

RECORD

October 1989

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REPORTS

REPORTS DUE IN OCTOBER

Presidential Candidates

Authorized Presidential committees that have chosen to file on a quarterly schedule in 1989 (instead of monthly) must file a quarterly report by October 15. The report should cover all activity from the close of books of the last report filed or from the date of registration (whichever is later) through September 30, 1989.

All Monthly Filers

Party committees, PACs and other committees filing on a monthly schedule must file reports by the 20th of each month. Reports should cover all financial activity from the close of books of the last report filed or from the date of registration (whichever is later). For example, the October monthly report should be filed by October 20 and should cover all activity through September 30.

SPECIAL ELECTIONS

SPECIAL ELECTIONS IN TEXAS AND MISSISSIPPI

Texas and Mississippi have scheduled special elections to fill recently vacated House seats. The reporting requirements explained in this article 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 1989 issues of the *Record*, as well as the article on October Reports, above).

Mississippi Special Election

Mississippi will hold a special election on **October 3, 1989**, to fill the 5th Congressional District seat left vacant by the death of Congressman Larkin Smith. If no candidate wins a majority of the votes in the October 3 election, a runoff will be held on **October 17**.

Texas Special Election

Texas has scheduled a special election on **November 7, 1989**, to fill the 18th Congressional District seat held by the late Mickey Leland.

As in Mississippi, a second election may be necessary if no candidate wins a majority of the votes in the November 7 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 party affiliation—will participate in the second election.

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. A committee should consult the table that corresponds to the candidate's situation.

Note that an authorized committee must also file notices of contributions of \$1,000 or more

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received after the close of books of 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 a candidate apply separately to each election 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 Mississippi Secretary of State, 401 Mississippi Street, Jackson, MS 39205
- o Texas Secretary of State, P.O. Box 12070, Austin, TX 78711

For more information, call the Information Services Division at 800/424-9530 or 202/376-3120.

MISSISSIPPI SPECIAL ELECTION REPORTING DATES

Table I: Only One Election Held; Committees Supporting Candidates in the 10/3 Special

Report	Period Covered*	Reg./ Cert. Mailing Date**	Filing Date
Pre-Special	7/1 - 9/13	9/18	9/21
Post-Special	9/14 - 10/23	11/2	11/2
Year-End	10/24 - 12/31	1/31	1/31

*The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

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

***Committees involved in the runoff may use the October 5 filing date as the mailing date for the Pre-Runoff report.

Table II: Two Elections Held; Committees Supporting Candidates in Both 10/3 Special and 10/17 Runoff

Report	Period Covered*	Reg./ Cert. Mailing Date**	Filing Date
Pre-Special	7/1 - 9/13	9/18	9/21
Pre-Runoff	9/14 - 9/27	10/5***	10/5
Post-Runoff	9/28 - 11/6	11/16	11/16
Year-End	11/7 - 12/31	1/31	1/31

Table III: Two Elections Held; Committees Supporting Candidates in 10/3 Special Only

Report	Period Covered*	Reg./ Cert. Mailing Date**	Filing Date
Pre-Special	7/1 - 9/13	9/18	9/21
Year-End	9/14 - 12/31	1/31	1/31

TEXAS 18th DISTRICT SPECIAL ELECTION REPORTING DATES

Table I: Only One Election Held; Committees Supporting Candidates in 11/7 Special

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

Table II: Two Elections Held; Committees Supporting Candidates in Both 11/7 Special And Runoff, to be Announced (TBA)

Report	Period Covered*	Reg./ Cert. Mailing Date**	Filing Date
Pre-Special	7/1 - 10/18	10/23	10/26
Pre-Runoff	10/19 - TBA	TBA	TBA
Post-Runoff	TBA	TBA	TBA
Year-End	TBA - 12/31	1/31	1/31

Table III: Two Elections Held; Committees Supporting Candidates in 11/7 Special Only (Not in Runoff)

Report	Period Covered*	Reg./Cert. Mailing Date**	Filing Date
Pre-Special	7/1 - 10/18	10/23	10/26
Year-End	10/19 - 12/31	1/31	1/31

SPECIAL ELECTION REPORTING FOR PAC AND PARTY COMMITTEES

PACs and party committees active in the Mississippi and Texas special elections may also have to file reports, depending on whether they file on a monthly or a semiannual schedule. (To change filing schedules, see 11 CFR 104.5(c).) Additionally, PACs--including monthly filers--may have to file last-minute reports of independent expenditures made in connection with special elections.

Semiannual Filers

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

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

*The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

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

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, however, may 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 of 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 104.5(g).

PARTY EXPENDITURE LIMITS FOR MISSISSIPPI AND TEXAS SPECIAL ELECTIONS

The coordinated party expenditure limit for both the Mississippi and Texas 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 the candidates running in each special election. The parties' Mississippi and Texas state committees may also each spend up to \$23,990 in coordinated party expenditures in connection with the special election in their states.

For purposes of coordinated party expenditures, the November 7 Texas election and the October 3 Mississippi election are considered general elections. Note, however, that a single \$23,990 limit (that is, one limit for the national party and one limit for the state party) applies, regardless of the number of candidates 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)

COMMISSIONERS

COMMISSION RELEASES REPORT ON TRIP TO SOVIET UNION

In September the Commission released a report on the FEC's eight-day visit to the Soviet Union in June 1989. At the invitation of the Soviet Central Electoral Commission, the FEC delegation, headed by Chairman Danny L. McDonald, met with Soviet election officials, academics, Communist Party leaders, and candidates who participated in the spring elections to the Congress of the People's Deputies.

In the "Overview and Findings," the report notes that:

- o The March elections can be seen as a significant move toward democratization, in that the Soviets permitted multicandidate slates, the secret ballot and grass roots participation in the initial selection of nominees.
- o Despite the stated goal of democratization, Soviet officials acknowledged many problems in the electoral system--among others, the need to equalize campaign resources, encourage multicandidate contests, facilitate more grass roots participation in the nomination process and strengthen enforcement of the election laws.
- o Soviet officials stated that, in further reforming their election law, they wanted to draw upon the experience and constitutional laws of Western nations.

Highlights of the report include:

- o Summaries of private meetings with Soviet Vice President Anatoliy Lukyanov and Boris Yeltsin, an opposition figure in the recent elections;
- o Observations on the Soviet election law;
- o Campaign financing in the Soviet Union;
- o The role of the Communist Party in the elections;
- o Pluralism in Soviet politics;
- o The role of women in Soviet politics; and
- o Future electoral reform in the USSR.

Copies of the report are available free of charge from the Commission's Public Records Office.

PUBLIC APPEARANCES

- October 13** California Political Attorneys Association
Los Angeles, California
Craig M. Engle
- October 17** Second Friday Group
Los Angeles, California
Craig M. Engle

Mr. Engle is Executive Assistant to Vice Chairman Lee Ann Elliott

ADVISORY OPINIONS

ADVISORY OPINION REQUESTS

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

AOR	Subject
1989-16	Transfers between unaffiliated corporate PACs in connection with bank takeover by U.S. Office of the Comptroller of the Currency and receivership by FDIC. (Date made public: August 29, 1989; Length, including supplements: 33 pages)
1989-17	Multibank holding company PAC's solicitation of personnel of affiliated banks scheduled to merge with company in future (Date made public: September 5, 1989; Length, including supplements: 156 pages)
1989-18	Membership organization PAC's use of raffle for fundraising. (Date made public: September 1, 1989; Length, including supplements: 30 pages)
1989-19	Sale of copies of FEC reports filed by candidates (Date made public: September 7, 1989; Length: 6 pages)
1989-20	Contributions to nonfederal candidates by PAC of foreign-owned and foreign-funded corporation (Date made public: September 11, 1989; Length: 2 pages)

ADVISORY OPINION SUMMARIES

AO 1989-13: Corporation's Plan to Provide Candidates with Computer Equipment for Compliance Purposes

International Business Machines Corporation (IBM) may not provide equipment and training free of charge to federal candidate committees under the Act's legal and accounting exemption. The proposed donation would result in a prohibited corporate contribution.

IBM had planned to provide candidates of its choice with personal computers, software and training by corporate employees in order to facilitate the candidates' compliance with the reporting and recordkeeping requirements of the Act and FEC regulations. Under the proposed plan, the company would have retained title to the equipment. Chosen candidates would have been required to guarantee in writing that they would

use the equipment and assistance only for compliance. IBM had planned to repossess the equipment if the agreement were broken.

Corporate in-kind contributions--i.e., gifts of "anything of value"--are prohibited under 2 U.S.C. §441b(a) and (b)(2). Congress, however, has exempted from the definitions of "contribution" and "expenditure" the donation of legal and accounting services to help political committees comply with the election law. 2 U.S.C. §§431(8)(B)(ix)(II) and 431(9)(B)(vii)(II). This exemption applies only to payments by the regular employer of the individual providing the legal or accounting services. For example, the Commission has permitted corporations to donate the services of their lawyer-employees and accountant-employees to political committees while the employees continued to draw their regular corporate salaries. See AOs 1982-31, 1981-54, 1979-77 and 1979-22.

IBM's proposal differs from those approved in earlier opinions because IBM wanted to donate equipment rather than services. (The training was subordinate to the primary gift of the equipment.) Therefore, the company's plan fails to qualify under the legal and accounting exemption. (Date issued: August 11, 1989; Length, 4 pages)

AO 1989-14: Restaurant's Method of Charging Political Customers

Anthony's Pier 4 Restaurant, Inc., may charge political candidates and committees on a "cost plus" basis when they use its facilities for fundraisers. This method of charging is a usual and normal practice of the restaurant for both political and nonpolitical customers.

The restaurant usually charges either on a "flat fee" or a "cost plus" basis for receptions. The "flat fee" option involves charging customers on a per-person basis; the "cost plus" option involves billing for the actual cost of the food and drink consumed, multiplied by certain amounts. Because of lower costs to the restaurant for providing the "cost plus" option, which requires fewer employees and includes a more limited menu, Anthony's Pier 4 charges less for the this option. Many political fundraisers choose the "cost plus" option for their receptions.

The ban on corporate contributions generally prohibits a corporate vendor from granting discounts to federal candidates or committees (with certain limited exceptions). However, reduced charges to a political client are not considered contributions if they are established as a "usual and normal" practice of the vendor. Since Anthony's Pier 4 offers the "cost plus" option to both political and nonpolitical customers, the method does not result in a prohibited corporate contribution when offered to political clients. See AOs 1987-24, 1986-22, 1985-28 and 1982-30. (Date issued: August 18, 1989; Length: 3 pages)

AO 1989-15: Contributions to Special Election Nominee Not Running in Primary Runoff

Individual contributors to Ileana Ros-Lehtinen's special election campaign for Congress did not have a separate \$1,000 limit for the August 15 primary runoff election in which Mrs. Ros-Lehtinen was not a candidate. Contributions made after the primary (in which she was a candidate) were subject to the \$1,000 general election limit.

Mrs. Ros-Lehtinen won a majority of votes in an August 1 primary election, thus becoming the Republican nominee for the general election, held on August 29 to fill the 18th Congressional District seat left vacant by the death of Congressman Claude Pepper. An August 15 runoff was held to select a Democratic nominee. Mrs. Ros-Lehtinen was not a candidate in that election.

The election law and FEC regulations place a \$1,000 per candidate, per election, limit on contributions from individuals. 2 U.S.C. §441a(a); 11 CFR 110.1(j)(1). Separate limits apply to the primary and general elections; a separate limit also applies to a runoff election, defined as an election held after a primary to select a nominee for the federal office sought. 11 CFR 100.2(d)(1). Because Mrs. Ros-Lehtinen was not a candidate in the August 15 runoff, she was not entitled to a separate limit for that election. Individual contributors to her campaign, therefore, have only two contribution limits--\$1,000 each for the primary and the general. See also AO 1978-25.

Contributors who designated their contributions for the runoff could redesignate them for Mrs. Ros-Lehtinen's general election campaign, provided the redesignations did not cause the contributors to exceed their limits for the general election. 11 CFR 110.1(b)(4)-(5) and 110.2(b)(4)-(5). Similarly, if Mrs. Ros-Lehtinen had debts outstanding from the primary, the committee could ask contributors to redesignate their runoff contributions for the primary, as long as they had

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SAN FRANCISCO CONFERENCE

On October 12 and 13, the Federal Election Commission and the California Secretary of State's Office will be cosponsoring a conference on campaign finance law. The conference will feature workshops on candidate campaigns, PAC and party activity, contributions and reporting. The California Fair Political Practices Commission will also conduct a workshop on the new state campaign finance law.

The conference will take place at the Holiday Inn-Fisherman's Wharf in San Francisco. The cost is \$100. For information on registration, call the Information Services Division at 800/424-9530 or 202/376-3120.

not already given up to their limit for that election. (Date issued: August 11, 1989; Length: 4 pages)

REGULATIONS

SUMMARY OF REVISED RULES ON AFFILIATION AND TRANSFERS

On August 14, 1989, the Commission sent to Congress revised rules concerning affiliated committees, transfers, prohibited contributions, annual contribution limits, and earmarked contributions. The final rules and the Explanation and Justification (E&J) were published in the Federal Register on August 17. See 54 Fed. Reg. 34098. The major changes concerning affiliation, transfers and prohibited contributions are summarized below. (NOTE: The changes concerning the annual contribution limit for individuals and earmarked contributions will be summarized in the Record next month.)

Effective dates for the new rules will be announced after the rules have been before Congress for 30 legislative days.

Contribution Limitation for Affiliated Committees and Political Party Committees; Transfers: 11 CFR 110.3

Section 110.3 has been retitled to reflect that several provisions pertain to party committees as well as to other political committees. The section has also been reorganized.

Contribution Limitations for Affiliated Committees: 11 CFR 110.3(a)(1)-(2)

Section 110.3(a)(1) states the general rule that committees commonly established, financed, maintained or controlled are affiliated and, thus, are subject to common contribution limitations. This provision has been revised to:

- o Specify that the shared limits for affiliated committees apply to both contributions they make and contributions they receive;
- o Clarify that committees may be affiliated even if one of them is not a political committee as defined in 11 CFR 100.5;
- o Clarify that common contribution limits apply to all authorized committees of a candidate for the same election; and
- o State in paragraph (a)(1)(ii) that, in appropriate cases, the term "local unit" (of the entity that establishes, finances, maintains or controls a political committee) may include a franchisee, licensee, or state or regional association.

A list of committees viewed as *per se* affiliated (currently set forth in paragraph (a)(1)(ii)) appears in amended paragraph (a)(2).

Factors of Affiliation: 11 CFR 110.3(a)(3)

A revised paragraph (a)(3) lists "circumstantial factors of affiliation," which are called "indicia of affiliation" under the current rules.

A new paragraph (a)(3)(i) explains that, in determining whether entities are affiliated—i.e., whether they are commonly established, financed, maintained or controlled—the Commission may examine a variety of relationships, such as those between organizations sponsoring PACs, between committees themselves, and between one sponsoring organization and a committee sponsored by another organization.

In evaluating these relationships, the Commission will consider a revised list of affiliation factors, set forth in new paragraphs (a)(3)(ii)(A)-(J), given below. Note that changes from current rules have been printed in bold:

- (A) An organization owns a controlling interest in the voting stock or securities of an organization sponsoring another committee;
- (B) A sponsoring organization has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through its constitution, bylaws, contracts or other rules, or through formal or informal practices or procedures;
- (C) A committee or sponsoring organization has the authority or ability to hire, appoint, demote or otherwise control the officers or employees of another sponsoring organization or committee;
- (D) & (E) A sponsoring organization or committee has a common or overlapping membership, or common or overlapping officers or employees, with another sponsoring organization or committee, indicating a formal or ongoing relationship between them;
- (F) A committee or sponsoring organization has members, officers or employees who were members, officers or employees of another sponsoring organization or committee, indicating a formal or ongoing relationship or the creation of a successor;
- (G) A sponsoring organization provides funds or goods in a significant amount or on an ongoing basis to another organization or committee, such as through direct or indirect payments for administrative, fundraising or other costs, but not including joint fundraising proceeds;
- (H) A sponsoring organization or committee arranges for funds to be provided to another organization or committee in a significant amount or on an ongoing basis, with the exception of joint fundraising transfers;
- (I) A sponsoring organization, committee or an agent of one of them had an active or significant role in the formation of another organization or committee; and
- (J) A sponsoring organization or committee has a similar pattern of contributions or contrib-

utors with another entity, indicating a formal or ongoing relationship between them.

Finally, the Commission emphasizes that the following principles in evaluating affiliation have not changed:

- o The presumption that state and local party committees are affiliated; and
- o The application of affiliation factors to committees set up by the same candidate.

Contribution Limitations for Political Party Committees: 11 CFR 110.3(b)

Section 110.3(b) has been reorganized. New paragraph (b)(1) generally follows current (b)(1), which states that national and state party committees have separate limits. New language clarifies, however, that the limitations apply to contributions both made and received. New paragraph (b)(2) has been reorganized, consolidating the current provisions in (b)(2)(i) and (b)(4) and clarifying that the Congressional campaign committee and the national committee of a political party have separate per-election limits on contributions they give to federal candidates, including House, Senate and Presidential candidates. Similarly, the Senatorial campaign committee has separate limits from the national committee, with the exception of their combined limit on contributions to Senate candidates.

Current paragraph (b)(3), which contains examples of how the contribution limits apply to different party committees, has been deleted—the examples are now in the E&J. The Commission added new paragraph (b)(3), which retains the approach of the current section (b)(2)(ii) by presuming that state and subordinate party committees are affiliated but granting them the opportunity to demonstrate otherwise.

Transfers: 11 CFR 110.3(c)

The revised rules for transfers between affiliated committees, currently set forth in sections 110.3(a)(2) and (c), have now been consolidated in new paragraph (c).

Transfers Between Affiliated or Unaffiliated Committees of the Same Political Party, and Transfers Made by a Collecting Agent to a Separate Segregated Fund: 11 CFR 110.3(c)(1)

Paragraph (c)(1) continues to permit unlimited transfers between party committees of the same party, whether affiliated or not. New language states that the contribution limits do not restrict transfers between affiliated committees or transfers by a collecting agent to a separate segregated fund. However, the rules still specify that only permissible funds may be transferred and that transfers can trigger the Act's registration and reporting requirements for previously unregistered entities.

Transfers Between Committees Involved in Joint Fundraising: 11 CFR 110.3(c)(2)

New paragraph (c)(2) revises current paragraph (a)(2)(i), clarifying that, under joint fundraising rules, a participating committee or organization may not receive more than its allocated share of the funds raised.

Transfers Between Current and Previous Campaign Committees of the Same Candidate: 11 CFR 110.3(c)(4)

With regard to transfers between current and previous campaign committees of the same candidate, new paragraph (c)(4) continues the approach taken by the current rules in section 110.3(a)(2)(iv). It also adds that transfers of permissible funds between two previous federal campaign committees of the same candidate are permissible.

Further, the section specifies that the "pool of funds" from which a transfer is made consists of the funds most recently received, and that there must be sufficient permissible funds in this pool to transfer. New language clarifies that contributions made after the previous election was held, or after the candidate withdrew from or became ineligible to participate in the previous election, must be aggregated with other contributions from the same donor to the next election. However, post-election contributions do not need to be aggregated with others from the same donor if they are properly designated for outstanding debts.

The new paragraph (c)(4) defines "previous Federal campaign committee" and "current Federal campaign committee."

Dual Federal Candidates: 11 CFR 110.3(c)(5)

The Commission clarified the restrictions on transfers between the authorized committees of a candidate seeking election to more than one federal office.

First, a "dual candidate" is defined as a candidate concurrently seeking election to more than one federal office during the same or overlapping election cycles. This section implements 2 U.S.C. §441a(a)(5)(C), which provides that transfers between committees authorized by dual candidates are prohibited until the candidate stops actively seeking election to more than one office. New language in paragraph (c)(5)(i) offers two additional examples of instances where the Commission would not presume a candidate to be "actively seeking" more than one federal office: (1) when the candidate is ineligible for nomination or election to more than one office by operation of law and (2) when the individual publicly withdraws from one race and ceases to campaign.

The "pool of funds" principle of paragraph (c)(4) applies here, as well. New paragraph (c)(5)(ii) clarifies that aggregation is required if a

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donor has contributed to both committees and funds are transferred between them. Furthermore, a donor's contributions may not be transferred if the aggregation will cause the donor to exceed the limits on his or her contributions to the committee receiving the transfer.

The Commission revised paragraph (c)(5)(iii), which prohibits transfers when a dual candidate "has elected to receive" public funding under the Presidential public funding statutes, to clarify that the prohibition is effective regardless of the timing of the receipt of the public funding.

Transfers Between Federal and Nonfederal Committees: 11 CFR 110.3(c)(6)

As with transfers between current and previous federal committees of the same candidate, new paragraph (c)(6)(1) clarifies that, while a previous nonfederal candidate committee may transfer unlimited amounts of money to a previous or current federal committee of the same candidate, the funds transferred must come from permissible sources. To ensure this, the committee transferring the money must be able to demonstrate that it had sufficient permissible funds on hand at the time of the transfer. (Permissible funds are funds that are not from excessive contributions or from sources prohibited by the Federal Election Campaign Act.) The committee must also keep records of the sources of the funds and make these records available to the Commission upon request.

New paragraph (c)(6)(ii) requires that contributions to the nonfederal committee that are transferred to the federal committee must be aggregated with contributions made by the same donor to the federal committee if they were originally given after:

- o The nonfederal election took place;
- o The candidate withdrew from the nonfederal election; or
- o The candidate publicly announced his or her candidacy for federal office.

Again, transfers to the federal committee must also come from a "pool of funds" containing sufficient permissible funds to cover the amount of the transfer. New paragraph (c)(6)(iii) clarifies that a transfer of funds in excess of \$1,000 from a nonfederal to a federal committee triggers registration and reporting requirements for the nonfederal committee. New language also permits a nonfederal committee required to report under these circumstances to terminate with the first report filed, if appropriate.

Prohibited Contributions: 11 CFR 110.4¹

The Commission added new paragraph (b)(1)(iii) to specifically prohibit any person from knowingly helping or assisting any other person in the making of a contribution in the name of another. Also, former paragraph (b)(1)(iii) was renumbered as (b)(1)(iv).

Conforming Amendments

The Commission revised other parts of the regulations to make them consistent with the revisions described above. The conforming amendments modify cross references and definitions and apply the new rules to corporate and labor PACs and to the Presidential primary regulations. The modified rules are: 11 CFR 100.5(g), 102.2, 110.1(f)(3), 110.8(d)(2), 114.5(g)(1), 114.8(g)(1) and 9034.4(d).

Explanation and Justification

The E&J, published August 17 in the Federal Register along with the amended regulations, further explains the significance of the new rules, provides illustrations of their application and discusses some aspects of the rules which the Commission decided not to change. For more information, call the Information Services Division at 800/424-9530 or 202/376-3120.

COURT CASES

NEW LITIGATION

FEC v. John Bryant Campaign Committee

The Commission asks the court to declare that the John Bryant Campaign Committee and Kenneth H. Molberg, as treasurer, violated the Federal Election Campaign Act by:

- o Knowingly accepting \$2,000 in excessive contributions for the 1986 Congressional primary in Texas (2 U.S.C. §441a(f)); and
- o Using information copied from another committee's FEC reports for purposes of solicitation (2 U.S.C. §438(a)(4)).

The agency also asks the court to assess civil penalties and to order the defendants to refrain from future similar violations of the law.

U.S. District Court for the Northern District of Texas (Dallas Division), No. CA3-89-1694-F, July 6, 1989.

¹The Commission has recently proposed other changes to section 110.4. These proposals were summarized on page 1 of the July Record.

FEC v. Webb for Congress

The Commission asks the court to declare that the Webb for Congress Committee and Roy D. Fowler, as treasurer, violated the Federal Election Campaign Act by:

- o Accepting an excessive contribution in the form of a \$19,000 loan from the candidate's wife (2 U.S.C. § 441a(f)); and
- o Failing to accurately disclose the source and nature of the same contribution (2 U.S.C. § 434(b)).

The agency also asks the court to find that William Woodward Webb, a 1986 Congressional candidate from North Carolina, also violated the law by accepting the excessive contribution.

The Commission claims that the committee reported the contribution as coming from Mr. Webb's personal funds. (Under the election law, candidates may contribute unlimited amounts of personal funds to their own campaigns. Other individuals, however, including family members, may contribute no more than \$1,000 per election to a candidate.)

The FEC further asks the court to assess civil penalties and impose permanent injunctions against the defendants.

U.S. District Court for the Eastern District of North Carolina, No 89-664-CIV-5-BO, August 21, 1989.

COMPLIANCE

MUR 1837: Impermissible Activities of Senate Campaign Committee

This MUR, resolved through conciliation and payment of civil penalties (including a \$30,000 civil penalty against the respondent candidate committee), involved the activity of the principal campaign committee of a 1984 Senate candidate. Violations by the committee and its treasurer included:

- o Acceptance of excessive contributions totaling over \$690,000 from 874 persons;
- o Failure to continuously report all outstanding debts;
- o Acceptance of 127 corporate contributions totaling over \$9,700;
- o Failure to disclose all required information regarding the identification of each person making contributions aggregating over \$200 per calendar year;
- o Failure to disclose all expenditures requiring individual itemization;
- o Failure to deposit a significant number of contributions into the depository account within 10

days of the treasurer's receipt of the contributions; and

- o Failure to comply with the Commission's regulations with respect to joint fundraising activity.

Background

This matter was initiated by a complaint filed by a citizen who reviewed the committee's finance reports and alleged that the committee had failed to report debts or, alternatively, had received excessive contributions. Further violations also came to light as a result of the Commission's review of the committee's reports.

The complaint noted that the committee's July 15 quarterly report showed no outstanding debts or obligations from the May 5 primary. Press accounts, however, indicated that between July 1 and September 30, the committee had accepted over \$110,000 in contributions designated for the primary election from individuals who had also contributed \$1,000 each to the general election during the reporting period. (Under 11 CFR 110.1(b)(3)(i) and 110.2(b)(3)(i), a contribution designated in writing for a particular election but made after that election is permissible only if the contribution does not exceed the net debts outstanding from the election and the contributor's contribution limits.) Reviewing the committee's July and October quarterly reports and the pre-election report, the complainant asserted that at least 163 individuals and nine PACs had made over \$150,000 in excessive contributions after the primary election.

The complaint said that the committee and the nine PACs had violated 11 CFR Part 110 by accepting and making impermissible contributions. Alternatively, the complaint said, if the committee did have outstanding debts from the primary, it had violated the election law by not properly reporting outstanding debts and obligations as required by 11 CFR 104.3. The complaint contended that, in either case, the committee's violations were knowing and willful.

The Commission found reason to believe that the committee had violated numerous sections of the Act and FEC regulations. The Commission also authorized an audit of the committee's finances, pursuant to 2 U.S.C. § 437g(a)(2) and rejected the committee's offer to enter into pre-probable-cause conciliation at that time. With regard to the other respondents, however, the Commission found "no reason to believe" that 32 respondents had violated 2 U.S.C. § 441a(a)(1)(C) by making excessive contributions and took no further action with respect to the other respondents, except for the matter involving a broadcasting company, described below.

continued

Broadcasting Company. The complaint also alleged excessive contributions by the president of a broadcasting company who had contributed \$1,250 to the Senate campaign. Responding to the notification of the complaint in this MUR, the president denied that he had made the excessive contribution; instead, he explained, the contribution had been made by the corporation, because the corporation had reimbursed him. The Commission found reason to believe that the president had violated the law by authorizing the making of a corporate contribution and by permitting his name to be used for a contribution in the name of another (2 U.S.C. §§ 441b and 441f, respectively).

Notified of the Commission's "reason to believe" finding, the president returned \$1,250 to the corporation. The Commission entered into conciliation agreements with both the corporation and the president. Both the corporation and the president paid a \$200 civil penalty.

Legal Challenge. After the Commission's "reason to believe" determinations, the Senate committee filed a motion asking the Commission to reconsider its actions. The committee argued that the Commission's audit was time-barred, that the Commission was required to grant the respondent's request for pre-probable-cause conciliation, and that the "reason to believe" determinations extended beyond the allegations contained in the complaint. The Commission considered the arguments and denied the committee's motion. Subsequently the committee filed suit against the Commission, challenging the audit. The committee said that the Commission had to begin the audit within the time frame established under section 438(b); the Commission argued, in response, that section 438(b) did not apply here because the audit had been authorized under section 437g(a)(2). The court granted the FEC's motion to dismiss the suit and determined that the committee had to comply with the FEC's audit.

General Counsel's Report

The General Counsel's report analyzed the findings of the Commission's audit of the committee.

Excessive/Misattributed Contributions. In all, the auditors' review found 374 excessive contributions totaling \$691,000. Twelve of the excessive contributions resulted from 15 misattributed checks and money orders totaling \$33,800, which were found to be signed by only one individual but attributed by the committee (either in whole or in part) to persons other than the one signing the instrument or accompanying documentation.

FEC regulations provide that each contributor in a joint contribution must sign the check (or other written instrument) or a statement that accompanies the contribution. The committee apparently had attributed contributions to certain

individuals without receiving the required signed documentation, resulting in excessive contributions of \$21,550 for the twelve checks and money orders.

Failure to Report Debts and Obligations. The auditors' review of reports filed during the committee's first six reporting periods found that the committee initially reported no debts, subsequently amended some reports to show debts, and finally reported all required debts.

FEC regulations require that debts and obligations must be continuously reported until extinguished. 11 CFR 104.11(a). The auditors concluded that the committee had failed to continuously disclose over \$1,072,000 in debts and obligations.

Primary Debt. Under the Commission's regulations, a principal campaign committee may accept contributions designated for the primary election after the date of the primary, but only to the extent that the contribution does not exceed the net debts outstanding from the primary election. 11 CFR 110.1(a)(2)(i); 2 U.S.C. §441a(f). The Commission concluded that the committee had sufficient primary debts "to accommodate the Committee-generated contributions total."

Corporate Contributions. The audit revealed that the committee had accepted and later refunded 127 contributions totaling over \$9,700 in corporate funds. Corporations are prohibited from making contributions in connection with federal elections, and political committees are prohibited from knowingly accepting corporate contributions. 2 U.S.C. §441b(a). Although the contributions were refunded, the refunds were not made in a timely manner.

Insufficient Disclosure of Information. The committee's original reports filed with the Commission did not fully itemize contributions and expenditures, as required under 2 U.S.C. §§434(b)(3)(A) and (5)(A). Although the committee filed amendments to correct the insufficient disclosure, incomplete and inaccurate information about contributions and expenditures was on the public record for over a year.

Timely Deposit of Contributions. The audit further revealed that a significant number of contributions were not deposited in a timely manner, as required under 2 U.S.C. §432(b)(1).

Joint Fundraising Violations. Responses to the complaint indicated that the committee had engaged in a joint fundraising event, although the committees's initial reports did not show any joint fundraising activity. The auditors identified three specific problems with the committee's joint fundraising activity.

1. Misallocation of Proceeds. The auditors found that the committee apparently miscalculated gross proceeds as \$613,997.11 instead of \$645,320.61. The miscalculation of gross proceeds led to a miscalculation of allocated operating expenditures. As a result, the committee overpaid

its share of operating expenditures by nearly \$8,700.

2. Failure to Report Joint Fundraising Activity. The auditors found a number of apparent violations of 11 CFR 102.17, regarding the receipt and reporting of joint fundraising proceeds. First, the committee did not deposit all of the gross proceeds into the joint fundraising depository account but instead deposited over \$28,000 directly into a committee account. Second, not all disbursements were made from the fundraising account. Third, although the committees held the joint fundraising event in August 1984, none of the joint fundraising activity was disclosed until the committee amended its reports in August 1985. Before these amendments, the committee had reported the contributions representing its share of net proceeds as if they had been received directly from the contributors rather than as a transfer-in.

3. Fundraising Notice. FEC regulations at 11 CFR 102.17(c)(2)(i) set out detailed requirements for the notice that must be included on every joint fundraising solicitation. The notice must inform contributors that: (1) contributions may be designated for a particular participant and (2) the stated allocation formula may be changed if a contribution would otherwise result in an excessive contribution to one of the joint fundraising participants. The committee did not include this information on the fundraising notice.

Bank Overdrafts. The General Counsel recommended that that Commission find reason to believe that the committee, its treasurer, and a national bank violated 2 U.S.C. §441b(a) in connection with overdrafts paid on the committee's primary account. (See 11 CFR 100.7(b)(11).) The Commission decided to take no further action on the matter.

Commission Determination

The Commission voted to enter into a conciliation agreement in which the committee and its treasurer agreed to pay a civil penalty of \$30,000. The committee made refunds to all known contributors who were identified as having made excessive contributions, and also agreed to seek reimbursement for the operating expenditures it paid on behalf of other participants in its joint fundraising activity.

CORRECTION

The MUR summary published in September's Record was incorrectly numbered 2594. The correct number is 2924.

STATISTICS

FINAL REPORT ON 1988 PRESIDENTIAL PRIMARY ACTIVITY ISSUED

In August the Commission released the Final Report on the 1988 Presidential primary campaigns, summarizing the activity of 16 Republican, Democratic and minor party candidates who raised or spent more than \$500,000.

Disclosure reports filed by the candidates showed "adjusted" campaign receipts (i.e., gross receipts minus transfers, refunds and rebates) of about \$214 million for the primary elections. Among the 16 campaigns, adjusted receipts ranged from just over \$2 million for New Alliance Party candidate Lenora Fulani to over \$30 million each for George Bush and Pat Robertson. About 31 percent of adjusted receipts in the primary campaigns came from federal matching funds. Two-thirds of primary receipts came from individuals, and the remaining receipts came from PAC contributions and other sources.

The chart on the following page shows the amounts each candidate received from individuals, political committees and matching funds.

Adjusted expenditures (i.e., gross disbursements minus transfers, refunds and rebates) disclosed in the reports totaled \$211 million for the 16 campaigns. Independent expenditures made to support Presidential candidates amounted to \$10.7 million; independent spending in opposition to candidates totaled \$3.4 million.

A copy of FEC Reports on Financial Activity 1987-88, Final Report, Presidential Pre-Nomination Campaigns is available for \$1.00 from the FEC's Public Records Office. A statistical press release is also available.

MAJOR PARTY ACTIVITY AT MID-YEAR

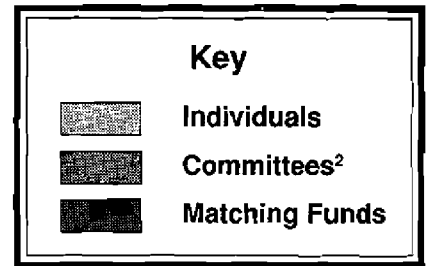
An FEC compilation of figures from the national committees of the two major parties' mid-year reports shows the Republicans with a five to one lead in fundraising during the first six months of 1989.

At the same point during the 1987-88 election cycle, the Republicans at the national committee level had more than a three to one lead in total receipts. During the previous non-Presidential election cycle in 1985-86, however, the Republicans' lead was more than seven to one.

The chart on page 13 compares committee activity for the first half of 1989 as shown in mid-year reports of receipts and disbursements filed by the Republican and Democratic National, Senatorial and Congressional Campaign Committees.

A copy of the statistical press release containing the mid-year party data can be obtained from the FEC's Public Records Office.

**1988 PRESIDENTIAL PRIMARY CAMPAIGNS:
SOURCES OF ADJUSTED CAMPAIGN RECEIPTS¹**



Democrats

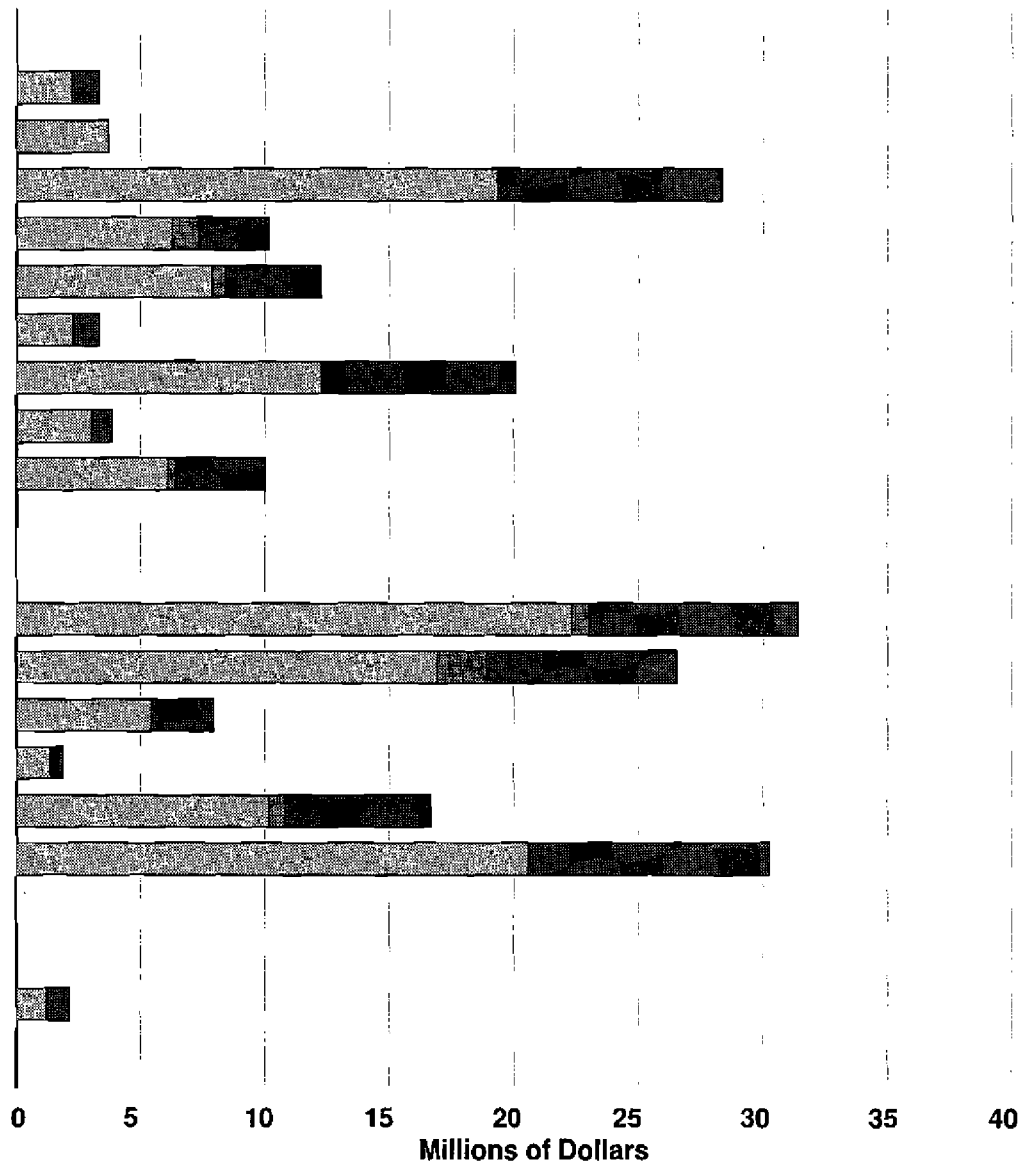
- Bruce Babbitt
- Joseph Biden
- Michael Dukakis
- Richard Gephardt
- Albert Gore, Jr.
- Gary Hart
- Jesse L. Jackson
- Lyndon H. LaRouche
- Paul Simon

Republicans

- George Bush
- Robert J. Dole
- Pete du Pont
- Alexander M. Haig
- Jack Kemp
- Marion G. Robertson

New Alliance Party

- Lenora B. Fulani

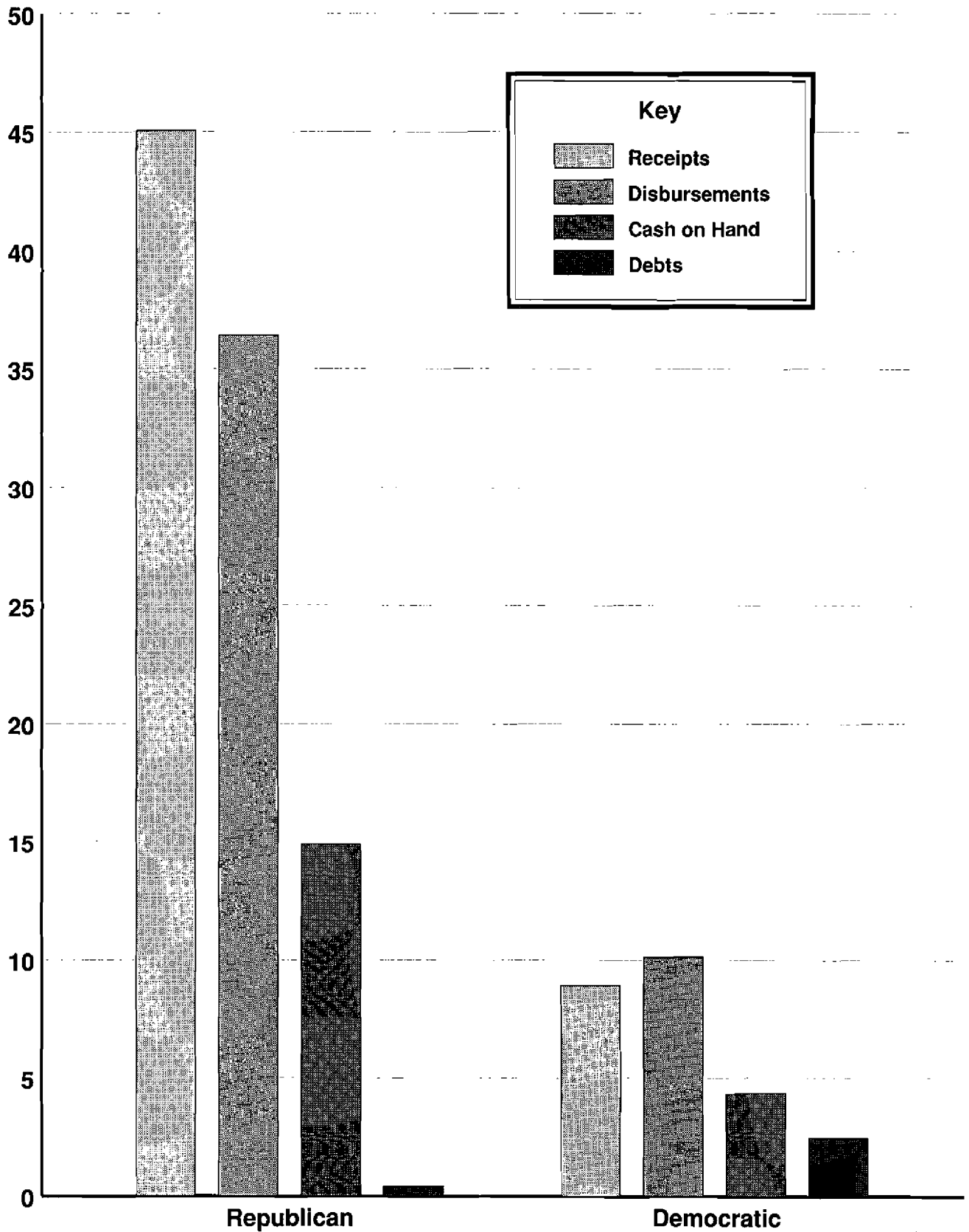


¹Does not include outstanding loans, contributions from candidates, and some miscellaneous receipts.

²Includes contributions from PACs and other political committees.

MAJOR PARTY ACTIVITY, JANUARY - JUNE 1989

Millions of Dollars



CLEARINGHOUSE

THE FEC JOURNAL OF ELECTION ADMINISTRATION

The National Clearinghouse on Election Administration recently published Volume 16 of The FEC Journal on Election Administration. This edition focuses on the role of the federal government in American elections.

In a series of articles, the Journal discusses the roles of the following:

- o Congressional committees;
- o The FEC;
- o Department of Justice;
- o Census Bureau;
- o Department of Defense;
- o National associations; and
- o The private sector.

The Journal also lists state-by-state final results of the 1988 Presidential election and discusses voter participation. For a free copy of the Journal, call the Clearinghouse at 800/424-9530 or 202/376-5670.

ADVISORY PANEL MEMBERS APPOINTED

In July the Commission appointed eight new members of the Advisory Panel of the National Clearinghouse on Election Administration. Composed of election officials from throughout the country, the Advisory Panel makes recommendations to the Commission on possible topics for Clearinghouse research and other actions to assist state and local election administrators. Filling four vacancies and four newly established seats, the new members are:

- o Sherrod Brown, Secretary of State, Ohio;
- o Jane Carroll, Supervisor of Elections, Broward County, Florida;
- o Marge Christianson, Supervisor of Elections, Hennepin County, Minnesota;
- o Bremer Ehrler, Secretary of State, Kentucky;
- o Ralph Munro, Secretary of State, Washington;
- o Barbara Rossetti, Assistant Secretary, Tulsa Board of Elections, Tulsa, Oklahoma;
- o Deborah Seiler, Chief of Elections and Political Reform, California; and
- o Jim Shumway, Secretary of State, Arizona.

The full panel conducted its annual meeting in Washington on August 23-25.

INFORMATION

CONFIRMING CORPORATE STATUS OF CONTRIBUTORS THROUGH STATE CORPORATIONS DIVISIONS

Campaign and committee workers calling the Commission often ask how to be sure that a contribution has not been received from a corporation, which is a prohibited source under 2 U.S.C. §441b(a). Under FEC regulations, it is unlawful to knowingly accept a corporate contribution. 11 CFR 114.2(e).

To help determine whether a contributor is a corporation, committees can contact the relevant state's Corporations Division, which usually operates under the Secretary of State. The Corporations Divisions maintain information that can help committees determine whether:

- o The contributor in question is incorporated in that state; or
- o The contributor is a corporation registered or licensed to operate in that state.

The list below provides telephone numbers of the Corporations Divisions throughout the country. Note that contacting state Corporations Divisions is only one possible way of determining whether a contributor is incorporated. State laws vary with respect to registration and licensing requirements; consequently, a company often may not be registered in a state where it is doing business. Persons accepting contributions must determine that the money comes from a lawful source. 11 CFR 103.3(b).

State (City)	Telephone Number
Alabama (Montgomery)	205/261-5324
Alaska (Anchorage)	907/563-2161
Arizona (Phoenix)	602/542-3026
Arkansas (Little Rock)	501/682-3409
California (Sacramento)	916/445-2900
Colorado (Denver)	303/894-2251
Connecticut (Hartford)	203/566-8570
Delaware (Dover)	302/736-3073
District of Columbia	202/727-7283
Florida (Tallahassee)	904/488-6000
Georgia (Atlanta)	404/656-2185
Hawaii (Honolulu)	808/548-6111
Idaho (Boise)	208/334-2300
Illinois (Springfield)	217/782-7880
Indiana (Indianapolis)	317/232-6576
Iowa (Des Moines)	515/281-5204
Kansas (Topeka)	913/296-4564
Kentucky (Frankfort)	502/564-7330
Louisiana (Baton Rouge)	504/925-4704
Maine (Augusta)	207/289-4189
Maryland (Baltimore)	301/225-1340
Massachusetts (Boston)	617/727-2850
Michigan (Lansing)	517/334-6304

Minnesota (St. Paul)	612/296-2303
Mississippi (Jackson)	601/359-1350
Missouri (Jefferson City)	314/751-4153
Montana (Helena)	406/444-3665
Nebraska (Lincoln)	402/471-4079
Nevada (Carson City)	702/885-5203
New Hampshire (Concord)	603/271-3246
New Jersey (Trenton)	609/530-6400
New Mexico (Santa Fe)	505/827-4504
New York (Albany)	518/474-6200
North Carolina (Raleigh)	919/733-4201
North Dakota (Bismarck)	701/224-2900
Ohio (Columbus)	614/466-3910
Oklahoma (Oklahoma City)	405/521-3048
Oregon (Salem)	503/378-4166
Pennsylvania (Harrisburg)	717/787-1057
Rhode Island (Providence)	401/277-3040
South Carolina (Columbia)	803/734-2158
South Dakota (Pierre)	605/773-3537
Tennessee (Nashville)	615/741-2286
Texas (Austin)	512/463-5555
Utah (Salt Lake City)	801/530-4849
Vermont (Montpelier)	802/828-2386
Virginia (Richmond)	804/786-3672
Washington (Olympia)	206/753-7115
West Virginia (Charleston)	304/342-8000
Wisconsin (Madison)	608/266-3590
Wyoming (Cheyenne)	307/777-7311

work regularly with federal election law.

The volume costs \$25.00, which includes a subscription for automatic notifications of updates. To order the volume, call the FEC's Public Records Office at 300/424-9530 or 202/376-3140.

INDEX

This cumulative index lists advisory opinions, court cases, MUR summaries and 800 Line articles published in the Record during 1989. The first number in each citation refers to the "number" (month) of the Record issue; the second number, following the colon, indicates the page number in that issue.

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EXPLANATION & JUSTIFICATIONS FOR FEC REGULATIONS: 1975 - PRESENT

The Commission has recently updated its compilation of Explanation and Justifications (E&Js) that have been issued for proposed FEC regulations since 1975. The E&Js accompany regulations submitted to Congress and explain the origin and intent of the rules proposed.

Designed as a loose-leaf binder insert, the compilation contains the following:

- o E&Js for all current regulations, as well as for older rules that have been revised or deleted;
- o E&Js for rules that never took effect, along with the text of the proposed rules;
- o A citation index identifying all E&J applicable to each regulation;
- o A subject index to help locate topics addressed by more than one E&J;
- o A conversion table showing the widespread changes in FEC regulations that resulted from the 1979 amendments to the Federal Election Campaign Act; and
- o An appendix that lists previous citations for current regulations.

The E&J compilation is a useful reference tool for attorneys, accountants and others who

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