercised executive powers.<sup>8</sup> As a result, beginning on March 22, 1976, the Commission could no longer exercise its executive powers.<sup>9</sup> The agency resumed full activity in May, when, under the 1976 amendments to the FECA, the Commission was reconstituted and the President appointed six Commission members, who were confirmed by the Senate.

## 1976 Amendments

In response to the Supreme Court's decision, Congress again revised the campaign finance legislation. The new amendments, enacted on May 11, 1976, repealed most expenditure limits (except for candidates who accepted public funding) and revised the provision governing the appointment of Commissioners.

Among the 1976 amendments were provisions to limit the scope of PAC fundraising by corporations and labor organizations. Preceding this curtailment of PAC solicitations, the FEC had issued an advisory opinion, AO 1975-23 (the SunPAC opinion), confirming that the 1971 law permitted a corporation to use treasury money to establish, operate and solicit contributions to a PAC. The opinion also permitted corporations and their PACs to solicit the corporation's employees as well as its stockholders. The 1976 amendments, however, put significant restrictions on PAC solicitations, specifying who could be solicited and how solicitations would be conducted. In addition, a single contribution limit was adopted for all PACs established by the same union or corporation.

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<sup>8</sup>Similarly, in 1993, the U.S. Court of Appeals for the District of Columbia ruled that the Commission's two Congressionally-appointed *ex officio* members "violate[d] the Constitution's separation of powers." In compliance with the court's decision, the Commission reconstituted itself as a six-member body, comprising only the Presidentially-appointed Commissioners. As a precaution, the reconstituted Commission ratified all of its previous decisions to ensure uninterrupted enforcement of the FECA. The Commission petitioned the Supreme Court for a writ of certiorari in the case, but in December 1994, the Court dismissed the Commission's petition, concluding that the agency lacked statutory authority to seek Supreme Court review on its own, in cases arising under the FECA. The Court's decision left standing the appeals court ruling. (*FEC v. NRA Political Victory Fund*)

<sup>9</sup>The Supreme Court stayed its judgment concerning Commission powers for 30 days; the stay was extended once.

## 1979 Amendments

Building upon the experience of the 1976 and 1978 elections, Congress made further changes in the law. The 1979 amendments to the FECA (P.L. 96-187), enacted on January 8, 1980, included provisions that simplified reporting requirements, encouraged party activity at state and local levels and increased the public funding grants for Presidential nominating conventions.

## Subsequent Amendments

Since 1979, Congress has adopted several amendments of more limited scope, including provisions to:

- Ban honoraria for federal officeholders;
- Repeal the "grandfather clause" that had permitted some Members of Congress to convert excess campaign funds to personal use (see page 22); and
- Increase funding for national nominating conventions.

In addition, Congress enacted legislation that:

- Assigned significant new administrative duties to the Commission under the National Voter Registration Act (see page 15); and
- Increased the tax checkoff for the Presidential Election Campaign Fund from \$1 to \$3. (see page 12.)

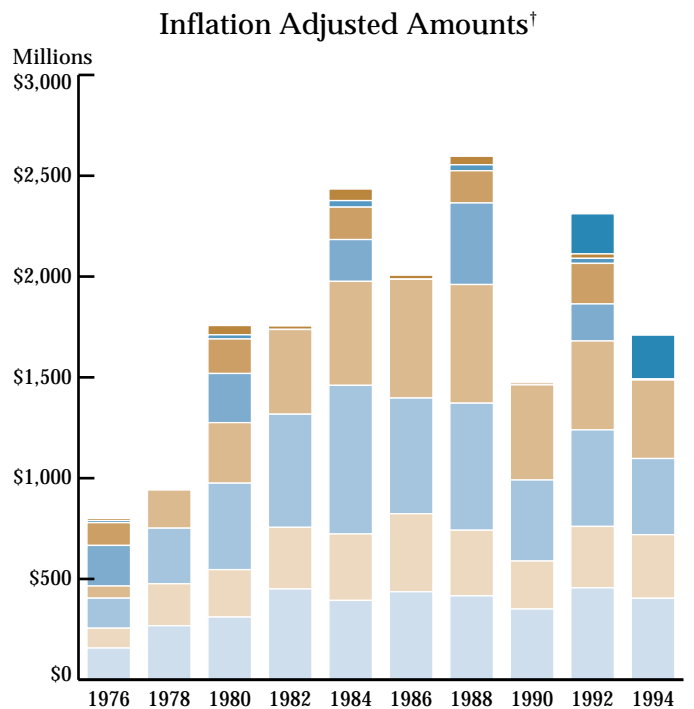
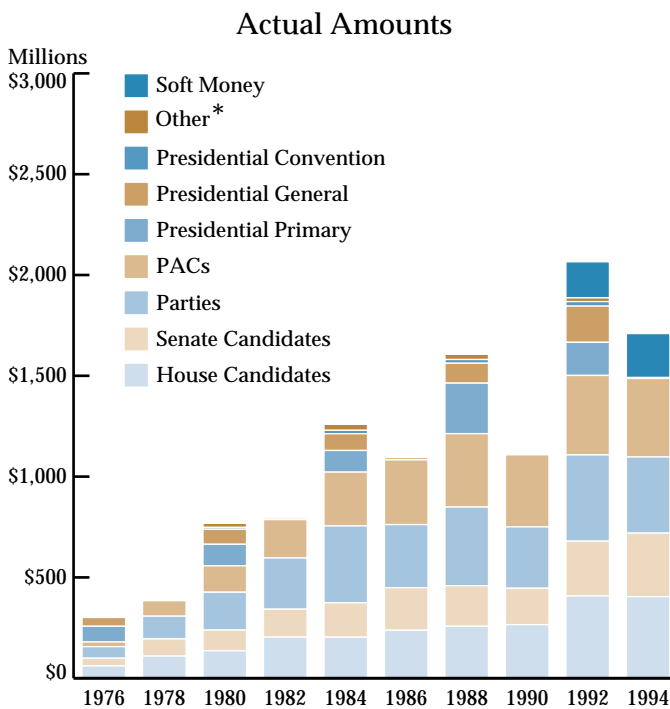
Although Congress has continued over the years to consider major reform of the current election laws, in recent years relatively few changes to the law have occurred. The focus of activity has, in effect, shifted from legislative initiatives to administrative and judicial actions. New developments have occurred at the Federal Election Commission, as it has attempted to implement and enforce the law, and in the courts. These developments are the subject of the next two chapters.

## CHAPTER 2 ADMINISTERING AND ENFORCING THE FECA

The Federal Election Campaign Act (FECA) regulates the financing of elections for federal office. It limits the sources and amounts of funds used to support candidates for federal office, requires disclosure of campaign finance information and—in tandem with the Primary Matching Pay-

ment Act and the Presidential Election Campaign Fund Act—provides for the public funding of Presidential elections. (Chart 2-1 provides a glimpse of the activity regulated by the federal election law.)

**CHART 2-1**  
Overall Financial Activity Reported to the FEC



\*The "Other" category includes communication costs and independent expenditures.

<sup>†</sup>Activity is expressed in 1994 dollars. This means the values in earlier years have been increased to account for inflation between that year and 1994.

As the agency charged with administering and enforcing the FECA, the Federal Election Commission has four major responsibilities:

- Providing disclosure of campaign finance information;
- Ensuring that candidates, committees and others comply with the limitations, prohibitions and disclosure requirements of the FECA;
- Administering the public funding of Presidential elections; and
- Serving as a clearinghouse for information on election administration.

This chapter highlights the Commission's stewardship of the FECA, focusing on recent improvements the agency has made in carrying out its responsibilities.

### Customer Service

Since its beginning, 20 years ago, the FEC has prided itself in providing outstanding service to the public, the press and the regulated community. Transcending the Commission's prescribed duties, the commitment to customer service is most evident in the Commission's efforts to encourage voluntary compliance with the FECA and to facilitate public access to campaign finance data. This section demonstrates how the agency's outreach and disclosure programs serve the agency's customers.

### Outreach

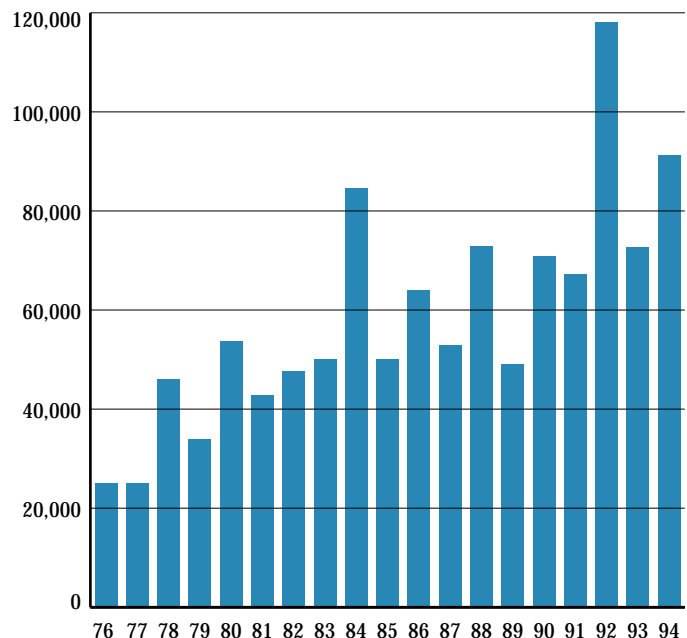
For political committees, outreach begins early. A committee's first contact with the FEC often comes through the agency's toll-free information hotline. Staff from the Information Division explain the requirements of the FECA and send the committee a registration packet that contains forms and publications geared toward its needs.

When a committee submits its registration documents, the Commission's Data staff assign it an identification number and enter the registration information into the FEC database. Microfilm and paper copies of the registration are placed on the public record, and the committee is automatically added to the mailing list for all official notices and correspondence from the Commission, including the agency's award-winning monthly newsletter, the *Record*.

As questions about the FECA arise, committee staff can choose from a variety of FEC services designed to help them understand the law and voluntarily comply with its provisions. (These services are available to anyone interested in learning about the law. As shown in Chart 2-2, thousands of callers dial the toll-free information hotline for help each year.) Public affairs specialists answer their questions about the law, and reports analysts, who review the actual reports filed by committees, are also available to respond to questions and offer guidance on the law. (The Commission's Audit staff helps Presidential committees comply with the special rules that govern publicly funded campaigns.) Committee staff can also attend instructional workshops and conferences and/or request free FEC publications that explain particular aspects of the law. Should committee staff need a publication or other document quickly, they can call the agency's automated "flashfax" system and receive the document immediately by fax, 24 hours a day, seven days a week. More than 2,500 documents were faxed during the system's first six months of operation (July - December 1994).

If a committee wants official, legally binding guidance from the Commission, it may request an advisory opinion (AO). The Commission responds to these requests within 60 days, or within 20 days if a candidate's committee submits the request just

CHART 2-2  
Telephone Inquiries on the 800-line



before an election. An AO answers the requesting committee's question and also serves as a precedent for other committees in similar situations. The Commission has issued more than 1,000 AOs since 1975.

To further assist committees, the Commission sends reminder notices along with the necessary reporting forms shortly before reports are due.

### Disclosure

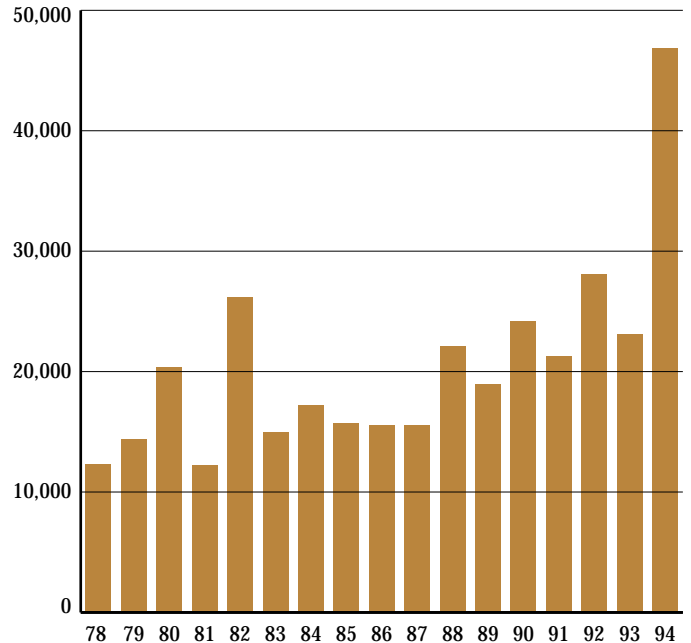
Disclosing the sources and amounts of funds used to finance federal elections is perhaps the most important of the FEC's duties. In fact, it would be virtually impossible for the Commission to effectively fulfill any of its other responsibilities without disclosure. The Commission could not, for example, enforce the law without knowledge of each committee's receipts and disbursements. Disclosure also helps citizens evaluate the candidates running for federal office and it enables them, along with the agency, to monitor committee compliance with the election law. Given these facts, the Commission has devoted substantial resources to providing effective access to campaign finance data.

When a committee files its FEC report, the Commission's Public Records Office ensures that a copy is available for public inspection within 48 hours. Simultaneously, the agency's Data staff begins to enter the information disclosed in the report into the FEC computer database. The amount of information disclosed has grown dramatically over the years. By December 1994, more than 12 million pages of information were available for public review.

In the Public Records Office citizens can inspect microfilm and paper copies of committee reports, as well as the FEC's computer database and more than 25 different computer indexes that make the data more accessible. (The G Index, for example, lists individuals who have given more than \$200 to a committee during an election cycle. The K and L Indexes offer broader "bank statement" views of receipts and disbursements for PACs, parties and candidates.) Public Records staff assist thousands of callers and visitors every year. (See Chart 2-3.)

On-line computer access to a committee's financial data is also available in a number of state

CHART 2-3  
Persons Served in Public Records

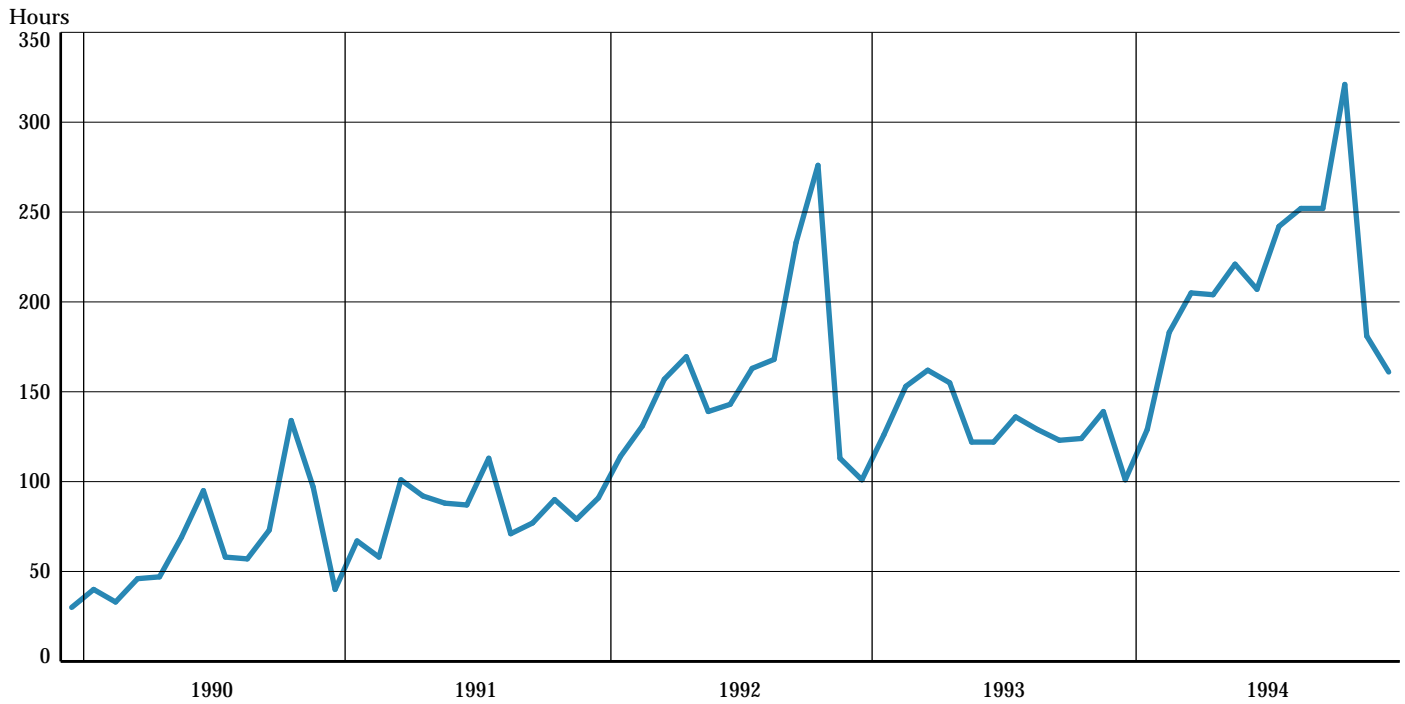


offices through the State Access Program (SAP), and to individual subscribers linked by modem to the Commission's Direct Access Program (DAP). These systems afford access not only to raw financial data, but also to the various categorical indexes mentioned above. (Chart 2-4 tracks DAP usage since December 1989.)

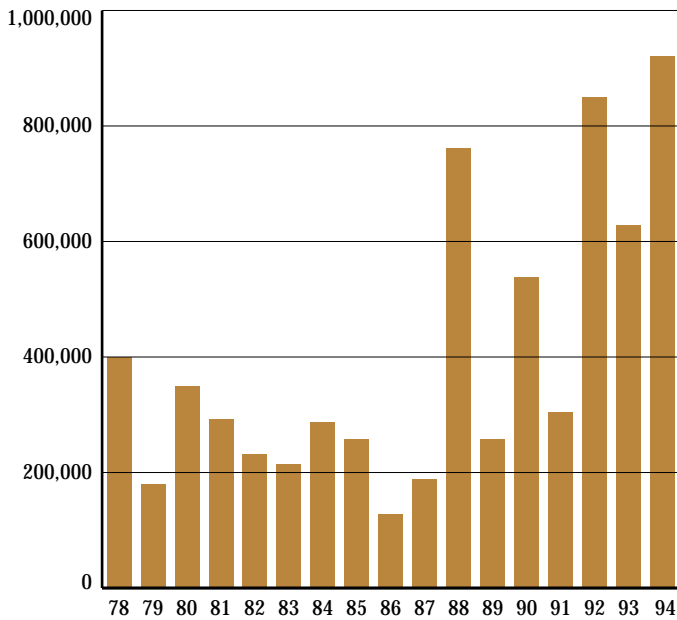
In the near future, computers will play an even larger role in disclosure. The Commission is adding a digital imaging system to permit a user to view a committee's report on a high resolution computer screen (or a paper copy), just as the document appeared in its original form. Further, the Commission plans to develop and implement an electronic filing program within the next few years to expedite disclosure and to ease the data entry burden the agency now faces. (See Chart 2-5.)

Members of the news media may review committee reports using any of the methods described above, and may receive assistance from the Commission's Press Office. Staff answer reporters' questions, issue press releases summarizing campaign finance data and significant FEC actions, and respond to requests under the Freedom of Information Act (FOIA). The press office logs thousands of calls each year. (See Chart 2-6.)

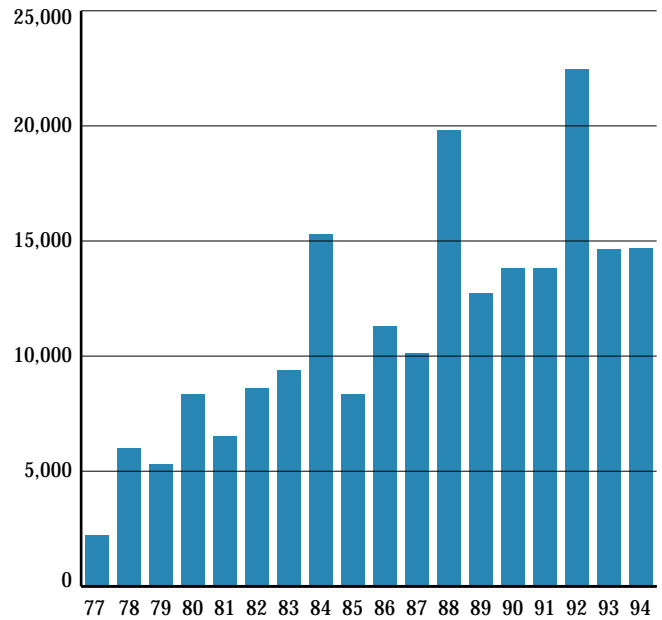
**CHART 2-4**  
Direct Access Usage by Month



**CHART 2-5**  
Number of Detailed Contribution and Expenditure Transactions Processed\*



**CHART 2-6**  
Number of Phone Calls to the Press Office



\*The Commission lowered its data entry threshold from \$500 to \$200 in 1989, and began entering soft money transactions in 1991.

The Commission also makes available a variety of agency documents, including: advisory opinions, closed enforcement and litigation files, audit reports and both written minutes and audio tapes of Commission meetings.

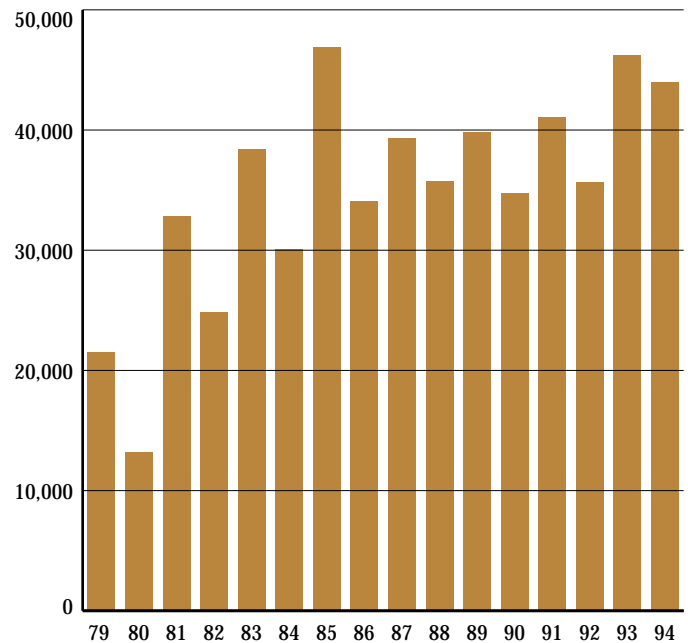
## Enforcement

As effective as the Commission's efforts to encourage voluntary compliance with the FECA have been, none would have succeeded without the deterrent provided by the agency's enforcement program. As noted in Chapter 1, earlier campaign finance laws were largely ineffectual because no single, independent agency handled enforcement. By contrast, under the current law, the Commission has exclusive jurisdiction over civil enforcement.

Enforcement cases are generated through complaints filed by the public, referrals from other federal and state agencies and the FEC's own monitoring procedures. The Commission's Reports Analysis Division reviews each report a committee files in order to ensure the accuracy of the information on the public record and to monitor the committee's compliance with the law. If the information disclosed in a report appears to be incomplete or inaccurate, the reviewing analyst sends the committee a request for additional information (RFAI). The committee may avoid a potential enforcement action and/or audit by responding promptly to such a request. (Most responses take the form of an amended report.) Although the Commission does not have authority to conduct random audits of committees,<sup>1</sup> it can audit a committee "for cause" when the committee's reports indicate violations of the law. (Chart 2-7 tracks report review activity.)

The agency must attempt to resolve enforcement matters through conciliation. If conciliation fails, however, the Commission (rather than the Justice Department) may take a respondent to

CHART 2-7  
Number of Reports Reviewed  
by the Reports Analysis Division



court. Likewise, when Commission actions are challenged in court, the Commission conducts its own defensive litigation.<sup>2</sup> The Commission has been involved in more than 350 court cases since 1980.<sup>3</sup>

## Prioritization

Until recently, the Commission handled every enforcement matter, regardless of its significance. As the number and complexity of cases increased, a backlog developed, jeopardizing the Commission's ability to effectively enforce the law. Given its limited resources, the Commission recognized that it could not enforce the law effectively if it continued to handle every enforcement matter

<sup>1</sup>In its legislative recommendations, the Commission has asked Congress to reinstate the agency's authority to conduct random audits. Congress revoked that authority as part of the 1979 amendments to the FECA.

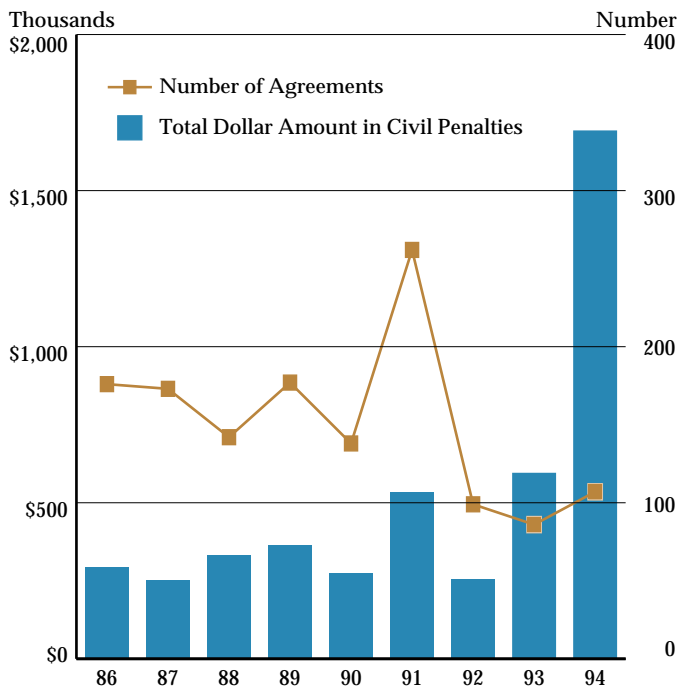
<sup>2</sup>With regard to cases that are appealed to the Supreme Court, however, the high Court ruled, in December 1994, that the FEC could not unilaterally bring cases before it, except those involving the Presidential public funding program. Instead, the Commission must ask the Justice Department either to represent the agency or to grant approval for the Commission to represent itself before the Court. (*FEC v. NRA Political Victory Fund*)

<sup>3</sup>The Commission has won 90 percent of those cases (excluding cases that were dismissed).

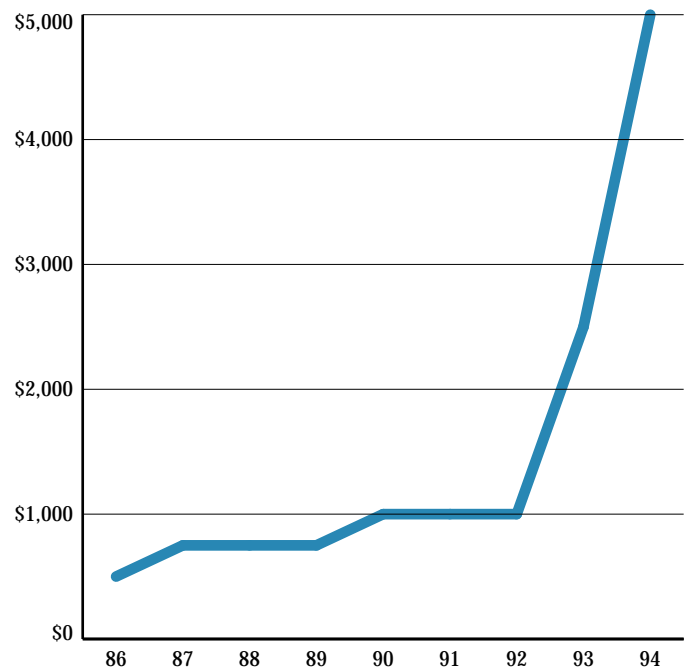
that came before it. As a result, the Commission developed an enforcement prioritization system. Under this system, the Commission ranks enforcement cases based on specific criteria, and assigns only the more significant cases to staff. Less significant cases are held until staff becomes available, and those that do not warrant further consideration are dismissed. While the prioritization system ensures that the agency devotes its resources to the more significant cases on its docket, the Commission continues to pursue a wide range of cases at all times.

The Commission introduced the prioritization system in 1993. At the same time, the Commission began to seek higher civil penalties when it found serious violations of the law. The agency believes that this combination of prioritization and higher penalties will help deter future violations of the law. (As shown in Chart 2-8, the agency's new approach has had a significant impact.)

**CHART 2-8(a)**  
**Conciliation Agreements and**  
**Civil Penalties by Calendar Year\***



**CHART 2-8(b)**  
**Median Civil Penalty**  
**by Calendar Year\***



\*An enforcement case may include several respondents. Because some respondents enter into conciliation agreements more quickly than others, agreements calling for civil penalties in a single enforcement case may be concluded in different years. The figures in this chart represent the total penalties included in all conciliation agreements entered into during the calendar year specified, whether or not the case itself was concluded during that year.

Note that conciliation agreements for a given case are not made public until the entire case closes.



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## Presidential Public Funding

Every Presidential election since 1976 has been financed with public funds. While the concept of public funding dates back to the turn of the century, a public funding program was not implemented until the early 1970s.

Congress designed the program to correct the problems perceived in the Presidential electoral process. Those problems were believed to include:

- The disproportionate influence (or the appearance of influence) of the wealthiest contributors;
- The demands of fundraising that prevented some candidates from adequately presenting their views to the public; and
- The increasing cost of Presidential campaigns, which effectively disqualified candidates who did not have access to large sums of money.<sup>4</sup>

To address these problems, Congress devised a program that combines public funding with limitations on contributions and expenditures. The program has three parts:

- Matching funds for primary candidates;
- Grants to sponsor political parties' Presidential nominating conventions; and
- Grants for the general election campaigns of major party nominees and partial funding for qualified minor and new party candidates.

Based on statutory criteria, the Commission determines which candidates and committees are eligible for public funds, and in what amounts. The U.S. Treasury then makes the necessary payments. Later, the Commission audits all of the committees that received public funds to ensure that they used the funds properly. Based on the Commission's findings, committees may have to make repayments to the U.S. Treasury.

### Audits

Ensuring the proper use of public funds requires Commission auditors to review thousands of transactions involving millions of dollars for each Presidential candidate who receives public

funds. The time required for these audits, and the campaigns' response to the Commission's conclusions, can extend several years after the election. These delays have frustrated everyone involved, including the Commission, the candidates and the public.

To minimize these frustrations, the Commission recently introduced a number of innovations to expedite the presidential audit process. In 1991 and 1992, the agency revised its regulations, amended its audit procedures, expanded its use of technology and increased staffing to hasten the completion and disclosure of Presidential audits. The new methods have paid off. The agency issued the final audit reports of all the 1992 Presidential candidates by the end of 1994. In past elections, some reports had taken up to four years to complete.

### Tax Checkoff

The public funding program is exclusively funded by the dollars that taxpayers designate for the Presidential Election Campaign Fund on their 1040 tax forms. Beginning in 1980, fewer and fewer taxpayers designated a dollar to the Presidential Fund, even as Fund payments to candidates increased with inflation. (See Chart 2-9.)

The Commission warned Congress of an impending shortfall in the Fund and launched a public education program, urging taxpayers to "make an informed choice" regarding the checkoff.

In August 1993, Congress preserved the Fund in the short run by increasing the checkoff amount from \$1 to \$3. The legislation did not, however, index the checkoff amount to inflation. Since payments from the Fund will continue to increase with inflation, a shortfall at some future point remains inevitable. Should a shortfall occur, current law requires the U.S. Department of Treasury to allocate remaining funds, giving first priority to the conventions, second priority to the general election and third priority to the primaries. (For further information, see *The Presidential Public Funding Program*, a 1993 FEC publication.)

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<sup>4</sup>See S. Rep. No. 93-689, pp. 1-10 (1974).

CHART 2-9 (1 of 2)  
 Presidential Fund  
 Income Tax Checkoff Status



FEDERAL ELECTION COMMISSION  
 PRESS OFFICE  
 (202)219-4155  
 (800)424-9530

February 1995

PRESIDENTIAL FUND — INCOME TAX CHECKOFF STATUS

| CALENDAR YEAR                 | 1984                | 1983                | 1982                | 1981                | 1980                | 1989                | 1988                | 1987                | 1986                | 1985                |
|-------------------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| JANUARY                       | \$ 840,258          | \$ 496,442          | \$ 185,784          | \$ 55,917           | \$ 191,076          | \$ 51,732           | \$ 189,239          | \$ 180,021          | \$ 93,644           | \$ 22,489           |
| FEBRUARY                      | 9,603,292           | 4,169,736           | 5,350,532           | 3,859,981           | 3,651,840           | 3,350,332           | 3,577,465           | 2,193,576           | 2,433,902           | 756,295             |
| MARCH                         | 13,670,027          | 5,626,467           | 6,543,872           | 8,967,739           | 9,103,550           | 7,231,448           | 7,217,318           | 9,554,967           | 7,928,518           | 7,535,879           |
| APRIL                         | 16,726,728          | 5,020,155           | 5,731,339           | 6,419,427           | 6,395,132           | 6,300,921           | 6,998,769           | 7,148,608           | 9,944,248           | 8,590,753           |
| MAY                           | 11,537,067          | 5,582,833           | 5,808,728           | 5,854,209           | 5,519,508           | 7,536,090           | 7,295,636           | 6,615,806           | 6,718,371           | 8,235,644           |
| JUNE                          | 9,281,193           | 3,555,265           | 3,635,585           | 4,845,602           | 4,707,103           | 3,903,518           | 3,216,574           | 4,071,899           | 4,082,492           | 2,986,813           |
| JULY                          | 5,567,974           | 1,936,487           | 1,119,885           | 958,772             | 1,228,985           | 1,402,031           | 2,219,724           | 2,033,072           | 2,453,953           | 3,455,350           |
| AUGUST                        | 903,022             | 337,847             | 254,933             | 506,805             | 434,132             | 1,347,288           | 1,096,980           | 830,094             | 947,562             | 1,910,141           |
| SEPTEMBER                     | 1,155,429           | 458,471             | 502,316             | 364,392             | 545,024             | 669,189             | 686,710             | 100,870             | 690,992             | 587,237             |
| OCTOBER                       | 1,181,278           | 172,882             | 201,739             | 144,866             | 162,037             | 172,340             | 155,329             | 550,265             | 100,254             | 310,643             |
| NOVEMBER                      | 722,307             | 271,725             | 194,241             | 294,056             | 258,973             | 250,685             | 279,726             | 267,288             | 260,196             | 229,308             |
| DECEMBER                      | 128,420             | 52,672              | 63,781              | 50,570              | 65,619              | 70,062              | 80,317              | 105,541             | 90,065              | 90,209              |
| <b>TOTAL CHECK-OFF</b>        | <b>\$71,316,995</b> | <b>\$27,636,982</b> | <b>\$29,592,735</b> | <b>\$32,322,336</b> | <b>\$32,462,979</b> | <b>\$32,285,646</b> | <b>\$33,013,987</b> | <b>\$33,651,947</b> | <b>\$35,753,837</b> | <b>\$34,712,761</b> |
| <b>TOTAL REPAYMENTS YEAR-</b> |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| <b>TO-DATE</b>                | \$136,601.00        | \$129,707.22        | \$566,076.68        | \$595,419.14        | \$39,148.13         | \$22,024.32         | \$103,499.76        | \$357,307.09        | \$61,640.71         | \$61,839.97         |
| <b>TOTAL DISBURSEMENTS</b>    |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| <b>YEAR-TO-DATE</b>           | \$568,434.92        | \$1,048,364.31      | \$153,191,152.59    | \$21,200,000.00     | \$2,426.42          | \$1,843,016.67      | \$158,560,804.63    | \$17,764,000.00     | \$5,596.22          | \$1,617,841.66      |
| <b>FUND BALANCE</b>           | \$101,664,546.86    | \$30,779,365.78     | \$4,061,060.87      | \$127,144,468.62    | \$115,426,713.48    | \$82,927,012.77     | \$52,462,359.12     | \$177,905,676.99    | \$161,680,422.90    | \$125,870,541.41    |

NOTES:  
 • MONTHLY DEPOSIT FIGURES ARE NOT AVAILABLE FOR THE YEARS 1973 - 1975.  
 • 1973 TAX RETURNS PROVIDED TAXPAYERS THE OPPORTUNITY TO DESIGNATE FUNDS FOR 1972 AND 1973.  
 • FIGURES FOR 1973 THROUGH 1976 CAN NOT BE VERIFIED.  
 • ALL MONTHLY DEPOSIT FIGURES HAVE BEEN PROVIDED BY THE U.S. DEPARTMENT OF THE TREASURY.

ACCORDING TO INTERNAL REVENUE SERVICE INFORMATION, THE PERCENTAGE OF TAX RETURNS PROCESSED INDICATING ONE- OR TWO-DOLLAR DESIGNATIONS WAS:

|                     |                     |                     |
|---------------------|---------------------|---------------------|
| 1976 RETURNS—27.5 % | 1984 RETURNS—23.0 % | 1988 RETURNS—20.1 % |
| 1977 RETURNS—28.6 % | 1985 RETURNS—23.0 % | 1989 RETURNS—19.8 % |
| 1978 RETURNS—25.4 % | 1986 RETURNS—21.7 % | 1990 RETURNS—19.5 % |
| 1979 RETURNS—27.4 % | 1987 RETURNS—21.0 % | 1991 RETURNS—17.7 % |
|                     |                     | 1992 RETURNS—18.9 % |
|                     |                     | 1993 RETURNS—14.5 % |

CHART 2-9 (2 of 2)  
 Presidential Fund  
 Income Tax Checkoff Status



FEDERAL ELECTION COMMISSION  
 PRESS OFFICE  
 (202)219-4155  
 (800)424-9530

February 1995

PRESIDENTIAL FUND — INCOME TAX CHECKOFF STATUS

| CALENDAR YEAR                               | 1984             | 1983             | 1982             | 1981             | 1980             | 1979             | 1978             | 1977            | 1976            |
|---|------------------|------------------|------------------|------------------|------------------|------------------|------------------|-----------------|-----------------|
| JANUARY                                     | \$ 169,832       | \$ 319,570       | \$ 457,372       | \$ 684,510       | \$ 326,184       | \$ 482,973       | \$ 689,488       | \$ 746,685      | \$ 876,771      |
| FEBRUARY                                    | 3,769,428        | 4,077,295        | 3,790,858        | 4,141,426        | 7,247,271        | 4,583,893        | 5,986,292        | 7,811,426       | 7,487,457       |
| MARCH                                       | 8,732,837        | 8,847,655        | 11,013,954       | 11,254,856       | 8,625,855        | 9,637,824        | 9,006,764        | 10,472,777      | 8,828,310       |
| APRIL                                       | 5,482,270        | 7,527,099        | 6,338,933        | 7,424,035        | 7,186,840        | 6,713,117        | 9,765,133        | 7,054,795       | 7,090,211       |
| MAY   | 8,465,697        | 5,778,132        | 7,427,745        | 7,665,407        | 6,563,699        | 6,581,790        | 5,941,997        | 6,029,693       | 6,073,861       |
| JUNE  | 2,757,257        | 2,987,695        | 4,145,029        | 4,592,000        | 3,933,738        | 4,233,077        | 4,851,826        | 3,618,171       | 2,725,832       |
| JULY  | 3,171,247        | 3,000,431        | 4,193,252        | 3,773,686        | 4,061,737        | 3,035,907        | 2,224,813        | 350,497         | 323,616         |
| AUGUST                                      | 1,113,469        | 2,071,316        | 1,049,706        | 871,842          | 409,085          | 264,192          | 409,288          | 225,626         | 128,536         |
| SEPTEMBER                                   | 669,569          | 583,082          | 272,412          | 300,194          | 235,375          | 166,705          | 136,750          | 225,626         | 88,078          |
| OCTOBER                                     | 208,484          | 172,454          | 143,312          | 140,723          | 109,983          | 123,841          | 127,755          | 47,965          | 47,965          |
| NOVEMBER                                    | 205,530          | 182,126          | 129,927          | 134,997          | 104,440          | 83,457           | 69,867           | 40,564          | 36,413          |
| DECEMBER                                    | 291,141          | 84,213           | 61,382           | 65,376           | 34,210           | 34,571           | 36,716           | 33,632          | 24,895          |
| <b>TOTAL CHECK-OFF<br/>YEAR-TO-DATE</b>     | \$35,036,761     | \$35,631,068     | \$39,023,882     | \$41,049,052     | \$38,838,417     | \$35,941,347     | \$39,246,689     | \$36,606,008    | \$33,731,945    |
| <b>TOTAL REPAYMENTS YEAR-<br/>TO-DATE</b>   | \$505,807.15     | \$21,899.13      | \$58,399.69      | \$202,287.60     | \$1,094,097.68   | \$23,473.82      | \$163,725.41     | \$1,037,029.10  | -0-             |
| <b>TOTAL DISBURSEMENTS<br/>YEAR-TO-DATE</b> | \$120,149,768.18 | \$11,786,485.65  | \$1,070.22       | \$630,255.73     | \$101,427,115.89 | \$1,050,000.00   | \$6,000.00       | \$521,124.42    | \$69,467,521.18 |
| <b>FUND BALANCE</b>                         | \$92,713,782.10  | \$177,320,982.13 | \$153,454,500.65 | \$114,373,289.18 | \$73,752,205.31  | \$135,246,806.52 | \$100,331,985.70 | \$60,927,371.29 | \$23,805,659.61 |

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## National Clearinghouse on Election Administration

The Commission's National Clearinghouse on Election Administration serves as a central exchange for information and research on issues related to the administration of federal elections. Clearinghouse programs fall into three broad categories:

- Conducting research, both contract and in-house;
- Providing information by participating in meetings of state and local election officials, briefing foreign visitors and maintaining a library of election information; and
- Monitoring federal legislation that affects the administration of elections.

Products of Clearinghouse research span a variety of topics including state campaign finance law, election case law, state ballot access procedures and state procedures for contested elections and recounts. The Clearinghouse also publishes the *FEC Journal of Election Administration* and a continuing series of monographs describing recent technological and administrative innovations in state and local election offices.

In 1980, Congress directed the Commission to study the feasibility of developing performance standards for voting systems used in the United States. After a decade of research and dialogue, the Clearinghouse published *Performance and Test Standards for Punchcard, Marksense, and Direct Recording Electronic Voting Systems*. This document provides voluntary performance and test standards that states and voting systems vendors may use to improve the accuracy, integrity and reliability of computer-based voting systems.

Following the passage of the National Voter Registration Act of 1993, the Clearinghouse helped states implement the new law. Congress enacted the NVRA to facilitate and increase voter registration by providing opportunities to register at a number of different state agencies or offices. Citizens may, for example, register to vote at state offices that provide public assistance and at those that provide state-funded services to persons with disabilities. States must also offer voter registration via a mail-in registration form, at armed forces re-

cruitment offices and at offices that issue driver's licenses (hence the nickname, the "Motor Voter" law).

As required under the NVRA, the Clearinghouse informed state and local election officials and public interest groups about the law's requirements and published a guide for the states entitled *Implementing the National Voter Registration Act of 1993: Requirements, Issues, Approaches, and Examples*.

In June 1994, the Commission published final rules concerning the information that states must provide to the FEC for its report to Congress on the NVRA's effect on the administration of federal elections. The rules also describe the national mail voter registration form.

The Clearinghouse designed the voter registration form in consultation with state election officials and made it publicly available in January 1995. Under the NVRA, states must accept and use the form as a means of applying for voter registration or updating registration data.<sup>5</sup>

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<sup>5</sup>In December 1994, the governor of California filed a lawsuit challenging the constitutionality of the NVRA. In January 1995, the Justice Department sued California, Illinois and Pennsylvania for refusing to comply with the statute. Two other states, Michigan and South Carolina, also failed to comply, but were not named in the suit. In the wake of the Justice Department's action, South Carolina filed a preemptive lawsuit to prevent the government from forcing it to comply with the law. Nonetheless, in February 1995, the Justice Department filed suit against South Carolina. At the time of publication, none of these cases had been resolved.

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## CHAPTER 3

# KEY ISSUES BEFORE THE COMMISSION

“[S]afeguarding the integrity of the electoral process without...impinging upon the rights of individual citizens and candidates to engage in political debate and discussion.” Those words, from the Supreme Court’s *Buckley v. Valeo* decision, describe the balance that the Commission has tried to achieve as it has administered and enforced the Federal Election Campaign Act. During the last 20 years, the Commission has wrestled with many difficult issues, often searching for ways to balance the governmental interest of ensuring the integrity of the electoral process and our representative form of government with the constitutional rights to free speech and free association. This chapter examines that search, focusing particularly on a few of the difficult issues that the Commission is currently addressing or has recently resolved.

### *Corporate Communications*

The extent to which the FECA may limit election-related communications by corporations has been among the most contentious and constitutionally significant topics of debate in recent years, both in the courts and at the Federal Election Commission. As the Supreme Court has noted, “the special characteristics of the corporate structure require particularly careful regulation.” (*FEC v. National Right to Work Committee*). The Court has warned that “Direct corporate spending on political activity raises the prospect that resources amassed in the economic marketplace may be used

to provide an unfair advantage in the political marketplace.” (*FEC v. Massachusetts Citizens for Life*). At the same time, however, the power to regulate corporate communications is limited by the constitutional protections for political speech.

Section 441b of the FECA prohibits all contributions and expenditures by corporations and labor organizations in connection with federal elections. The Supreme Court’s 1986 decision in *FEC v. Massachusetts Citizens for Life* (MCFL)<sup>1</sup> altered the application of that ban in two ways. First, the Court effectively narrowed the scope of the prohibition by concluding that “an expenditure must constitute ‘express advocacy’ [i.e., expressly advocate the election or defeat of a clearly identified candidate] in order to be subject to the prohibition of §441b.” Second, the Court held that §441b’s ban on independent expenditures—which by definition include express advocacy—is unconstitutional as applied to a small group of incorporated, nonprofit organizations that meet certain criteria.

This section explores the implications of the MCFL decision, looking first at the express advocacy standard, then at the so-called “MCFL exemption” for nonprofit corporations and, finally, at the Commission’s rulemaking to implement the MCFL decision.

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<sup>1</sup>The case involved an MCFL-produced newsletter that advocated the election of pro-life candidates.



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## Express Advocacy

For some time after the *MCFL* ruling, it was the Commission's view that the Court's application of the express advocacy standard was dictum (a statement, but not a binding ruling) because it was unnecessary to the Court's resolution of the case. However, a subsequent decision by the U.S. Court of Appeals for the First Circuit in *Faucher v. FEC* reasoned that express advocacy was essential to the application of 441b's prohibition on corporate expenditures. Since the Supreme Court declined to review that decision, the agency has followed the express advocacy standard.

Defining express advocacy, and distinguishing it from issue advocacy, have proven to be daunting tasks for the courts and the Commission.

The "express advocacy" standard was first employed in the landmark Supreme Court case, *Buckley v. Valeo* (although not in the context of §441b). In its decision, the Court defined express advocacy as "communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office," including "communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' [or] 'reject.'"

In *MCFL*, which is the only post-*Buckley* Supreme Court decision involving express advocacy, the Court applied its *Buckley* definition and concluded that the *MCFL*'s "Special Election Edition" newsletter did contain express advocacy, despite the absence of explicit "Vote for Smith" language.

"The publication not only urges voters to vote for 'pro-life' candidates, but also identifies and provides photographs of specific candidates fitting that description. The Edition cannot be regarded as a mere discussion of public issues that by their nature raise the names of certain politicians. Rather, it provides in effect an explicit directive: vote for these (named) candidates. The fact that this message is marginally less direct than 'Vote for Smith' does not change its essential nature."

The courts have offered additional interpretations of *Buckley*'s express advocacy definition. In *FEC v. Furgatch*, which involved independent ex-

penditures<sup>2</sup> by an individual, the U.S. Court of Appeals for the Ninth Circuit concluded that "[political] speech need not include any of the words listed in *Buckley* to be express advocacy under the Act, but must, when read as a whole, and with limited reference to external events, be susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate."

Elaborating on this standard, the appeals court held that a political communication would constitute express advocacy if:

- The communication "is unmistakable and unambiguous, suggestive of only one plausible meaning," even if "not presented in the clearest, most explicit language";
- The communication "presents a clear plea for action"; and
- There can be no reasonable doubt about "what action is advocated."

The appeals court concluded that this express advocacy standard would "preserve the efficacy of the Act without treading upon the freedom of political expression."

The court warned that a more rigid application of the *Buckley* definition "would preserve the First Amendment right of unfettered expression only at the expense of eviscerating the Federal Election Campaign Act. 'Independent' campaign spenders working on behalf of candidates could remain just beyond the reach of the Act by avoiding certain key words while conveying a message that is unmistakably directed to the election or defeat of a named candidate."

The district court decision in *FEC v. National Organization for Women* relied on the *Furgatch* test, concluding: "The words listed in *Buckley* are not the only ones which will be deemed express advocacy."

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<sup>2</sup>An independent expenditure is an expenditure for a communication which expressly advocates the election or defeat of a clearly identified candidate and which is not made in cooperation or consultation with or at the request or suggestion of, or with the prior consent of any candidate or his or her authorized committees or campaign agents. 2 U.S.C. §431(17). Persons making certain independent expenditures must report them and include a disclaimer. 2 U.S.C. §§434(b)(6)(B)(iii) and (C) and 441d.

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In *Faucher v. FEC* (noted earlier), however, the U.S. Court of Appeals for the First Circuit seemed to eschew the *Furgatch* interpretation of *Buckley*. “In our view, trying to discern when issue advocacy... crosses the threshold and becomes express advocacy invites just the sort of constitutional questions the Court sought to avoid in adopting the bright-line express advocacy test in *Buckley*.”

More recent decisions on express advocacy have relied on a similar interpretation of *Buckley*. In *FEC v. Colorado Republican Federal Campaign Committee*, a district court cited *Furgatch*, but concluded: “Trying to determine whether the surrounding circumstances, coupled with the implications of the [publication], constitute ‘express advocacy’ leads to the type of semantic dilemma which the Court sought to avoid by adopting a bright-line rule.” The court “decline[d] to blur *Buckley*’s bright-line rule.” (Significantly, this case—for the first time—applied the express advocacy standard to §441a(d), which governs coordinated political party expenditures. The Commission has appealed the decision.)

Similarly, in *FEC v. Survival Education Fund, Inc.*, a district court concluded that “expressions of hostility to the positions of an official, implying that that official should not be reelected—even when that implication is quite clear—do not constitute the express advocacy which runs afoul of the statute.” (The Commission has also appealed this decision.)

The range of express advocacy definitions espoused by the courts—from “bright line” to “reasonable interpretation”—has profoundly affected the Commission’s consideration of new regulations governing corporate communications. (See *FEC Rulemaking*, below.)

### *The MCFL Exemption*

In the portion of the *MCFL* decision that resolved the case, the Supreme Court concluded that “§441b’s restriction on independent spending is unconstitutional as applied to MCFL.” The Court explained that:

“Some corporations have features more akin to voluntary political associations than business firms, and therefore should not have to bear burdens on independent spending solely because of their incorporated status.”

The Court identified three features of MCFL that were essential to its ruling that MCFL was exempt from the ban on corporate independent expenditures. Those features are:

- The organization is a nonprofit ideological corporation formed “for the express purpose of promoting political ideas, and cannot engage in business activities.”
- It has “no shareholders or other persons affiliated so as to have a claim on its assets or earnings.”
- It has not been established by a corporation or labor union and has a policy “not to accept contributions from such entities.”

In subsequent cases, courts have applied this three-part test to other organizations. In *Austin v. Michigan Chamber of Commerce*, for example, the Supreme Court upheld the application of a Michigan statute containing prohibitions similar to those found in §441b. The Court concluded that the Chamber of Commerce did not qualify for the MCFL exemption because it did not meet the three-part test.

In fact, the Court concluded that the Chamber did not possess any of the three essential features:

- The Chamber’s activities were not limited to political and public educational purposes.
- “[T]he Chamber’s members [were] more similar to the shareholders of a business corporation than to the members of MCFL” because the members had an economic disincentive to withdraw support from the organization if they disagreed with its political views.
- The Chamber had no policy against accepting contributions from corporations or unions, and, because three-fourths of the Chamber’s members were business corporations, the organization’s treasury contained corporate funds in the form of membership dues.

### *FEC Rulemaking*

Shortly after the *MCFL* decision, the National Right to Work Committee (NRWC) filed a petition asking the FEC to rewrite its rules to adopt the Court’s conclusion that “express advocacy” is the proper standard for determining when communications by corporations and labor organizations are



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prohibited under §441b. The Commission responded by publishing an Advance Notice of Proposed Rulemaking seeking comments on how the agency should respond to the *MCFL* decision.

The Commission received more than 17,000 comments in response to the Advance Notice, most of which supported the NRWC’s position on express advocacy. Nevertheless, the comments, the testimony at public hearings on the subject and discussions among the Commissioners themselves all revealed a wide range of views on how broadly or narrowly the Commission should define express advocacy. Some encouraged the Commission to limit express advocacy to the words and phrases spelled out in *Buckley*, while others—citing *MCFL* and *Furgatch*—favored a broader interpretation.

In the wake of the *Austin* decision, the Commission published a second notice inviting comments on express advocacy and the MCFL exemption. Again, most of the those commenting supported adoption of a narrow express advocacy standard. Several also offered suggestions for implementing the MCFL exemption.

In its attempt to craft regulations, the Commission has struggled to find an express advocacy definition that is narrow enough to avoid impinging upon First Amendment rights, but broad enough to ensure the effectiveness of the federal election laws. The definition must distinguish express advocacy from issue advocacy without creating a loophole that would, in effect, allow corporations, labor unions and individuals to sidestep the requirements of the election law.

In August 1994, the Commission tentatively approved an express advocacy definition, but has not taken final action on the rulemaking.

The Commission is also considering proposals to implement the MCFL exemption allowing certain nonprofit advocacy groups to make independent expenditures using treasury funds. In addition, the rulemaking proposals under consideration would revamp the applicable standards for corporate and union activities such as the publication of voter guides and candidate endorsements, in line with the *MCFL* decision.

## Soft Money

**soft money** - n. [slang]: funds raised and/or spent outside the limitations and prohibitions of the Federal Election Campaign Act. Sometimes referred to as nonfederal funds, soft money often includes corporate and/or labor treasury funds, and individual contributions in excess of the federal limits, which cannot legally be used in connection with federal elections, but can be used for other purposes.

Soft money is one of the most difficult issues the Commission has addressed during the last 20 years. The origins of “soft money” lie in the United States’ federal system of government. The Constitution grants each state the right to regulate certain activities within that state. In the area of campaign finance, each state may establish its own rules for financing the nonfederal elections held within its borders. As a result, committees that support both federal and nonfederal candidates frequently must adhere to two different sets of campaign finance rules—federal and state. (Sometimes, cities and counties create yet a third set of rules governing the financing of local elections.)

Acknowledging this fact, FEC regulations permit committees to establish separate bank accounts for federal and nonfederal activity. Only funds deposited into the federal bank account are subject to the limitations, prohibitions and disclosure requirements of the FECA. The nonfederal or “soft money” account is subject only to state laws, which may be more permissive than the FECA. As a result, only funds from the federal account may be used to influence federal elections.

Some expenses incurred by these committees, however, may in fact relate to both federal and nonfederal elections. Party committees, for example, may purchase generic get-out-the-vote advertisements that benefit both their federal and nonfederal candidates. To pay for these ads, committees must use federal funds for the portion that benefits federal candidates, but may use soft money for the rest (i.e., the portion that benefits nonfederal candidates).

During the 1980s, some argued that—among other things—committees were underestimating the federal share of their expenses. As a result, soft money covered not only the costs attributable to

nonfederal candidates, but also those related to federal candidates. At the time, FEC regulations required committees to allocate expenses between their federal and nonfederal accounts on a “reasonable basis.” Some public interest groups believed this standard was too vague and failed to provide a framework for monitoring improper use of soft money in federal elections.

In November 1984, Common Cause submitted a rulemaking petition asking the Commission to adopt more stringent rules to preclude allocation and thereby close the perceived soft money loophole. In 1986, after conducting public hearings, the Commission concluded that evidence of improper use of soft money in federal elections was insufficient to justify the rule changes suggested in the Common Cause petition.

Common Cause responded by filing a suit against the FEC. The suit asked the U.S. District Court for the District of Columbia to declare that the Commission had acted contrary to law by denying the rulemaking, and to order the Commission to act on the petition. The court upheld the Commission’s decision to deny the rule changes Common Cause had requested, but it did order the FEC to clarify its allocation regulations.

In June 1990, after evaluating information gathered from a questionnaire, from responses to a notice of proposed rulemaking and from testimony at hearings, the Commission approved new regulations. The rules:

- Specify formulas that committees must use to determine the amount of federal funds required to be spent for any activity that benefits both federal and nonfederal candidates;
- Require expanded reporting of shared federal/nonfederal spending; and
- Establish the presumption that funds raised through activities that mention a federal candidate are federal funds.

As a result of the revised rules, which took effect January 1, 1991, the national party committees now disclose all of the receipts and disbursements of their soft money accounts. (See Chart 3-1) Other committees that maintain two accounts—federal and nonfederal—must report detailed information on their shared expenses and also show the amount of soft money used to pay the nonfederal portion of those expenses.

Despite these significant new regulations, some legislators and public interest groups are still concerned about the effects of soft money. They say, for example, that soft money spending—even for the nonfederal share of expenses—influences federal elections because it permits committees to conserve federal funds that can later be spent to support federal candidates.

Many are also concerned about the way committees raise soft money. They believe that the active role federal candidates and their associates play in raising large sums of soft money, at the very least, creates an appearance of undue influence by the contributors on the federal candidates involved.

Others, however, view federal regulation of soft money as an unwarranted intrusion into the financing of nonfederal elections. They argue, in part, that complex federal regulations may have a chilling effect on grassroots electoral activity. (Ironically, some states regulate the financing of their nonfederal elections so strictly that federally permissible funds cannot legally be spent for state and local activity.)

CHART 3-1(a)  
Party Federal and Nonfederal Receipts

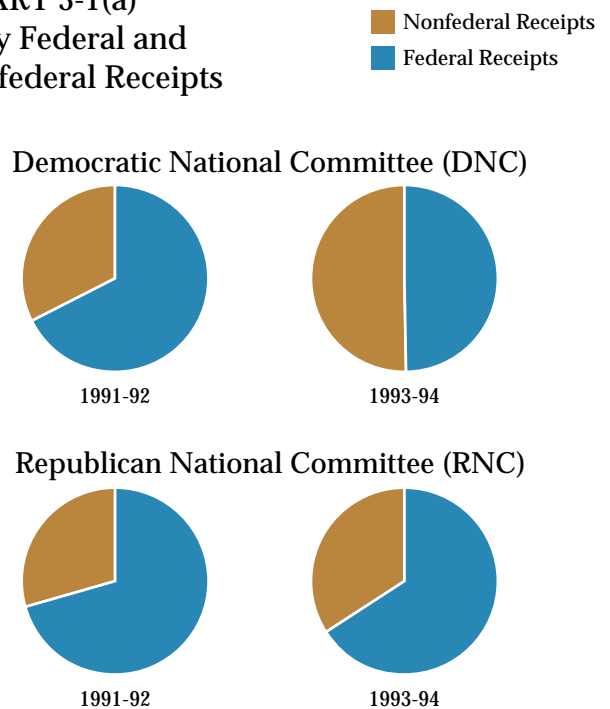


CHART 3-1(b)  
Sources of Party Receipts

1992  
1994

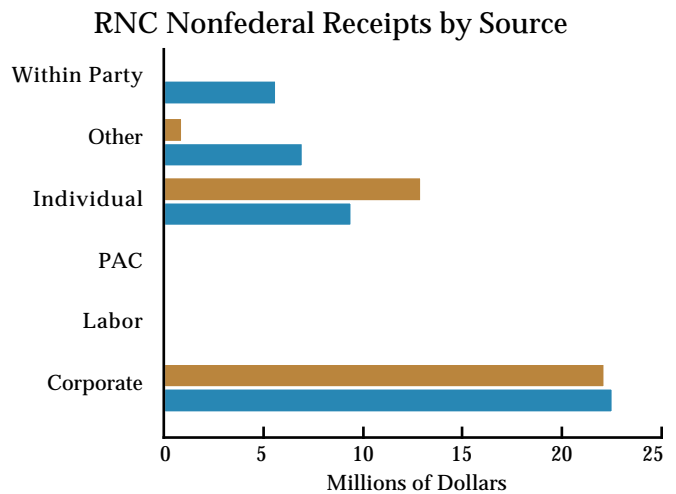
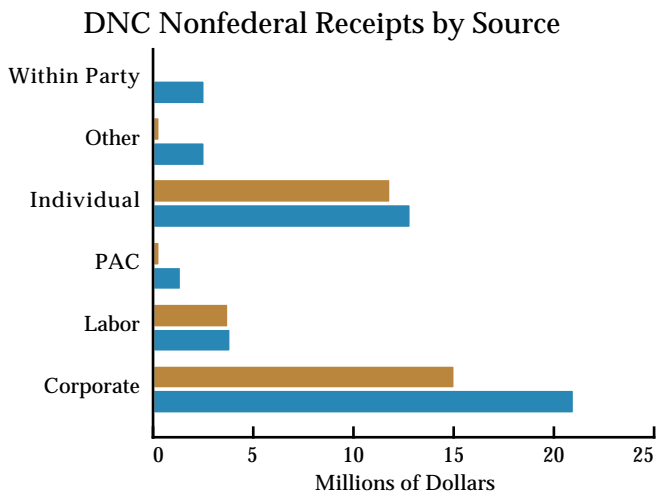
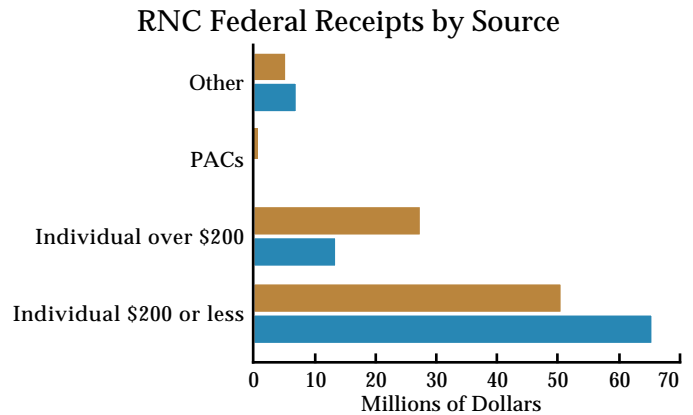
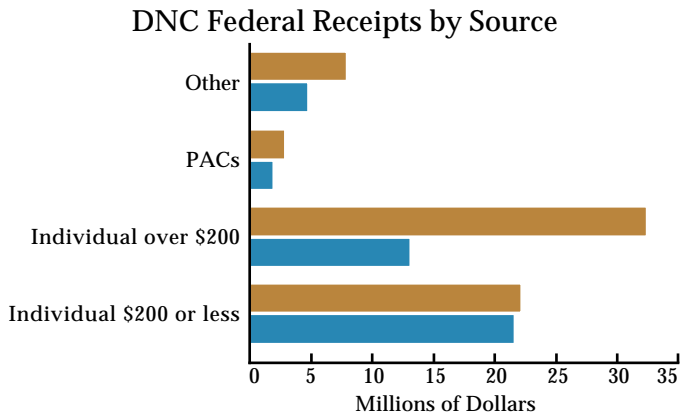
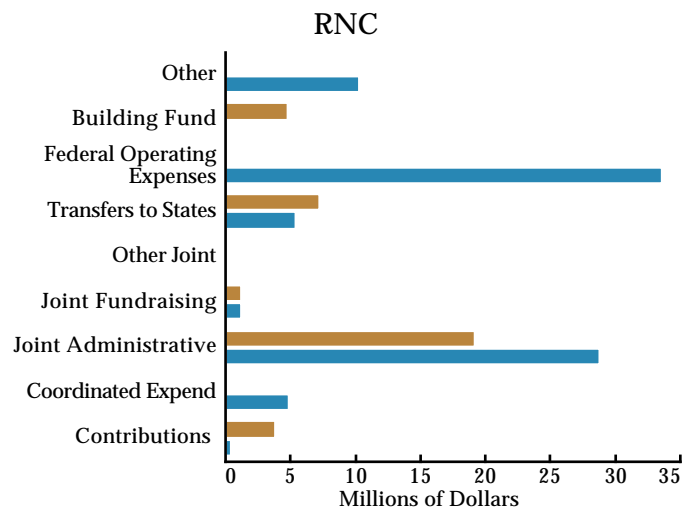
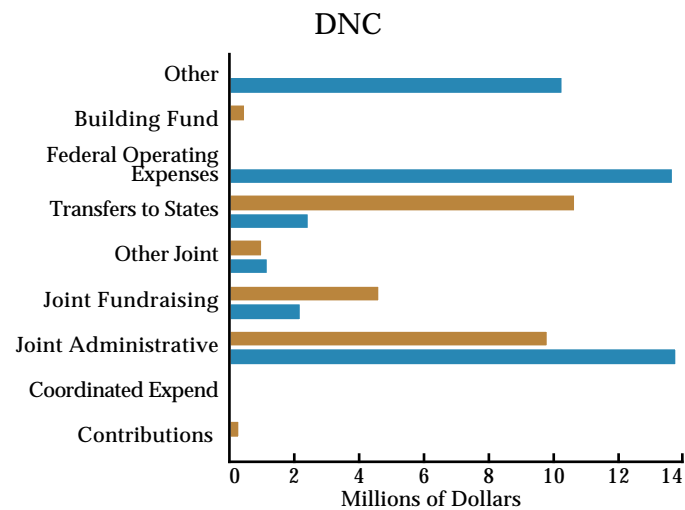


CHART 3-1(c)  
Party Federal and Nonfederal Disbursements - 1994

Nonfederal  
Federal



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In adopting its soft money allocation rules, the Commission proceeded as far as its statutory authority would permit, short of barring the combined use of federal and nonfederal funds altogether. It then asked Congress to consider whether legislation was needed to deal not only with the way soft money is spent, but also with the way it is raised. In the package of legislative recommendations sent to the President and Congress in 1994, the Commission asked Congress to consider changes in several areas, including:

- Expanding disclosure of soft money receipts;
- Prohibiting the use of a federal candidate's name or appearance to raise soft money;
- Confining soft money fundraising and spending to nonfederal election years; and
- Requiring that all party activity which is not exclusively on behalf of nonfederal candidates be paid for with federally permissible funds.

### *Personal Use of Campaign Funds*

Congress banned personal use of excess campaign funds as part of the 1979 amendments to the FECA. That ban, however, did not apply to candidates who were Members of Congress on January 8, 1980 (due to the so-called "grandfather clause"), nor did it define the parameters of "personal use."

Since most of the candidates initially seeking guidance under this section were incumbents, who were exempt under the "grandfather clause," the Commission was rarely called upon to address the personal use issue. When questions did arise, the Commission tried to find answers that took into account both Congress's desire to prohibit the (undefined) "personal use" of campaign contributions and the need to give candidates and campaigns the discretion to conduct their campaigns as they saw fit. Once again, the Commission was called upon to find a balance between legislative interests and constitutional freedoms, mindful of practical considerations.

As years passed, public interest groups and the press began to focus public attention on the way certain Members of Congress and other candidates spent their campaign funds. Common Cause, for example, alleged that "Members are using campaign funds to buy cars, to pay for clothes and

meals, to pay for pleasure and vacation trips, to pay for club dues and tickets to theater and sporting events... claiming these activities are related to campaign or official duties." Others complained that "some campaign coffers are regarded as slush funds to be used by incumbents for whatever purposes meet their fancy." (Fritz/Morris, p. 9)

In response to the criticism, Congress repealed the "grandfather clause" by passing the Ethics Reform Act of 1989. That statute extended the personal use ban to all candidates, including Members of the House and Senate who served in the 103d Congress or a subsequent Congress, but it did not define "personal use."

With the repeal of the "grandfather clause," the Commission expected additional questions regarding the scope of the personal use ban. As a result, the Commission initiated a rulemaking to define the term. Conflicting comments and testimony at public hearings demonstrated the controversial nature of the issue: One person's "personal use" is another's legitimate campaign expenditure.

After carefully considering the issues, the Commission adopted detailed regulations that define personal use, and offer specific examples of expenses that the Commission will consider personal. Generally, under the new rules, expenses that would exist regardless of an individual's campaign for federal office or duties as a federal officeholder are deemed personal. Examples include:

- Household expenses;
- Funeral expenses;
- Tuition payments;
- Entertainment expenses; and
- Membership dues at clubs.<sup>3</sup>

The Commission was unable to resolve the question of whether campaigns may pay a salary to a candidate during the campaign. Some Commissioners maintained that salary payments represented an illegal conversion of campaign funds to personal use. Others argued that banning campaign salaries unfairly disadvantaged challengers. They pointed out that challengers often had to leave their jobs in order to campaign, while incumbents

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<sup>3</sup>While these expenses are generally considered personal, the regulations do specify certain exceptions.

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bents continued to draw their Congressional salaries throughout the campaign. In its rulemaking, the Commission considered two proposals to address the salary question: one would have banned candidate salaries; the other would have allowed candidates to receive a salary equal to the one they were forced to give up in order to campaign. Neither proposal, however, garnered support from a majority of the Commissioners.

The new regulations took effect in 1995.

### *Best Efforts*

“Disclosure... is the single greatest check on the excesses of campaign finance....” (Sabato, p. 63) That is why the Commission devotes so much time, effort and money to ensure that campaign finance information is readily accessible to the public, and that the information is accurate and complete.

Under the Act and FEC regulations, a committee must disclose the name, mailing address, occupation and employer of each individual who contributes a total of more than \$200 in any calendar year. Although the rules do not compel individual contributors to provide this information, a committee must make its “best efforts” to obtain and report it. Should the committee fail to fully identify a contributor on its report, it must be able to demonstrate that it made its “best efforts” to do so.

Through its regular review of reports and its enforcement actions, the Commission discovered that some committees routinely failed to disclose the occupation and employer for a large percentage of their \$200-plus contributors. At that time, committees could satisfy the “best efforts” requirement by making at least one written or oral request for contributor information per solicitation. Some committees, however, printed these requests in small type, and did not adequately convey the importance of providing the information. Given these facts, the Commission decided to initiate a rulemaking to strengthen and clarify the “best efforts” standard.

After soliciting public comments, conducting hearings and surveying the regulated community on the subject, the Commission promulgated new regulations in 1994 that specify the steps committees must take to demonstrate that they made their

“best efforts” to obtain and report contributor information. The steps include:

- Requesting contributor information in the initial solicitation;
- Making a follow-up request solely devoted to seeking the missing information (if necessary);
- Reporting the information; and
- Filing necessary amendments to disclose previously unreported information.

Given the importance of disclosure and the evidence of past noncompliance in this area, the Commission also specified the language to be used in the request and its minimum type size, the timing and content of any follow-up request, and the applicable reporting requirements.

The three national Republican party committees<sup>4</sup> filed suit against the Commission challenging the rules. They argued that the requirements violated free speech rights, exceeded the Commission’s statutory authority and were contrary to Congressional intent. The U.S. District Court for the District of Columbia, granting the FEC’s request for summary judgment, rejected the parties’ challenge. (The case is on appeal.)

### *Foreign Nationals*

#### *Background*

Section 441e of the Federal Election Campaign Act explicitly prohibits foreign nationals from making contributions in connection with any U.S. election (federal, state or local), either directly or through another person. The contribution ban originated in the 1966 amendments to the Foreign Agents Registration Act, and was incorporated directly into the FECA ten years later. In 1989, the Commission modified its regulations to clarify that expenditures by foreign nationals—like contributions—are prohibited. The ban applies to individuals who are not U.S. citizens (except those with “green cards”<sup>5</sup>) and to foreign governments, politi-

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<sup>4</sup>The Republican National Committee, National Republican Senatorial Committee and the National Republican Congressional Committee.

<sup>5</sup>A “green card” indicates that an individual has been lawfully admitted for permanent residence in the United States.



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cal parties, partnerships, associations and corporations. 11 CFR 110.4(a).

### *Foreign-Owned Corporations*

The Commission has been asked, on numerous occasions, how the ban affects foreign-owned corporations which are located in the United States. In response, the Commission created a two-part test to determine whether these companies could establish federal PACs (hereafter referred to as separate segregated funds or SSFs) or make contributions and expenditures to influence state and local elections.<sup>6</sup> Under the test, a foreign-owned corporation could not establish an SSF or make nonfederal contributions or expenditures if:

- Foreign nationals made any decisions regarding the SSF's activities or the company's nonfederal contributions or expenditures; or
- The funds used to run the SSF or to make federal (SSF) or nonfederal (corporate) contributions or expenditures came from the foreign owner. (See also AOs 1992-16, 1990-8, 1989-29, 1989-20, 1985-3 and 1982-10.)

The Commission codified this test in 1989 when it prescribed 11 CFR 110.4(a)(3). That section clarifies that foreign nationals cannot participate, even indirectly, in election-related decisions.<sup>7</sup>

The two-part test, in effect, respects both a legitimate government interest (prohibiting foreign involvement in U.S. elections) and the constitutional guarantees of free speech and association. On the one hand, the test ensures that foreign entities will not influence U.S. elections while, on the other hand, it preserves the rights of domestic corporations and their U.S. employees to form an SSF to support federal candidates and/or to make nonfederal corporate contributions or expenditures, subject to state law.

Despite the clear standards the Commission established, violations of the foreign national ban have occurred. Consequently, the Commission has

taken action in several enforcement matters. In 1994, for example, the Commission concluded two investigations that uncovered more than \$312,000 in illegal foreign donations to state and local campaigns in Hawaii. (MURs 2892 and 3460) The illegal donors were mostly foreign-owned U.S. corporations that had either used funds provided by their foreign owners or allowed foreign individuals to make decisions (either directly or indirectly) concerning the contributions. The Commission fined the donors a total of \$219,225 and sent admonishment letters to the recipient candidates and party committees instructing them to refund the illegal donations or otherwise rid their accounts of the money.

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<sup>6</sup>The FECA prohibits corporate contributions and expenditures in connection with federal elections. 2 U.S.C. 441b. Some states, however, allow corporations to use their treasury funds to support nonfederal candidates.

<sup>7</sup>In 1990, the Commission considered, but rejected, a proposed rule that would have treated a domestic corporation as a foreign national if its foreign ownership exceeded 50 percent.

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## CHAPTER 4

# CONTINUING DEBATE OVER REFORM

Although the last major amendments to the Federal Election Campaign Act (FECA) were adopted in 1979, campaign finance reform continues to spark debate both within Congress and throughout the country. This chapter examines some of the fundamental issues at the top of the reform agenda, supplemented by FEC statistical data.

### *The Role of Political Parties*

For many years conventional wisdom has held that political parties are gradually becoming less relevant in the American political arena. Up until the 1950s and '60s, the parties dominated the electoral process. (Sorauf, *Inside Campaign Finance*, p. 3) Then, a number of factors—including social, political, technological and governmental changes—coalesced to reduce party influence.

- Direct primaries limited the role parties played in selecting nominees.
- Changes in civil service laws limited patronage, which parties had used to reward loyalists.
- Higher education levels spawned issue-oriented campaigns, where voters and candidates were less reliant on party guidance.
- Television replaced the party as the primary link between candidates and voters. (Sabato, *Paying for Elections: The Campaign Finance Thicket*, p. 47 and Crotty, *American Parties in Decline*, p. 75)

Some suggest that the FECA has further weakened the parties. “The regulation of political finance... seldom took direct aim at party organizations and practices. Nevertheless, it has altered the parties’ roles, the base of resources, and the campaign environment to which they must adapt.” (Price, *Bringing Back the Parties*, p. 239) It is argued, for example, that the Presidential public funding program, which provides public money directly to qualified candidates, has further reduced the parties’ role in selecting Presidential nominees by encouraging the trend toward candidate-centered politics. (Price, p. 243)

Critics believe that the FECA has also bolstered PACs at the parties’ expense: “[A]s PACs began gathering strength in the 1970s, the parties began a steady decline in power.” (Sabato, p. 17) In fact, they say, “PACs have emerged as major competitors of the parties in financing campaigns, aggregating interests, and claiming the attention and loyalty of candidates and officeholders.” (Price, p. 244)

Many attribute this turn of events to the FECA’s contribution limits. They affect both the flow of money into the parties and the stream of party contributions to candidates. Although the limit on individual contributions to parties (\$20,000/year to a national party committee and \$5,000/year to a state party) is higher than (or equal to) the limit on contributions to PACs (\$5,000/year), some suggest that the party limit poses a greater obstacle. Party fundraising, they say, tends to rely on long-term relationships between the party and wealthy donors. These con-



tributors, who once gave in abundance, must now curtail their federal contributions to comply with the limits (or contribute nonfederal “soft money”). Issue-oriented PACs, on the other hand, may inspire immediate enthusiasm among a multitude of individual contributors who may contribute less individually, but make up for it in their numbers. (Price, p. 244)

On the other side of the equation, parties and PACs both may contribute \$5,000 per election to a candidate,<sup>1</sup> but PAC contributions consistently comprise a higher percentage of candidates’ total funds. Even if one accounts for the parties’ additional coordinated party expenditures, which can amount to hundreds of thousands of dollars per candidate, the parties’ piece of the campaign pie remains comparatively small.<sup>2</sup> (See Chart 4-1.) The discrepancy can be attributed largely to the fact that there are thousands of federally-registered PACs and only a relative handful of registered party committees. Prior to the passage of the FECA, there were virtually no PACs at all. In addition, state and local party committees tend to support only candidates within their geographic area, whereas PACs often support candidates throughout the country.

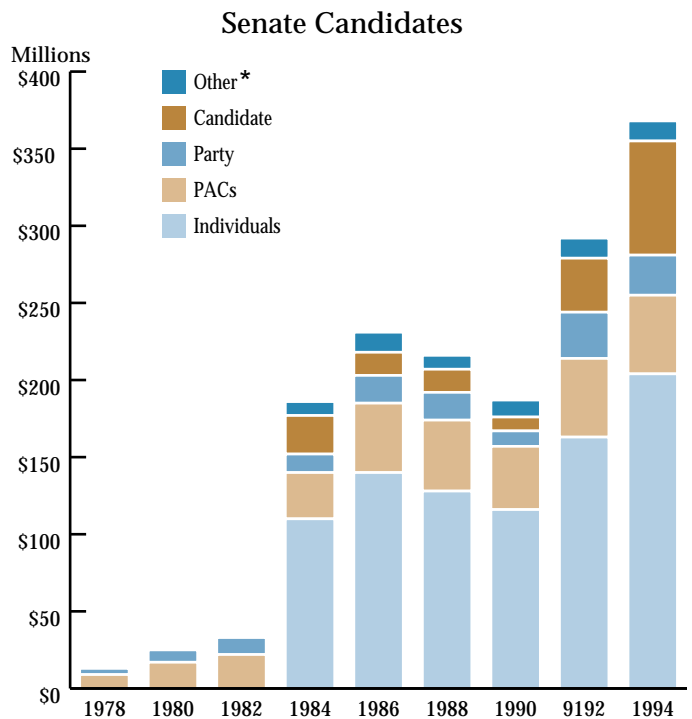
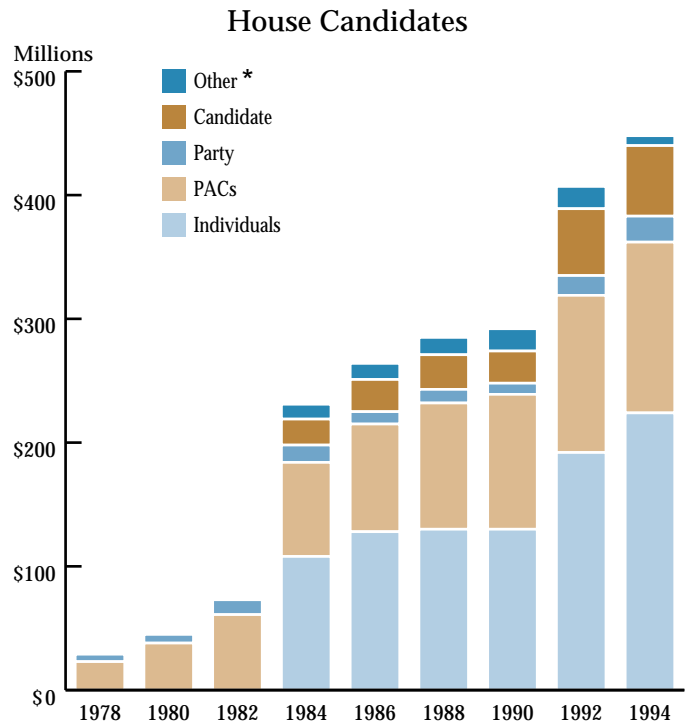
The Commission’s regulations concerning “soft money”<sup>3</sup> have also drawn fire from some critics. They argue that the Commission’s complex “soft money” allocation rules have discouraged grassroots party organizations from engaging in federal election activities—contributing to party decline. (Price, p. 245)

<sup>1</sup>A party’s national committee and Senate campaign committee share a special limit for Senate candidates: \$17,500 per candidate for the entire campaign period.

<sup>2</sup>Party committees are the only privately financed entities that are subject to expenditure limits. (Committees that participate in the Presidential public funding program may voluntarily agree to limit their spending in exchange for public funds.) Unlike PACs and individuals, parties cannot make unlimited “independent expenditures” to support or oppose particular candidates. The party committees are presumed to be acting in coordination with their nominees.

<sup>3</sup>As noted in Chapter 3, the term “soft money” refers to funds raised and/or spent outside the limitations, prohibitions and disclosure requirements of the Federal Election Campaign Act. These funds are used to support state and local candidates, and to pay the nonfederal portion of certain expenses that benefit both federal and nonfederal candidates.

CHART 4-1  
Sources of Campaign Receipts



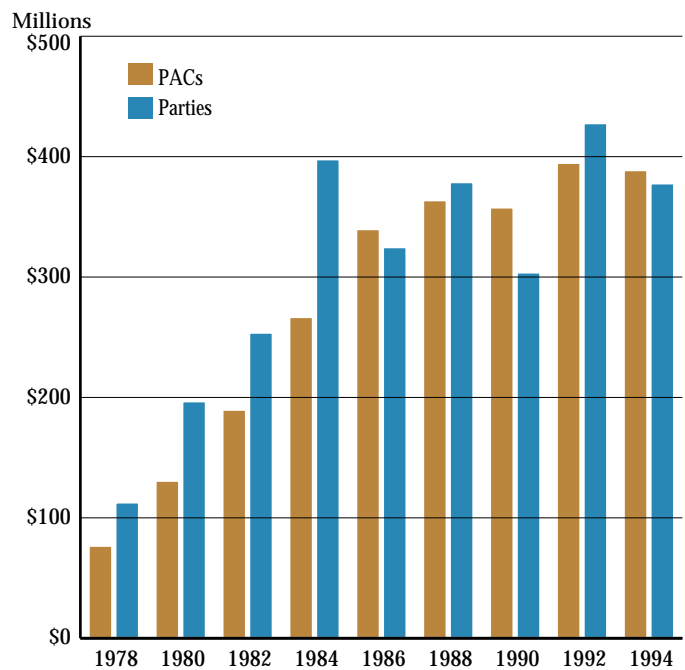
\*The “Other” category includes dividend or interest income, refunds or rebates from vendors and other miscellaneous receipts.

Many, however, find the critics' evidence of party decline inconclusive. They discount, for example, the significance of PAC/party contribution comparisons, noting that—despite the PACs' apparent dominance—the amounts raised and spent by parties generally indicate growth, rather than decline. Further, they point out, the true importance of parties cannot be measured by contributions and expenditures alone. Parties produce generic materials and engage in other activities that also benefit federal candidates. For example, as a result of the 1979 amendments to the FECA, state and local party committees may produce and distribute slate cards and sample ballots, as well as yard signs, bumper stickers and other campaign materials that aid federal candidates, but are not considered contributions or coordinated party expenditures. As another example, parties may engage in generic voter identification and get-out-the-vote drives which have a significant impact on elections. Yet these activities are not considered contributions or expenditures. (See Chart 4-2.)

Regardless of their stance on the strength or weakness of the parties, virtually all observers agree that parties are essential to American politics. The parties provide stability, unity and accountability in policymaking, and they increase electoral competition by funding challengers more often than PACs or individuals do. (Magleby/Nelson, *The Money Chase: Congressional Campaign Finance Reform*, p. 121)

These facts have led some to push for statutory changes that would strengthen the parties: "Given parties' vital centrality in the American system, they should be accorded special, preferential treatment in the statutes that limit and regulate campaign finance." (Sabato, p. 50) Some, for example, advocate increasing the amount parties may contribute to candidates. They argue that such an increase would not risk the "fat cat" or special interest concerns inherent in increasing the individual or PAC limits, and that it might aid policymaking by holding legislators more accountable to the party. (Cantor, *CRS Issue Brief: Campaign Financing*, p. 6) Others, however, warn that unless soft money donations to party committees are reigned in, any increased role for parties in the funding process may only undermine the efforts made to reduce the deleterious effect of large special interest contributions.

CHART 4-2  
Federal Spending by PACs and Parties\*



\*Parties must use their own funds to pay administrative and solicitation expenses. By contrast, a separate segregated fund's connected corporation or labor union may pay its administrative and solicitation expenses.

Others believe that the election laws already favor parties, and the candidates they support, in relation to independent candidates (i.e., those not affiliated with any political party). Independents, they note, enjoy none of the financial advantages that come with party affiliation: party contributions, coordinated party expenditures, generic support, etc.

## The Role of PACs

### Background

The term "political action committee" (PAC) actually refers to two distinct types of political committees—separate segregated funds (SSFs) and nonconnected committees. SSFs are PACs sponsored by corporations, labor organizations, trade associations and other incorporated groups. The sponsoring organization may pay the costs associated with operating its SSF. Nonconnected committees, on the other hand, are not sponsored by a

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corporate or labor entity. They must pay their own administrative expenses. Both types of PACs may contribute up to \$5,000 per election to a federal candidate—assuming the PAC qualifies as a multicandidate committee.<sup>4</sup> (Chart 4-3 tracks the number of PACs registered with the FEC over the last 20 years.)

### *The Case Against PACs*

In recent years, many have warned of the deleterious effect that PACs, and the “special interests” they represent, have on elections and legislation. Some PACs, critics note, have sufficient resources to dominate the financing of campaigns. (See Chart 4-1, p.26.) Many find the discrepancy between the contribution limit for individuals (\$1,000 per election) and the limit for multicandidate PACs (\$5,000 per election) particularly troubling.

PAC critics also cite instances of sizable contributions that appear to sway the votes of particular members of Congress. During 1994, for example, several studies linked contributions from insurance and health industry PACs to the demise of health reform legislation in the 103d Congress. Implicit in these studies, and others like them, is the notion that “special interest” PACs subvert the “public interest” by making large campaign contributions.

The critics argue that PACs, in serving their own “special interests,” are more likely than individuals to contribute to incumbents instead of challengers. (Magleby/Nelson, p. 54) In recent years, more than 70 percent of all PAC contributions have gone to incumbent candidates. (See Chart 4-4.) Further, they note, if a PAC supports an incumbent who loses, the PAC will sometimes make post-election, debt-retirement contributions to the winning challenger to ensure the committee’s continued access to the legislative process. (Magleby/Nelson, p. 54) In particularly close races, critics cite instances of PACs contributing to both candidates. In short, critics believe, “PACs exist for one purpose: to buy influence with members of Congress.” (Fritz/Morris, p. 172)

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<sup>4</sup>To qualify as a multicandidate committee, a PAC must receive contributions from more than 50 contributors, be registered with the FEC at least six months and contribute to at least five federal candidates. 11 CFR 100.5(e)(3).

### *The Case for PACs*

PAC supporters contend that critics have exaggerated PACs’ negative effects on elections and legislation. In fact, they say, “PACs are both natural and inevitable in a free, pluralistic democracy... [T]he vibrancy and health of a democracy depend in good part on the flourishing of interest groups and associations among its citizenry.” (Sabato, p. 4)

In fact, some have suggested that PACs are at least partially responsible for the increased number of minorities elected to Congress. They note that minority candidates are seldom wealthy, and often represent predominantly poor districts where most individuals cannot afford to contribute: “If your district is poor, you’re not wealthy and you’re excluded from affluent circles, it’s hard to raise money.” (Rep. Eva Clayton (D-NC), as quoted in *Congressional Quarterly*, Sept. 25, 1993.) White candidates, they argue, are more likely to be wealthy and/or have access to wealth. Without PAC funding, some say minority candidates could not amass sufficient funds to communicate effectively with the electorate.

PAC supporters also dispute the critics’ contention that a PAC’s success in furthering its “special interest” necessarily subverts the “public interest.” Instead, they note that PACs represent a variety of individual interests that, when combined, create the “public interest.”

Supporters also question the extent to which PAC contributions actually influence legislation:

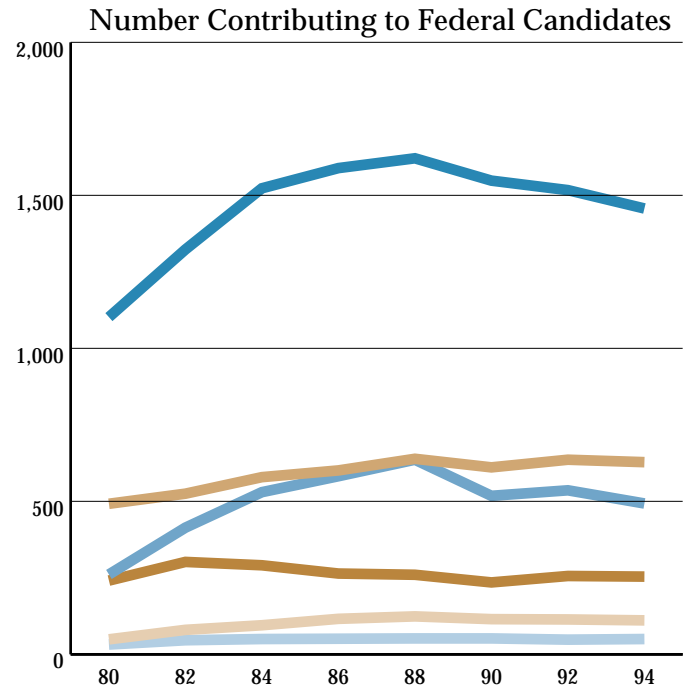
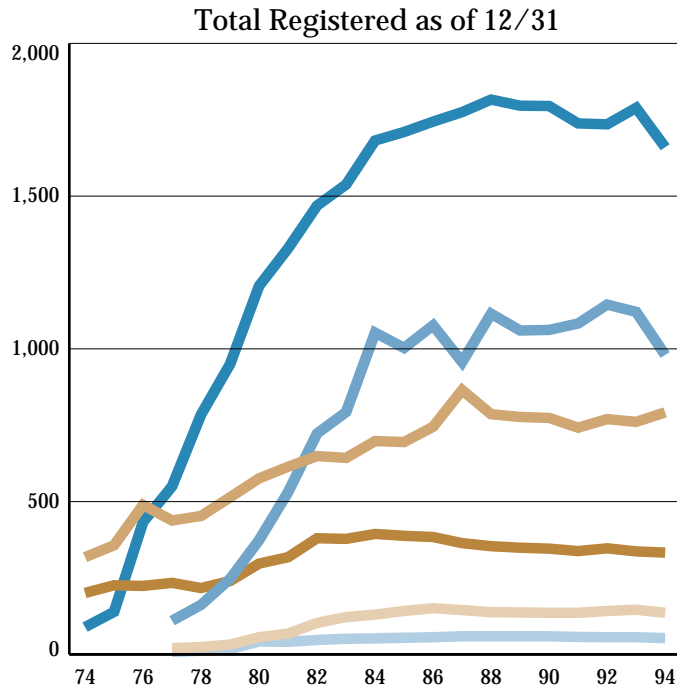
“It is naive to contend that PAC money never influences decisions, but it is unjustifiably cynical to believe that PACs always, or even usually, push the voting buttons in Congress.” (Sabato, p. 15)

Rather, they argue, PACs influence only those narrow issues of little significance to other influence seekers (constituents, parties, etc.). In fact, research has shown that constituency concerns, party loyalty and the personal beliefs of officeholders affect Congressional voting much more than PAC contributions do. (Sorauf, pp. 163-174)

PAC defenders also dispute the critics’ studies linking large PAC contributions to legislative actions. They say that the studies often “establish correlation, not cause,” and that they tend to focus only on PACs’ “success” in legislative battles, ignoring the fact that other PACs were on the “los-

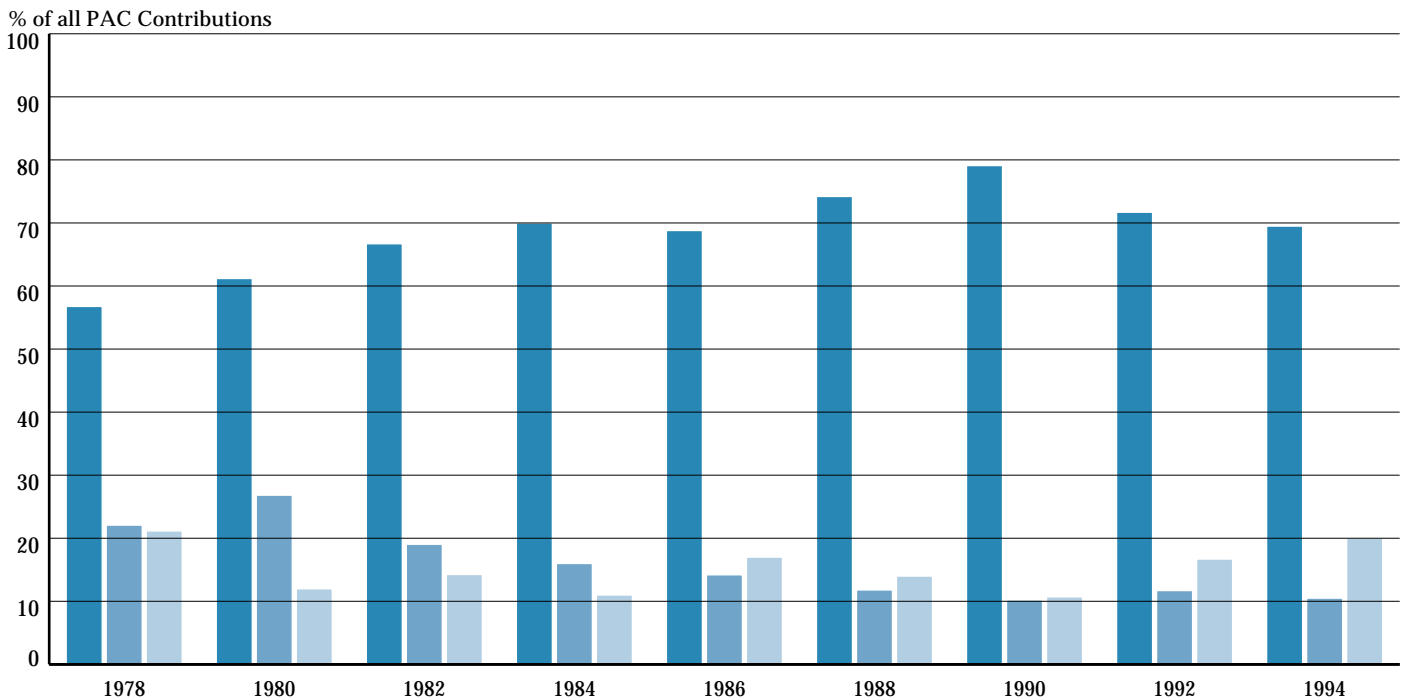
**CHART 4-3**  
**Number of PACs Registered with FEC**

Corporate  
 Labor  
 Nonconnected  
 Trade/Membership/Health  
 Cooperative  
 Corporation w/o Stock



**CHART 4-4**  
**PAC Contributions by Type of Campaign**

Incumbents  
 Challengers  
 Open Seats



ing” side. (Sorauf, p. 165) Others contend that PACs do not make contributions to influence future votes on legislation at all. Instead, they contribute to demonstrate their agreement with past legislative actions. (Cantor, p. 3)

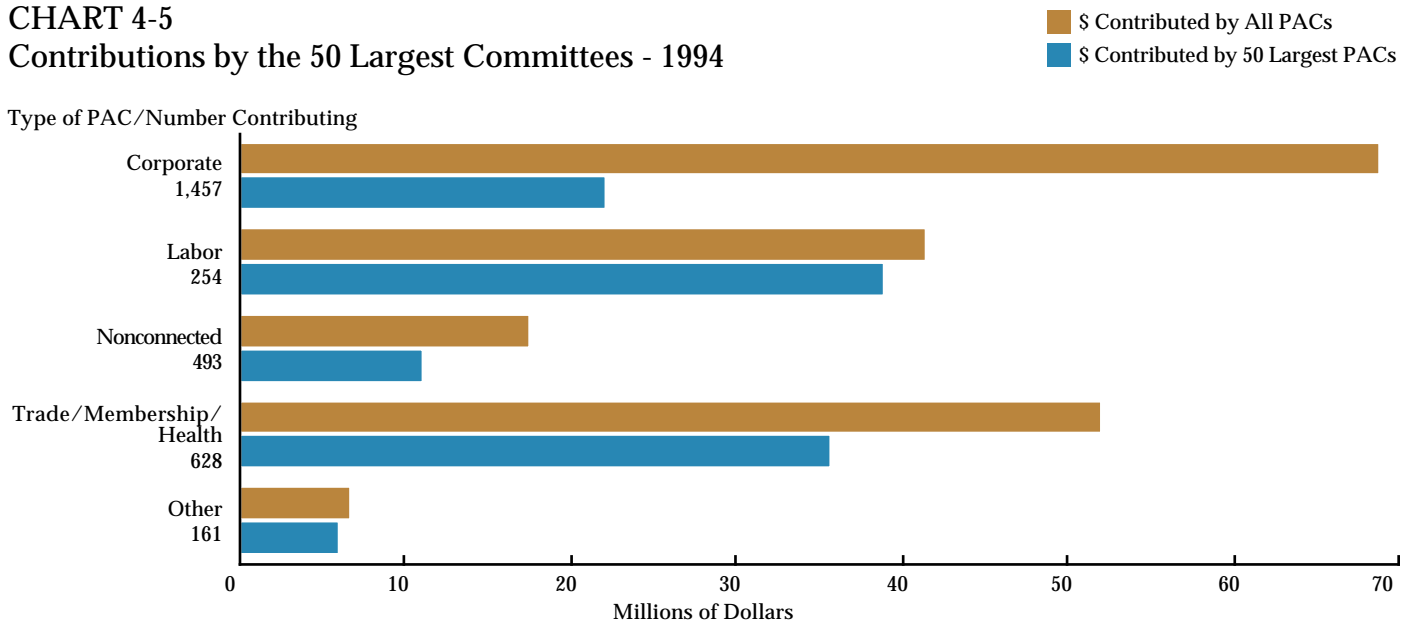
Supporters also fault the critics for lumping all PACs into the same undesirable category. Few PACs, for example, actually contribute large amounts of money: “PACs are like the opera; a few heavyweights get to sing the arias and there are a lot of spear carriers mulling around at the back of the stage.” (Zuckerman, *Political Finance & Lobby Reporter*, Oct. 12, 1994) (See Chart 4-5.)

### PAC Reform

In response to the critics’ concerns, Congress has considered several proposals to reduce the influence of PACs. Among them were President Bush’s recommendation to ban corporate/labor PACs and President Clinton’s proposal to reduce PACs’ contribution limit and to cap candidates’ total PAC receipts. (Chart 4-6 projects the effects of one of the proposed reforms.)

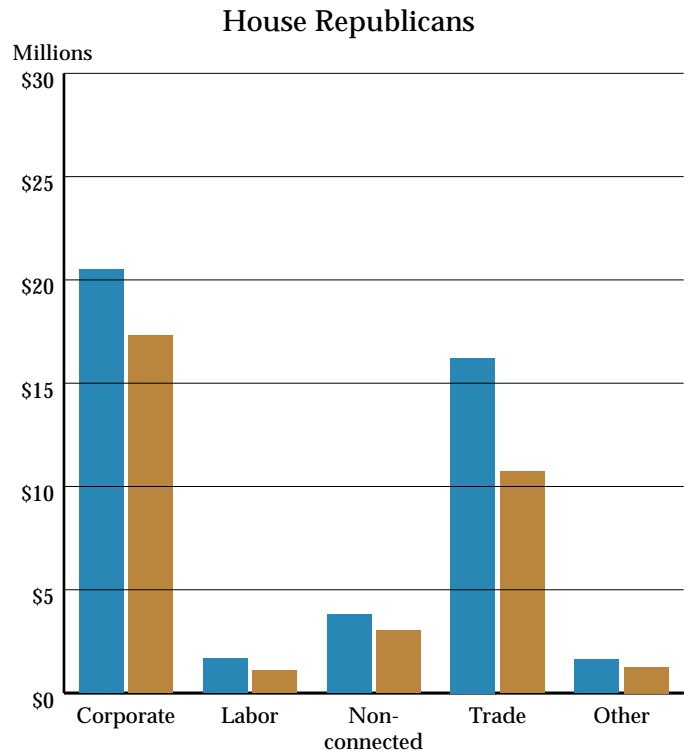
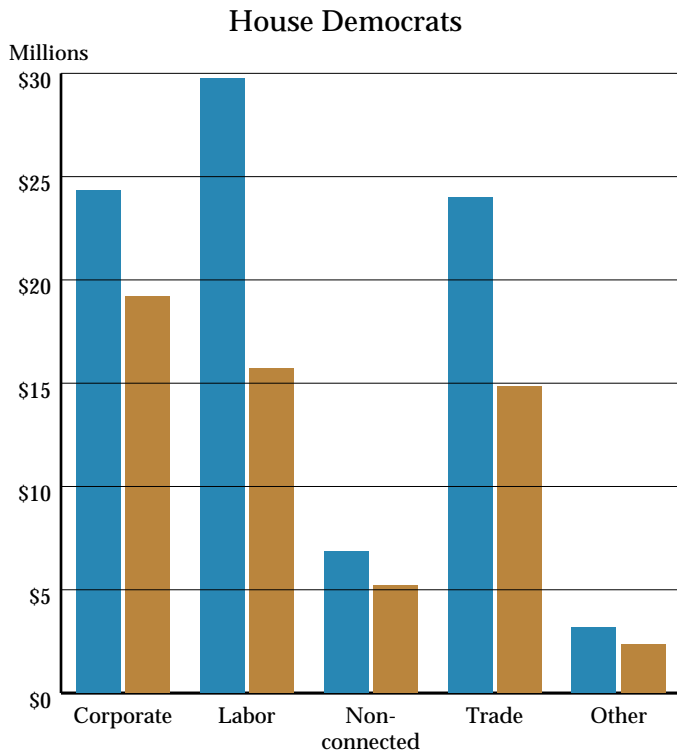
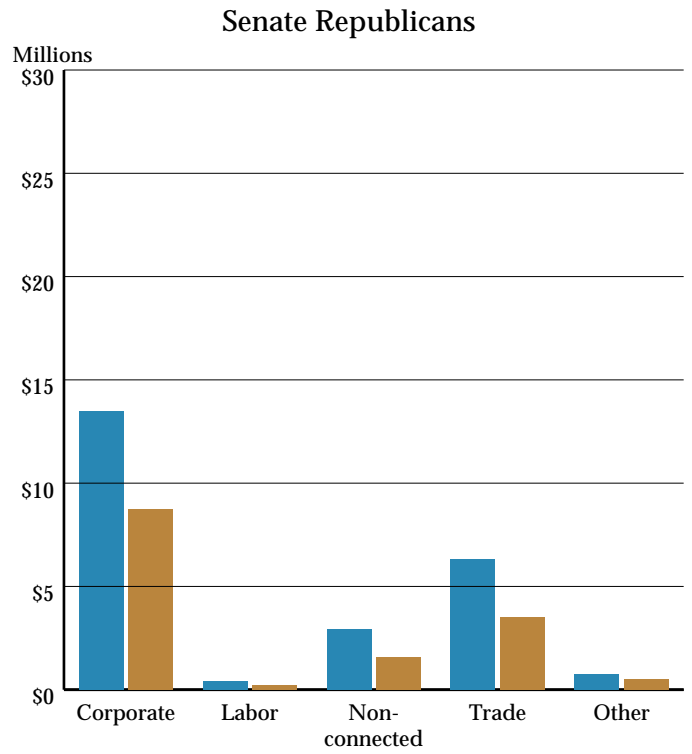
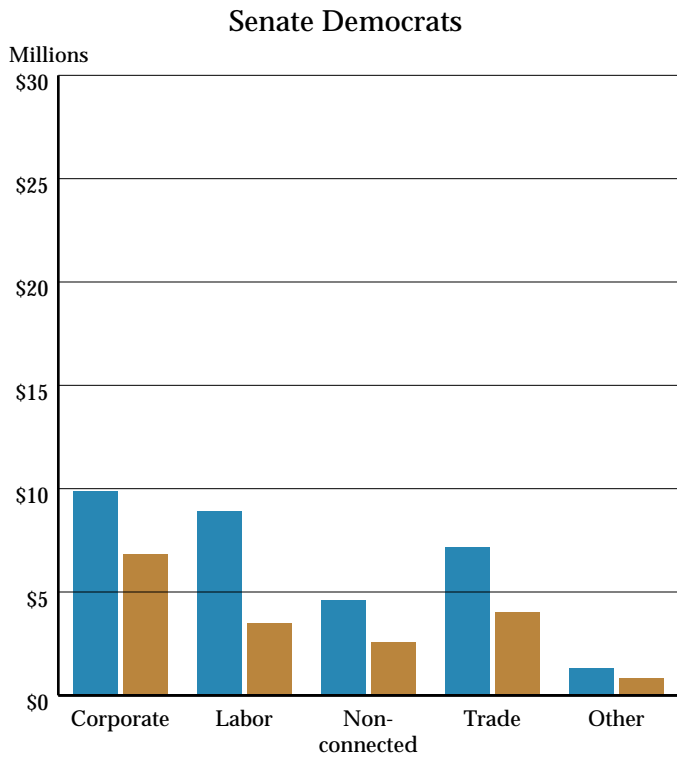
PAC supporters warn that a ban on PAC money would raise constitutional questions regarding free speech and association. (Cantor, p. 5) Supporters also fear that reducing or eliminating PAC contributions would prove counterproductive because it would reduce the overall amount of money available for campaigns, making each contribution worth more to the recipient candidate. (Sorauf, p. 200) Others believe that reduced limits or a total ban on PAC contributions would encourage other types of spending, such as soft money and independent expenditures, which are more difficult to track. Similarly, if individuals replaced their PAC donations with personal contributions to candidates, some argue that disclosure would suffer. The occupation and employer of an individual contributor (reported by the recipient committee) might not convey the contributor’s political motivation, whereas the political interest behind a PAC contribution is self evident. An individual might, for example, work for a corporation, belong to a labor union and support certain social causes. The reported occupation and employer information would not account for the individual’s union membership or interest in social causes as possible motivations for the contribution.

CHART 4-5  
Contributions by the 50 Largest Committees - 1994



**CHART 4-6**  
Possible Effect of \$2,000 PAC Limit in 1992

■ Actual 1992 Contributions (\$5,000 Limit)  
■ 1992 Contributions Adjusted for \$2,000 Limit





## The Cost of Campaigns

In its landmark *Buckley v. Valeo* decision, the Supreme Court concluded that “[t]he First Amendment denies government the power to determine that spending to promote one’s political views is wasteful, excessive or unwise.” As a result, the Court declared the FECA’s limits on congressional campaign spending unconstitutional. (The Court upheld only those spending limits that apply to Presidential candidates who voluntarily choose to accept public funding.)

In the wake of the Court’s decision, congressional campaign spending has increased from \$194.8 million in 1978 to \$761.6 million in 1994, an increase of 291 percent. Adjusted for inflation, spending increased 48 percent over the period. (See Chart 4-7.)

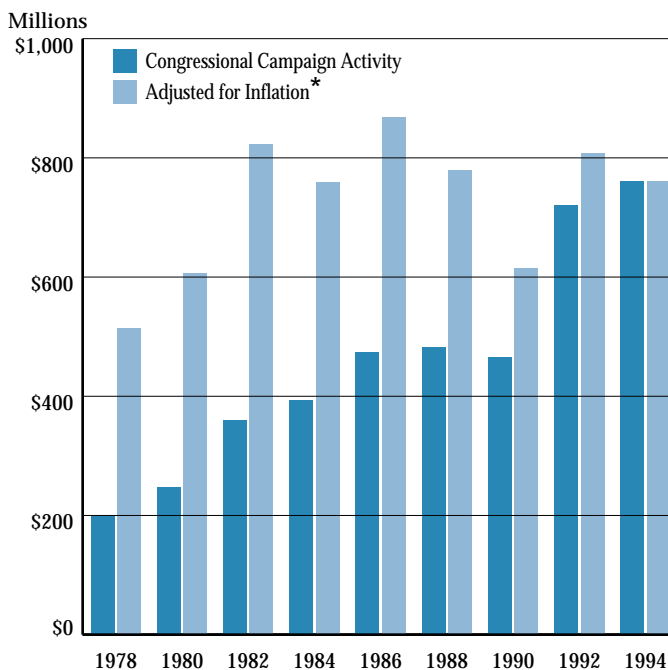
### Spending Limits

Some political observers believe that campaigns are too expensive, arguing that the high “price of admission” to Congress excludes all but the wealthy and those who are willing and able to raise large sums of money. (Magleby/Nelson, p. 45) Voters are left to wonder “who... represents their interests—the millionaires who finance their own races or the millionaires who finance the others.” (Ellen Miller, “The Influence Game,” from *The Hill*, Oct. 26, 1994) The solution, they believe, is spending limits.

Ironically, some supporters of spending limits contend that the Act’s contribution limits—which have not been adjusted for inflation—exacerbate the problem by forcing candidates to spend more time raising funds. The \$1,000 per election limit on individual contributions to candidates, established in 1974, is worth less than half that amount today. As a result, they say, candidates spend more time raising money, and tend to focus their fundraising efforts on the sources that can contribute the most. Unfortunately, from their perspective, those sources are special-interest PACs (discussed above) and influential fundraisers who bundle together many individual contributions and deliver them to the campaign. They say these “bundlers” pose a particular threat because they represent the very type of “fat cat” influence-seekers that the Act sought to eliminate. (Fritz/Morris, p. 157)

Among backers of spending limits, many are also concerned that the constant demand of

CHART 4-7  
Congressional Campaign Activity



\*Activity is expressed in 1994 dollars. This means the values in earlier years have been increased to account for inflation between that year and 1994.

fundraising discourages qualified challengers from running, and prevents incumbents from devoting as much time as they should to their legislative duties. In a survey conducted by the Center for Responsive Politics, 52 percent of the senators surveyed said fundraising significantly reduced their legislative time. Another 12 percent thought the demands of fundraising had at least some negative impact. (Magleby/Nelson, p. 44)

Others contend that incumbents raise and spend more than they actually need to get re-elected. They say that incumbent fundraising and spending is “driven by the urge to build a political empire, not by the seriousness of the opposition.” (Fritz/Morris, p. 3) They note that in 1990, for example, incumbents spent less than 40 percent of their campaign funds to communicate with voters. Most of their money went to create what one critic calls a “gold-plated permanent political machine”—a well-funded campaign organization used to discourage challengers from entering the race. (Fritz/Morris, p. 27) Supporters of spending limits say that, without a legislative change, the

amounts raised and spent by these incumbents will continue to grow in direct relation to the availability of campaign contributions. (Fritz/Morris, p. 2)

Those who favor spending limits in congressional campaigns recognize that such a reform would have to comply with the restrictions of the *Buckley* decision. The limits would have to be voluntary. Many advocate a system similar to that used for Presidential elections—candidates would agree to limit spending in exchange for public funding. (Chart 4-8 compares Congressional and Presidential spending.) Several legislative proposals have incorporated this approach, including the separate bills passed by the House and Senate in 1994.

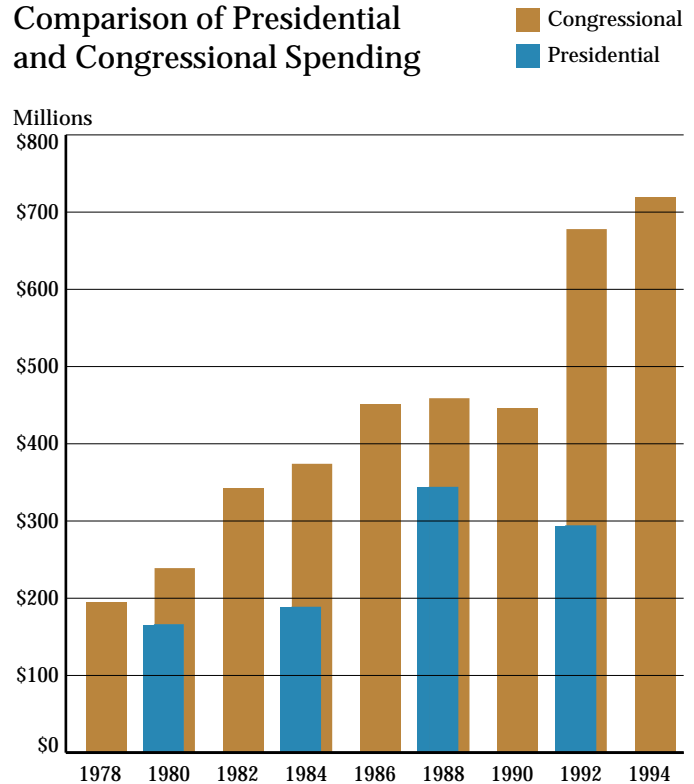
### Opposition to Spending Limits

Some, however, are concerned that spending limits would create as many problems as they solve. They argue, for example, that spending limits would reduce electoral competition because challengers need to raise and spend a considerable amount of money to offset the incumbents' inherent advantages. (Teixeira, "Beyond Spending Limits: An Alternative Approach to Campaign Reform," p. 3)

Instead of limiting spending, some scholars advocate "floors without ceilings"—offering public funds to provide campaigns a financial base without limiting campaign communications by capping spending. Under this approach, public funds would be given to both challengers and incumbents. Even though incumbents would likely raise much more than challengers in private funds, the public funding base would enable the challenger to mount a competitive campaign. Several studies have demonstrated that challengers gain more per dollar spent than incumbents do. In fact, where challengers have had a sufficient financial base, there is some evidence that increases in incumbent spending yield diminishing returns. (Sorauf, p. 178)

Others, however, object to both spending limits and "floors without ceilings," in part because they oppose the public funding provisions inherent in each. They view public funding as wasteful government spending, and say that the public does not want tax money spent to finance elections. Instead, these observers favor a system based solely on

CHART 4-8  
Comparison of Presidential  
and Congressional Spending



public disclosure, without any contribution or expenditure limits.

Underlying these suggested solutions is a firm belief that campaign spending is not out of control. Some suggest that, when adjusted for inflation, spending is relatively flat. (See Chart 4-7, p. 32.) In fact, these political observers maintain that campaign spending is comparatively low: "Americans spend more on chewing gum than they do on elective politics...." (Alexander, "Election Reform and Reality," p. 4)

There are many in this camp who argue that the spending increases decried by the critics largely reflect the increased importance of media in campaigns and inflationary pressure. The high cost of television advertising and the expense of raising enough inflationarily-devalued contributions to pay for it have created a costly electoral process. (Cantor, p. 2)

Finally, there are many who adhere to the *Buckley* view that a restriction on spending is a restriction on free speech. In their view, continued

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protection of First Amendment rights precludes the imposition of limits on campaign spending.

Regardless of their opinion on the cost of campaigns, however, most observers agree that too many voters cast their ballots without adequate information about the candidates running. Perhaps, as one observer suggested, candidates raise too much but spend too little. (Sorauf, p. 189)

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## CONCLUSION

For two decades, the Federal Election Commission has administered and enforced the Federal Election Campaign Act—balancing the governmental interest in ensuring the integrity of our electoral process against the protection of the constitutional rights to free speech and association.

Achieving that balance has become an increasingly arduous task, given the complex legal issues that have come before the agency in recent years. Nevertheless, the Commission has made significant strides in a number of areas. During the last several years, the agency has, for example:

- Promulgated regulations to curb the alleged improper use of soft money and to improve its disclosure;
- Sought to define the parameters of the “express advocacy” standard and its application to the ban on corporate and union expenditures and other provisions of the Act;
- Worked to ensure that foreign-owned U.S. corporations cannot become vehicles for prohibited foreign contributions or expenditures;
- Improved disclosure by adopting more stringent “best efforts” regulations; and
- Defined what constitutes an unlawful conversion of campaign funds to personal use.

The Commission also takes pride in its 20 year commitment to customer service. As part of that commitment, the agency has devoted substantial resources to:

- Ensuring easy public access to campaign finance data;
- Applying modern information technology to enhance disclosure;
- Helping reporters, academicians and the general public utilize and understand the data; and
- Helping candidates and committees understand and comply with the law.

Finally, in recent years, the agency has significantly improved the way it processes its work. The innovations include:

- Prioritizing enforcement matters to ensure that the agency devotes its limited resources to the most significant enforcement cases;
- Assessing much higher civil penalties for violations of the law as a way of deterring future violations; and
- Streamlining audit procedures to expedite the conclusion of Presidential audits.

On its 20th birthday, the Federal Election Commission has much to celebrate. Not only is the agency fulfilling its mission, it is—in the process—helping to define the proper role of government and the reach of constitutional protections.

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## APPENDIX 1

### FEC COMMISSIONERS AND OFFICERS 1975-1995

#### *Commissioners*

- Joan D. Aikens** April 1975 - April 1995 (reappointed May 1976, December 1981, August 1983 and October 1989).
- Thomas B. Curtis** April 1975 - May 1976.
- Thomas E. Harris** April 1975 - October 1986 (reappointed May 1976 and June 1979).
- Neil O. Staebler** April 1975 - September 1978 (reappointed May 1976).
- Vernon W. Thomson** April 1975 - June 1979; January 1981 - December 1981 (reappointed May 1976).
- Robert O. Tiernan** April 1975 - November 1981 (reappointed May 1976).
- William L. Springer** May 1976 - January 1979.
- John Warren McGarry** October 1978 - April 1995 (reappointed July 1983 and October 1989).
- Max L. Friedersdorf** March 1979 - December 1980.
- Frank P. Reiche** July 1979 - August 1985.
- Lee Ann Elliott** December 1981 - April 1999 (reappointed July 1987 and July 1994).
- Danny L. McDonald** December 1981 - April 1999 (reappointed July 1987 and July 1994).
- Thomas J. Josefiak** August 1985 - December 1991.
- Scott E. Thomas** October 1986 - April 1997 (reappointed November 1991).
- Trevor Potter** November 1991 - April 1997.

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## *Ex Officio Commissioners*

### *Clerk of the House*

**W. Pat Jennings** April 1975 - November 1975.

**Edmund L. Henshaw, Jr.** December 1975 - January 1983.

**Benjamin J. Guthrie** January 1983 - January 1987.

**Donnald K. Anderson** January 1987 - October 1993.\*

### *Secretary of the Senate*

**Francis R. Valeo** April 1975 - March 1977.

**Joseph Stanley Kimmitt** April 1977 - January 1981.

**William F. Hildenbrand** January 1981 - January 1985.

**Jo-Anne L. Coe** January 1985 - January 1987.

**Walter J. Stewart** January 1987 - October 1993.\*

## *Statutory Officers*

### *Staff Director*

**Orlando B. Potter** May 1975 - July 1980.

**B. Allen Clutter, III** September 1980 - May 1983.

**John C. Surina** July 1983 - .

### *General Counsel*

**John G. Murphy, Jr.** May 1975 - December 1976.

**William C. Oldaker** February 1977 - October 1979.

**Charles N. Steele** December 1979 - March 1987.

**Lawrence M. Noble** October 1987 - .

### *Inspector General*

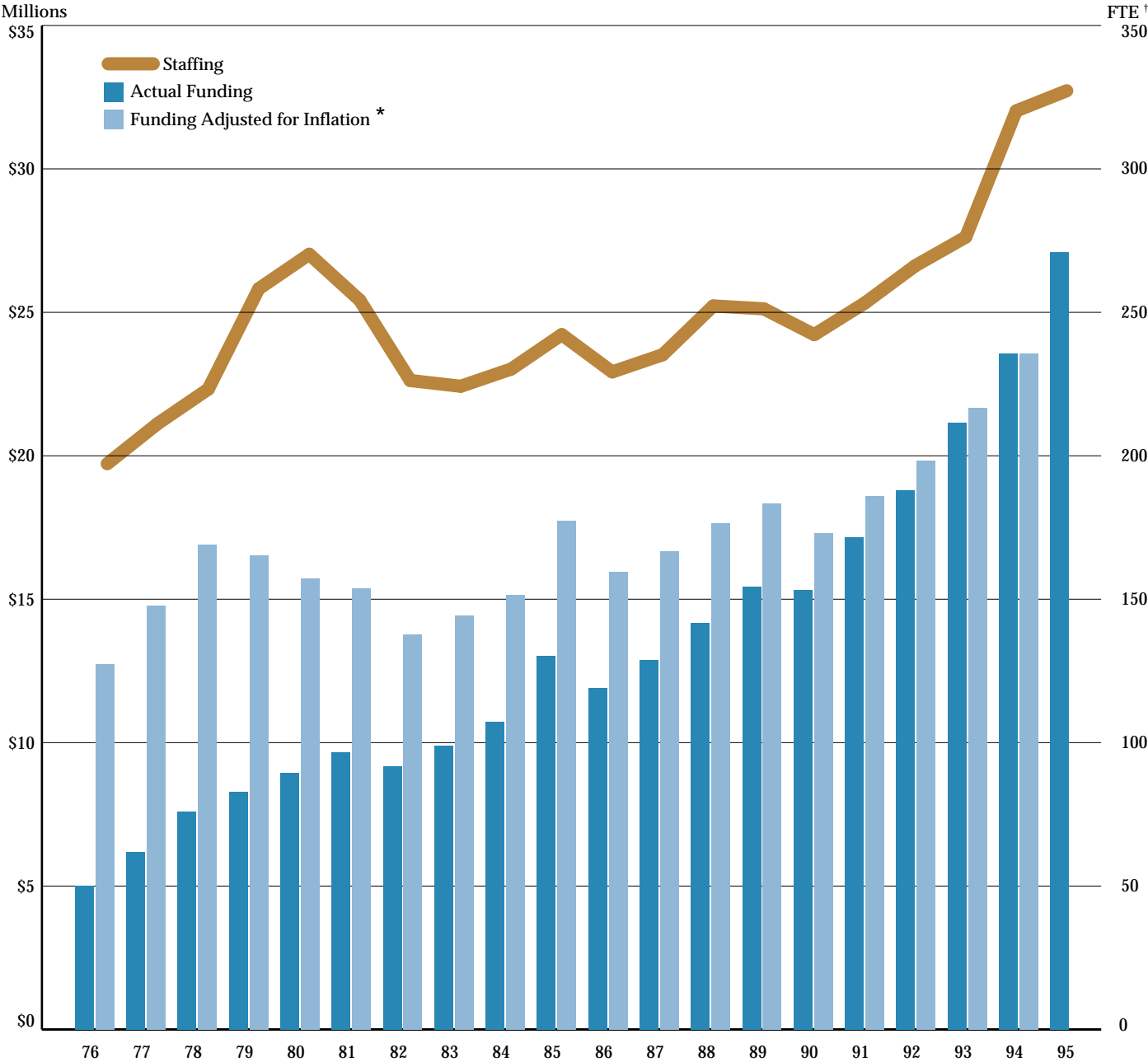
**Lynne A. McFarland** February 1990 - .

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\* In 1993, an appeals court ruled that the presence of nonvoting Congressionally appointed *ex officio* members on the Commission violated the Constitution's separation of powers. The Supreme Court dismissed the Commission's appeal for lack of jurisdiction. *FEC v. NRA Political Victory Fund*. Subsequent to the appeals court decision, the Commission reconstituted itself as a six-member body.



## APPENDIX 2 FEC BUDGET AND STAFFING HISTORY



\*Activity is expressed in 1994 dollars. This means the values in earlier years have been increased to account for inflation between that year and 1994.

<sup>†</sup>Full-time equivalent employees.

# APPENDIX 3 FEC ORGANIZATION CHART

