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SPECIAL ELECTIONS

TEXAS AND CALIFORNIA SPECIAL ELECTIONS

Texas and California have scheduled special elections to fill recently vacated House seats. The reporting requirements explained below apply only to committees active in the special elections. All other committees should follow the normal nonelection year reporting schedule (see the January and June issues of the Record).

Political committees authorized by candidates participating in these elections must file the appropriate pre- and post-election reports, according to the schedules given below. PACs and party committees may also have to file special election reports, as explained in the article that follows.

CONFERENCE SERIES ON ELECTION LAW

In upcoming months, the Federal Election Commission will hold two conferences on federal campaign finance laws. The conferences will include workshops on candidate campaigns, party and PAC activity, contributions and reporting. In addition, a representative of the Internal Revenue Service will be available to answer election-related tax questions.

The schedule for the conferences is given below. For more information, contact the FEC's Information Services Division at 800/424-9530 or 202/376-3120.

Philadelphia: September 14-15

This conference will be held at the Holiday Inn-Center City. The conference fee is \$110.

San Francisco: October 12-13

Cosponsored with the California Secretary of State's Office, this conference will feature a special workshop on the new state campaign finance law presented by the California Fair Political Practices Commission. The conference will be held at the Holiday Inn-Fisherman's Wharf; the fee is \$100.

Texas Special Election

Texas has scheduled a special election on **August 12, 1989**, to fill the 12th Congressional District seat vacated by the resignation of House Speaker Jim Wright.

A second special election may be required if no candidate wins a majority of the votes in the August 12 election. In that case, a second special election will be scheduled within five days after the official election results are declared. Only the two top vote-getters in the previous election, regardless of their party affiliation, will participate in the second election.

California Special Election

California will hold a special election on **September 12, 1989**, to fill the 15th Congressional District vacated by the resignation of Congressman Tony Coelho.

As in Texas, a second election may be necessary. If no candidate wins a majority of votes in the September 12 primary, the top vote-getters of each political party will participate in a special general election on **November 7, 1989**.

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Reporting by Authorized Committees

Authorized committees of candidates who participate in these elections must file reports according to the schedules given in the tables below. The committee treasurer should consult the table that corresponds to the candidate's situation.

Note that an authorized committee must also file notices on contributions of \$1,000 or more received after the close of books for the pre-election report but more than 2 days before an election. The notice must reach the Clerk of the House and the appropriate state office within 48 hours of the committee's receipt of the contribution. 11 CFR 104.5(f). See also AO 1988-32.

Contribution Limits

The limits on contributions to candidates apply separately to each election that is held. 11 CFR 100.2, 110.1(j) and 110.2(i). A candidate must participate in an election to qualify for the contribution limit for that election.

Where to File

Authorized committees of candidates file with the Clerk of the House (see Form 3 for the address) and simultaneously file copies of reports with the appropriate state office:

- o Texas Secretary of State, P.O. Box 12070, Austin, TX 78711
- o California Secretary of State, P.O. Box 1467, Sacramento, CA 95812-1467

TEXAS SPECIAL ELECTION REPORTING DATES

Table I: Only One Election Held; Committees Supporting Only Candidates in 8/12 Election

Report	Period Covered	Reg./Cert. Mailing Date*	Filing Date
Mid-Year	Waived		
Pre-Special	1/1** - 7/23	7/28	7/31
Post-Special	7/24 - 9/1	9/11	9/11
Year-End	9/2 - 12/31	1/31	1/31

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

**Or from the close of books of the last report filed, if the closing date is after 12/31/88 for the Texas election or after 6/30/89 for the California election. If no previous reports have been filed, the opening date is the date of the committee's first activity.

Table II: Two Elections Held; Committees Supporting Candidates in Both Primary (8/12) And General (To Be Announced)

Report	Period Covered	Reg./Cert. Mailing Date*	Filing Date
Mid-Year	Waived		
Pre-Primary	1/1** - 7/23	7/28	7/31
Pre-General	7/24 - TBA***	TBA	TBA
Post-General	TBA	TBA	TBA
Year-End	TBA - 12/31	1/31	1/31

Table III: Two Elections Held; Committees Supporting Candidates in 8/12 Primary Only (not in General)

Report	Period Covered	Reg./Cert. Mailing Date*	Filing Date
Mid-Year	Waived		
Pre-Primary	1/1** - 7/23	7/28	7/31
Year-End	7/24 - 12/31	1/31	1/31

CALIFORNIA SPECIAL ELECTION REPORTING DATES

Table I: Only One Election Held; Committees Supporting Candidates in 9/12 Election

Report	Period Covered	Reg./Cert. Mailing Date*	Filing Date
Pre-Election	7/1** - 8/23	8/28	8/31
Post-Election	8/24 - 10/2	10/12	10/12
Year-End	10/3 - 12/31	1/31	1/31

Table II: Two Elections Held; Committees Supporting Candidates in Both 9/12 Primary and 11/7 General

Report	Period Covered	Reg./Cert. Mailing Date*	Filing Date
Pre-Primary	7/1** - 8/23	8/28	8/31
Pre-General	8/24 - 10/18	10/23	10/26
Post-General	10/19 - 11/27	12/7	12/7
Year-End	11/28 - 12/31	1/31	1/31

***To be announced.

Table III: Two Elections Held; Committees Supporting Candidates in 9/12 Primary Only (But Not in 11/7 General)

Report	Period Covered	Reg./ Cert. Mailing Date*	Filing Date
Pre-Primary	7/1** - 8/23	8/28	8/31
Year-End	8/24 - 12/31	1/31	1/31

SPECIAL ELECTION REPORTING FOR PAC AND PARTY COMMITTEES

PACs and party committees may also have to file special election reports, depending on whether they file on a semiannual or monthly schedule.¹ Additionally, PACs—including monthly filers—may have to file last-minute reports on independent expenditures made in connection with special elections.

Semiannual Filers

PACs and party committees that report on a semiannual schedule during 1989 may have to file pre- and post-election reports. A filing requirement for a special election report is triggered if:

- o The PAC or party committee makes contributions or expenditures in connection with a special election during the coverage dates shown in the tables; and

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

**Or from the close of books of the last report filed, if the closing date is after 12/31/88 for the Texas election or after 6/30/89 for the California election. If no previous reports have been filed, the opening date is the date of the committee's first activity.

¹Party committees and PACs report on either a semiannual basis or a monthly basis during 1989, a nonelection year. Committees that filed quarterly during 1988 now file semiannually; committees that filed monthly reports in 1988 continue to file monthly in 1989, unless the committee has changed its filing frequency under 11 CFR 104.5(c).

- o The committee has not previously disclosed the special election activity in an earlier report. 11 CFR 104.5(c)(1)(ii) and 104.5(h).

Monthly Filers

PACs and party committees that file monthly during 1989 do not have to file pre- and post-election reports for special elections. PACs filing on a monthly schedule may, however, have to file independent expenditure reports, as explained below.

PAC Reports on Independent Expenditures

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

PARTY EXPENDITURE LIMITS FOR TEXAS AND CALIFORNIA SPECIAL ELECTIONS

The coordinated party expenditure limit for the Texas and California special elections is \$23,990 (\$10,000 multiplied by 2.399, the 1988 cost-of-living adjustment). This amount may be spent by the party's national committee in connection with the general election campaigns of candidates running in the special elections. The party's Texas and California state committees may also each spend up to \$23,990 on coordinated party expenditures in connection with the special election in their state.

For purposes of coordinated party expenditures, the August 12 Texas election and the September 12 California election are considered general elections; party committees may therefore make coordinated expenditures on behalf of candidates running in those elections. Note, however, that a single \$23,990 limit (that is, one limit for the national party and one for the state party) applies, regardless of how many of the party's candidates run in the election and regardless of whether a second election is held. (A second election would be considered a continuation of the first.) AO 1983-16.

The Record is published by the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. Commissioners are: Danny L. McDonald, Chairman; Lee Ann Elliott, Vice Chairman; Joan Aikens; Thomas J. Josefiak; John Warren McGarry; Scott E. Thomas; Walter J. Stewart, Secretary of the Senate, Ex Officio; Donald K. Anderson, Clerk of the House of Representatives, Ex Officio. For more information, call 202/376-3120 or toll-free 800/424-9530. (TDD For Hearing Impaired 202/376-3136)



ADVISORY OPINION REQUESTS

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

AOR	Subject
1989-10	Procedures for determining a candidate committee's deficit due to embezzlement by former treasurer. (Date made public: June 15, 1989; Length: 2 pages)
1989-11	Sponsorship of a nonconnected political committee by members of a partnership that is a federal contractor. (Date made public: June 16, 1989; Length: 4 pages)
1989-12	Act's preemption of a state law restricting contributions to U.S. Senate candidates by persons providing services to a lottery commission. (Date made public: June 23, 1989; Length: 3 pages, plus 16-page supplement)
1989-13	Corporation's plan to provide candidates with computers and software to aid them in compliance with the Act. (Date made public: July 10, 1989; Length: 6 pages)

AO 1989-7: Corporation's Matching of PAC Contributions with Donations to Charity

The New Jersey Bell Telephone Company may use its treasury funds to match contributions to its separate segregated fund with donations to charity.

The company proposes to match the total amount of an individual's PAC contributions from the previous year with an equal donation to a 501(c)(3) charity designated by the contributor. (See 26 U.S.C. §501(c)(3) of the Internal Revenue Code.) This plan substantially resembles one approved by the Commission in AO 1986-44. According to that opinion, matching payments to 501(c)(3) charities qualify as solicitation expenses of a separate segregated fund, which are exempt from the definition of expenditure under 2 U.S.C. §441b(b)(2)(C) and which may therefore be defrayed with the corporation's treasury funds. See also AO 1988-48. This process does not result in a prohibited exchange of treasury funds for contributions because the individual contributors do not

receive any financial or tangible benefit, such as a tax benefit.

Commissioner Scott E. Thomas filed a dissenting opinion. (Date issued: June 30, 1989; Length, including dissent: 8 pages)

AO 1989-8: Solicitable Class and Name of PAC Established by Corporation Affiliated with Partnership

Insilco Corporation may establish a separate segregated fund to solicit the restricted class of the corporation and its affiliates, including an affiliated partnership, Wagner & Brown. Wagner & Brown's solicitable class, however, does not extend beyond its executive and administrative personnel and their families. The name of the PAC must include the full name of Insilco Corporation, the connected organization, but it may also include the name of the affiliated partnership.

Because the two individuals who are partners of Wagner & Brown have a controlling interest in Insilco, the partnership and corporation are affiliated. By virtue of this affiliation, Insilco's separate segregated fund may solicit the partnership's executive and administrative personnel and their families. 11 CFR 114.5(g)(1). The PAC may also solicit the restricted class of three corporations owned by Wagner & Brown and of 27 divisions and subsidiaries owned or controlled by Insilco itself, since all these organizations qualify as affiliates of Insilco.

With respect to the solicitable personnel of a partnership affiliated with a corporation, AO 1989-8 partially supersedes AO 1979-77 to the extent that the previous opinion implied that a political committee sponsored by a partnership but affiliated with a corporate separate segregated fund could solicit contributions beyond the restricted class, set out at 11 CFR 114.5(g)(1).

The name of the proposed PAC must include the full name of its connected organization, Insilco Corporation. 11 CFR 102.14(c). As the entity paying for the PAC's establishment, administration and solicitation costs, Insilco will be the connected organization. 11 CFR 100.6. The name of the affiliated partnership may also be included in the PAC's name (i.e., "Insilco Corporation/Wagner & Brown Political Action Committee" is a permissible name), but the PAC's Statement of Organization should list only Insilco Corporation as the connected organization. Vice Chairman Lee Ann Elliott plans to file a dissenting opinion. (Date issued: June 30, 1989; Length: 4 pages)

AO 1989-9: PAC Contributions Matched with Charitable Donations

The General Dynamics Corporation may match employee contributions to its separate segregated fund with donations to charity, a plan similar to the one contemporaneously approved in AO 1989-7, summarized above.

Under the proposed program, first-time contributors to the PAC who contribute \$200 or more may designate a 501(c)(3) charitable organization to receive a donation from the company in an amount equal to the employee's contribution. Employees already enrolled in the PAC who increase their support above the \$200 level may also be eligible to designate a charity to receive a corporate donation equal to the increase. This plan, like the one in AO 1989-7, resembles the plan approved in AO 1986-44. In that opinion, the Commission viewed a corporation's matching of contributions with charitable gifts as a solicitation expense permissible under 2 U.S.C. §441(b)(2)(C).

Commissioner Scott E. Thomas dissented to this advisory opinion for the same reasons given in his dissenting opinion to AO 1989-7. (Date issued: June 30, 1989; Length, including dissent: 4 pages)



FINAL AUDIT REPORT ON HAIG CAMPAIGN RELEASED

In June the Commission released the final audit report on the Haig for President committee, Alexander Haig's 1988 Presidential primary campaign committee.

The Commission must audit all committees receiving public funds to ensure that they have complied with federal campaign finance laws. Mr. Haig was one of 15 Presidential candidates whose primary campaign committees received U.S. Treasury funds in the form of matching payments (up to \$250 from each individual contributor can be matched with public funds). The Commission also authorized full public financing for the two major parties' Presidential nominating conventions and for their nominees' general election campaigns. Along with the Haig campaign, the Commission has released final audit reports on the campaigns of Pete du Pont and Bruce Babbitt; other committees receiving public funds for the 1988 elections are in various stages of the audit process.

As a result of the Haig audit, the Commission found that several disbursements totaling \$23,029.10 lacked sufficient documentation to be considered "qualified campaign expenses." 11 CFR 9033.11. Because the law requires a com-

mittee to repay any public funds that were used for nonqualified campaign expenses, the Commission made an initial determination that the committee repay to the Treasury \$5,979.14, that portion of the nonqualified expenses that was defrayed with public funds.

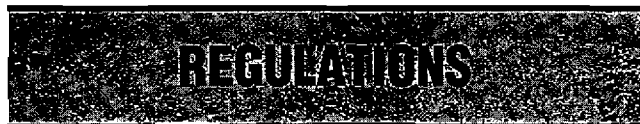
The Haig audit also revealed that the committee had received \$1,681 in matching payments for seven contributions that exceeded the law's limits and therefore were not matchable under 11 CFR 9034.3(e). The committee received an additional \$1,174 in matching funds for contributions that were not matchable because they were not payable to Haig for President. Instead, these contributions, which were raised during joint fundraising events, were made payable to or designated for other committees participating in the events. Based on these audit findings, the Commission made an initial determination that the committee repay an additional \$2,855 (\$1,681 plus \$1,174) to the Treasury.

A copy of the final audit report for the Haig for President committee is available from the FEC's Public Records Office.

FEC HEARS PRESENTATION BY DU PONT COMMITTEE

On June 28, 1989, the Chairman of the Pete du Pont for President Committee, Glenn Kenton, made an oral presentation before the Commission to contest the initial repayment determination that the Commission had made in the Final Audit Report on the committee, released in March and summarized in the May 1989 Record.

In that report, the Commission had made a preliminary determination that the committee repay \$23,254.83 to the U.S. Treasury—a sum representing the portion of public funds used by the committee to make expenditures in excess of the spending limit in Iowa. The Commission will consider the committee's presentation when it makes a final repayment determination.



EFFECTIVE DATE OF TRADE ASSOCIATION RULE

An amended regulation governing solicitations by trade associations, 11 CFR 114.8(f), became effective on June 28, 1989. (See 54 Fed. Reg. 27153.) The revised rule, which applies to the solicitation of parent and subsidiary member corporations, appeared in the March 15, 1989, Federal Register (54 Fed. Reg. 10622) and was summarized in the May 1989 Record.

STATISTICS

PAC ACTIVITY IN 1988 ELECTIONS

An interim FEC report released in April showed a slowdown in the growth of PAC activity during the last election. During 1987 and 1988, PACs—that is, noncandidate and nonparty political committees—raised \$369.5 million and spent \$349.6 million, increases respectively of 5 percent and 3 percent over the previous election cycle. By comparison, 1985-86 PAC receipts and disbursements were, respectively, 22 percent and 27 percent higher than during the 1984 cycle.

During the 1987-88 election cycle, Democrats received \$98.6 million from PACs—62 percent of all PAC contributions, a 25 percent increase over the amount contributed to Democrats in 1985-86. Republicans received \$60.8 million from PACs, an amount virtually unchanged from the \$60.9 million received during the 1986 cycle.

Incumbent candidates received 74 percent of all PAC contributions in the past election, up from 68 percent in 1986. At the same time, contributions to challengers declined from 14 percent in 1986 to 12 percent in 1988.

The table below summarizes total receipts, disbursements and contributions to candidates made by PACs during 1987-88. Further details on 1987-88 PAC activity are provided in a statistical press release available from the FEC's Public Records Office. Call 800/424-9530.

SUMMARY OF PAC ACTIVITY, 1987-88 (in millions of dollars)

Type of PAC	Raised	Spent	Contributed to Candidates
Corporate	\$96.4	\$89.0	\$56.3
Labor	76.0	70.4	35.5
Trade/Membership/Health	86.4	81.6	41.2
Cooperatives/Corporations without Stock	13.3	11.6	6.1
Nonconnected	97.4	97.0	20.3

PAC CONTRIBUTIONS, 1987-88

Information compiled by the FEC's Data Systems Development Division provides a detailed analysis of contributions made by PACs during the 1987-88 cycle.

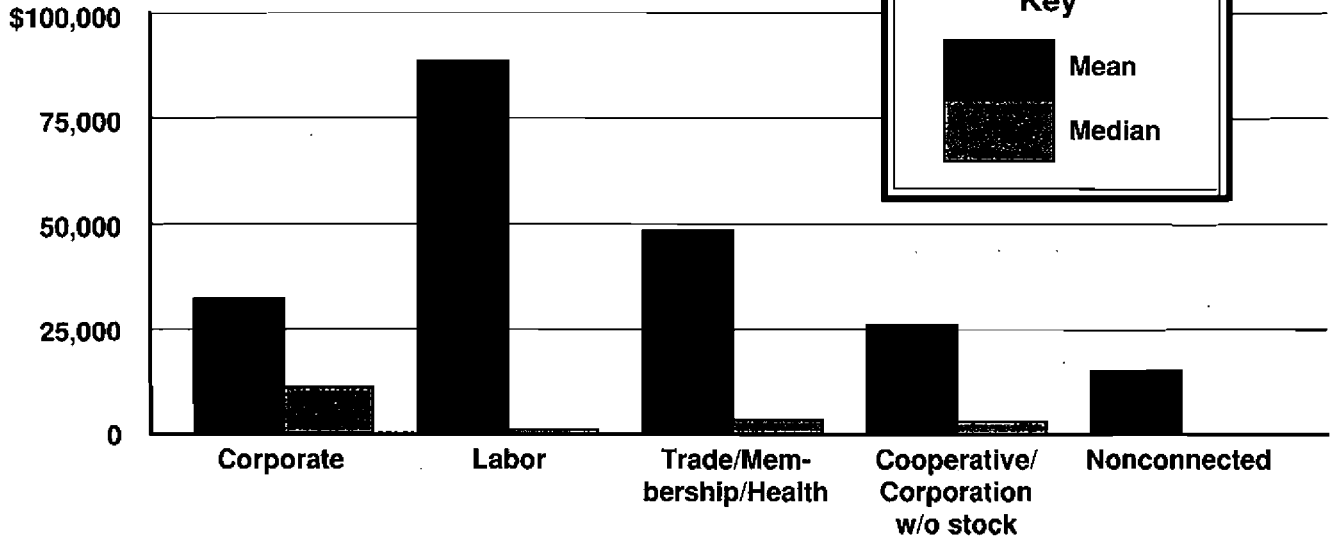
The graph on the following page compares the major categories of PACs in terms of their mean (or average) and median contributions during 1987-88. Both mean and median levels have been shown because neither amount, by itself, adequately describes a typical committee in any category. For example, the mean amount contributed by corporate PACs (arrived at by dividing total contributions by the number of PACs) was \$28,105. By comparison, median corporate contributions were \$11,100 (indicating that half of all corporate PACs gave more than that amount and half gave less). The mean amount contributed by labor organization PACs was \$88,646, whereas median labor contributions were \$1,120. In each case, the median is much lower than the mean because of substantial variations in amounts given by different committees. Less than 2 percent of corporate PACs and about 6 percent of labor PACs made contributions aggregating over \$500,000, while approximately half of all corporate PACs and two-thirds of all labor PACs made aggregate contributions amounting to \$5,000 or less.

These variations can be seen more explicitly in the accompanying table, which distributes PACs according to the total amount they contributed to candidates during the 1987-88 election cycle. The table shows, for example, that 402 corporate PACs did not make any candidate contributions in the past cycle, while 558 made contributions of between \$1 and \$5,000. This means that nearly half the corporate PACs (960 out of 2,008) accounted for 2 percent of all corporate PAC money contributed to candidates during 1987-88. By contrast, the 100 corporate PACs falling in the \$100,001 to \$250,000 contribution range—5 percent of the total—accounted for more than a quarter (27 percent) of total corporate PAC dollars contributed during the two-year period.

The table also shows that 68 percent of all labor committees made contributions amounting to \$5,000 or less, and that labor contributions in this range accounted for 1 percent of all contributions from labor PACs to candidates. Six percent of all labor committees made candidate contributions in excess of \$500,000; contributions from labor PACs in this range accounted for 76 percent of all labor contributions.

PAC CONTRIBUTIONS TO CANDIDATES,¹ 1987-88

Mean and Median Contributions



Distribution of PACs by Total Contributions²

	\$0	\$1 \$5,000	\$5,001 \$50,000	\$50,001 \$100,000	\$100,001 \$250,000	\$250,001 \$500,000	\$500,001 \$1,000,000	\$1,000,001 and over	Total PACs
Corporate	402	558	744	169	100	31	3	1	2,008
% of Committees	20	28	37	8	5	2	<1	<1	
% of Dollars (\$56.3 mil.)	0	2	26	21	27	18	3	2	
Labor	149	124	68	10	18	9	11	12	401
% of Committees	37	31	17	2	4	2	3	3	
% of Dollars (\$41.2 mil.)	0	1	3	2	9	9	23	53	
Trade/Member/Health	222	241	256	56	39	19	7	8	848
% of Committees	26	28	30	7	5	2	1	1	
% of Dollars (\$35.5 mil.)	0	1	12	9	15	16	12	35	
Cooperative/Corporation w/o stock	58	78	69	13	7	4	1	0	230
% of Committees	25	34	30	6	3	2	<1	0	
% of Dollars (\$6.0 mil.)	0	3	22	17	19	25	14	0	
Nonconnected	727	296	229	35	37	12	3	2	1,341
% of Committees	54	22	17	3	3	1	<1	<1	
% of Dollars (\$20.3 mil.)	0	3	19	12	28	17	10	11	
Total	1,558	1,297	1,366	283	201	75	25	23	4,828
% of Committees	32	27	28	6	4	2	<1	<1	
% of Dollars (\$159.3 mil.)	0	2	16	13	20	16	11	23	

¹Graph and table reflect contributions made to all federal candidates during 1987-88.

²For each PAC category, the first row indicates the number of committees whose contributions fell within a given dollar range. The second row shows the percentage of all committees in that category that made contributions in the given range. The third row indicates the percentage of total contributions made by the committees in each given range; for example, 296 nonconnected PACs — about 22 percent of all nonconnected PACs — made contributions of between \$1 and \$5,000. Contributions in that range accounted for 3 percent of all contributions made by nonconnected PACs.

1988 INDEPENDENT EXPENDITURES

A report released in June by the FEC shows that independent expenditures made during the 1988 elections totaled \$21.1 million—a decrease of nine percent from the \$23.4 million reported during the previous Presidential election cycle, 1984.

Independent expenditures, according to the election law's definition, are made for communications that expressly advocate the election or defeat of a clearly identified federal candidate. To be considered "independent," an expenditure may not be made in cooperation or consultation with a candidate or candidate's committee. 2 U.S.C. §431(17). Unlike contributions, independent expenditures are not subject to limitations.

The 1988 Presidential race was the main focus of last year's independent spending, with \$9.7 million spent to support George Bush, while \$519,000 was spent to support Michael Dukakis. Dukakis opponents spent \$3 million in independent expenditures advocating his defeat; about \$75,000 in negative independent spending was aimed at George Bush. Two-thirds of all independent expenditures in 1987-88 were made to influence the Presidential elections.

The study also shows that:

- o About \$7 million in independent expenditures were made in connection with Congressional elections, down from the all-time 1986 high of \$9 million;
- o Independent spending favored Democrats in the House, Republicans in the Senate, and Congressional incumbents over challengers; and
- o Negative spending—totaling \$4.7 million—was the highest since 1982, when it totaled \$5.1 million.

The chart on the following page compares independent expenditures made in support of and in opposition to Republicans and Democrats for the 1988 elections.

Copies of the FEC press release, as well as a summary index of persons and committees who filed independent expenditure reports for the 1988 elections, are available from the FEC's Public Records Office.


OPINION POLLS

This article informs candidates and political committees about Commission regulations affecting the purchase and donation of opinion polls.

Can anyone pay for an opinion poll and give the results to a candidate or political committee? No. Only persons who may legally make contributions may donate poll results, because such a donation is generally considered an in-kind contribution. 11 CFR 100.7(a)(1)(iii) and 100.8(a)(1)(iv). See also AO 1987-22.

Under what circumstances are poll results considered an in-kind contribution? When the recipient candidate or committee accepts the donation of the poll results. 11 CFR 106.4(b).

What is meant by "accepting" the results? Poll results are considered "accepted" when the recipient candidate or committee:

- o Requests the poll results before receiving them;
- o Uses the poll results; or
- o Fails to notify the contributor that the results are refused. 11 CFR 106.4(b)(1)-(3).

If a committee receives unsolicited poll results after they have been published, are the poll results considered an in-kind contribution? No. 11 CFR 106.4(c).

If an individual who is "testing the waters" accepts the results of a poll, has that individual accepted an in-kind contribution? Not initially, but upon becoming a candidate the donated opinion poll is a contribution. Donated goods received for testing the waters are not considered "contributions" unless the individual actually becomes a candidate. Although not considered a "contribution," the donation is subject to the Act's prohibitions and limitations on contributions. 11 CFR 100.7(b)(1)(i), 100.8(b)(1)(i) and 101.3.

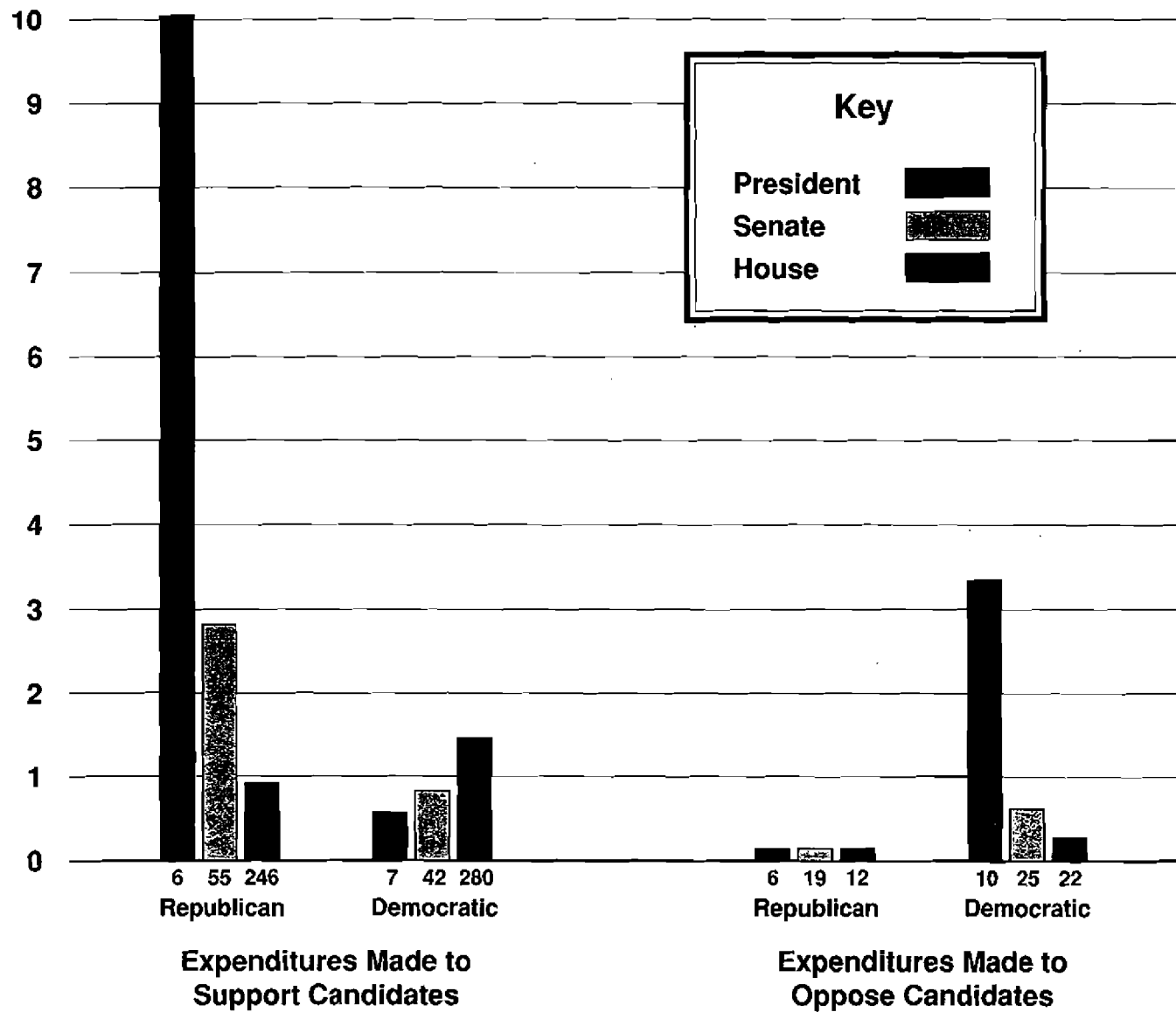
If the results of a poll are given to more than one political committee, how much should be attributed to each recipient? While any method of calculation that yields an amount reasonably reflecting the benefit derived may be used, the Commission suggests any one of the following methods of calculation:

- o Adopt the cost allocation formula used by the polling firm;
- o Divide the overall cost of the poll equally among the candidates and committees receiving the results; or

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INDEPENDENT EXPENDITURES IN 1987-88¹

Millions of Dollars



¹Numbers below the bars indicate the number of candidates supported or opposed with independent expenditures.

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o Apportion the total cost among recipients based on the ratio of question results received by each candidate or committee to the total number of questions included in the poll. 11 CFR 106.4(e).

Does the value of opinion poll results decrease over time? Yes. For more information, see 11 CFR 106.4(f) and (g).

Does the contributor of poll results have any special responsibilities? Yes. A contributor of poll results must inform recipients of the value of the in-kind contribution made and must keep documentation showing how the value was derived. 11 CFR 106.4(h). See also AO 1987-22.

How does the recipient candidate or committee report the receipt of the in-kind contribution? As both a contribution and an operating expenditure on the appropriate lines of the detailed summary page. Additionally, the poll results may have to be itemized on Schedules A and B.¹ 11 CFR 104.13(a).

What if an unauthorized political committee purchases an opinion poll solely for its own information? Assuming that the poll is not used as an in-kind contribution or an independent expenditure made by the committee, the purchase is an overhead expenditure and need not be attributed to any candidate or committee. 11 CFR 106.1(c)(1) and 106.4(d).

Once a committee has accepted or purchased an opinion poll, may it later sell the results? Yes, but the sale will result in a contribution by the purchaser to the committee. Thus, poll results may be sold only to those buyers who are permissible sources of contributions and for an amount that does not exceed contribution limits. 11 CFR 100.7(a)(1) and 114.2(b); AO 1980-19.

¹Contributions from political committees must be itemized regardless of amount. A contribution from an individual must be itemized if it exceeds \$200 when added to other contributions made by the donor during the calendar year. 11 CFR 104.3(a)(4).

COURT CASES

FUND FOR A CONSERVATIVE MAJORITY, DEBTOR

On May 8, 1989, the U.S. Bankruptcy Court for the Eastern District of Virginia denied a motion by the U.S. Trustee to dismiss the Chapter 11 petition filed by Fund for A Conservative Majority (FCM), a nonconnected political committee (Case No. 88-00924-A). The FEC had filed an amicus curiae brief discussing the FEC's regulation of political committees and supporting the U.S. Trustee's motion for dismissal.

Both the U.S. Trustee and the Commission argued that Congress did not contemplate the application of the Bankruptcy Code to political committees and that permitting relief to them under Chapter 11 could result in abuses. Possible abuses cited by the U.S. Trustee and the Commission included: the deception of contributors by political committees that fail to inform the contributors that they have filed for bankruptcy; an unfair advantage obtained by committees granted relief under Chapter 11 over committees that must pay their debts in full; and debt settlements that constitute contributions to such committees by corporate vendors. The Commission also argued that Chapter 11 was inapplicable because of the FEC's exclusive statutory jurisdiction over debt settlement by political committees.

In denying the motion to dismiss the case, the court found that Chapter 11 does not specifically prohibit political committees from filing petitions for relief and that no such prohibition could be inferred without clear evidence of Congressional intent. While acknowledging the deference that the courts have shown to the FEC regarding its exclusive jurisdiction over the Federal Election Campaign Act, the court said, "These [prior] cases...are not dispositive of the matter at hand, which relates to the exclusive jurisdiction of this court to adjudicate petitions filed in bankruptcy." The court also observed that the Commission's rules on debt settlement "appear to facilitate 'monitoring' by the FEC, rather than form a mandatory debt resolution mechanism," and acknowledged that the result might be different if the FEC adopted different rules.¹ The court, however, noted "the need for the FEC to participate in the case" by reviewing FCM's Chapter 11 debt settlement plan.

¹On December 3, 1988, the Commission published a Notice of Proposed Rulemaking on revised debt settlement regulations. See 53 Fed. Reg. 49193. For a summary of the proposed rules, see the January 1989 Record.

FEC v. LIFE AMENDMENT PAC, INC.

On June 15, 1989, the U.S. District Court for the Western District of Washington issued a final order and default judgment in FEC v. Life Amendment PAC, Inc. (No. C88-860Z). The court declared that Life PAC and its treasurer, Rick Woodrow, had violated 2 U.S.C. §434(a) by failing to file six reports during 1985, 1986 and 1987. The court ordered Life PAC and Mr. Woodrow to pay a civil penalty of \$30,000 (\$5,000 for each missing report).

The court also found that Mr. Woodrow and Citizens Organized to Replace Kennedy (C.O.R.K.), a political committee of which he was also the treasurer, failed to disclose debts and obligations in three 1986 reports, in violation of 2 U.S.C. §434 (b)(8). The court ordered C.O.R.K. and Mr. Woodrow to file the missing Schedules C and D and to pay a \$5,000 civil penalty.

Permanently enjoining the defendants from future similar violations of the election law, the court also ordered them to pay the FEC's costs in the action.

FEDERAL REGISTER**FEDERAL REGISTER NOTICES**

Copies of notices are available from the Public Records Office.

Notice	Title
1989-6	11 CFR Parts 100 and 110: Contributions and Expenditures; Prohibited Contributions and Expenditures; Second Notice of Proposed Rule-making (54 Fed. Reg. 24351, June 7, 1989)
1989-7	Filing Dates for Florida Special Election (54 Fed. Reg. 25903, June 20, 1989)
1989-8	11 CFR Part 114: Trade Association Solicitations; Announcement of Effective Date of Rule (54 Fed. Reg. 27153, June 28, 1989)
1989-9	Filing Dates for California Special Election (54 Fed. Reg. 27704, June 30, 1989)
1989-10	Filing Dates for Texas Special Election (54 Fed. Reg. 29385, July 12, 1989)

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