# OVERSIGHT OF THE FEDERAL ELECTION COMMISSION

## HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

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# OVERSIGHT OF THE FEDERAL ELECTION COMMISSION

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**THURSDAY, MARCH 5, 1998**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:50 a.m., in room 2247, Rayburn House Office Building, Hon. Stephen Horn (chairman of the subcommittee) presiding.

Present: Representatives Horn, Kucinich, Maloney, and Turner.

Staff present: J. Russell George, staff director and chief counsel; John Hynes, professional staff member; Randy Kaplan, counsel; Matthew Ebert, clerk; and Mark Stephenson and Michael Raphael, minority professional staff members.

Mr. HORN. A quorum being present, the Subcommittee on Government Management, Information, and Technology will come to order. We are sorry we are running a little late, but the markup in the full committee took a little more time than it should have.

This is an oversight hearing on the management practices and procedures of the Federal Election Commission. The FEC was established in 1975, to administer the Federal Election Campaign Act, and more broadly, to restore faith in the integrity of the Nation's political process. Despite these ambitious origins, the FEC has not been at the center stage in the increasingly intense debate on campaign finance reform. The question is, why not? And what can be done to make the FEC more effective will be the focus of this hearing today.

To achieve its ambitious mission, FEC was assigned four primary responsibilities: to disclose campaign finance activity to the public; to enforce campaign finance laws in a timely and efficient manner; to administer the public funding of Presidential campaigns; and last, to supply the State and local governments with information on election administration. We're particularly interested in learning how successful the FEC has been in carrying out their disclosure and enforcement responsibilities.

The first responsibility, disclosure, is probably the most important. Comprehensive and accurate disclosure is essential to the democratic process. In order to make an informed decision about which candidate to support, voters need and are entitled to all available information relating to campaign finance activity. Further, they need this information before the election. That makes speedy disclosure essential.

Over the years, Congress has provided substantial funding to the FEC for computerization and automation. Congress has earmarked funds for digital imaging, an automated case management system, and electronic filing. All of this funding was meant to promote speedy disclosure. Unfortunately, FEC has been slow to implement these initiatives.

Modernization is critical, if the FEC is going to maximize disclosure. Currently, FEC disclosure data bases are, for all practical purposes, available only through the FEC's Direct Access Program. The FEC currently charges for this information. It should be available to the public free of charge on the FEC web site. Also, these data bases should be searchable and simple to use.

To assist in the processing of campaign finance information, the FEC has recently made electronic filing software available. This technology should increase the speed and accuracy of reporting. The current system, however, falls short of achieving these objectives. Presently, only a handful of campaigns and committees are filing their reports electronically. Most campaigns and committees will benefit from electronic filing. The public also will benefit by receiving the information more quickly and in a uniform format. The FEC needs to do a better job in promoting the benefits of this software.

By fully automating the disclosure process, the FEC will also be able to ensure the accuracy of reporting. The political action committees' and campaign reports should be cross-referenced to check for accuracy. For example, if a candidate returns an unsolicited political action committee check, that information needs to appear in the political action committee reports as well as the candidate reports.

And I might say, I speak from personal experience and personal suffering under some of this stupidity, since I do not take any political action committee money. Yet my opponent always says, "That isn't true. Look, here, here, and here," because we need to change line 1, or whatever it is, on that opening page, where the FEC merges PAC money with everything else that's coming from leadership groups or other candidates.

So we're going to have that in extensive discussion. There is some concern that this is not presently being done. That's the understatement of the year. Computerization of the reporting process can go a long way toward achieving this goal.

Another primary responsibility of the FEC is enforcement. Presently, campaign finance laws are not being enforced in a timely and efficient manner. Enforcement of the laws is essential in order to promote and encourage voluntary compliance. The FEC implemented an enforcement priority system in 1994 to concentrate FEC resources on the more significant cases. Under this system, however, more than two-thirds of the enforcement cases are dismissed each year. Also, cases that do fit into the system often are completed 1 or 2 years after an election is over. Instead of promoting voluntary compliance with campaign finance laws, it seems as if the FEC's enforcement process is promoting the attitude that negligent or willful violation of campaign finance laws will result in no meaningful consequences.

The FEC's enforcement division continues to use a manual docketing system to track enforcement cases. That process is simply inefficient. The FEC needs to modernize its case management system and has the funds to do so. Any automated case management system the FEC adopts should include a cost-accounting system. Cost should always be considered when the FEC pursues or continues to pursue a case. A successful automated system will reduce delays and improve efficiency in enforcement.

This hearing is meant to be the first step toward a comprehensive examination of the management practices and the procedures at the FEC. It is my hope that the testimony received today will assist us as we pursue the goal. We welcome the panelists.

I now yield to the ranking minority member, Mrs. Maloney of New York.

Mrs. MALONEY. Well, actually, the ranking minority member is Mr. Kucinich, but I am here with you today. We've worked together for many years on this subcommittee, and I continue to serve on it. I really thank you, Mr. Horn, for holding these very important hearings.

Campaign spending levels are at record highs. Public confidence in the electoral process is at an all-time low. Most Americans think that their elected leaders care more about big campaign contributors than average voters. The time is ripe, Mr. Chairman, for Congress to take an active oversight role in investigating the ability of the Federal Election Commission to enforce our laws.

Today, we will hear testimony from several witnesses about the many challenges the FEC has faced since its creation in 1975. They will paint a picture of an agency that is stretched past its limits. It cannot possibly cope with the incoming complaints.

Over the past year, the agency was forced to dismiss well over 100 cases. Many of those cases of alleged campaign law violations were very well founded, but the money trail was left cold, because investigators simply didn't have the resources to chase the case. 1996 cases nearly crushed the FEC. Campaign finance reform, sadly, is a long way off. Spending levels will surely rise, and the caseload will just as surely increase. In short, if we don't act soon, 1998 will be even worse than 1996.

And remember that enforcement is only part of the FEC's job. The FEC is also charged with promoting disclosure of campaign finance data and with administering the Presidential campaign fund. These important functions will be neglected, as well, unless we act.

Mr. Chairman, what is most upsetting about the problems we will hear about today is that they are largely not of the FEC's making. Today's witnesses can tell only half the story. The rest of the story must be told by Members of Congress, who, over the past 25 years, have sought to silence the FEC.

We would need to hear from appropriators, Democrat and Republican, who have regularly denied the FEC its full funding request. We would need to hear from congressional leaders who have refused to grant the FEC the authority the FEC needs to conduct proper investigations. All the while they are holding the purse strings so tightly behind their backs, they openly criticize the agency for not doing its job.

Mr. Chairman, there are many statistics I could cite to illustrate the extent to which Congress has neglected the FEC, but one, in particular, stands out. This past year, both the Senate Governmental Affairs Committee and the committee on which we both serve, the Government Reform and Oversight Committee, have spent, between them, $7 million of taxpayers' money to investigate the alleged abuses of one campaign in one political party from the last election. According to the FEC's own budget, that same year the General Counsel's Office of the FEC only spent $6.5 million enforcing the law.

The numbers speak for themselves: $7 million in congressional investigations, and $6.5 million for the Federal Election Commission, which is charged with enforcing our laws. This Congress spent more money on a partisan investigation than the FEC spent investigating every single election from that same cycle.

Mr. Chairman, you and I have worked together in the past—and I see Mr. White is going to testify, and we've worked with Mr. White—to seek a bipartisan solution on campaign finance reform. We've conducted our own hearings and forums on it when committees have not conducted these hearings.

The fact that we are holding this hearing today shows me that you and other Members are committed to a strong Federal Election Commission that can conduct investigations in a bipartisan, independent way. I hope this hearing serves as a wake-up call to others in Congress that we must begin to give the Federal Election Commission the tools it needs to enforce the law.

As long as the Federal Election Commission has to dismiss large numbers of cases because it doesn't have enough staff to conduct full and fair investigations, then candidates will continue to disobey the law. And this Congress must accept responsibility for protecting them. If Members of Congress truly want a strong Federal Election Commission, and I believe that most do, then we must give the Commission the resources and the authority it needs to do the job.

And finally, Mr. Chairman, I must reiterate that stronger enforcement of the law is no substitute for real campaign finance reform, and I know you share that belief. We, the Congress, need to take action to address such problems as banning soft money, the growth of independent expenditures, the so-called "issue advocacy campaigns," and one bill that we are working on together, not only the Commission bill, but the full disclosure bill, so that we know how much is being spent to woo voters. The Federal Election Commission has been effective in bringing some of these problems to our attention, but in the end, it's up to Congress to act on them.

Mr. Chairman, again, I thank you for holding this important hearing, and I look forward to hearing from Mr. White. I do want to let you and Mr. Kucinich know that I am in a markup on the International Monetary Fund, which will require my running back and forth between these two committees.

Again, I thank you for holding this hearing and for your own work on supporting the FEC and campaign finance reform. Thank you.

Mr. HORN. I thank you very much for your thoughtful statement.

I now yield to the gentleman who is the ranking minority member, Mr. Kucinich of Ohio.

Mr. KUCINICH. Thank you very much, Mr. Chairman. Thank you for calling this hearing on the "Oversight of the Federal Election Commission."

I think there is wide agreement that fair and lawful elections are central to our democracy. Given the importance of lawful elections, the well-documented level of public cynicism about our campaign finance system is profoundly disturbing. We have numerous campaign finance reform bills pending before Congress, and most members agree that reform is necessary. Yet last week's defeat of the leading bill in the Senate, the McCain-Feingold bill, by a minority of Senators does not bode well for the cause.

While we in Congress dedicated to reform of the laws must continue our fight to do so, we must not lose sight of the need to ensure that the laws now on the books are effectively enforced. To that end, we must ensure that the Federal Election Commission has the tools it needs to do the job.

One central concern, which I'm sure we will hear about from our third panel today, FEC personnel, is whether the FEC has sufficient funding to achieve its statutory mandate. In this regard, I have little doubt that the FEC is leanly funded.

My understanding is that to handle all of its enforcement actions nationwide, the FEC has the equivalent of 24 staff attorneys. To put that number in context, the full House Committee on Government Reform and Oversight has more than that number of staff attorneys working only on our investigation of campaign fund-raising in the 1996 election. We have no enforcement authority and have held only a few days of public hearings.

I don't know whether that comparison says more about the FEC's small staff or about the output of our committee's investigation, but it points out the problems that come from the volume of work which the FEC has to deal with and the relatively scarce resources it must employ in pursuit of its statutory responsibilities.

In today's hearing, I hope that we have a chance to explore both the adequacy of the FEC's budget and the ways in which that limited budget can be used more effectively. The most noncontroversial part of this discussion should be improving the reporting of campaign contributions through electronic disclosure on the World Wide Web.

Today's technology should make more and better information available to the public, more quickly and cost-effectively. But better reporting and disclosure, though important, is no substitute for strong auditing and enforcement procedures. I hope to hear about how we can help the FEC make sure that candidates everywhere understand and comply with the laws.

Mr. Chairman, as we turn to our first panel, I certainly want to welcome them and to say how grateful I am for a chance to be on this subcommittee with you.

[The prepared statement of Hon. Dennis J. Kucinich follows:]

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# Congress of the United States

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## Opening Statement of Representative Dennis Kucinich

**The Subcommittee on Government Management, Information, and Technology Hearing on "Oversight of the Federal Election Commission"**

**March 5, 1998**

Mr. Chairman, thank you for calling this hearing today on oversight of the Federal Election Commission.

I think there is wide agreement that fair and lawful elections are central to our democracy. Given the importance of lawful elections, the well-documented level of public cynicism about our campaign finance system is profoundly disturbing.

We have numerous campaign finance reform bills pending before Congress, and most members agree that reform is necessary. Yet last week's defeat of the leading bill in the Senate, the McCain-Feingold bill, by a minority of Senators, does not bode well for the cause.

While we in Congress dedicated to reform of the laws must continue our fight to do so, we must not lose sight of the need to ensure that the laws now on the books are effectively enforced. To that end, we must ensure that the Federal Election Commission has the tools to do its job.

One central concern, which I'm sure we will hear about from our third panel today, FEC personnel, is whether the FEC has sufficient funding to achieve its statutory mandate.

In this regard, I have little doubt that the FEC is very leanly funded.

My understanding is that to handle all of its enforcement actions nationwide, the FEC has the equivalent of only 24 staff attorneys. To put that number in context, the full House Committee on Government Reform & Oversight has more than that number of staff attorneys working only on our investigation of campaign fundraising in the 1996 election -- and we have no enforcement authority and have held only a few days of public hearings.

I don't know whether that comparison says more about the FEC's small staff or about the poor success of our committee's investigation; I suspect it says a little about both.

Another way of looking at the FEC's limited resources is that it has an annual budget of approximately $30 million. That is less than Independent Counsel Kenneth Starr has spent during the course of his investigation of Whitewater.

In today's hearing, I hope we will have a chance to explore both the adequacy of the FEC's budget and the ways in which that limited budget can be used more effectively.

The most non-controversial part of this discussion should be improving the reporting of campaign contributions through electronic disclosure on the World Wide Web. Today's technology should make more and better information available to the public more quickly and cost effectively

But better reporting and disclosure, though important, is no substitute for strong auditing and enforcement procedures I hope to hear about how we can help the FEC make sure that candidates -- everywhere and in both parties -- understand and comply with the laws.

Mr. Chairman, it is time for our first panel, and I am glad to welcome some of our colleagues here to start things off.

Mr. HORN. Well, thank you very much. We appreciate that.

I am delighted to introduce our first panelist. Representative Rick White, a Republican from the State of Washington, is one of the leaders in campaign finance reform in this chamber. We have put together several bills on a very bipartisan basis. And on his legislation, the four of us that had put in Commission bills have said to Rick, "Go to it. You're the lead sponsor."

Mrs. Maloney had a bill, I had a bill, and Mr. Franks of New Jersey had a bill. Am I missing somebody?

Mr. WHITE. Probably.

Mr. HORN. We've integrated them all under what is now the White bill, a bipartisan bill.

So welcome, Rick. Glad to have your testimony.

## STATEMENT OF HON. RICK WHITE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. WHITE. Well, thank you very much, Mr. Chairman, Mr. Kucinich, and Mr. Chairman of the full committee. I appreciate those kind words about our Commission bill. It hasn't been enacted into law yet, so I can't take too much praise for it so far, but we definitely are working on it.

Mr. Chairman, I consider myself kind of an unassuming guy for a Congressman, and what I'm here to talk to you about today is a very modest proposal that could actually have some significant consequences for campaign finance reform, and that is simply that we give the FEC the resources to make it ready for the 21st century.

As I think you pointed out in your comments, and other Members have pointed out, too, disclosure really is the central function of what the FEC is all about. The disclosure function is really tailor-made to take advantage of the technology that many people are using out in the business world and other places today. So, I would urge this committee to think very carefully about how we could improve the disclosure function of the FEC by better use of technology.

The fact is, the FEC is making some progress, and we should recognize them for that. It is now permissible, although far from common, for people to file electronically with the FEC. I think that's a step in the right direction. The FEC also has begun scanning your reports onto the Internet, so that you can actually pull up a photograph, as it were, of reports that have been filed by various candidates, and that's a step in the right direction.

But there is so much more that we could do that can't be done right now by the FEC under its current resource situation. In fact, it's now having to be done by private organizations. Mr. Cooper will testify later today, I'm sure, about some of the things that he's doing.

So what I have done, with several other Members, is to come up with a bill. It's called the Electronic Campaign Disclosure Act, H.R. 3174, which would simply help and direct the FEC to do a little better job of using technology in its disclosure function.

Here is essentially what our bill would do: No. 1, it directs the FEC to develop a searchable web site, a data base, on the Internet, where any citizen could go in and conduct a search of campaign fi-

nances, campaign contributions, and the like, so that they could be informed on what's going on.

It would be possible, for example, for them to go to this web site and type in my name, Rick White, and type in the name of a large corporation that is in my district, Microsoft. They could find out what contributions I've gotten from Microsoft, and find out, perhaps, what legislation Microsoft has had an interest in and what my votes have been.

It would be a very useful tool for the news media, but also just for the general public, to get a little sense of what's really going on in campaign contributions. Our bill also directs that any campaign over a certain size, any campaign that's raised over $25,000, is required to file electronically. It's not a hard thing to do to file over the Internet.

It also would shorten the time limits, so that within 10 days after receiving a contribution of over $100, you'd have to file electronically with the FEC, so that that could be posted immediately on their Internet site. Actually, as the election approaches, in the 90 days prior to an election, that time limit is shrunk to 48 hours, so that you have real-time information available on the Internet for people to take a look at.

It's true that this is a modest proposal. There are many other things that we could do, but I think this is very doable. It's not a partisan issue. It's something I think the FEC, in general, would welcome, and I would encourage the committee to give serious consideration to it.

Thank you very much.

[The prepared statement of Hon. Rick White follows:]

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## Testimony of Rep. Rick White

## Before the Committee on Government Reform and Oversight, Subcommittee on Government Management, Information, and Technology

## March 5, 1998

Chairman Horn, Members of the Committee, thank you for the opportunity to testify this morning. I commend the Subcommittee for looking at ways the Federal Elections Commission (FEC) can improve their enforcement and oversight of our election laws.

I will focus my testimony on the FEC's use of technology and how I believe technology can improve the FEC's operations. Specifically, I will examine the benefits of mandatory electronic disclosure to the electorate, media, political committees, and the FEC.

Last month I introduced H.R. 3174, the Electronic Campaign Disclosure Act, which currently has 8 cosponsors. The bill would direct the FEC to develop an integrated and searchable Internet site that will allow anyone, at anytime, to search the FEC's campaign finance data files. The legislation would require that all political contributions over $100 be reported electronically within 10 days and posted on the Internet immediately. Within 90 days of an election -- primary or general -- contributions to candidates over $100 would have to be reported within 24 hours. Only those political committees that raise or spend over $25,000 during an

election cycle would be required to file electronically.

I acknowledge the recent efforts by the FEC to encourage electronic filing and to increase the amount of information available on the Internet. Unfortunately, there is still much to be done.

Under current FEC regulations electronic reporting is voluntary. If the public is to realize the benefits of electronic disclosure it must be mandatory. It also must be administered in a manner that makes electronic filing a cost effective and simple alternative to paper filing. At this point, it is my intention to file my campaign's next report — which is due next month — electronically. I hope to do so, but it is a difficult and time consuming undertaking to make my campaign's software work with the FEC's software. Under H.R. 3174, electronic filing would be mandatory and the FEC would be required to make it an easy task for political committees. In the meantime, I urge the FEC to continue to work with candidates, parties, and political action committees (PACs) to make electronic disclosure a simple process.

I am pleased that the FEC has also recently begun making images of reports filed by House campaigns, political parties, and PACs available on their web site. Now, if any of my constituent's want to see who has contributed to my campaign they can do so at any time — even from their own home. In the past, they would have had to come to the FEC's office in Washington, D.C. or the Public Disclosure Commission in Olympia, WA, and either pay for photocopies of my report or examine the report on microfiche. This is a significant step in the right direction but it does not fully take advantage of new technologies. Apart from the convenience of being able to review my report from their home, the scanned images are no

different than a paper copy. My constituent can not — without spending hours with a pad of paper and a calculator — determine from where the contributions to my campaign have come.

The Electronic Campaign Disclosure Act would make this information more readily available. The web site that the FEC would establish and maintain would be integrated and searchable. A constituent could type in the name of a company, and a list of every person that works for that company that has contributed to a particular committee would appear. They could input an individual's name and see which candidates, parties, or PAC's he or she has contributed to. They could see a contribution from a PAC and immediately link to see who has contributed to that PAC.

Electronic disclosure combined with a user-friendly web site would make it substantially easier for the FEC to enforce current election laws. By their own admission, the FEC is not capable of sifting through the thousands of pages of reports to determine what information has been omitted, and what numbers do not add up. Under H.R. 3174, it would be very apparent to voters, and to the FEC, if a committee has not provided the FEC with the name of a contributor's employer. An entry in the search field of the web site under employer, left blank, would automatically list the instances where the committee did not list an employer. Also, when reports are filed electronically, any calculations that do not add up would automatically be flagged. With a reporting system as transparent as what is envisioned under H.R. 3174, political committees would have a much greater incentive to fully comply with all current FEC regulations.

I doubt that anyone would argue that timely, accessible disclosure of campaign finance

data is good for democracy. In the information age, it is important that we make the government more open and give taxpayers more access to information. Under H.R. 3174, the amount of information that political committee's must disclose is increased, the information will be made public faster, and the data will be available in more user friendly manner.

# Support for H.R. 3174, the Electronic Campaign Disclosure Act

Eastside Journal
(Bellevue/Redmond)
2-8-98

For **Rep. Rick White** for pushing to make information about campaign contributions available faster via the Internet. White wants the Federal Election Commission to develop a web site that will allow voters to search through campaign finance disclosure reports, which would be posted directly by campaigns. Any candidate, party or PAC that has raised more than $25,000 in an election cycle would be required to post all disclosure reports electronically. Every contribution of more than $100 would have to be reported within 10 days of receipt. Even better, in the last 90 days before an election, contributions over $100 to candidates would have to be reported within 24 hours. We've always felt quick disclosure was the best way to insure fair elections.

Seattle Post-Intelligencer
2-23-98

## White takes on fund raising

As Congressional leaders prepare once again to kill campaign finance reform for the year, Rep. Rick White, R-Wash., believes interest is building behind his approach to the problem.

White, arguing that Congress is never going to rein in spending by itself, has been calling for a bipartisan commission on campaign finance reform to recommend changes in the law.

According to Congress Daily, White's measure has more support than any other campaign finance measure in the House, with 24 Republicans and 93 Democrats signing on. Among the co-sponsors are Reps. Norm Dicks and Jim McDermott, D-Wash., and Rep. Jack Metcalf, R-Wash.

Meanwhile, White is also attempting to force greater disclosure of campaign money. He recently introduced a bill to require candidates, parties, and political action committees to file financial disclosure reports electronically.

That would make the data searchable online, via the Internet, much more quickly and easily than now. Reps. Doc Hastings, George Nethercutt, and Linda Smith, all R-Wash., are supporting White on this proposal.

The Senate is expected to take up the subject of campaign finance reform as early as today, and although current members of Congress seem disinclined to pass any restrictions on their own ability to raise money, those who have left Congress are increasingly speaking out against the system.

Led by former Kansas Sen. Nancy Kassebaum Baker, a Republican, and former Vice President Walter Mondale, a Democrat, 217 former lawmakers have signed on to the Campaign Finance Reform Project, which is pushing Congress to ban "soft money," improve disclosure, and enhance enforcement.

Among the former lawmakers from Washington who are on board: Sen. Brock Adams and Reps. Mike McCormack, Lloyd Meeds and Al Swift, all Democrats, and Reps. Catherine May Bedell, Rod Chandler and John Miller, all Republicans.

Mr. HORN. Well, we thank you very much for that most helpful statement.

Are there any questions?

Mr. KUCINICH. I just have one question. Is this disclosure act a replacement for other campaign finance reform bills, or is it a supplement to them?

Mr. WHITE. No, I would say the genius of this act is that it does absolutely nothing to change any of the fundamental rules. It is absolutely a supplement to what else has to be done. But we're in this position right now where we can't seem to get anything substantive done. Maybe we can at least make some progress on the form, and that will at least be a step in the right direction.

Mr. KUCINICH. One other question, and this keeps coming up in a number of hearings, and that is, if committees are to post their information directly on an FEC page on the World Wide Web, are there security concerns?

Mr. WHITE. There may be security concerns, although I think, really, with today's technology, they are very easily surmounted. Part of our bill directs the FEC to supply software to each campaign. They'd develop a little software package that is supplied to each campaign, and I think you could build an encryption function into that, that would really make it virtually impossible to tinker with the system.

Mr. KUCINICH. I would suppose, Mr. Chairman—it's just something I suppose we'd talk about, and that is that if we get into electronic filing, would we at the same time encourage people to keep a paper copy of their filing?

Mr. WHITE. What we actually say in this bill is that this electronic requirement is in addition to the current requirements. We might find, as electronic filing becomes more widespread and we get more used to it, maybe we don't have to do as much paper filing. I think you'd always want to have some sort of paper record, though, just to make sure.

Mr. KUCINICH. Thank you.

Thank you, Mr. Chairman.

Mr. HORN. Thank you very much.

And Rick, thank you very much.

Mr. WHITE. Thank you very much.

Mr. HORN. We appreciate your coming down here.

Mr. WHITE. Thank you.

Mr. HORN. Without objection, I'm going to enter in the record at this point the testimony of Mr. Shays, a Republican of Connecticut and Mr. Meehan, a Democrat of Massachusetts, both of whom have been lead authors on the House version of McCain-Feingold, and both of whom, since they are fairly far up the seniority food chain, are presiding over hearings this morning and participating in them. So we won't have their testimony except in the record.

[The prepared statement of Hon. Christopher Shays and Hon. Martin Meehan follows:]

**Testimony of Congressmen Christopher Shays and Marty Meehan Before the Government Reform Subcommittee on Government Management, Information and Technology**

**Improving the Federal Election Commission**

**March 5, 1998**

Chairman Horn, Ranking Member Kucinich, and Members of the Subcommittee:

Thank you for allowing us this opportunity to testify before your subcommittee on a matter of great importance -- the Federal Election Commission (FEC).

The FEC, while it has been criticized by many, is an extraordinarily important agency charged with overseeing and enforcing all of our federal election laws. As sponsors of legislation to overhaul our campaign finance system, we feel strongly an important component of election reform must be the existence and proper maintenance of an effective agency to oversee our laws.

Rather than dismiss the agency as a "toothless tiger" that ought to be abolished, however, we support strengthening and supporting the agency to allow it to truly fulfil its mission. Specifically, we believe that the FEC faces two challenges that must be addressed: it must be properly financed and it must be given the authority it needs to do its job.

With regard to financing, we have advocated to the Appropriations Committee that the FEC receive funding increases. Unfortunately, these increases have either failed to come to fruition, or they have been allocated in such a restrictive way that the Agency has had little ability to spend the money as it needs to. We intend to continue to press for full-funding of the FEC.

Setting the funding issue aside, the focus of our comments today is on the reforms that should be made to the FEC.

We introduced H.R. 493, the Bipartisan Campaign Reform Act, along with Marge Roukema, Jim Moran, Zach Wamp, Sandy Levin and others, to make comprehensive changes to our campaign laws. In fact, three members of this subcommittee -- Chairman Horn, Congresswoman Maloney, and Congressman

Sanford -- are also cosponsors of the bill. The legislation, based on the McCain/Feingold bill in the Senate, includes a number of provisions to both reform and to strengthen the FEC.

H.R. 493 gives the FEC independent litigation authority, allowing the agency to appear on its own behalf in any of its court matters. For more than twenty years, the FEC had the ability to both argue its own cases before the Supreme Court and to decide which cases it wanted to ask the Court to take. Yet with its decision in the FEC v. NRA Political Victory Fund (15 S.Ct. 537, 1994), the Court determined that Congress had in fact never given the FEC the authority to represent itself before the Supreme Court. In short, from that point on, the FEC has had to rely on the decision-making authority of the Solicitor General's office -- a situation that seriously undermines the Agency's independence.

In addition, the legislation imposes a one-term limit for FEC commissioners. This is comparable to the term limit for board members of the Office of Compliance, established under the Congressional Accountability Act.

Congress enacted this reform through the fiscal year 1998 appropriations process. We are grateful for this, because commissioners are appointed by politicians whose campaign activities are under the jurisdiction of the Agency. Under the previous system, once commissioners' terms had expired, they would have to go to the very people they oversee to seek reappointment. This, we feel, hampered their ability to effectively oversee those who are ultimately responsible for their jobs being renewed.

The bill includes a provision to allow the FEC to initiate a civil action for a temporary restraining order or injunction, if it believes:

a violation will likely occur;

failure to act will be harmful; and

it is in the public interest to act on the likely violation.

Our current system invites abuse because most violations are not caught until after the election has been won or lost. Candidates and committees -- whose primary objective is to win a seat -- will have greater incentive to follow election rules if there is a real and imminent threat of punishment for a violation.

Our legislation also allows the FEC to order expedited procedures in certain circumstances. Specifically, under the bill, if the FEC determines that there is "clear and convincing evidence that a violation" has occurred is occurring , or is about to occur, it may:

> order expedited proceedings as necessary to allow the matter to be resolved in sufficient time before the election to avoid harm or prejudice to the interests of the parties; or
>
> if the Commission determines that there is insufficient time to conduct proceedings before the election, immediately seek relief.

In addition, if the FEC determines that a complaint is clearly without merit, it may order expedited proceedings or, if there is not time to conduct the proceedings before the election, summarily dismiss the complaint. This change will increase the FEC's ability to resolve complaints in a timely fashion.

Taken as a whole, these and other provisions in H.R. 493 will increase the effectiveness and efficiency of the FEC.

The Federal Election Commission does not have to be a "toothless tiger". Congress is responsible for creating a weak agency to enforce our election laws, and to further undermine it now adds insult to injury. Instead, we should improve, strengthen and properly fund the FEC.

While some in Congress may desire to cripple the FEC, making it impossible for the Agency to effectively police our campaigns, we should realize that, in many ways, Members of Congress have the most to gain from preserving the FEC and ensuring its integrity. This is because the FEC -- unlike any other agency or body -- has the ability to protect the soundness and honesty of the elections that have brought us all to office, and the democracy in which we all believe.

Thank you for your consideration of our comments.

Mr. HORN. Let us now go to the first panel. Let me just note a few things to all panelists. We are probably going to break at about 12:10. We will try to go as far as we can, and then we'll come back either at 1:30 or 2. We will just have to see how we're doing, and then we'll go the rest of the afternoon.

So we're going to start with panel II now, the congressional panel being the first one. If Mr. Cooper, Ms. Brian, Mr. Dahl, Ms. Cain, and Mr. Reiche will come forward, there's a sign for each of you: Mr. Cooper, Ms. Brian, Mr. Dahl, Ms. Cain, and Mr. Reiche.

The tradition on this committee, and all subcommittees of Government Reform and Oversight, is to swear in all witnesses except Members of Congress. We are going to do that, and then we would like you to summarize your statement. You have furnished the statements here. I don't know when we got them. I didn't get them until this morning, which is unfortunate. But just try to summarize it so we can have more time for questions.

So if you would raise your right hands.

[Witnesses sworn.]

Mr. HORN. The clerk will note all six witnesses affirmed.

All right. We'll begin and just go down the line here, and reserve questions until we're done, with each panelist having made a presentation. We'll start with Mr. Cooper, who is the executive director of the Center for Responsive Politics, which has been a very helpful group.

We're delighted to have you here, Mr. Cooper.

**STATEMENTS OF KENT C. COOPER, EXECUTIVE DIRECTOR, CENTER FOR RESPONSIVE POLITICS, ACCOMPANIED BY TONY RAYMOND; DANIELLE BRIAN, EXECUTIVE DIRECTOR, PROJECT ON GOVERNMENT OVERSIGHT; BOB DAHL, PRESIDENT, FAIR GOVERNMENT FOUNDATION; BECKY CAIN, PRESIDENT, LEAGUE OF WOMEN VOTERS; AND FRANK P. REICHE, ESQ., SCHRAGGER, LAVINE & NAGY, AND FORMER FEC COMMISSIONER**

Mr. COOPER. Thank you very much, Mr. Chairman.

I think this is a very appropriate subcommittee to take on the task of looking at the FEC and its operations. Back in the early 1970's, when Chairman Hayes headed House Administration, it was almost a cantankerous session every time that campaign finance bills came up. At that time, he was monitoring the Clerk of the House, and they were always a sort of battleground.

Throughout the 1970's, there were a lot of legal challenges to the campaign finance rules and regulations, a lot of legislation when several amendments were passed to the act. In the 1980's, as the Commission got going, the campaign finance system got more complicated. The data became a flood of information. Groups and organizations started to use new tactics in fund-raising and in the spending of money, such as independent expenditures. The FEC added more complicated regulations to the system, trying to regulate it as best it could.

In the 1990's, however, I think we've seen a situation where the use of information and technology, and its management, has been left behind as more and more groups have figured out how to get around the law, how to move money and transfer money in new

and unique ways. And it's clear that the FEC cannot keep up with its current attitude toward regulation.

I think that the opportunity for this subcommittee, in trying to look at how the FEC uses its budget, is going to help them become—or put them on a better foundation when they do ask for more money. I think there are a number of weaknesses there where they have been very timid in how they start new programs, how they spend their money on new activities, which has left them open for criticism. So when they come before appropriation committees for funds, they are vulnerable.

I think the subcommittee should go in and use, possibly, some of the funds from the full committee on its GAO investigation, looking at the management, how it makes decisions, how it is decided to move ahead on projects, and possibly teach this small Federal agency something about how they can use information to their advantage and how it can help enforce the law. I think, if they can learn some things through the use of that GAO investigation, it would be a tremendous benefit.

I don't think the FEC will ever have enough lawyers, accountants, auditors, and information people to get the information out. I think the Commission has to understand that it is so big a task that you have to involve the press, you have to involve the players in the political process, you have to involve regular citizens and treasurers, and I think that's where information technology can help.

I think that if you can get more information out to the public, out into the political arena, there will be some self-enforcing that will go on, some type of bringing up of either illegal acts or possibly very good fund-raising activities that the public can be proud of. There are a lot of members, I think, who raise a great deal of money from a lot of small individual donors, who are suddenly cast in the light of all candidates as being involved in some type of money race. I think, if that information can get out sooner and faster, the public can compliment those who are doing it well, criticize those who aren't.

I think elections move too fast, and the money moves too fast for a Federal agency to ever catch up to it during an election year. So compliance cases, audits, and investigations aren't going to be finished during the election cycle. If you are somehow going to get information back to the public so that they can make a more informed voting decision, they've got to have it before the election. That's where information technology comes into play.

Independent expenditures, which usually happen in the fall of an election year, quickly go by. They are not keypunched quickly at the FEC, the public doesn't know who's doing it, and the people back in the congressional district don't know. Last-minute large contributions to campaigns, again, get filed mostly during October. Again, the public doesn't see those on a data base until well after the election.

So there are certain activities during an election cycle that have to move very fast. The disclosure of them can be done via web access, via the Internet. I think the Commission's move into electronic filing was good but very slow. Right now, they have very few people filing, and I think it's because the FEC did not promote it.

They basically said, "Here are the forms. We've put them in electronic form. Fill them out this way."

Well, there are other examples that I think organizations and State agencies did better, Michigan for one. Secretary of State Candice Miller came out with an electronic reporting and tracking system, and what's different about it is the attitude.

They basically said,

> We've got to convince treasurers that they're going to get something that's going to help them, that's going to make them be able to provide a cleaner, better report, when it first goes on the public record. We're going to eliminate the errors, the omissions, and the addition problems, so that we don't get a slew of letters from the FEC saying we had small, minor mistakes, and that the press won't misinterpret what we filed.

By going out and giving them something that gave them an accounting system for small campaigns, who would normally pay $5,000 or $10,000 for a package from a consultant, they give it to them. Well, the FEC, even with what they have now, their small package, they ought to be giving that to every single candidate, mailing it out this week, and saying, "Here it is. You don't have to ask for it. You don't have to send for it. We're putting it right on your table." That's the aggressive approach that might win them more electronic filers.

But the key thing with some of these other States like Iowa, they've given something the treasurer could use, where they are saying, "Gee, this really helps me manage my money and learn the rules." So you're actually using the software to teach people what the rules are. That's the attitude that I think the Commission should take, in a much more aggressive way.

I think it applies to PACs as well as candidates. Why hasn't the FEC gone out and educated PACs about how important it is to quickly notify the Commission if they get a returned check. I guess most of these people would willingly, quickly file with the FEC if someone told them they could do that. Many of them wait until the next report to notify them that, yes, some candidates returned checks.

Well, that's the type of aggressive education that the Commission should be doing, sending letters, holding conferences with PACS, and saying, "If you get a check back, it meant that someone didn't want it. And they probably don't want to touch it. Please, you can go ahead and report it right away to us." That's the type of aggressive educational thing that eliminates problems and concerns that are often caused.

In the testimony, we've outlined some very specific things we think the FEC should be doing. It's not a lot of flowery language; it's very specific examples. I would hope the subcommittee has the opportunity to inquire of the FEC if they are willing to do these things. If not, why not? If they see any merit in it or not. But I think the subcommittee could take a very aggressive mode with the FEC. I think this subcommittee is free of the rhetoric of the campaign finance battles and comes across as a high-technology type of committee.

I do have Tony Raymond with me, who, because of the questions the ranking minority had asked about security, I thought our webmaster, Tony Raymond, might have a comment or two.

[The prepared statement of Mr. Cooper follows:]

TESTIMONY OF

KENT C. COOPER, EXECUTIVE DIRECTOR,
CENTER FOR RESPONSIVE POLITICS

March 5, 1998
Before the

**SUBCOMMITTEE ON GOVERNMENT MANAGEMENT INFORMATION, AND TECHNOLOGY**

Of the
**COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT**
**U. S. HOUSE OF REPRESENTATIVES**

Mr. Chairman, thank you for the invitation to testify before the subcommittee on the topic of disclosure efforts by the Federal Election Commission. The operations, effectiveness and strength of the Federal Election Commission (FEC) to carry out its mission are of key interest to the Center for Responsive Politics. The Center for Responsive Politics is a non-partisan, non-profit research organization that studies the role of money in politics and in particular the impact that money has on the formulation of public policy and Congressional actions. The Center conducts computer-based research on money-in-politics issues for the news media, academics and the public.

The Center has specific and direct knowledge of the activities of the Federal Election Commission. The Center relies heavily on the FEC for electronic data from campaign finance reports, and we are very familiar with the day to day products of the Commission and its attempts at using technology to implement the Federal Election Campaign Act. We are also very much aware of the missed opportunities by the FEC to live up to its expectations and its potential under existing budgets. For several years the Center had a project called FEC Watch that monitored the activities of the FEC and routinely called attention to areas or activities in which the FEC should have acted quickly and forcefully. These efforts have involved the filing of complaints with the FEC, testifying at public hearings, providing comments on Advisory Opinionsand Regulations, and involvement with campaign finance litigation.

In January 1997 the Center increased its knowledge of the implementation of the Federal Election Campaign Act, and specifically the FEC practices, policies and procedures, with the addition of Kent Cooper as Executive Director and Tony Raymond as the Center's webmaster. From the birth of the FEC in 1975 to January 1997 Mr. Cooper was Assistant Staff Director for Disclosure at the Federal Election Commission. Before that he was director of the National Information Center on Political Finance, and had worked for the Clerk of the House of Representatives from 1972-1974 when the Clerk was one of the supervisory officers of the original Federal Election Campaign Act. Tony Raymond was a campaign finance report analyst and webmaster at the FEC for 17 years. In his non-duty hours Mr. Raymond developed and wrote an electronic filing software package to assist treasurers in understanding the campaign finance laws and filing electronically. After departing the FEC in 1996 he was a computer consultant and set up and operated an Internet Web site for obtaining political finance information. Mr. Raymond is now the Center's webmaster.

**It is certainly worthwhile to routinely examine the policies, practices and products of the Federal Election Commission. In particular, the areas of management, information and technology should be targeted precisely because there is very little internal FEC oversight, coordinated planning, documented long-range strategy, or measurement systems for accomplishing tasks**. This has been the case throughout the existence of the Commission and responsibility for it primarily rests on the quality of Commissioners who have been appointed. Because of their background and their desire to continue their careers at the Commission, they have focused their attention on the political decisions that impact on their parties and future campaign financing strategy, not on the operations of the Commission.

## COMMISSIONERS

During the 1970's the Commissioners were regularly defending themselves and the law from legal challenges. In the 1980's the Commissioners fought to keep even with the complexities of presidential fund raising often falling hopelessly behind in audits and investigations. New political committees registered and exploded their spending in new and unique ways, such as independent expenditures. The Commissioners responded with even more complex regulations hoping to keep up. In the 1990's the Commissioners have fallen even further behind as more organizations move closer to direct political involvement and candidates, parties and political actions committees utilize complex money transfers and funding schemes. They act now with little regard to the FECA or the FEC.

Throughout these years the appointed Commissioners have concentrated on the crisis of the moment -- the compliance case in front of them, the advisory opinion being considered, or the audit being resolved. What they have lacked is a balance of skills, a strong chairman, and a long-range plan for becoming a strong independent regulatory agency.

**A review of the backgrounds of the Commissioners may indicate the need for more executive experience or management skill.** Their selections were often trade-offs for other needs of political leaders. Many of them came from the major political party establishment, which is not known for its efficient spending, management continuity, or long range strategy. Those selected at the federal level are in stark contrast to many of their counterparts at the state campaign finance commissions. In many cases, state-level commissioners have been chosen based on career-long reputations, which are being capped off with final public service efforts. Many of them are comfortable enough in the political community to quickly admonish even their own party candidates and officials that violate the law. They have no need to curry favor for a reappointment or their next career opportunity.

**Another review in order may be how Commissioners act as a collegial body, listening and learning from each other, striving to build consensus, and finally coming to agreement on an issue.** Our Web site, WWW.CRP.ORG, documents several examples of deadlocked votes of the Commissioners, resulting in no action taken. These include votes on regulations, advisory opinions, audits, and compliance matters. The ability and willingness to work with others toward common goals should be a basic requirement of Commissioners. **Consideration might be given to the establishment of a stronger chairperson who serves in that position for at least three years.** The current practice of electing a new chairman each year, rotating between parties, and often based on whose turn it is, forces no choice based on merit or effectiveness. Adapting to a new chairperson each year also requires the staff to shift plans, directions and budgets.

Changing plans, directions and budgets is fairly common at the Commission. In the Commission's early years, there was an effort to set up a Planning and Management team that would report directly to the Staff Director and Commissioners. Its role would be to consolidate the goals and objectives of the staff sections, create reporting schemes for the attainment of those goals, and present long range planning guidance for the Commission budget and policy development. This type of team never developed although it is still vitally needed. The current planning and management unit is not autonomous and it is viewed as a sub-unit of the Deputy Staff Director for Management, who is the responsible official for many contracting and administrative actions. The office also has no real impact on the office of the General Counsel, which is growing in budget and personnel. A strong planning and management unit may also be important in order to fulfill some of the roles of the Inspector General, who has been restricted in the scope of authority and jurisdiction. **Consideration should be given to reviewing the Planning and Management Office and how it might be strengthened.**

## DISCLOSURE

I would like to be able to say that the Commission's disclosure system is excellent and that the Commission should be highly praised for its efforts, but I cannot. After the Congress allocated massive amounts of new funds into automation and computerization, the Commission remains far behind in meeting the needs of a strong and aggressive enforcement and disclosure agency. Any review of the agency should certainly include how these most recent funds have been spent and what product or goal has been achieved.

**After several years of the Commission being a reluctant technology player it should embrace technology and information management as the best tool for improving the current campaign finance system.** It has been pushed, pulled and dragged into the modern electronic age, and has yet to fully embrace it. It dragged its feet for years on an electronic filing system for campaigns. It still has not provided software help to treasurers for testing their own reports prior to filing. It delayed for years utilizing high speed imaging technology for processing reports. The Commission also recently had to be pressured into disclosing images of reports on the Internet.

And there is much that could be done to make the Commission a bolder disclosure agency. For example:

### ELECTRONIC FILING

The Commission states it will have version 2 of its electronic filing software available within a week. If so, the Commission should not make people write and ask for it. **The Commission should immediately send (by overnight shipment) a copy of the filing disks to each registered filer.** If the Commission hopes to have more electronic filers for the first quarter report, it needs to get the software out now, before the books close on March 31, 1998.

**The Commission also should immediately post the software on its Web site for any person to download.** Original signatures of the treasurers for the file can be sent in shortly afterwards.

**The Commission should be monitored carefully to ensure that it meets its March 20, 1998, deadline for fully utilizing its current electronic filings.** At present, the electronic filings that are received **do not** go into the electronic imaging system for viewing or the electronic disclosure database. Instead the recently received electronic filings are processed back into paper copy, then scanned into the imaging system, and then sent to an outside contractor for key punching back into the electronic disclosure data base.

One of the main reasons that only 10 campaigns have filed electronic reports is that instead of helping campaign treasurers, the software appears to be forcing them to comply with a new set of requirements from a federal agency. This appearance will doom the electronic filing program unless the software is radically improved. **The Commission should immediately produce a new version 3 of its software that follows the example set by agencies in two states, Iowa and Michigan.** The Iowa Ethics and Campaign Disclosure Board produced its Iowa Campaign Finance Reporting System, and the Michigan Secretary of State, Candice Miller, produced the Michigan Electronic Reporting & Tracking System. In both cases, the states started with the premise that they wanted to help treasurers make complete and accurate filings. At the same time they wanted to reduce the careless mistakes and omissions that cause embarrassments to the campaigns and require state offices to send out numerous requests for additional information or clarification. These state software packages also have numerous drop-down messages and double checks to warn the treasurer when more information is needed or when it appears the treasurer may need some help about the legal requirements. These systems also permit the treasurer to check for common errors and omissions, before transmitting the report to the government. This step improves the quality of the reports made public and can save thousands of dollars of government funds by removing part of the need for compliance review and letters requesting amended reports. In the case of the FEC, which sends out over 10,000 request letters, the savings could be substantial. Another consideration should be the improvement of the language used in the FEC software. After years of learning the unusual phrases in the Federal Election Campaign Act and the Commission regulations, the treasurers are now faced with trying

to understand a whole new set of computer words and phrases. Having campaigns field-test the wording in the software might improve the product.

**The Commission also should consider providing a Web-based electronic filing system to all filers**, especially filers who are not running large campaigns. These campaigns may never volunteer for a complicated software package, but may find the standard fill in the blank form on the Internet an easy step. The key to the Web-based system is that it asks the treasurers about their individual transactions, then it automatically places them in order, adds the information for subtotals and creates the summary figures. The Center recently has provided a prototype version of this type of Web-based system to the Maine Commission on Governmental Ethics and Election Practices. The state will be using it for the electronic filing program for campaign finance reports. This type of Web-based system also can be used for other types of filings and disclosure, such as lobbying reports. The Center recently has provided a web-based lobbying disclosure system to the state of Missouri for use by the Missouri Ethics Commission. Another good example is the Web-based filing system for lobbying reports in Canada. This can be viewed on the World Wide Web at http://stategis.ic.gc.ca/cgi-bin/lobbyist-bin/bin/lrs.e/lrsmain.phtml?.

**The Commission should implement a system of Web-based electronic filing of independent expenditures and last minute contribution notices**. Both of these types of transactions are required to be filed immediately in the pre-election period. The Commission already has moved from receiving telegrams to receiving faxed documents, but even those must be processed in paper form and the detail of contributions and expenditures are not key punched for the disclosure data base until after the election. This crucial data, involving the largest campaign contributions and independent expenditures by persons or groups outside the campaign, should be received electronically and placed on the public record before the election. A Web-based system, accessed by a person using a personal computer and the Internet, would then be able to type in the required data and send it off immediately. It would then move to the FEC and be available instantly to all on the FEC web site.

With persons already starting to make expenditures in connection with the presidential campaign of 2000, it is not too early to start listing requirements for those campaigns. In the past the Commission has been criticized for not providing the rules early enough for presidential campaign planning. **Now is the time for the FEC to require electronic filing for all presidential campaigns anticipating exceeding $100,000 in receipts or expenditures**. The past presidential campaigns have already been involved with a form of electronic filing in relation to the primary matching funds system and they should have no difficulty meeting this requirement.

**The Commission should consider setting up a toll free (800) telephone number for technical support for the electronic filing system**. This line should be staffed Monday through Saturday, between 9am and 9pm EST, to ensure that West Coast filers are not disadvantaged and that treasurers volunteering on Saturdays can have their questions answered. This is especially critical during the period from the close of books until the pre-election report-filing deadline.

## DISCLOSURE OF OTHER COMMISSION DATA

The Commission currently charges the public for access to electronic information in its Direct Access Program. Now that the Commission has developed a Web site, **consideration should be given to placing all of the DAP information on the Web site.**

The Commission currently updates its electronic data on its FTP site only once a month. This delay slows down disclosure, especially of monthly reports and amended reports that correct information or list refunds from candidates. **The Commission should be updating its FTP site on a weekly basis.**

In an earlier report by an outside consultant the Commission was urged to move its computer operations to a client server environment from its current 1032 database. **The Commission should document its plan to accomplish the transfer to a client server environment.** This would permit the staff in various offices to develop more specialized inquiries and programs to manipulate the commission

data. This would greatly enhance the ability of the Reports Analysis Division to review, compare, and analyze various filings from the same committee, and to match up transactions from one committee to another. Currently, the analyst is provided an excellent personal computer and access to the database, but does not have the software to manipulate or "mine" the data. The Analysts are left checking for figures left out or that don't add up on their desk calculators. A Commission staff summary of common report errors found that 80 percent related to addition problems. Again, a software package for treasurers should do that double-checking before reports are filed.

The Office of the General Counsel also would benefit from more specialized programs and inquiry capabilities. While the staff can access the images and the database, they do not have the skills or staff assistance to manipulate the data to discover new meaning or understanding. As more campaigns and committees develop sophisticated transfer schemes and accounting systems, the enforcement staff will find it harder and harder to untangle the web of financial details.

**The Office of the General Counsel might also utilize its computers for better accountability of funds spent on enforcement cases.** Currently, there is no system to adequately track the cost of a particular compliance case or litigation, yet many law firms find it essential to understand the costs incurred in each and every case. In the law firm's situation it wants to bill a client, in the Commission's case it is spending the taxpayers' dollars. But as the Commission considers the next step in a case, it should be weighing its cost and benefits. Is this the best use of scarce funds? Which activity will most help the Commission meet its goals? The Commissioners should be presented with the running cost figure as each case is discussed.

## SUMMARY

Thank you again for the opportunity to offer comments on the operations of the Federal Election Commission. In this testimony 18 specific suggestions have been mentioned for study or action. If representatives of the Commission are here today, I encourage the subcommittee to seek a commitment from them to implement all or some of these suggestions. In the past the Commission has appeared to immediately reject initiatives from Congressional oversight committees, based not so much on the merits of the particular initiative, but on the basis that anything suggested by Congress would be a conflict of interest. In regards to the 18 suggestions made in this testimony, we hope the subcommittee and the Commission will agree to their merit. We hope our public support will persuade the Commission to seriously consider them and adopt them as priorities for this election year.

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Mr. HORN. Well, why don't we wait until Mr. Kucinich returns, during the question period.

Let me just say, to interject in your fine remarks, I want to put in the record, at this point, the detailed summary page, FEC Form 3, on receipts, so people have an idea of what the filing is.

My beef with them is, under No. 11, "Contributions other than loans from," and then what they do is, under 11(c), "Other political committees such as PACs." There should be a separate line for PACs. That's where the confusion comes.

We've never taken a PAC check since I first ran in 1992, and yet because we send them back and they don't give the rapid response you want them to give, we have some opponent that's demagoguing there, knows darn well I don't take them, but, gee, he can find something in the record, because we had to file a notice that it was there, that we've sent it back. They should make that easy on the candidate as well as the PAC group, in case somebody is just endorsing it off to themselves when it goes back to the PAC group.

But anyhow, that's the kind of thing about which I think your suggestions would be very helpful.

Ms. Brian, we've appreciated your papers and your very helpful suggestions, so we're glad to have you here.

Ms. BRIAN. Thank you very much, Chairman Horn.

Thank you for inviting me to testify regarding our investigation of and report on the FEC's PAC contribution disclosure system. Please submit my written comments for the record.

I will provide you with 10 modest but concrete reforms to our campaign finance disclosure system that we believe are both viable and necessary before the larger issues, such as soft money, are addressed. I also hope to persuade you that these reforms are not only in the best interests of the public and the FEC, but also of the candidates themselves.

The Project on Government Oversight [POGO] found that the current status of the FEC's data creates opportunities for unfair allegations of misconduct against candidates, as you, chairman, have experienced firsthand. We discovered that hundreds of thousands of dollars in contributions are unaccounted for, improperly listed, and otherwise missing from FEC data. This is because, although both candidates and PACs must each submit financial contribution data, these numbers are never compared by the FEC.

To be honest, at the beginning of this investigation, POGO believed that the large number of discrepancies and the sizable differentials in some of them might be the result of hidden PAC contributions. It was not long into our investigation, however, that we found it was the FEC's current disclosure system that was causing the misleading differentials.

It does not appear that change is likely to emanate from within the FEC without direction and funding from Congress. The FEC is resigned to reacting to outside complaints of illegal activity rather than using the resources at its disposal, the information it collects from contributors and candidates. As a result, the FEC accepts the inaccuracies in their data and regards them as tolerable. This acquiescence is not only harmful to the public and the media, who rely on accurate disclosure, but also to the candidates, who are portrayed by the FEC data as intentionally concealing contributions.

In addition, contrary to the FEC's assessment, POGO believes these reforms would, in the long run, save the FEC both time and money. As you can see from appendix C in our report, by August 1997, 9 months after the 1996 election, only 4 candidates out of nearly 500 were in the FEC data as having reported receiving the same amount of PAC money that the PACs reported contributing.

I will briefly outline the 10 reforms we suggested, many of which have already been proposed in bills before Congress and FEC's annual reports.

First, the FEC should compare information filed by PACs and candidates as a basis for checking the accuracy of PAC and candidate data.

Second, the FEC groups data in 2 calendar year periods. To perform this investigation, POGO was required to look at data from at least three different 2-year cycles to identify contributions given to House candidates for their 1996 elections. The FEC should begin to group data by 2- and 6-year campaign cycles. In addition, new legislation is required to simplify the filing process for candidates by requiring candidates and PACs also to file by 2- and 6-year campaign cycles.

Third, we had great difficulty identifying and cross-referencing the irregular use of PAC names used by all parties. The FEC should enforce its current requirement to use similar PAC names, for example, the name printed on the check, and require ID numbers that already exist on all receipts and disbursements.

Fourth, the FEC does not correct many duplicate entries in filings submitted by candidates. Once duplicates are discovered, we recommend the FEC should send an inquiry to the PAC asking for confirmation of the two contributions.

Fifth, as Chairman Horn noted, when PAC contributions are returned by candidates, PACs often do not report the unaccepted contribution back to the FEC, although it is currently required. Of the 10 candidates that we selected as examples, three of those candidates took a position of not accepting any PAC contributions, and all three of them appeared in the records as having accepted the money. The FEC should recommend to candidates that they provide the FEC a list of the PACs and the returned contributions.

Sixth, campaign committees are not always aware of in-kind PAC contributions, although they had been reported by the PACs to the FEC. The FEC should also require PACs to notify campaign committees of all in-kind contributions.

Seventh, legislation is needed to grant the FEC the authority to conduct random audits. Currently, audits for cause are only initiated after an outside complaint is filed, often by opponents relying on the inaccurate FEC data. The FEC should also consider publishing a list of PACs and candidates whose reports were found by the FEC to be incomplete or inaccurate, and create a fee schedule for fines.

Eighth, legislation would be needed to mandate electronic filing. That's something that's been discussed so much today I don't need to explain it any longer.

Ninth, the Senate mandates that its candidates file their reports with the secretary of the Senate, which only sends the reports to the FEC on microfilm. Legislation is needed to require Senate can-

didates to send their filings directly to the FEC, as already is required of the House.

And finally, tenth, PACs usually issue one check that is later divided by multiple candidates involved in a multi-candidate entity, such as a joint fund-raiser or leadership PAC. This practice sometimes falsely portrays candidates as having accepted more money than is actually received. Legislation is needed to change existing disclosure laws and require that separate checks be issued to each participating member in the multi-candidate entity.

This concludes my oral presentation. For the purposes of this hearing, we've provided all the members of the subcommittee with a copy of our report with the names of the candidates removed. I hope this is a useful tool. I'd be happy to answer any questions.

[The prepared statement of Ms. Brian follows:]

Good morning Chairman Horn and Members of the Subcommittee. I want to thank you for inviting me to testify regarding our investigation into the Federal Election Commission's (FEC) Political Action Committee (PAC) contribution disclosure system. I will provide you with concrete reforms to our campaign finance system that we believe are both viable and necessary. I also hope to persuade you that these reforms are not only in the best interests of the public and the FEC, but also of the candidates themselves.

POGO found that the current status of the FEC's data creates opportunities for unfair allegations of misconduct against candidates. We discovered that **hundreds of thousands of dollars in contributions are unaccounted for, improperly listed, or otherwise missing from FEC data.**

Current FEC data inaccuracies are often very misleading. POGO's investigation took months of original research and consultations with numerous campaign finance experts, including senior FEC staff and officials and the independent Center for Responsive Politics. POGO discovered that surprisingly, although both candidates and PACs must each submit financial contribution data, **these numbers are never compared.**

To be honest, at the beginning of this investigation, POGO believed that the large number of discrepancies and the sizable differentials associated with congressional candidates might be the result of hidden PAC contributions or some other nefarious activity on the part of candidates. It was not long into our investigation, however, that we found it was the FEC's current disclosure system itself that was causing the misleading differentials.

Review of these differentials led POGO to discover several systemic flaws and to propose realistic reforms, many of which have been suggested in bills before Congress and in the FEC's annual reports to Congress. POGO's investigation and report provides the tangible evidence needed to achieve the implementation of these campaign finance reforms.

The most immediate impact of the reforms listed below would be to allow the FEC to better discern genuine campaign finance infractions from data errors, and therefore more effectively use their resources to enforce campaign finance laws. Even high-level FEC officials have admitted that they have had to assume a level of "chaos" in their numbers, making enforcement of the law sporadic at best. FEC sources stated that due to limited resources, they work under the assumption that some violations will have to slip through the system.

The longer-range intention of our work is to rebuild the integrity of the FEC and the campaign finance disclosure process. If the more comprehensive campaign finance reforms currently being debated are ever to pass, the FEC will ultimately be responsible for overseeing and regulating the $100,000 contributions that are fueling that debate. If the FEC is not equipped to handle the current oversight of $1,000 and $5,000 PAC contributions, how can it be expected to

tackle the big dollars? We believe our suggested reforms can lead to the institution-building necessary for positive systemic change.

However, it does not appear that change is likely to emanate from within the FEC without direction and funding from Congress. The FEC is resigned to reacting to outside complaints of illegal activity, rather than using the resources at its disposal — the information it collects from contributors and candidates. As a result the FEC accepts the inaccuracies in their data and regards them as tolerable. In fact, it was expressed by FEC officials that even with the proper resources, it was not clear that the FEC would spend them on fixing the systemic problems POGO discovered. This acquiescence is not only harmful to the public and the media, who rely on accurate disclosure, but also to the candidates, who are portrayed by the FEC data as intentionally concealing contributions. In addition, contrary to the FEC's assessment, POGO believes that these reforms would, in the long-run, save the FEC both time and money. In the end, the FEC's very mission is compromised by its bunker mentality.

The individuals POGO used as examples in our full report are just that — examples to prove the systemic flaws in the system. As you can see from Appendix C in our report, by August 1997, nine months after the 1996 election, **only four candidates out of nearly 500**, were in the FEC data as having reported receiving the same amount of PAC money that the PACs reported contributing. In other words, every other candidate that ran for election in 1996 had either over-reported, or in the majority of cases, under-reported, PAC contributions. The discrepancies found in their reports were overwhelmingly caused by the flaws in the FEC's system and could have been avoided if our recommended reforms were implemented. To indicate that the candidates did not intend to provide inaccurate or incomplete information, a number of the candidates told POGO they were going to amend their FEC filings as a result of our inquiries.

I will now outline the ten reforms we identified to remedy the systemic flaws we encountered. Appendix E of the version of our report prepared for the Subcommittee breaks these reforms down into two categories — those that require legislative action, and those that could be addressed internally by the FEC.

First, the FEC does not compare PAC receipts reported by candidates with contributions reported by the PACs. The current system allows inaccuracies in FEC data to go undetected and uncorrected. Discrepancies that occurred between candidate and PAC reports -- in some cases by as much as hundreds of thousands of dollars -- remain undetected and uncorrected. In fact, these discrepancies are so common that a zero balance is rare. This misinformation makes a candidate vulnerable to unfair accusations of improprieties. **The FEC should compare sets of data as a basis to check the accuracy of PAC and candidate data.**

Second, the FEC groups data in two calendar year periods. To perform this investigation, POGO was required to look at data from at least three different two-year cycles to identify contributions that were given to House candidates for their 1996 elections. **The FEC should begin to group data by two- and six-year campaign-cycles.**

Candidates and PACs also file primary and general campaign data in monthly, quarterly and semiannual reports by calendar year. Campaign finance laws, however, do not correspond with calendar years, but with primary and general campaign-cycles. **New legislation would be required to simplify the process by requiring candidates and PACs to file by two- and six-year campaign-cycles. This reform may also require extending contribution limits from the current general and primary election basis to campaign cycles.**

Third, one of the most time-consuming aspects of this project was identifying and cross-referencing the irregular use of PAC names used by the candidates, the PACs and the FEC. The FEC, the candidates and the PACs use neither the same name for a PAC nor their already-established identification numbers when filing receipts and disbursements, making it difficult to check contribution limits. **The FEC should enforce its current requirement to use similar PAC names (i.e., the name printed on the check) and require I.D. numbers on all receipts and disbursements.**

Fourth, the FEC does not correct many duplicate entries in filings submitted by candidates. POGO's investigation also revealed that the FEC often unwittingly creates duplicate entries by assigning two different transaction numbers to the same contribution. The FEC's inability to correct erroneous reporting of this kind creates phantom contributions in the candidate's receipt index. This problem again makes a candidate vulnerable to accusations of hiding PAC contributions or of violating contribution thresholds. **Once duplicates are discovered, the FEC should send an inquiry to the PAC asking for confirmation of the two contributions.**

Fifth, when PAC contributions are returned by candidates, PACs often do not report the unaccepted contribution to the FEC, although it is currently required. This failure to report returned contributions leaves the false impression that candidates have accepted the money. In particular, this problem causes a dilemma for candidates who pledge not to accept any PAC money, because FEC records falsely show them receiving PAC contributions. **The FEC should recommend to candidates who return PAC contributions that they provide the FEC with a list of the PACs and the returned contributions.**

Sixth, campaign committees are not always aware of "in-kind" PAC contributions although the contributions had been reported by the PACs to the FEC. This lack of reporting may cause embarrassment for the candidate who does not report an "in-kind" contribution. **The FEC should require PACs to notify campaign committees of all "in-kind" contributions.**

Seventh, the FEC does not have adequate tools to enforce compliance and deter noncompliance of regulations. As a result, some PACs and candidates are unconcerned about noncompliance and thus often do not meet existing requirements. **Legislation would be needed to grant the FEC the authority to conduct random audits as a deterrent to noncompliance. The FEC should also consider publishing a report, press release and web page that would list PACs and candidates whose reports were found by the FEC to be incomplete or inaccurate. A fee schedule to impose fines for noncompliance should be created and enforced.**

Eighth, electronic filing is not required for candidate and PAC filings. **Legislation would be needed to mandate electronic filing by candidates and PACs reporting over a certain level of financial activity. If such legislation were enacted, many, if not all, of POGO's reforms could be easily implemented through the electronic filing system. Having a threshold would protect small PACs and candidates with limited resources from undue hardship. This system would dramatically increase the accuracy and thoroughness of FEC data, as well as simplifying the process for all participants.**

Ninth, the Senate mandates that its candidates file their reports with the Secretary of the Senate (Office of Public Records) which only sends the reports to the FEC on microfilm. While it is possible to run computer searches for House candidates and PACs, Senate candidates have to be searched the old-fashioned way — on microfilm and various other paper indices that have yet to be assembled into one searchable computerized system. **Legislation would be needed to require Senate candidates send their filings directly to the FEC, as is already required of the House.**

And finally tenth, PACs usually issue one check that is later divided by multiple candidates involved in a multi-candidate entity. This practice muddies disclosure. In the case of one Senator and one Representative, their reported receipts totaled significantly above each of their actual PAC contributions. This falsely portrayed them as accepting more money than they actually received. **Legislation would be needed to change existing disclosure laws and require that separate checks be issued to each participating member in the multi-candidate entity.**

This concludes my presentation of POGO's ten recommended reforms. Thank you again for giving POGO the opportunity to speak before you today. For the purposes of this hearing, we have provided all the Members of this Subcommittee a copy of our report, "Re-Establishing Institutional Integrity at the FEC: Ten Common Sense Campaign Finance Disclosure Reforms," with the names of the candidates removed. I hope it proves to be a useful tool as you consider this important issue. I would be happy to answer any questions regarding our investigation or our findings.

# Re-Establishing Institutional Integrity at the FEC:
## Ten Common Sense Campaign Finance Disclosure Reforms

**1. Utilize Existing Checks and Balances: Compare Databases**

The FEC does not compare PAC receipts reported by candidates with contributions reported by the PACs. The current system allows inaccuracies in FEC data to go undetected and uncorrected. The FEC should compare sets of data as a basis for checking the accuracy of PAC and candidate data.

**2. Make Compilation and Filing of Data Uniform by Campaign-Cycle**

• The FEC groups data in two calendar year periods. As a result, it is nearly impossible to determine violations of contribution limits. The FEC should begin to group data by two- and six-year campaign-cycles.

• Candidates and PACs file primary and general campaign data in monthly, quarterly and semiannual reports by calendar year. Campaign finance laws, however, do not correspond with calendar years, but with primary and general campaign-cycles. New legislation should simplify the process by requiring candidates and PACs to file by two- and six-year campaign-cycles. This reform may also require extending contribution limits from the current per-election basis to campaign cycles.

**3. Eliminate Irregular PAC Names**

The FEC, the candidates and the PACs use neither the same name for a PAC nor their already-established identification numbers when filing receipts and disbursements, making it difficult to check contribution limits. The FEC should enforce its current requirement to use similar PAC names (i.e., the name printed on the check) and require I.D. numbers on all receipts and disbursements.

**4. Eliminate Duplicate Entries**

The FEC does not correct many duplicate entries in filings submitted by candidates. POGO's investigation also revealed that the FEC often unwittingly creates duplicate entries by assigning two different transaction numbers to the same contribution. Once duplicates are discovered, the FEC should send an inquiry to the PAC asking for confirmation of the two contributions.

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**5. Candidates Should Report Returned Checks**

When PAC contributions are returned by candidates, PACs often do not report the unaccepted contribution to the FEC, although it is currently required. The FEC should recommend to candidates who return PAC contributions, that they provide the FEC with a list of the PACs and the returned contributions.

**6. Notify Candidates of All "In-Kind" Contributions**

Campaign committees are not always aware of "in-kind" PAC contributions even though the contributions have been reported by the PACs to the FEC. The FEC should require PACs to notify campaign committees of all "in-kind" contributions.

**7. FEC Needs Better Tools to Encourage Compliance**

The FEC does not have adequate tools to enforce compliance and deter noncompliance with regulations.

• The FEC should be granted the authority to conduct random audits as a deterrent to noncompliance.

• The FEC should consider publishing a report, press release and web page that would list PACs and candidates whose reports were found by the FEC to be incomplete or inaccurate.

• A fee schedule should be created and enforced for noncompliance.

**8. Mandatory Electronic Filing**

Electronic filing is not required for candidate or PAC filings. If electronic filing were mandated by Congress for candidates and PACs reporting over a certain level of financial activity, many, if not all, of POGO's reforms could be incorporated into the electronic filing system. This system would dramatically increase the accuracy and thoroughness of FEC data.

**9. Streamline Senate Filing**

The Senate mandates that its candidates file their reports with the Secretary of the Senate (Office of Public Records) which only sends the reports to the FEC on microfilm. Senate candidates should be required to send their filings directly to the FEC, as is already required of the House.

**10. Streamline Joint Fund-Raisers & Multi-Candidate Committees**

PACs usually issue one check that is later divided by multiple candidates involved in a multi-candidate entity. This practice muddies disclosure. Congress should require that separate checks be issued to each participating member in the multi-candidate entity.

Mr. HORN. Well, we thank you. We have a vote on the floor, so we're going to have to recess to go over and vote. Hopefully, we can make it back in 15 minutes, I would hope. But at this point, which is about 11:28, we're in recess.

[Recess.]

Mr. HORN. Again, sorry for the delay, but we're sent here to vote, so we have to vote.

Ms. Brian, you're finished, basically?

Ms. BRIAN. Oh, yes, I am. Thank you.

Mr. HORN. OK. Mr. Dahl, we're delighted to have you here. You are president of the Fair Government Foundation. Welcome.

Mr. DAHL. Thank you, Chairman Horn.

I am pleased to be here today on behalf of the Fair Government Foundation. I've only been president of the group for a couple months. The foundation, FGF, engaged in significant study and analysis of the performance of the Federal Election Commission under my predecessor, Brent Thompson.

I worked for a member of the Federal Election Commission for 6 years, from 1985 to 1991, and I have observed the FEC and practiced before the FEC for another 6 years. So I hope my perspective will be of some value to you and your committee.

Despite the occasionally harsh tone of my written testimony, it brings me no pleasure to come before your committee today to criticize the FEC. I spent 6 years working there, and I very much enjoyed the time I spent working with then Commissioner Tom Josefiak. I consider the commissioners and much of the staff friends of mine, at least until my testimony was released today. [Laughter.]

But I think a lot of people who work at the FEC want the agency to make changes, to get back on course, and to reclaim its credibility.

And finally, of course, no attorney wants to criticize publicly the agency before which they practice law. So my clients are not thrilled that I'm here today. But, you know, as they say, "You asked." And I'm glad that you did. I'm here today to speak more to the management part of your jurisdiction rather than the technology issues that other panelists are discussing.

The first point I make in my written testimony is that I believe that serious congressional oversight of the Federal Election Commission is long overdue; that, contrary to conventional wisdom, Congress does not cast a long shadow over the FEC. Except for occasional blips of interest or flare-ups of controversy, I think Congress has largely ignored the FEC and not closely examined how it functions.

I'm going to skip to the major part of my written testimony, which is the two major functions of the Office of General Counsel: litigation and enforcement. As an attorney who served at the FEC and one who has worked on the outside, I have strong feelings about this that I have conveyed in my written testimony and have asked your committee to look into. In other words, don't take my word for it; find out whether what I say has some merit.

I make the following statement in my written testimony:

In my view, the frequent losses by the FEC in court are symptomatic of two problems that also pervade enforcement matters: one, a prosecutorial culture at the FEC

that tends to villainize respondents, which are defendants, and cannot give up once it starts to pursue the bad guys; and second, that the general counsel tends to refuse to accept consistently adverse rulings by courts on certain significant legal issues.

I briefly describe what I consider to be an intolerable situation arising from the general counsel's insistence on relitigating over and over again a fundamental constitutional limitation upon the jurisdiction of the Federal Election Campaign Act and upon the ability of the FEC to restrict or encumber political speech, the "express advocacy" standard. I'm going to refrain from going into the details and the history of how this issue has been developed over the 22 years of the FEC's existence. I describe it in more detail in my written testimony, and I've encouraged the committee to read the decision of the U.S. Court of Appeals for the Fourth Circuit, issued just last April, in a case brought by the FEC against the Christian Action Network. I would note to you that the court remanded the case to the District Court for purposes of awarding legal fees and costs to the defendants, sanctions against the FEC for even bringing that case that far.

Regardless of the actual merits of the issue of express advocacy, Mr. Chairman—and I know that many in the campaign finance reform community wish the courts had given the FEC more leeway on this matter—the FEC simply no longer has any credibility on this issue. The FEC should stop wasting resources on this pursuit and stop dragging the political community into court on it. I'm afraid this kind of intransigence is not unusual in both litigation and enforcement matters at the FEC.

My testimony about the FEC enforcement process draws upon my own analysis of the disposition of 314 FEC enforcement cases made public by the FEC over the past 13 months. These are press releases available on their web site. My recent review of these cases, which is consistent with a 1994 to 1997 study conducted by the Fair Government Foundation, revealed the following.

Of those 314 cases, 69 cases, 22 percent, resulted in the signing of a conciliation agreement and the payment of a civil penalty by at least one of the respondents. But in 215 cases, 68.5 percent, the Commission simply "took no action" as to all respondents, and reached effectively the same result in another 24 cases, 8 percent. That means they dropped 76.5 percent of their enforcement cases during this 13-month period.

This trend toward wholesale dumping of cases without taking any action coincides with the implementation of the FEC's touted enforcement priority system in 1994. I think that system has been a disaster. It permits the Office of General Counsel to pick and choose cases on subjective criteria, including legal issues they want to push or respondents they want to make an example of. The general counsel, not the Commission, decides which cases to activate and when.

More importantly, that system has turned enforcement and compliance priorities upside-down, focusing on a few juicy cases and ignoring a vast array of routine cases that affect the broadest range of the political community and involve the bread-and-butter aspects of the law, upon which there is little disagreement.

FEC enforcement of the law has never been swift, and now it is uncertain, even unlikely. As I say in my testimony, enforcement at the FEC is no longer a general store; it is a boutique. Or to make another analogy, they skip the vegetables, and they go right to dessert.

The FEC will tell you this has happened because of a shortage of resources for enforcement, even as the enforcement section of the general counsel has a caseload per lawyer, from what I can tell from their records, of only three or four cases each, at any time.

Their logic, as I state in my testimony, suggests the worse the FEC gets at enforcing the law, the more they should be rewarded with higher budgets. Congress, aided by your committee and a comprehensive GAO audit of the FEC ordered by Congress last fall, should decide if the FEC's approach can be justified by any rational administrative and prosecutorial standards.

I will make one other point about the study that we did of their most recent enforcement cases. My examination of the 314 recent enforcement cases also revealed that in only 5 cases, 1.5 percent, did the Commission make a finding of "no reason to believe," and thus clear respondents at the outset of the case. And in zero cases, not a single one of this group, did the Commission make a finding of "no probable cause" to clear a respondent after an investigation.

My written testimony goes into some detail as to my opinion as to why this has taken place and about the culture that pervades the FEC in the way they pursue enforcement cases. I recommend the committee not take my word for it. You should send a questionnaire to attorneys who represent clients in FEC enforcement and litigation matters, under assurances of confidentiality, and ask them to describe their experiences and give their opinion of the practices and professionalism of the Office of General Counsel.

Again, today's hearing should be the beginning of your committee's FEC oversight effort into management practices, not the end.

I will conclude my testimony by noting what I said in my written testimony, that I encourage Congress to not only accept greater responsibility for the problems of the FEC, but to expect greater accountability by the members of the Commission. Your committee should look carefully at the problems at the FEC and get the Commission to join you in examining and solving these problems, and not instinctively resist you in this effort. I believe the starting point may be to revise FEC procedures, to help the Commission reclaim appropriate authority and operating control in these areas.

Thank you, Mr. Chairman and members of the committee, for your kind attention.

[The prepared statement of Mr. Dahl follows:]

BOB DAHL has served as President of the Fair Government Foundation since the beginning of 1998. Dahl practices law in field of campaign finance regulation, ethics and election law. He serves as election law consultant for the International Foundation for Election Systems in democratization programs in the Russian Federation. Dahl was formerly Executive Assistant to a member of the Federal Election Commission from 1985 to 1991. He received his law degree from the Law School at the University of Chicago in 1980, and has been admitted to the Bar in Illinois and the District of Columbia.

THE FAIR GOVERNMENT FOUNDATION is a non-profit, §501(c)(3) organization founded in 1994 under the leadership of Senator Paul Coverdell of Georgia. FGF was established to inform the public about threats to constitutional rights posed by governmental interference in and regulation of the political process. FGF conducts research and public education on First Amendment rights of free speech, association and political action, and surveys the impact of campaign finance regulation and other governmental constraints upon political activity. FGF has taken a lead role in monitoring the regulatory and enforcement practices of the Federal Election Commission.

Prepared Testimony of

Bob Dahl

Fair Government Foundation

Thank you for this opportunity to testify before your committee on behalf of the Fair Government Foundation (FGF). I have served as President of FGF for two months. My predecessor, Brent Thompson, headed FGF since its creation in 1994, and testified before Congress on several occasions. Brent conducted extensive research for FGF regarding the regulatory and enforcement practices of the Federal Election Commission (FEC). I will draw upon his findings and from information available on the public record for this testimony. I will also rely heavily on personal observations from my experience of working at the FEC for Commissioner Thomas J. Josefiak from 1985 to 1991, and from practicing law in this area since leaving the FEC.

*Congressional Oversight*

I begin by stating that I am very glad this committee is holding this hearing. I strongly support increased oversight of the Federal Election Commission by Congress. There is a myth often advanced in discussions of campaign finance regulation that the FEC is always subject to pressure, intimidation and meddling by Congress (and that it was designed by Congress to fail). The news media and commentators often cite that excuse as a reason the FEC is ineffective – the "toothless watchdog."

The notion that the FEC is too much under Congress' thumb is clearly false. The opposite is true. The operations and performance of the FEC have traditionally been given little real scrutiny by Congress, largely I suspect because Members fear the very

allegation that they are trying to intimidate the agency (and perhaps they fear they may themselves be the object of an FEC enforcement case someday). Even the committees with appropriations or oversight jurisdiction over the FEC rarely dig very deep into its actual functioning and tend to focus on fairly peripheral matters.

Though widely viewed as ineffective, and occasionally criticized for specific actions, the FEC floats along without serious challenge to its practices. Hopefully, this situation is about to change. The current interest in the FEC by this committee -- and inclusion last year of appropriations in the federal budget for a comprehensive audit of the FEC by the General Accounting Office -- are good signs. Importantly, four of the six seats on the Commission have expired terms and are ready for appointments by the U.S. Senate (which has not held hearings on FEC appointments since the early 1980's). Both Houses of Congress are now presented with an extraordinary opportunity to review and reevaluate the FEC, and I strongly urge you to make full use of this opportunity.

I hope you will not be intimidated by charges that you are trying to intimidate the FEC; responsible oversight of the FEC is Congress' right and obligation. Today's hearing should serve as the beginning step in a process of renewed and ongoing congressional oversight of the FEC, rather than an isolated effort among infrequent inquiries.

*Recommendation #1*: This committee should formulate a second round of questions for the FEC based upon information it has already received and testimony presented today (questions will be suggested throughout this testimony), and schedule a follow-up hearing if necessary to proceed with its inquiry. To the extent it is appropriate, this committee should make known to the General Accounting Office the specific areas of FEC performance that would benefit from more focused review in the audit.

Last Thursday, in what has become a meaningless ritual, the Commission voted to send to Congress its 1998 legislative recommendations. Some issues are technical or administrative "fixes" favored by the FEC; others involve major policy choices affecting

the scope of the Federal Election Campaign Act (FECA). The FEC's list has now grown to over sixty recommendations for congressional consideration regarding the law or FEC operations. Congress never takes any action on them and the FEC openly admits it has no other expectation. Congress should surprise them.

*Recommendation #2*: The appropriate committee or committees of Congress should give full consideration to the 1998 legislative recommendations of the Federal Election Commission. Those recommendations that may deserve further action should be subject to robust debate in Congress; proponents of campaign finance "reform" should be dissuaded from introducing contentious proposals to expand federal restrictions on free speech and would subvert genuine reform of the FEC.

*FEC Resources*

I realize your purpose here is oversight, not budget authorization. But the subject of the sufficiency of FEC funding will inevitably be raised today by FEC representatives and by organizations favoring greater regulation of political activity.

The idea that the FEC is perennially under-funded and under-staffed, preventing it from doing its job properly, is another favorite myth advanced in the news media (under-funding is another sign of Congressional malevolence). Congress is certainly accustomed to hearing from departments and agencies why they must have large budget increases to function effectively. In the case of the FEC, the argument for more money and personnel is often justified by pointing to its increasingly poor performance; the worse the FEC gets at enforcing the law, the more they should be rewarded with higher budgets.

I will not offer a sophisticated analysis of the FEC's budget or budget requests. Your committee may need to sort through the numbers to fully assess the adequacy of FEC funding as an issue in your oversight review. I can point to some simple math, however. According to publicly available sources, outlays of the federal government

grew from approximately 808.4 billion dollars in 1983 to one trillion, 601.2 billion dollars in 1997 – an increase of about 98%. According to FEC documents, appropriations for the Federal Election Commission grew from approximately 9.897 million dollars in 1983 to 28.165 million dollars in 1997 – an increase of about 185%. That means the budget of the FEC grew at a rate nearly twice as fast as the entire federal budget during the past fifteen years.

Now I may be missing something, but this does not appear to be an agency that Congress has maliciously starved of resources. At the very least, FEC requests for more money should be given serious scrutiny. Before accepting the premise that significantly more funding is needed for the FEC, Congress should be fully satisfied it knows precisely how the money will be spent and how the mission of the agency will be furthered.[1] Also, Congress should quit beating the dead horse of FEC computerization; the FEC almost certainly wants to modernize disclosure and other functions through computerization, and is probably moving as quickly as it can to do so efficiently.

One more point about money: do not fall for the rationale that the FEC needs more funding because of the "skyrocketing" costs of political campaigns. The effect of the increase in campaign spending by candidates, PACs and political party committees upon the operations of the FEC should be slight. There may be a few more pages in disclosure reports regarding contributions and expenditures because of more spending, but the increase is mostly reflected in higher figures within the expenditure entries.

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[1] In particular, I note the Office of the General Counsel has recently requested as much as a doubling of personnel in its Enforcement Division. But in the FEC's response last week to questions forwarded by this committee regarding case management practices within that division, the FEC deflects the questions by saying its current system for tracking active enforcement cases "has limited input and reporting functions," "is difficult to use as an analytical tool," and will be replaced later this year (twenty-three years into the agency's existence) by a new system "based on a tailored commercially available software program." How

The FEC does not need more funding because a typical benchmark opinion poll in a congressional district may now cost $14,000 instead of $7000 fifteen years ago.

*Recommendation #3*: Maintain the FEC budget at current levels until Congress receives the results of the GAO audit next year and conducts further oversight inquiry.

*Disclosure and Compliance*

The response of the FEC to questions from this committee in advance of this hearing identifies "disclosing campaign finance information" as the agency's most important function. Oddly, the FEC's description of the disclosure function apparently draws in not only its Public Disclosure and Press Offices. The FEC encompasses the Information Office and the rulemaking and advisory opinion components of the Office of General Counsel within the disclosure category, although the obvious purpose of these programs is to promote compliance with the law (this rearrangement favors the FEC in its budget breakdown).

The second most important function is said to be "securing compliance with the law." The description leaves out the offices or sections misplaced under "disclosure" and makes scant reference to the valuable role of the Reports Analysis Division (RAD). The description for "compliance" includes the Audit, Enforcement and Litigation divisions, which I consider to be more properly viewed as within an enforcement function (the FEC response does not list "enforcement" within the five most important FEC functions). As discussed below, I believe prosecutorial and case management practices of the Office of General Counsel in enforcement matters undermine any claim that its enforcement efforts are primarily intended to further compliance with the FECA.

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can Congress authorize more budget resources for FEC enforcement when the agency has not yet instituted

As to the FEC operations genuinely related to the function of public disclosure of federal campaign finance information, I think there is general agreement by the public, the regulated community, and the news media that the FEC does an excellent job in this area. Records in the Public Disclosure Office are easily accessible, and staff is helpful. Information about federal campaign finance is also increasingly available on the FEC's Internet website (and available and further analyzed on websites sponsored by groups such as the Center for Responsive Politics). From my perspective of working in election law development in emerging democracies, it is apparent the United States (however criticized our campaign finance system) is the world leader in meaningful political finance disclosure at both the federal and state levels.

My opinion of the FEC's efforts at encouraging legal compliance is more mixed. The Reports Analysis Division (RAD) is given insufficient credit for both its appropriate monitoring function for enforcement purposes and, perhaps more importantly, promoting compliance by encouraging correction of reporting errors or inadvertent violations of the law by political committees. My impression is that the regulated community has a generally favorable interaction with both RAD and the Information Office (which dispenses information and informal advice, publishes the monthly FEC Record, prepares specialized FEC guides for legal compliance and conducts seminars around the country).

The "regulations" section of the Office of General Counsel is often criticized by lawyers practicing in this field for being, not surprisingly, too pro-regulation. But the rulemaking area has the benefit of necessarily involving public scrutiny and comment, and the Commissioners have an opportunity to limit the scope at the beginning of the

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any internal procedures that permit objective review and full accountability of its enforcement operations?

process and to iron out the details of FEC regulations at the end.[2] The Commission also sets the priorities for FEC rulemaking projects. A practical complaint about the FEC regulation process is that too much quasi-regulation "law" is tucked into the FEC's "Explanation and Justification" for new regulations (published in the Federal Register), with which the regulated community and lawyers outside the beltway are rarely familiar.

Similarly, the output of the "advisory opinion" section of the Office of General Counsel tends to incorporate too many quasi-regulations into Commission opinions. FEC advisory opinions are often belabored exercises laden with extra-legal conditions and requirements tailored to the situation. Analysis in FEC advisory opinions is frequently based on a list of mushy, fact-based factors of indeterminate significance or weight, leaving any legal conclusion so idiosyncratic that it is difficult to rely upon as precedent in similar but not precisely identical circumstances.[3] As in enforcement cases, the FEC hates to lay down any rule of law or clear standard, for fear somebody less worthy might come along and take advantage of it. Its decisions preserve a lot of subjective leeway.

Thus, any weaknesses in FEC efforts to encourage legal compliance are largely the responsibility of the Commission itself. While congressional oversight may serve to identify problems or even suggest solutions in this area, it is the attentiveness of the Commissioners that will make the most difference.

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[2] Congress rarely expresses any dissatisfaction with FEC rulemaking – perhaps out of fear of appearing to meddle. The current effort by the Office of General Counsel to have the Commission propose regulations banning political party "soft money" – a step the FEC does not have the statutory authority to take, and an issue that the U.S. Senate could not resolve just last week – may change that tradition.

[3] Contrary to the impression left by advisory opinions, the Commission cannot "rule" on an issue through such an opinion, nor broadly permit or prohibit anything. The Commission can only interpret the proper application of the law to the prospective facts presented in the request; i.e., decide whether the law or regulations permit, prohibit or condition certain activity. An FEC advisory opinion is generally accorded deference by courts as "expert" legal interpretation, and the Commission is bound by its opinions in later enforcement matters involving "materially indistinguishable" circumstances.

*Audit*

The Audit Division is an easy target for criticism because of the historically long time the FEC has taken to conduct and complete audits of publicly funded Presidential campaigns and political party conventions (full audits are mandated by public financing laws). The Commission has been sensitive to this criticism, and has instituted internal procedures and timelines to insure Presidential audits are now at least completed before the next round of Presidential primaries begin. Until the law governing public financing of Presidential campaigns is reviewed and simplified (which would likely open fierce political debate about its policy merits), FEC auditors will continue to sift through staff expenses, car rental receipts and telephone bills of Presidential campaigns to determine if they are "qualified campaign expenses" and to which state limit they should be allocated. And the Commission will continue to sit in lengthy open sessions going over the auditors' conclusions about such minutiae.

*Recommendation #4*: Review FEC legislative recommendations about public financing first. Eliminate state by state limits in the Presidential primary funding scheme (which now tend to affect only activity in Iowa and New Hampshire), or at least have the limits apply only to easily documented expenditures, such as for public advertising and other forms of voter contact, rather than to every campaign expense.

In 1979, Congress repealed the provision of the FECA granting the Commission authority to conduct random audits of federal political committees (including candidate committees). One of the FEC's current legislative recommendations, and often part of campaign finance "reform" legislation, is a proposal to reinstitute this mechanism. In my opinion, the current FEC practice of conducting audits "for cause" (based upon objective standards, by which a committee earns negative points for serious and repeated reporting

problems) is sufficient. Moreover, it is unclear that results of current audits "for cause" receive adequate attention under the FEC's priority system for enforcement cases; cases arising from an audit are frequently concluded by a Commission decision to "take no action" (see discussion of case disposition below).

*Recommendation #5*: Do not accept the FEC's legislative recommendation to permit random audits of political committees by the FEC.

*Litigation*

The FEC is widely considered to have suffered a string of significant losses in courts recently. The FEC's response to this committee's questions acknowledges the FEC has not had an outright win in an appeals court since 1993. That record does not include their loss on the issue of "independent expenditures" at the U.S. Supreme Court in Colorado Republican Federal Campaign Committee v. FEC, 116 S.Ct. 2309 (1996) nor the Court's recent denial of certiorari in FEC v. Maine Right to Life Committee, Inc., *cert. denied*, 118 S.Ct. 52 (1997), which involved the issue of "express advocacy."

The "win/loss record" in district courts provided to you by the FEC is the first I have ever seen the FEC compile, and I intend to have the Fair Government Foundation give that record further scrutiny. Without closer examination, it would be unfair of me to suggest the FEC only wins the easy ones. But several of the FEC losses in district courts have been cases involving important legal issues and to which the agency committed substantial resources. The FEC appealed some of those cases.

*Recommendation #6*: This committee should ask follow-up questions to the FEC's prior response regarding its litigation record. What were the primary or significant legal questions presented by each case? Approximately how much did the FEC "spend" in lawyer and paralegal man-hours and other agency resources on each case? If it cannot answer that question for lack of accountability for resources by each case, why does it lack such accountability procedures? (And ask for an educated guess anyway).

In my view, the frequent losses by the FEC in court are symptomatic of two problems (that also pervade enforcement matters): a prosecutorial culture at the FEC that villainizes respondents (defendants) and cannot give up once it starts to pursue the "bad guys," and the General Counsel's refusal to accept consistently adverse rulings by courts on certain significant legal issues.

Nowhere is the intransigence of the Office of General Counsel more apparent than in the protracted litigation regarding how to define "express advocacy" under the FECA.

In Buckley v. Valeo, 424 U.S. 1 (1976), the U.S. Supreme Court fully reviewed the newly minted FECA. The Court recognized that discussion of public issues would inevitably involve reference to officeholders and candidates, and that "issue advocacy" or other general political speech might be drawn into the type of direct and "unambiguous" support of candidates governed by prohibitions, limitations and disclosure requirements of the FECA. To avoid such ambiguity, the court articulated the "express advocacy" standard: only public communications that expressly advocate the election or defeat of clearly identified candidates come within the jurisdiction of the FECA's restrictions.

Two years later, during the 1978 elections, a small anti-abortion advocacy group distributed voter guides describing the views of candidates. The FEC challenged the distribution of the guides as a contribution by this non-profit corporation. Eight years later, the case was resolved by the U.S. Supreme Court in FEC v. Massachusetts Citizens for Life, 479 U.S. 238 (1986) ("MCFL"). There, the Court specifically held the FECA's prohibition upon political expenditures by corporations applied only to communications expressly advocating the election or defeat of clearly identified candidates, per Buckley.

I will not recount for this committee the lengthy history of the FEC's efforts to circumvent the MCFL decision and later court decisions following it. That effort included revising the definition of "express advocacy" in its regulations, which was rejected by federal courts. *See* Maine Right to Life Committee v. FEC, 914 F.Supp. 8 (D.Me. 1995), *aff'd per curiam*, 98 F.3d 1 (1st Cir. 1996), *cert. denied*, 118 S.Ct. 52 (1997). Notably, the FEC failed twice to convince the Supreme Court to reconsider and overturn its holding in MCFL. Any objective observer would recognize, rightly or wrongly, this issue is settled law. The FEC has lost this one. It's over.[4]

Just last month, however, the Commission voted to accept the recommendation of the General Counsel and to reject a petition from the public to initiate rulemaking that would facilitate the bringing of FEC regulations regarding the "express advocacy" standard into conformity with Maine Right to Life and its long line of precedent. The General Counsel stated its intention to continue to litigate the "express advocacy' standard in federal circuits where the issue has not been decided, to force a Supreme Court rehearing of the issue to resolve "conflicts" in interpretation between the circuits.[5]

*Recommendation #7*: Make them stop. Through the appropriations process, prohibit the FEC from spending any funds on enforcement cases or litigation that rely on or utilize a legal standard for defining "express advocacy" communications that is broader or more inclusive than the standard articulated by the court in Maine Right to Life.

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[4] I would encourage the members of this committee to read the court's opinion in FEC v. Christian Action Network, 92 F.3d 1178 (4th Cir. 1997)("CAN"). There, the court imposed monetary sanctions on the FEC for doggedly litigating the case against respondents despite the clear application of the "express advocacy" standard.

[5] The General Counsel clings to the frayed thread of FEC v. Fugatch, 807 F.2d 857 (9th Cir.), *cert. denied*, 484 U.S. 850 (1987), as its "alternative" interpretation. Furgatch was decided less than a month after, and in apparent total ignorance of, the Supreme Court's decision in MCFL. The General Counsel's strained interpretation of Furgatch was specifically rejected by the CAN decision last year. Proper interpretation of Furgatch has been a subject of contentious disagreement within the Commission for ten years.

Finally, I would note that the promising new legal frontier for the Office of General Counsel is the issue of "coordination" between political groups and candidates. This issue is already dominating the list of enforcement cases activated by the General Counsel. The FEC is already in court with issue advocacy organizations on this issue. The General Counsel wants to define behavior constituting "coordination" between candidates and independent groups broadly, so as to encompass any communications between officeholders/candidates and interest groups that could be remotely viewed as "election-related" (the "any contact" theory). A broad standard for "coordination" would turn independent issue advocacy speech (including voter guides expressly permitted by the FECA) into "contributions" to candidates arguably benefited by such speech (making such speech excessive or impermissible [corporate] contributions retroactively). A broad standard would permit the FEC to engage in wide-ranging and intrusive investigations of contacts between officeholders/candidates and interest groups: subpoenas of memoranda and telephone logs, depositions of staffs of candidate campaigns and issue groups, subjective analyses of motives, etc.

In its legislative recommendations to Congress approved last week, the FEC added a new recommendation inviting Congress to "revise the statute to include a definition of the term 'coordination'" as it applies to candidates and political parties. Congress should accept the invitation. The issue of 'impermissible contact' between officeholders/candidates and independent interest groups involves fundamental First Amendment freedoms of speech and association and the right to petition government. Members of Congress are familiar with the interaction between officeholders/candidates and independent "special interest" or issue advocacy organizations, and can provide

expert perspective on this issue. Moreover, the legal standard for "coordination" that triggers contribution consequences should be supported by clear Congressional intent (rather than driven by prosecutorial zeal). And determining that legal standard should not take twenty years of protracted FEC litigation.

*Recommendation #8*: Because of the constitutional significance of this issue, the FEC legislative recommendation that Congress revise the FECA to define "coordination" should be referred to the House Judiciary Committee for full consideration.

*Enforcement*

The Federal Election Commission issued 24 news releases between January 10, 1997, and February 26, 1998, that made public the Commission's final action on a total of 314 "compliance" (enforcement) cases.[6] Of these 314 cases, 69 cases (22%) resulted in the signing of a conciliation agreement and payment of a civil penalty by at least one respondent. In only 5 cases (1.5%) did the Commission make a finding of "no reason to believe" as to all respondents.[7] In no case (0%), did the Commission make a finding of "no probable cause to believe" against any respondent.[8]

In 215 cases (68.5%), the disposition of the case was simply described as "took no action" as to all respondents. An additional 12 cases (4%) were concluded by a "reason to believe but took no further action" result as to all respondents. Another 12 cases (4%) involved some mix of "took no action," "reason to believe but took no further action," or a "no reason to believe" finding as to various respondents. In sum, 239 cases out of the

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[6] This group represents all FEC news releases regarding the disposition of enforcement cases presently available on the FEC's Internet website.

[7] A "reason to believe" finding is the lower of two Commission determinations and a prerequisite for the FEC to conduct an investigation of the matter beyond information provided in the complaint and responses.

total of 314 cases concluded by the FEC during this period of thirteen months – 76.5% -- resulted in neither a "clearing" of all respondents nor a conciliation agreement and civil penalty as to at least one respondent.[9]

This analysis is consistent with a comprehensive study published last summer by the Fair Government Foundation reviewing all completed enforcement cases released to the public by the FEC during the period of January 1, 1994, through May 12, 1997. That study found that 60% of FEC enforcement cases during that period resulted in either no action taken or a finding of "reason to believe but took no further action."

Amazingly, the FGF study also revealed that cases of self-reported violations (sua sponte cases) resulted in a civil penalty twice as often as other cases (50% versus 25%) and drew a 50% higher average fine; only 14% of sua sponte cases resulted in no action taken. So much for encouraging compliance.

The FGF study further noted the average FEC enforcement case took 19.6 months to conclude during this period – including the 60% of cases in which the Commission took no action. Enforcement cases arising from an audit of a publicly funded Presidential campaign took an average of 68.6 months to conclude during this period.

The time frame covered by the 1997 study of FEC enforcement output by the Fair Government Foundation coincided with implementation of the FEC's much-heralded Enforcement Priority System (EPS). In announcing the EPS program in an FEC news

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[8] A determination by the Commission as to "probable cause" is made following investigation of the matter and the submission of legal briefs to the Commission by the General Counsel and respondents.

[9] Despite the conventional wisdom that FEC enforcement is frequently impeded by "partisan deadlocks" (and despite a vacancy on the Commission), only one case during this time period was reported to have concluded with a "reason to believe" finding but "insufficient votes to proceed." The 1997 FGF study (cited next) also found deadlocked votes occurred in less than one percent of cases.

release of December 13, 1993, then-Chairman Scott Thomas said the Commission had adopted "a sweeping, new approach to enforcing election law." Thomas went on to say:

> At the heart of this new system is the principle that we are going to operate more efficiently by pursuing the most significant cases. We cannot, and should not, attempt to fully investigate and resolve each and every one of the hundreds of cases that come before us... Our new approach will better enable the FEC to work on a wide range of cases at all times...

The FEC has certainly kept its word to 'not resolve each and every one of the hundreds of case that come before us.' And judging from their record over the past thirteen months, the trend is getting worse.

In response to questions from this committee, the FEC describes its criteria for pursuing enforcement cases under EPS as follows (response to Question 8):

> The Enforcement Priority System (EPS) rates all incoming cases against objective criteria to determine whether they warrant use of the Commission's limited resources. Because the ratings are crucial to the Commission's decisions regarding its prosecutorial discretion, as with other law enforcement thresholds, the specifics of the rating criteria are not public. However, the Commission has made public the general elements covered by the EPS ratings. Those elements are: Respondents/Players; Impact on the Process; Intrinsic Seriousness of the Violations; Topicality of the Issues or the Activity; Development of the Law; Subject Matter; and Countervailing Considerations.

Do those seven elements sound like "objective criteria"? Though the operation of EPS is 'secret,' I am convinced this priority system has become a means for the General Counsel to pick and choose cases it wants to pursue. This system permits the General Counsel to load the "ratings" with subjective determinations. Reliance on the cited "elements" under EPS allows the General Counsel to focus on a few cases involving favorite issues for which it wants to push the jurisdictional envelope ( such as "express advocacy" and "coordination") that happen to coincide with major litigation endeavors. It allows the General Counsel to go after political activity ("impact on the process") and

political participants ("players") of which it subjectively disapproves and about which it wants to make a statement. The system could not be less objective.

But the worst effect of this case priority system is how it has turned enforcement and compliance priorities upside down. It gives extraordinary attention to a few juicy enforcement cases, and deliberately neglects a vast number of "routine" cases. The basic "bread and butter" aspects of the law (which affect the broadest range of the regulated community and for which there is generally wide agreement on what the law says) are ignored in favor of exploring the frontiers of the law or only going after big fish.[10] That outcome, evident from whole batches of FEC cases being regularly dismissed, does not serve the goal of effectively deterring violations and encouraging compliance across the board. FEC enforcement is not a general store; it is a boutique.

Importantly, under EPS, the Office of General Counsel – not the Commission-- decides which cases to "activate" or "deactivate." The Commissioners have been relegated to merely ratifying the General Counsel's decisions about case priorities (or forcing a contentious and usually futile debate). I suspect the EPS system, as it has been revealed in operation, would never be supported by four votes at the Commission now.[11]

*Recommendation #9*: Request a formal report from the Commission identifying the current objectives of the Enforcement Priority System, evaluating its performance over the past four years in achieving those objectives, describing the impact of EPS on goals of enforcement and compliance and suggesting potential improvements to the system. Require the Office of General Counsel to provide to the GAO auditors, under confidential

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[10] This approach is particularly misguided in a field of regulation where political participants may only come within the agency's jurisdiction occasionally or for brief periods, and where the subject of the regulation is constitutionally protected political speech and activity.

[11] Like every other aspect of the Commission's performance, status quo practices at the FEC (as evolved through custom or implementation) cannot be changed without four votes to change them. Bad practices cannot be stopped without four votes to stop them. If half the Commission routinely supports the legal or administrative approach of the Office of General Counsel, the status quo prevails.

and secure conditions, all EPS reports to the Commission, "ratings" worksheets and related materials.

The supposed need to dismiss three-fourths of FEC enforcement cases and focus on a few has another interesting consequence. Last year, in a letter from the Chairman of the FEC responding to inquiries by Congresswoman Carolyn Maloney, the FEC said it could no longer enforce many basic provisions of the law because of a lack of staff and funding. Yet the FEC stated that only 94 enforcement cases were currently activated. The enforcement section of the Office of General Counsel employs 24 staff attorneys, five team leaders (attorneys) and one Associate General Counsel for Enforcement (an attorney). Not counting that section's nine paralegals (some of whom handle their own cases), that works out to about three active cases per attorney.

I recall that during my time at the FEC, attorneys in enforcement were said to have a caseload of 12-15 cases each at any given time. That makes sense in terms of work flow, since cases are constantly in different stages of stop and go. But three cases per lawyer? That seems a preposterously inefficient concentration of lawyers on a few cases. The amount of "green paper" reports to the Commission for enforcement matters appears to have slowed to a trickle since the time I worked at the FEC (reviewing such reports was a primary obligation and time consumer for Commissioners' offices). Now the Commission reviews fewer cases, and holds fewer "closed" meetings on enforcement.

The environment for representing clients before the FEC has become increasingly bizarre. Predicting FEC prosecution of cases is now a roulette wheel. Those of us who practice law in this field, even those with considerable knowledge of the FEC, can no longer describe to a client the likely course of a case and its probable disposition with any confidence. There is more than a 75% chance the case against your client will eventually

be dismissed without any investigation or action (even if you were willing to admit some inadvertent violation and pay a reasonable penalty). But there is also a greater than 20% chance the FEC will come down on you like a ton of bricks. Months or even years after filing your response to a complaint, you get a letter from the FEC telling you which of these is your fate. No news is usually good news, because they tend to sit on cases a long while before voting to take no action, but not always.

In my view, the most remarkable statistic about the disposition of enforcement cases (presented at the beginning of this section of testimony) is too easily overlooked. Of the 314 FEC cases released to the public from January 1997 and February 1998, not a single one involved a finding of "no probable cause" by the Commission. In not one case did the General Counsel and the Commission agree, following a lengthy investigation and full briefing, that an insufficient basis existed in law or fact for the Commission to determine the respondents had violated the FECA.

The following viewpoint will sound too sweeping and subjective. But my own experience inside and outside the FEC, and the experiences shared with me by many colleagues in the legal profession, have convinced me that the prosecutorial culture within the FEC's Office of General Counsel is horribly out of control. Politics is dirty. Political fundraising is organized extortion and bribery. A free marketplace of political ideas favors greedy special interests. The First Amendment is an impediment to proper regulation of political activity, and the courts that invoke it must be circumvented.

The anti-politics and pro-regulation bias of the General Counsel is complemented by a zealous drive to punish political activity and participants of which it disapproves. The General Counsel's reports to the Commission, the 'factual and legal analyses' that

accompany "reason to believe" findings, their "probable cause" briefs and even legal briefs filed in litigation are often filled with subjective characterizations and pejorative language about the motives and general worthiness of respondents and their choice of political action. Reports and briefs become little morality plays. Cases are reduced to "these are bad people doing bad things." Lawyers shake their heads in disbelief at the villainization of their clients.

Naturally, when it becomes a fight between good and evil, the attorneys in the Office of General Counsel become emotionally invested in punishment outcomes. Investigations and "discovery" become weapons of prosecution: document requests are intrusive and a crippling distraction for recipients; witness depositions are protracted.

Is it any wonder, by the time a case reaches the Commission for a determination of "probable cause," that the outcome is never a finding of "no probable cause"? The report of the General Counsel accompanying a "probable cause" recommendation (in which they get to evaluate the relative merits of their brief versus respondents') almost never gives credit to respondents for any point raised in respondents' brief. Practitioners before the FEC realize there is almost no chance of convincing the General Counsel of anything, but hope one or more of the Commissioners may look favorably on their defense.

FEC concentration of lawyer time and other resources on only a few enforcement cases exacerbates the attitudinal problems in the Office of General Counsel. Attorneys in the enforcement section become even more invested in their narrow range of activated cases, unwilling to give an inch or let go of anyone in cases not abandoned to "take no action." Negotiations over conciliation agreements and civil penalties become a higher stakes game. Respondents have always had to calculate the cost of fighting FEC

allegations, including litigation expenses, in determining whether to fight or simply admit a violation and pay a fine. I suspect now those calculations are slanted even more in favor of settlement, since the Office of General Counsel has the time and resources to build a massive factual case and put a negative spin on it, and is more adamant about pursuing it (irrespective of legal merit).

But do not simply take my word for it that the prosecutorial culture of the FEC is heavy-handed, arbitrary and obsessive, or that current FEC enforcement practices work against deterring violations or promoting legal compliance. And do not take the FEC's word for it that I am wrong.

*Recommendation #10*: This committee should send a questionnaire to all attorneys who have represented clients in FEC enforcement and litigation matters during the past five years, and strongly urge them to complete it – under assurances of confidentiality -- to assist your oversight effort. The questions should explore their experiences dealing with the Office of General Counsel and ask their opinion about the practices and professionalism of that office. A breakdown between attorneys who often handle FEC cases and those who do so only once or twice because of a particular client would be helpful. Comparisons to other independent agencies should be encouraged. The results of this inquiry should form the basis for a further oversight hearing.

*Responsibility of FEC Commissioners*

I began this testimony by saying Congress should engage in far more oversight of the FEC than it traditionally has conducted. But Congress is not the only institution that should accept greater responsibility for the problems at the FEC. So should FEC Commissioners. Congress can encourage that result through ongoing oversight of the FEC, and holding FEC commissioners accountable for failed performance.

Every one of the five sitting Commissioners has been at the agency for at least fifteen years.[12] The only FEC seat that has had some turnover has now been vacant for two and a half years.[13] Two Commission terms expired in April 1995 and two more expired in April 1997; three Commissioners are serving past expiration of their terms pending new appointments by the U.S. Senate (the fourth seat is vacant). The members of the FEC are good, well-intentioned public servants. But you would have to drive to Luray Caverns to find a bigger example of calcification than the FEC.

At a time when the FEC is widely criticized for ineffectiveness, the case for new blood and new ideas at the Commission could not be stronger. The White House and Senate need to complete action on FEC appointments soon.

From the perspective of this committee and recommendations resulting from this hearing, serious consideration should be given to suggesting specific amendments to the FECA that would give more direct authority and operating control to the Commissioners for FEC enforcement and litigation functions. The Fair Government Foundation will be offering specific proposals in the near future for legislative changes to enhance the management role of the Commission and the efficiency of the Office of General Counsel. These proposals will include placing a statutory timeline for completion of each phase of the enforcement process (e.g., requiring the General Counsel to recommend a finding of "reason to believe," "no reason to believe," or "take no action" within 90 days of receipt

[12] Commissioner Joan Aikens was appointed to the original FEC in 1975 and appointed to the reconstituted Commission in 1976 (following *Buckley v. Valeo*, 424 U.S. 1 (1976)). Scott Thomas first worked in the Office of General Counsel in the early days of the FEC and then as Executive Assistant to a Commissioner; he was subsequently appointed a Commissioner in 1986. John Warren McGarry was first appointed in 1978. Commissioners Danny Lee McDonald and Lee Ann Elliott were first appointed in 1981.

[13] Commissioner Trevor Potter resigned his seat in October 1995.

of the responses to a complaint) and instituting a two-Commission-member review panel for all legal briefs to be filed in court by the FEC.

*Recommendation #11*: Call the FEC commissioners before a hearing by this subcommittee to obtain their views on the problems at the agency and their proposals for solving these problems, and ask for suggestions from them as to how their control over the enforcement and litigation functions of the FEC could be augmented.

*Conclusion*

The Federal Election Commission has not undergone intensive Congressional scrutiny since its inception in the mid-'70's. Therefore, the agency has not itself engaged in fundamental reevaluation of its mission and operations, and has been able to resist any change in basic philosophy or approach – despite adverse court rulings and declining enforcement performance.

The agency responsible for implementing the federal government's regulation of First Amendment rights of political speech and association should no longer be neglected by Congress. This committee should begin the process of moving the FEC into the 21st century as a more efficient and restrained regulatory body.

Mr. HORN. Thank you. You've got a very thorough and detailed statement, and we appreciate that.

Our next witness is well-known on Capitol Hill, Becky Cain, the president of the League of Women Voters.

Ms. Cain.

Ms. CAIN. Thank you, Mr. Chairman and members of the subcommittee.

I am Becky Cain, and I am president of the League of Women Voters of the United States. On behalf of the League, I'm delighted to be here today, Mr. Chairman, to relate our views on the Federal Election Commission.

The FEC is the watchdog agency charged with providing Federal election information to the public and ensuring the integrity of the election system by enforcing campaign finance law. Only timely public disclosure of campaign finance information, combined with credible and effective enforcement of the law, can assure the public that our electoral system is both open and honest. A weak and ineffective FEC does tremendous damage to our entire electoral process and undermines the public's confidence in Congress.

Because the Commission is charged with regulating the campaign activities of the same officials who must approve its budget, the annual appropriations process is sometimes often a harrowing experience. Recently, we have seen money, as has been mentioned earlier, we have seen money flow freely for congressional investigations of campaign finance abuses. We've also heard some congressional opponents of campaign finance reform claim that the only necessary response to these abuses seen in the last election cycle, in particular, is to enforce current law.

Without a doubt, the law should be vigorously enforced, but this rhetoric is hard to square with the fact that the FEC, the agency responsible for enforcing those campaign finance laws, received the appropriations equivalent of a starvation diet last year. Although the Commission received an increase in its 1998 budget, it was all nearly fenced in for computer modernization only. While we are pleased that this money will help with disclosure, Congress must recognize that the FEC has enforcement responsibilities.

Recently, there's been a dramatic increase in the practice of case-dumping, where the Commission drops, eventually, potentially significant cases due to a lack of resources. In all of fiscal year 1997, 133 cases were dumped. So far in this fiscal year, 1998—and it is only March—118 cases have been dumped.

Cases are dumped for two reasons: one, because they are deemed to be low priority; or because they have grown stale. So-called "stale" cases are those that have grown old waiting for staff to become available to pursue them. Stale cases are the more disturbing of the two, because they are dumped even though they may involve significant violations of the law.

Since 1993, when this system was initiated, there has never been a fiscal year when stale cases represented a majority of dumped cases. This fiscal year, however, 62 percent of the cases dumped so far have been stale. Who knows how many violations of the law have gone unpunished because the FEC lacks the resources it needed to conduct thorough investigations?

We believe that Congress must act to determine whether it wants an effective campaign finance watchdog, if it wants one, or if it wants a toothless one. The League urges members of the committee to support full funding for the Commission.

The Congress should also look for long-term solutions that would shield the FEC from political attacks during the appropriation process and will consistently provide it with resources it needs to carry out its mission. Moving from an annual appropriation to a 2-year or even longer term funding is one possibility. Congress should also consider some independent funding sources, such as a modest filing fee for campaigns and related committees.

Reasonable measures to improve disclosure and enforcement should also be considered. Disclosure would be tremendously improved, as you've already heard from several others, by making electronic filing mandatory, as opposed to the current voluntary system. From the public's point of view, mandatory electronic filing would allow citizens and journalists to have important election information on a real-time basis. Also, on the disclosure front, Congress should consider requiring that a campaign has provided all requisite contributor information, that it has proven that it has, and that until it has, it cannot put a contribution into an account other than an escrow account where the money can't be spent.

Measures to help ensure compliance with campaign finance laws are also important. The FEC should be able to conduct, as has been mentioned earlier, random audits of House and Senate campaigns to encourage voluntary compliance. Additionally, Congress should examine proposals to allow for the possibility of private legal action when the Commission is unable to act, and the prospect of immediate and irreparable harm can be clearly demonstrated. In far too many cases, the FEC is simply incapable of providing meaningful, timely relief.

Congress should also consider structural changes. Because the FEC is composed of three commissioners from each party, with four votes required for any action, frequent partisan deadlock is inevitable. One possible solution is to appoint an odd number of commissioners.

The odd commissioner could be selected by the other members of the Commission, subject, of course, to Presidential approval and advice and consent of the Senate. Having an additional independent commissioner would substantially reduce the likelihood that the FEC would be hamstrung when dealing with contentious partisan issues.

Finally, we would like to congratulate the Congress for taking steps to limit commissioners to single 6-year terms. Thank you very much. It is our hope that this change in the law will increase the independence of the commissioners and help reassure the public that they are acting to enforce the law, not ensure their own reappointment.

An effective FEC can benefit Congress as a whole like no other Federal agency does. With strong congressional support, it could help remove the stigma of money buying influence behind closed doors. That's why Congress, in its wisdom, passed the campaign finance laws the FEC was established to implement and enforce. The League believes it's time to respond to the needs of the public by

fully funding the Commission and providing it with the tools it needs to carry out its mission.

Thank you very much, Mr. Chairman.

[The prepared statement of Ms. Cain follows:]

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Testimony
Before the Subcommittee on Government Management, Information and Technology
of the Committee on Government Reform and Oversight
On the Federal Election Commission
By
Becky Cain, President
League of Women Voters of the United States

March 5, 1998

Thank you Mr. Chairman and members of the Committee. I am Becky Cain, President of the League of Women Voters of the United States. On behalf of the League, I am delighted to be here today to relate our views on the Federal Election Commission, its effectiveness, and the need to strengthen its disclosure and enforcement capabilities. We firmly believe that the strength and effectiveness of the FEC cannot be separated from the public's interest in fair and open elections.

The League of Women Voters of the United States is a non-partisan citizen organization with 150,000 members and supporters in all fifty states, the District of Columbia and the Virgin Islands. For over 75 years, Leagues across the country have worked to educate the electorate, register voters and make government at all levels more accessible and responsive to the average citizen.

The Federal Election Commission is a small, bipartisan agency that is charged with a very important job. Established in the wake of the presidential campaign finance scandals of the Watergate era, the FEC is the watchdog agency charged with providing federal elections information to the public, and ensuring the integrity of the election system by enforcing campaign finance law. Only timely public disclosure of campaign finance information combined with credible and effective enforcement of the law can assure the public that our electoral system is open and honest. An FEC that is weak and ineffective does tremendous damage to our entire electoral process and undermines the public's confidence in the Congress.

Because the FEC is charged with regulating the campaign activities of the same officials who must approve its budget, the annual appropriations process is often a harrowing experience for the Commission. Recently, we have seen money flow freely for congressional investigations of campaign finance abuses. We have also heard some congressional opponents of campaign finance reform claim that the

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only necessary response to the abuses seen in the last election cycle is to enforce current law. Without a doubt, the law should be vigorously enforced. But this rhetoric is hard to square with the fact that the FEC, the agency responsible for enforcing campaign finance law, received the appropriations equivalent of a starvation diet last year.

Although the FEC did receive an increase in its fiscal 1998 budget, nearly all the increase was fenced for computer modernization. While we are pleased that this money will help improve disclosure, it is important that the Congress recognize that the FEC also has enforcement responsibilities.

The 1996 election cycle generated a third more complaints to the FEC than the previous cycle. Recently, there has been a dramatic increase in the practice of case dumping, where the FEC drops even potentially significant cases due to a lack of resources. In all of fiscal year 1997, 133 cases were dumped. So far in fiscal year 1998 – it is only March -- 118 cases have been dumped. Cases are dumped for two reasons. Because they are deemed to be either low priority, or because they have grown "stale." So-called stale cases are those that have grown old waiting for staff to become available to pursue them. Stale cases are the more disturbing of the two, because they are dumped even though they may involve significant violations of the law. Since 1993, when the FEC initiated its Enforcement Priority System, there has never been a fiscal year when stale cases represented a majority of dumped cases. This fiscal year, however, *sixty-two percent* of the cases dumped so far have been stale. Who knows how many violations of the law have gone unpunished because the FEC lacks the resources it needs to conduct thorough investigations? What message does this send to the regulated community?

At a time when the average FEC investigation can run as long as four and a half years, when only a handful of lawyers and investigators are available to handle an enormous backlog of complaints, and when those who break campaign finance laws stand little chance of being caught, and even less chance of receiving a punishment commensurate with their violations, we believe the Congress must act to demonstrate that it wants an effective campaign finance watchdog, not a toothless one. The League urges the members of this committee to support full funding for the FEC.

The Congress should also look for long term solutions that will shield the FEC from personal or political attacks during the appropriations process and will consistently provide it with the resources it needs to carry out its mission. Moving from an annual appropriation for the FEC to two-year or even longer term funding is one possibility. Congress should also consider an independent funding source for the FEC, such as a modest filing fee for campaigns and related committees. These measures would go a long way towards providing adequate and more stable funding for an agency that is vital in maintaining public confidence in the integrity of our campaign system.

In addition to creating a less vulnerable and erratic funding mechanism for the FEC, Congress should consider reasonable measures to improve the disclosure and enforcement capabilities of the FEC. Disclosure would be tremendously improved by making electronic filing mandatory, as opposed to the current voluntary system. A recent survey of those required to file reports with the FEC demonstrated that the vast majority of filers already have the capacity to do so electronically. In fact, seventy percent of those who responded to the survey believed that electronic filing would actually save them time after the initial setup period. From the public's point of view, mandatory

electronic filing would allow citizens and journalists to have important election information on a real-time basis.

Also on the disclosure front, Congress should consider adding a requirement that until a campaign has provided all the required contributor information to the FEC, it cannot put a contribution into any account other than an escrow account where the money cannot be spent.

Measures to help ensure compliance with campaign finance laws are also important. Just as American taxpayers are subject to random audits by the Internal Revenue Service, the FEC should have the authority and resources necessary to conduct random audits of House and Senate campaigns to encourage voluntary compliance. Additionally, Congress should examine proposals to allow for the possibility of private legal action where the FEC is unable to act by virtue of deadlock or administrative delay, and the prospect of immediate, irreparable harm can be clearly demonstrated. In far too many cases, the FEC is simply incapable of providing meaningful, timely relief. There is also a need to streamline the process for allegations of criminal violations, perhaps by creating more shared procedures between the FEC and the Justice Department, and fast-tracking the investigation from the FEC to Justice if significant evidence of fraud exists. These proposals are contained in a package of reforms suggested by a group of scholars led by Norman Ornstein of the American Enterprise Institute and Thomas Mann of the Brookings Institute, the goals of which the League has endorsed.

The Congress should also consider making structural changes to the FEC. Because the FEC is composed of three commissioners from each party, with four votes required for any action, frequent partisan deadlock is inevitable. One possible solution is to appoint an odd number of commissioners. The "odd" commissioner could be selected by the other members of the Commission, subject to presidential approval and the advice and consent of the Senate. Having an additional, independent commissioner would substantially reduce the likelihood that the FEC will be hamstrung when dealing with contentious partisan issues.

Finally, we would like to congratulate the Congress for taking steps to limit FEC Commissioners to a single six year term. It is our hope that this change in the law will increase the independence of FEC Commissioners, and help reassure the public that commissioners are acting to enforce the law, not ensure their own reappointment.

While the League is aware that the FEC is not a popular agency with some Members of Congress, its effectiveness can benefit Congress as a whole as no other federal agency does. With strong congressional support, the FEC could help remove the stigma of money buying influence behind closed doors. That is why Congress in its wisdom passed the campaign finance laws the FEC was established to implement and enforce.

A strengthened FEC could play an important role in raising public trust in government from the alarmingly low levels to which it has sunk. The League believes it is time to respond to the needs of the public by fully funding the FEC and providing it with the tools it needs to carry out its mission successfully.

Mr. HORN. We thank you.

Our last panelist is Frank Reiche, and we're delighted to have you here. I know you've been a former commissioner and chairman of the Commission, and we look forward to your testimony. You don't have to read it; we'd like you to summarize it. We've read it, so just summarize it, if you would. And then we're going to break for a recess and have questions after the recess.

So go ahead, Mr. Reiche.

Mr. REICHE. Thank you very much, Mr. Chairman, and I thank the members of the subcommittee for inviting me.

I do plan to summarize it. As you know, I approach this subject from the perspective of one who has served both as a member of the Federal Election Commission and also as the first chairman of the New Jersey Election Law Enforcement Commission.

Stated succinctly, our Federal campaign finance system is in disarray and desperately needs to be changed if we are to restore credibility to the process by which we finance and elect Federal candidates. The excesses of recent Federal elections illustrate the extent to which both the letter and spirit of the Federal Election Campaign Act have been undermined. This is particularly true with respect to the dramatic increase in soft moneys and the heightened pressure on candidates to amass higher and higher campaign war chests.

While the purpose of today's hearing is to evaluate the operations of the Federal Election Commission, we must not lose sight of the fact that sweeping changes in the law itself need to be considered if we are to address existing problems. Meaningful change requires that we have in place an efficient agency respected for its timely, even-handed administration of our campaign finance laws.

As one who has great affection for the FEC and for the people who work there, I wish I could affirm that the FEC, as presently constituted, is just such an agency. Unfortunately, I cannot say this, although I hasten to note that the Commission's shortcomings are not, in many instances, attributable to the Commission itself. I tend to agree with those who believe that the Commission has performed creditably in the disclosure area. I nevertheless share the concerns expressed by many that the Commission's enforcement record has been marked by seemingly endless delays and the occasional appearance of partisanship.

Whether this perception of partisanship has any basis in fact is for others to judge, but the existence of such a perception, in and of itself, damages the credibility of the Commission and credibility is critical, if the Commission is to discharge its duties effectively.

With respect to disclosure, my principal suggestion would be the expenditure of some additional funds in order to ensure that the Commission and those involved in the financing of Federal elections take advantage of the technology that is available in order to speed the flow of campaign finance data to the electorate before—and I emphasize "before"—they go to the polls.

In this connection, I notice Kent Cooper's comment to the effect that the Commission itself will probably not achieve this, but if we do take advantage of technological changes, then it is possible. This also suggests that the reporting dates be reviewed.

Turning to enforcement matters, the old cliche, "Justice delayed is justice denied," applies all too frequently to Commission decisions. Ways must be found to expedite such matters as the audit of Presidential campaigns and the processing of alleged violations of the act. Some State campaign finance agencies have pioneered in this field by formulating a traffic ticket approach to the handling of lesser violations.

It may appear as if the fault here lies exclusively with the Commission, but such is not the case. Congress, in devising the act, created a series of procedural safeguards that have contributed toward the extended delays that have characterized the Commission's deliberations. We must review the appropriateness and the efficacy of these procedures.

As regards the structure of the Commission itself and changes which might be considered to improve its image and expedite the handling of matters before it, I would make the following suggestions.

One, the appointment process should be reviewed so as to minimize the participation of Congress in the making of appointments to the Commission. Congressional domination of this process has contributed toward the perception that FEC commissioners serve as representatives of their respective political parties. This perception has indeed tarnished the credibility of the Commission.

I would favor centralizing the authority for making appointments to the FEC in the President, where it now resides theoretically, but not practically. This does not guarantee the appointment of outstanding nominees to the Commission, but it would at least establish accountability for such appointments.

Two, I would recommend the establishment of an independent advisory board to make recommendations to the President regarding nominees to the Commission.

Three, I would abolish the rotating chairmanship of the Commission and would suggest that an incoming president appoint a chairman for 4 years, coupled with the requirement that the individual so appointed be from a different political party than that of the President.

Four, I would strengthen the role of the chairman, particularly as regards the supervision of meeting agendas, greater involvement in the daily administration of the Commission working closely with the staff director, and responsibility for Commission budgets.

Five—and I think I differ slightly from my new friend on the right here—I would maintain an even number of commissioners. Based upon my experience on the Federal and State levels, it is not the number, but rather the independence, actual and perceived, of the commissioners that makes a difference.

Last, six, I would also suggest that the Commission be shifted to a 2-year budget, as has been suggested before, which would permit greater long-range planning and integration with a 2-year election cycle.

The most urgent need, in my opinion, however, is for the creation of an independent commission to study existing laws, practices, and procedures, as well as the Commission itself. I have advocated the creation of such a commission for more than 10 years and believe

that recent events on the Senate side of the Capitol confirm the desirability and timeliness of such a study now.

As a matter of fact, Congressman Rick White and the Chair of this subcommittee have proposed the establishment of such a Commission, a move I strongly support. I would, however, suggest that appointments to that Commission be made not by partisan leaders in the Congress, but rather by the President. Even though Congressman White's bill would exclude sitting Members of Congress and would require the appointment of at least one-third of individuals who are not actively associated with either party, the political realities indicate that anyone so appointed would be a political partisan.

[The prepared statement of Mr. Reiche follows:]

Testimony of Frank P. Reiche
Before the Sub-Committee on
Government Management, Information, and
Technology of the Committee on Government
Reform and Oversight

March 5, 1998

I appear before you this morning as a Former Commissioner and Chairman of the Federal Election Commission (FEC) and as the first Chairman of the New Jersey Election Law Enforcement Commission (NJELEC). I have maintained an active interest in the financing of our Federal and State elections for the last 25 years and have continued my contact with legislators and others in this field in an effort to secure the adoption of statutory and regulatory changes affecting campaign finance in the United States.

As one who cares deeply about the effectiveness of the system, I am concerned over the abuses and undermining of campaign finance laws that was evident not only in the 1996 election cycle, but also prior thereto. I refer in part to the influx of substantial "soft monies" and to other violations of the letter and spirit of the Federal Election Campaign Act (FECA). Clearly, this is a system that is broke and must be fixed.

There are those to whom the expenditure of unlimited sums on political campaigns is acceptable while others favor prescribed spending limits. I favor a balanced approach. On the one hand, the perceived need for incumbents and challengers to spend substantial amounts of time pursuing campaign funds not only discourages many able potential candidates from entering the political arena and detracts from candidates' concentration on the issues, but also lends credence to the charge that access to officeholders can be bought by political contributions, particularly collective contributions by special interest groups. On the other hand, challengers and incumbents themselves must be able to raise sufficient sums to wage effective campaigns. Is it possible to balance these competing interests? I believe it is.

One thing is certain--even if we had in place a reasonable law susceptible of even-handed application to candidates, parties and political committees, no law or set of regulations, no matter how perfect, may be equitably and effectively applied unless the agency responsible therefor has the legal and administrative capability and the will to do so, all of which brings us to a consideration of the FEC as it is presently structured. Although

the FEC has traditionally received considerable praise for its disclosure activities, its enforcement record has been criticized. Ways must be found of shortening the time required to audit Presidential campaigns and expediting the processing of complaints before the Commission. The inordinate amount of time heretofore spent on such matters is simply not acceptable. Other campaign finance agencies throughout the country have found ways of dispensing justice within a reasonable period. While the considerations involved in administering campaign finance laws on the Federal level are more complex, there are lessons to be learned by examining the approaches adopted by many State campaign finance agencies.

As individuals, we are prone to look back upon activities in which we have been involved as part of a second guessing process. This is true of my time on the FEC. While I tried to encourage the expeditious handling of matters before the Commission, in retrospect, I believe I did not push hard enough. The old cliche that 'justice delayed is justice denied' all too frequently applies to cases and other matters before the FEC.

In fairness to the Commission, it should be pointed out that many of the procedures that have resulted in seemingly endless delays were built into the Act by Congress. I refer, for example, to the provisions governing the finding of reason to believe and probable cause to believe. These have been effectively utilized by lawyers to protect their clients, but the end result has been to delay final decisions in many matters. We must re-examine these statutory provisions to determine if there is a more efficient way of providing due process in timely fashion.

Before considering various suggestions for the re-structuring of the FEC, I would like to emphasize the importance of public credibility for such an agency. This is particularly true in the enforcement area. As I have frequently stated, one cannot expect that all of the decisions rendered by campaign finance agencies will meet with universal approval. The best you can hope for is that they will be respected.

To win such respect, a commission must establish a reputation for non-partisanship in enforcement. Unfortunately, the FEC is viewed as being far more partisan than its State counterparts. Whether this reputation is deserved or not, it still affects the credibility of the Commission and its ability to function effectively. It is noteworthy that a number of the high profile cases that have come before the Commission have been decided along partisan voting lines.

Query--what changes can be made to improve the performance and credibility of the Commission? As noted above, the Commission's disclosure record has won many plaudits, with one of the few reservations being the timeliness of the availability of campaign data (resulting at least in part from limitations, financial and otherwise, in the Commission's ability to produce such information and make it available to the electorate before they go the polls). Perhaps the timing of reports and the form in which they are made available to the public should be reviewed to determine if some modest increase in funds allocated for this purpose might improve the public's knowledge of such matters.

On the enforcement side, it is time to review both the statutory procedures established by Congress and the Commission's internal processes. In addition to the delays noted above, there is the problem of finding a way in which complaints arising during latter stages of campaigns can be resolved fairly and expeditiously. Many States have developed procedures for handling such matters.

Furthermore, it appears as if the Commission generally, and the Commissioners individually, remain involved in virtually every enforcement matter that comes before the Commission. Some of these cases simply should not command the time they presently take. In New Jersey we developed a "traffic ticket" system for processing complaints involving relatively minor violations. I see no reason why a similar system could not be developed on the Federal level.

The sense of direction that drives the Commission or any other independent governmental body emanates from the top. It is important in my view that the Commissioners participate actively in developing streamlined procedures which will provide due process and at the same time dispense justice promptly. The delays that have characterized the Commission's post-campaign enforcement efforts previously must be deemed unacceptable by the Commissioners themselves and this unacceptability must be communicated to those involved in such matters.

Any effort to improve the Commission must inevitably include reference to the appointment process. It is a process that has become highly partisan over the years which naturally leads to the perception that Commissioners sit as representatives of their respective political parties. Congress has traditionally considered the FEC a partisan body. Senators have been known to use confirmation hearings to affirm the partisan nature of the Commission. The disturbing feature of such comments is not only its affirmation of partisanship, but more particularly its

reinforcement of the notion that such partisanship is, in the eyes of Congress, a reflection of what the Commission should be. This tradition of partisanship is in marked contrast with the less partisan and sometimes non-partisan traditions of many State campaign finance agencies.

As you know, the appointment process is presently dominated by Congress through the submission of "approved" lists to the President. We must find ways of limiting Congressional involvement in such matters. I would suggest that appointments be left to the President, subject to the current limitations on representation by either major political party. To be sure, there is no guarantee that if the President were primarily responsible for making such appointments, this would ensure the nomination of capable people to the FEC. It would, however, at least establish accountability for such appointments, something that is missing at present.

Perhaps an independent advisory board could be established to make recommendations to the President regarding qualified individuals to serve in this capacity. Here again, many States have traditionally minimized partisanship in the making of appointments to campaign finance commissions, thereby increasing the credibility of such commissions. I cannot overemphasize the importance of limiting Congressional participation in this process.

Questions have been raised in the past concerning the length of service for FEC Commissioners. I have long held the belief that one term is enough and thereby frees Commissioners from any actual or perceived pressures generated by the re-appointment process. I therefore applaud Congress' enactment last year of a provision that will in effect limit Commissioners to one six-year term.

Another provision of the Act that is a source of concern to me is the existence of a weak, rotating chairmanship. As one who has experienced both the weak chairmanship of the FEC and a stronger chairmanship in New Jersey, I would urge that the FEC chairmanship be strengthened. The required rotation of chairmen at the FEC deprives the Commission of stability and continuity. While there obviously must be limitations on the powers of the Chairman, a rotating chairmanship not only ensures a weak chairmanship, but also contributes toward a weak Commission.

I would favor increasing the powers of the Chairman with respect to such matters as supervision of meeting agendas, direct involvement in the day-to-day administration of the Commission

(working closely with the Staff Director) and greater responsibility for the preparation of Commission budgets. With respect to the chairmanship, and in an effort to preserve the delicate political balance on the Commission, we might consider having the President, when he or she takes office, appoint a Chair of the FEC for a 4-year term and further require that such appointment be someone from the opposing major political party. This would probably require certain transitional provisions, but I do not see this as a major obstacle.

Some people question the wisdom of having an even-numbered commission and suggest the addition of a seventh Commissioner so that ties can be broken. That is frankly not my experience. Both the FEC and the New Jersey Commission have an even number of Commissioners. This fact did not, however, hinder or in any way limit the ability of the New Jersey Commission to reach a decision, even on sensitive political matters. Based upon my Federal experience, I would suggest that it is not the number, but rather the independence, actual and perceived, of the Commissioners that makes a difference.

One other idea worthy of mention at this point is the financing of Commission operations. I would favor shifting to a two-year budget that would ease the fiscal pressure and permit better long-range financial planning by the Commission. Perhaps the experience of various State legislators would be helpful in this regard.

As I survey the campaign finance scene, I am more convinced than ever that we urgently need to have an independent commission, presidentially-appointed, to study all facets of our campaign finance system and to report back to the President and the Congress within eight or nine months, including recommendations for changes in the laws and their application. If such a commission were appointed, and if those serving on it were generally respected as fair, politically knowledgeable and truly independent individuals, I believe there is hope that we might restore confidence in our campaign finance system. It is essential that no one appointed to such a commission be deemed to represent any specific political constituency, but instead that he or she be an individual recognized as having experience in this area and a person of unimpeachable integrity. There are such people in our country who could, and I believe would, be willing to serve for the limited period required.

I applaud Congressmen Rick White, Stephen Horn and others who have proposed a commission to study our campaign finance system. Their proposal to eschew the appointment of sitting

Members of Congress to such a body is commendable, but I would carry this process one step further and centralize in the President the authority for making such appointments. If, instead, they are made by partisan leaders in the Congress, it will be difficult to limit the partisanship of this commission.

I hasten to note that the existence of such a panel would not guarantee the wisdom of all its recommendations, nor their adoption by Congress. It would, however, ensure that the expertise and collective judgment of an experienced and respected group of individuals would be made available to the Congress and the President. I urge you to support the formation of such a commission.

Mr. HORN. Yes. OK. I thank you very much. That's a thoughtful statement.

Pursuant to our previous announcement, we will stand in recess and begin the questioning at 1:30. Now, for those of you not familiar with this building, the Rayburn cafeteria is below us in the basement, and you are welcome to their gourmet meals.

[Recess.]

Mr. HORN. The subcommittee will come to order, a quorum having been established this morning.

We thank you for bearing with us. We got rid of another vote, so we didn't have to interrupt you. This should have been the last vote of the day, although I note a privileged resolution has been brought before the House, and it could be a forced vote that we have to contend with.

Let me ask you some—and when I ask a question of, say, a particular person, I would welcome your comments, if you disagree with that person, feel free to get them all on the record. We're here searching for information, and you all have spent a lot of time looking at FEC operations.

Let me just say, what will be the effect of the term limits recently imposed? I gather from some of your testimony you feel that will make the Commission more independent. But one could say that even though you only serve one term there, if you're looking to curry favor with the White House, no matter who's in power—and we see that everywhere I might add, regardless of administration—you might well be tilting all the decisions to whoever is in power in the White House, hoping to be a Federal judge, or whatever.

I'd be interested in your thinking on this one, 6-year term. So anybody want to get into that?

Mr. Reiche.

Mr. REICHE. This is something, Mr. Chairman, that I have favored for many, many years, even when I was on the Commission, and for that matter, before I went on. One of the factors that concerns me here is the appearance, during one's term, if you were going to be seeking reappointment, the possible appearance to people that perhaps you are trying to curry favor with those who would be in a position to assist in your reappointment. Therefore, I think it's a very positive move that the Congress has made to limit the term to one, 6-year term.

And also, my feeling is that during 6 years you can give to that position whatever it is that you have to contribute, and do it independently. At the end of that time, there are many qualified people in this country who would serve very well on the FEC. And I think 6 years is long enough.

Mr. HORN. I agree.

Mr. REICHE. I'm not too concerned about the second year question, because I think it would be obvious if someone was trying to curry favor with the White House, we'll say. I think that would be so obvious that there would be other ways in which you might correct that.

Mr. HORN. Well, in other words, you're saying, the confirmation hearing, if somebody did nominate the individual for Federal judge, would bring such bias out.

Mr. REICHE. Bring that out. That's right.

Mr. HORN. Yes. I'd be interested—we're going to hear from ex-commissioners and all later, but some of you have been deeply involved there, and you're an ex-commissioner and chair. Does the commissioner system really work, and could we make it work better?

I was on the Civil Rights Commission for 13 years, under four Presidents of both parties, and we worked as a team. I don't think we had one dissent—and these were Republicans and Democrats—in my 13 years there, of which I think 11 years were as vice chairman, going through Arthur Fleming and Theodore Hessburg, as commissioner and chairman.

I'm just curious. What should we expect from commissioners in terms of productivity?

I got a good feel from you, Mr. Dahl, on your feelings about sort of the attitude or approach of the Office of General Counsel. If you go look at the NLRB, that's been a historic fight between the general counsel and the commissioners, and so forth, from the 1940's up.

But any thoughts on what commissioners should be doing that they aren't doing? Should they be more involved, this kind of thing?

Mr. DAHL. Mr. Chairman.

Mr. HORN. Yes.

Mr. DAHL. I'd like to address the issue. Before I talk about productivity, perhaps, I think the search for an independent, nonpartisan Federal Election Commission is totally futile. I think that the current system of having a bipartisan Commission is a lot like democracy: it's not very good, but everything else is worse.

All the alternatives I've heard about, a seventh commissioner or some other arrangement by which the so-called "deadlock" can be broken, I think raise a lot more difficult questions, because, ultimately, somebody has to appoint these people. I'd rather have the system recognize that there are three representatives of one side in our essentially two-party system, and three of the other. In our study by the Fair Government Foundation, we found that less than 1 percent of the cases were so-called "deadlocks," so I think that's often exaggerated.

In terms of productivity, I would just simply say that I think that's the point of hearings like this, to just keep a closer eye on the Commission, and ask them more searching questions, and dig deeper into the operations.

Mr. HORN. Ms. Cain.

Ms. CAIN. Yes. Well, as I did testify, we do support a change or would ask that you look at the change and see whether or not it has merit, because of the concern over partisanship.

I serve on my State election commission, and again, there are two Democrats, two Republicans, and the Secretary of State serves ex-officio. But through that process, rarely do we have anything other than unanimous agreements. I don't know why the system doesn't work quite as well here, except maybe that the concern that you are there to represent your political party, as opposed to having been a political appointee, there to have a particular expertise, with a particular ideological slant.

I think the concept that I'm there to represent the party is stronger at the National level than it might be at some State levels, where they are able to make a more unanimous agreement, particularly on various issues. And enforcement seems to be one that is easier to agree on, because, as Mr. Reiche and I were talking earlier, that seems to be something that both parties always do care about, when something is really egregious.

Mr. HORN. Yes, I would hope. We have a House Ethics Committee. Now, it's been a little sort of, shall we say, partisanized in recent years, but basically it was a lot of good people over the years working on that, above the battle, and saying, "Hey, we just can't tolerate this. It doesn't matter if they're Democrats, Republicans, liberals, or conservatives." And when that breaks down, of course, we've got problems.

In other words, there's no reason why this system shouldn't work on a three-three basis. I think the rule the Civil Rights Commission had was, the President could not appoint more than three of the same party. So that was sort of the three-three bit, but we functioned for a number of years when they didn't nominate anybody, and we had five commissioners. And I don't know that anything much changed in that.

So it really gets down to, if people want to do the job as a public servant, not a partisan hack.

Mr. COOPER. Mr. Chairman, I think the two questions that you asked, on the term limits and the qualities of the commissioners, are really the crux of what can change the FEC. The appointment process so far—started out initially with representatives, basically two from the Senate, two from the House, two from the President, and it's really stayed that way.

The people have patrons. They are the key sponsors, who bring their names forward, put their names on the list that the President selects from. They have stayed, I think, attuned to those sponsors and kept those connections, and they count on those for that next appointment.

And I think waiting for their next reappointment, that interim period is very quiet at the FEC. When one of them is up for reappointment, the serious votes drop off dramatically. They are concerned about not making a misstep. There might be audits of the President going on at the current time. So they are in a tremendous conflict, and the productivity of the Commission drops tremendously as they are waiting for that next appointment. That's because they want to please their patron; they don't want to make a misstep.

I think that many of them have been chosen early in their careers. Some of the other Commissions that you mentioned and some of the State level commissions, the Governors, in many cases, have chosen people who have already established themselves as independent-minded professionals, people knowledgeable in the field. And this is the cap on their career or something that they are going to finish out their public service on.

In the case of the Commission, in most cases, it's been people who do need to look to their next job, and they are going to count on their party people or political leaders to give them that next job.

I think that's a tremendous conflict, and I think a one-term limit would remove that.

But I think it takes a President, and in many cases, coordination with the House and Senate leaders, to choose the best possible person. Right now, it is, in many cases, the lowest common denominator. If I were a Republican or a Democrat and had to choose off a list provided by the opposing party, would I choose the best possible commissioners, the ones with the most expertise, or would I choose those who might not be highest on the list, because they are the opposing party?

There's a tremendous conflict there, and I think, in the past, the Commission appointment slot has been bartered away for some other legislative reason, that the President needs some help from the Senate or the House, and therefore there may have been some trades. I think that reputation of the Commission as being one where you can barter that slot is terrible. I think that's a real disgrace.

The States have done a better job, and I would hope there might be some way to craft it.

Mr. HORN. Now, you're not telling me the States don't trade in politics between Governors. Now why have they done a better job? Is it the criteria of the State statute that's better than the Federal criteria?

Mr. COOPER. Well, the Federal criteria, early on, in the first act, was very high. They had a nice big paragraph in there that had very high-sounding phrases, which was eventually taken out in amendments. It didn't change the quality of commissioners. But I think it takes the President, with a strong backbone, to say, "This is best for democracy. We've got to have the best people there," and probably the House and Senate agreeing to that. But the Federal Election Commission has never gotten up to that level yet.

So it may be more reputation and image, but it then filters down from every decision that the commissioners make, down to the staff, down to the regulated community, down to the general public, and the press. So it does start at the top.

Mr. HORN. Any other thoughts?

Mr. REICHE. Mr. Chairman.

Mr. HORN. Yes, Mr. Reiche.

Mr. REICHE. In my view, it's not a question of the numbers on either side, as I stated in my written testimony. It's a question of the individuals who are appointed and a question of the process itself. And the problem that I see with the process, that has now become tradition at the FEC, is that Congress is involved completely in that process, and, in fact, has had what you might want to call a veto power, or certainly strong influence in it.

Those in Congress who have been involved have looked at it as a partisan appointment. I know, for example, on the occasion of my confirmation hearing, there were at least three Senators who said, "This is a partisan Commission," and they might have added, "And thus be it ever," simply because that was their firm belief.

The sad feature, to me, is the fact that they believe now that this is the way it should be. I know from my State experience in New Jersey—and Kent knows that, too, because he was involved in New Jersey, as well—that if you have a chief executive, be it the Presi-

dent or a Governor, who takes the high road, your commissions—and Becky was saying the same thing—your commissions will operate very well.

Mr. HORN. Yes, I think you're right on that.

Any other comments on this? If not, let's move to a few other questions. Would you say there's been increasing partisanship over the years? Is that a fair summary?

Mr. DAHL. May I speak to that?

Mr. HORN. Yes, please.

Mr. DAHL. I think that's another falsehood. I think there's been increasingly more division at the FEC, but my experience, honestly, is that there is a deep philosophical difference on the Commission. I think it's unfair that we impute to their decisions some sort of "Democrats trying to get Republicans, Republicans trying to get Democrats," or defend their own.

Mr. HORN. What's the deep philosophical difference?

Mr. DAHL. There is a deep philosophical difference in how they interpret the scope and jurisdiction of the act, and the powers of the agency and interpretations of particular provisions, and how the enforcement process should proceed, and all the way up and down the line. And frankly, the resolution of that is going to come only if Congress takes a look and starts answering some of the questions.

Mr. HORN. Well, I don't understand the philosophical difference.

Mr. DAHL. If I was to simplify it.

Mr. HORN. Please.

Mr. DAHL. I would say that it's those who are relatively pro-regulation versus those who are relatively anti-regulation.

Mr. HORN. In other words, by that we mean some want to enforce the law, and others don't?

Mr. DAHL. I think that's the unfair characterization that's put on.

Mr. HORN. Well, give me an example of a regulation that one group wants and the other group doesn't want.

Mr. DAHL. Well, it's not always a matter of wanting, because regulations, obviously, are passed by a majority, usually unanimously by the Commission. But it's the way in which those regulations are implemented, case-by-case, and there is a deep philosophical difference at the Commission. I think they would all admit that.

Mr. HORN. Well, we'll ask them. But you're outside observers, and we're counting on you to maybe be a little more objective about it.

Mr. DAHL. Yes.

Mr. HORN. Maybe I'm wrong, but I still am not clear. I need an example to get my weak brain tuned in to what the problem is.

Mr. DAHL. Well, I guess one of the examples I would give is that the Commission has been wrangling over what to do about the membership regulations, which they had thrown out in court just in the last couple years, after they revised them. They have had problems devising this express advocacy regulation.

Mr. HORN. Let's deal with the membership now. Give me a thumbnail sketch of what that's all about.

Mr. DAHL. The membership regulation which—I actually find this argument kind of ridiculous, because the argument gets down

to whether certain groups are entitled to call their supporters "members." And if they are entitled to call their supporters "members," they are entitled to operate as a membership organization under the act, and have a separate, segregated fund, like a corporation or labor union, and the entity that has them as members can pay the administrative costs and solicitation costs for seeking contributions from them and operating the PAC.

Mr. HORN. OK. You're talking about a business or a labor PAC, essentially?

Mr. DAHL. I'm talking about a membership organization that gets to have the same rights as a business or labor PAC.

Mr. HORN. Yes.

Mr. DAHL. And ironically, if we look over the last couple election cycles, everybody, I think, acknowledges that the issue advocacy issue, the issue advocacy arena, has seemed to overwhelm our perspective on politics today. Even out in California this week, outside groups are playing a bigger and bigger role in our politics. And that's an issue that's going to have to be debated here in Congress.

But the idea that we should be more restrictive about what groups qualify to get to call themselves membership organizations, because we don't want them to have this right to spend their money to solicit their own members, and to pay for the administrative expenses, when if they weren't a membership organization, they can solicit the world, but simply can't pay the expenses of the PAC.

You know, this is really in the realm of rearranging the chairs on the Titanic, because why would we try to discourage groups from getting to sponsor PACs, and then have those PACs engage in political activity that is reported to the Federal Election Commission, when if they really wanted to, they can now pretty much skirt the system and operate independently by not engaging in direct activity to support particular candidates.

Here's the FEC now arguing, philosophically, on whether to keep those regulations narrow and restrict the number of groups that qualify. At some point, the Commission usually, frankly—the side opposed to more regulation ends up conceding enough to get a regulation out. I think that happened last time. There was give-and-take on both sides. But the court said it was too restrictive.

I raise this point to say, frankly, I think this committee and Congress have to look at the debates that are going on at the Commission. I happen to favor the side that is less inclined to regulate. I happened to be on that side, with my boss, when I worked there.

And I think things have gotten worse. It's gotten more partisan in the sense that this philosophical difference, that happens to break down on party lines, has now reached the point where the Commission has difficultly acting, making decisions, and coming up with regulations that courts will accept.

Mr. HORN. Any comment anybody else would like to make on this?

Mr. Reiche.

Mr. REICHE. Mr. Chairman, if you would permit me to ask a question: is that because you have a situation in which the appointments to the Commission have been based largely on partisan considerations?

Mr. DAHL. No, I don't think that's the problem. I think the problem is, we haven't had a change in any commissioner offices, except for the vacant seat, in 12 years, and the place hasn't had very much oversight by Congress. It gets occasional attention from the news media, and often the news media focuses on the wrong things.

And these are tough issues. I mean, there were discussions this past month about campaign finance in the Senate. We all realize how volatile these issues are. And what the FEC really is is a microcosm of the philosophical differences on these issues.

In some ways, I think it's kind of unfair to the commissioners. They have been burdening under this difference of opinion for a long time, sometimes resolved by courts. But I think Congress has to get in here and start refereeing this a little bit, and part of it comes from appointing new commissioners, with new ideas and new perspectives, and partly it comes from giving them some guidance on what you want.

Mr. HORN. Any other thoughts on this? If not, we're going to move on.

We had some discussions here on the FEC and modern technology. It seemed to be that one opinion was that the FEC has been reluctant to embrace modern technology. I can remember my first term here, the 103d Congress, a Democrat-controlled House, and the committees of Authorization and Appropriations had given them several million dollars to automate, and they didn't spend it for that, even though there was a clear earmark from Congress. They went out and hired a lot of people. And I remember the chairman of Appropriations really hitting the ceiling on that one.

So I was just curious what the view is of technology.

Yes, Mr. Cooper.

Mr. COOPER. I think the committee has probably—the full committee has been ahead of the Commission. I think that not embracing technology is a correct description of it. I think they would have advanced much farther had they done so earlier, especially with the costs of technology coming down, especially because of better education of the general public in the use of computers and technology at the local level. Those are advances that are moving much faster than the Commission.

The electronic filing is probably the best example. Again, the Congress has been ahead of the agency by saying, "Get into it." And yet they still haven't sent a software package out to candidates.

Mr. HORN. Yes, well, that's just awful, frankly. I mean, they should have sent it. I've advocated this for years with many Federal agencies. It's the common sense thing to do.

Mr. COOPER. I think the example of the imaging, which you mentioned earlier, again, it took Congress telling them, "We're going to take away that authority and give it to GPO unless you do it by January 1." All of a sudden, the Commission suddenly gets interested. And they do a good job, but it was only because there was a big hammer over their head.

I think they could do that on their own, aggressively, if they got regular, constant oversight from the committee. And I think that means talking to the commissioners, and saying—not a staff per-

son, but the commissioners—"Mr. Chairman or Ms. Chairwoman, what kind of a deadline do you have to meet this goal? How are you doing on it?" I think it's having them come up with a deadline, then holding them to it.

I think they are counting on Congress to lose interest after several months, go on to other things, and hope that they aren't asked again until appropriation time how they've done. They certainly could go much farther. It's something that they are capable of doing. I think, however, it starts right at the top whether the commissioners are going to do it or not.

Mr. HORN. Is there any disagreement that electronic filing and more use of electronic technology in doing the work of the Commission, and providing better access, in terms of disclosure, is there anybody that's negative against that? I take it we're all for it. OK. We don't have to beat that poor cow to death.

Ms. BRIAN. Mr. Chairman, I wanted to just add one point. As we went through our investigation into this and actually went to meet with the commissioner, we'd been told had a real interest in reform, Leanne Elliott, and showed her the problems we were finding—for example, the one you mentioned where people who don't accept PAC money, but are reflected in their records as having accepted them—the sense we got from her, and that was reflected in others that we'd met over at the FEC was, "Well, that's all the data. We really don't deal with it all that much. We focus on when complaints come in to us."

And when I suggested that the complaints are often based on the bad data, that seemed to be dismissed. So I think that may be part of the problem. The inaccuracies in the data aren't getting adjusted because of exactly what you're saying. There's a reluctance.

Mr. HORN. I think we can solve this. I spent most of the last 2 days on the Government Performance Results Act. That was passed, on a bipartisan basis, in the Democratic 103d Congress. And now we're trying to make sense out of it, because we've got a lot of strategic plans that, frankly, we gave a lot of D and F grades too, which upset some people, but that's life.

There's an exemption clause—I think it's $20 million, is it not? And what's the FEC budget now? It's under $20 million, isn't it?

Mr. COOPER. $31 million.

Mr. HORN. It's what?

Mr. COOPER. $31 million.

Mr. HORN. OK. I just wanted to make sure they were covered on that, because I didn't have time to go through every plan, and I know the staff has. But that's one way to get them to face up to—which any human organization does, with any sense, they have a strategic plan.

And with those that Congress has now mandated with most agencies, with rare exception, then you link the performance indicators to that to see if you're meeting the plan. Then the whole world knows what your goals are, and they can hold a hearing like this, like we do. We listen, because that's the only way we learn.

So I think then we'll take a look at that plan and just see what they have. Has the staff looked at that plan? OK. We'll get to that, then, shortly.

Ms. CAIN. Mr. Chairman.

Mr. HORN. Yes.

Ms. CAIN. Just briefly, may I address—as we get all of this wonderful data and rich information, and it's accessible, we do need to take a look at how we provide that information to the American public. Sometimes we become overwhelmed with the amount of information and what it can mean.

From the citizens we deal with, they would like for it to be—the information provided to them without judgments—they want to make the judgments themselves—but provided in a manner that makes some sense to them, so that they can understand what it means.

They talk sometimes about scorecards and the fact that you can provide information about the stock market to me in a fairly capsuled situation, and I can understand that it was a good day or a bad day. If there's some way that we can learn—and of course, this is a charge to my organization, as well to provide that kind—take that rich data and provide it to the American public in a way that it can be useful for them. And I don't know, there are greater minds at the table here that can probably help me with that, but it's a concern.

Mr. HORN. Well, the League of Women Voters, which is nationwide, should be talking to the editors of the various print media and the people that can editorialize on TV, which they do, and on radio, and see if that information can't get out to the public. That's a real problem we are lacking in this country.

Mr. REICHE. Mr. Chairman.

Mr. HORN. Yes.

Mr. REICHE. Mr. Chairman, I think this morning Kent Cooper made an important point when he talked of getting the information to the electorate in advance of the election, which is something that has always had great meaning to me.

But if I interpreted what you said correctly, Kent, you were saying that the Commission, by itself, would not be able to achieve this without the assistance of advanced technology.

Mr. HORN. Yes, go ahead, Mr. Cooper.

Mr. COOPER. Mr. Chairman, I think the technology is there. I think it just has to be used.

Mr. REICHE. Oh, I agree.

Mr. COOPER. Congress got several million dollars for the Commission to spend on putting a computer on every single desk at the FEC, including file clerks. What they now need is to use that hardware with software and queries that the General Counsel's Office could use, the Reports Analysis Office could use, the auditors could use.

Mr. REICHE. OK.

Mr. COOPER. In the testimony that I think you'll hear this afternoon from the Commission, they admit they are using hand calculators as they look at images of the reports on the screen. All that should be using the power of the computer and information management systems rather than hand calculators.

So I think they have the money. I think they have the hardware there. I think they've got to pull it together and say, "How can we accomplish our goals now that we've got this." But I think it takes coming down from the top.

The information to the general public that Becky was talking about, we just got back from the printer a little brochure about who's paying, "Stats At A Glance On Funding U.S. Elections." The goal was to just come up with 50 or so quick facts about where the money is.

A lot of the data that comes from the Commission is gigantic, monumental, and a lot of reporters can't handle it. They don't have a big mainframe computer and they don't have a lot of computing staff. I think making that information understandable to the general public over the web, so that students, academics, reporters, and local citizens groups can see their own Representative, or any other candidates who might be running in an election, and locally ask questions: Who is supporting this person? What interests might be blocking out my representation?

Getting it down to the local level, the web is a perfect tool for that. Especially along the education lines, it's a tremendous tool.

Mr. HORN. Any other comments? Well, let me move to the Office of General Counsel. It was said by some of you during your testimony that the question could be raised as to how objective is the Office of General Counsel? In the various types of cases, obviously, any general counsel does pick some over other areas. The question is, is there a rational policy behind that, that's reflected by the actions of the commissioners, I would assume.

So tell us your views on that, in terms of the general counsel-commissioner relationship, and does the Commission have the power to order the general counsel one way or the other, or is that more of an independent office, as the NLRB general counsel has been?

I'd just be curious. Do you want to start, Mr. Cooper? We'll just go down the line.

Mr. COOPER. OK. Early on, when the Commission first started, the first general counsel had a very different philosophy than the several since. His view was that he would be a counselor to the commissioners. He wanted to have a small Office of General Counsel that would provide legal guidance in their decisionmaking. Yes, you could legally do this; yes, you could legally do that.

After he left, the General Counsel's Office developed into much more of its own entity, with a larger staff, where they started to investigate cases and bring forth recommendations to the commissioners. Over time, I think, however, the General Counsel's Office might have started to have a reputation of being controlled by three of the Democratic commissioners. I think that's a reputation that some of the press indicates.

I think, as a result, some of the Republican commissioners sometimes automatically take a stance, a quick stance, against the general counsel in certain areas. I think that perception is too bad. I think the commissioners do vote on the matters. They can tell the general counsel to come back with something, or "We're not agreeing with that."

So I don't think it's a matter of control, where they've lost control of the general counsel. I think you don't have commissioners there who have a collegial atmosphere, who are willing to listen to the views of the other commissioners and try to learn where they are coming from.

So I think the collegial attitude was lost very early on in the Commission, and that's a disappointment, but it reflects the type of people and their backgrounds that come to the Commission. Have they ever been in that type of collegial atmosphere before, or have they been in jobs where they didn't really have to deal with others in compromise and agreement?

So their backgrounds, as they come to the Commission, I think have prohibited them from seeing the power of the consensus and the strength that it could give to actions that the public then views. If they see a split Commission, well, then they will probably be looking for loopholes and realize there's a split. Maybe there's a different way to do something.

But I think when you can come out with unanimous votes, the image of the Commission is tremendously improved, and therefore, the deterrent that it creates in the community is very strong. And I think that's a very admirable thing to strive for.

Mr. HORN. Ms. Brian, do you have any comments on that?

Ms. BRIAN. I'm really not qualified to answer that.

Mr. HORN. Mr. Dahl?

Mr. DAHL. I guess I would say that there are some institutional problems regarding commissioner control of general counsel functions. I think in the litigation field, the fact is, when the general counsel comes to the Commission with a recommendation to go after somebody in court, to file a lawsuit, that they don't really have any control over that case, any input on that case, once they vote to file suit, until perhaps the decision comes whether to appeal the decision, if they lose.

My understanding is, they don't even have the power. They have no authority if the general counsel wants to ask for a rehearing or not, even if maybe some of the commissioners have decided they agree with the court.

Mr. HORN. Who appoints the general counsel?

Mr. DAHL. The Commission does.

Mr. HORN. For what term?

Mr. DAHL. It's an unlimited term.

Mr. HORN. Is it a pleasure appointment?

Mr. DAHL. It's a pleasure appointment. It would take four votes of the Commission to release the general counsel.

Mr. HORN. And when the general counsel takes a case into court, does the Department of Justice do it or does the general counsel?

Mr. DAHL. No, the FEC has independent authority. It does refer criminal cases to the Department of Justice.

Mr. HORN. The U.S. attorney gets it?

Mr. DAHL. The Department of Justice gets it, yes.

Mr. HORN. Or does it come directly to Washington on a criminal case?

Mr. DAHL. I guess because we're here. Larry can probably answer that question, the procedure.

Mr. HORN. Well, yes, we can get to that.

Mr. DAHL. The other point I would make is that some of this has to do with whether the commissioners themselves simply decide to try to exert some control. And I think there's a general sort of—there's a situation these days where I think there's sort of less than intrusive examination of what the general counsel does, a willing-

ness to—well, if we agree with a decision to find reason to believe and pursue a respondent, the general counsel sends out their factual legal analysis without much criticism.

When I worked at the Commission, with Commissioner Josefiak, I think we tended to take a little more interest in the output of the General Counsel's Office. So I think the Commission could, if it wanted to, exert more authority. But there is, I guess, a certain amount of resignation that has taken place.

I'll also finally get to the point about the priority system, which you began your question with, and the fact is, I don't know how that system operates. I can only look at what its output is, and I described that to you in my testimony. And I think it's very important, since that system has been in operation for 4 years, and during that time the number of cases tossed out has skyrocketed, I think it's very important.

Mr. HORN. And that's a judgment strictly of the general counsel, or does the Commission concur in those judgments?

Mr. DAHL. Apparently, the Commission votes whether or not to pursue specific cases, in general categories, that are brought to the Commission by the general counsel, in recommendations. But the general counsel has the authority, I understand, to actually activate or deactivate cases, to actually move on them at any present time.

Again, the general counsel can fill you in to the extent they want to tell you how the system operates. But I think you have every right to find out what's going on and why it seems to have manifested itself in this wholesale dumping of cases and this focusing on a few.

Mr. HORN. Ms. Cain, do you have any thoughts?

Ms. CAIN. Not in terms of the relationship.

Mr. HORN. OK. Mr. Reiche.

Mr. REICHE. Yes, two or three comments, Mr. Chairman. First off, I would agree with what Kent Cooper said about the perception back during the earlier days of the Commission, to the effect that there were some Republican commissioners who felt that there was a Democratic tilt out of the General Counsel's Office.

I was made aware of this when I went on the Commission. I frankly did not feel it. I think that is an honest difference of opinion that I had with my Republican colleagues, but I did not feel it. I never felt constrained to question the decisions of the Office of General Counsel, and in fact did so on many occasions, as, unfortunately, Larry Noble can testify to. Perhaps that is attributable, in part, to the fact that I am a lawyer, and I was not cowed by the fact that I was dealing with other lawyers.

I would also say that the reputation of the Office of General Counsel, and particularly—and I am not trying to embarrass him—but particularly under the leadership of Larry Noble, is one of even-handedness. You may not always agree with their decisions. I understand that. But it is one where people respect the decisions, even if they don't like them.

Mr. HORN. Well, I thank you.

I now yield to Mr. Turner, the gentleman from Texas, for questioning the witnesses.

Mr. TURNER. Thank you, Mr. Chairman.

I just was looking at your opening statement, Mr. Reiche, when you made the comment that you were greatly concerned, as we all are, about the influx of soft money into the political process, which you described as "the influx of substantial soft money," and you said, "and to other violations of the letter and spirit of the Federal Election Campaign Act."

Do you have any opinion regarding whether the FEC could or does have the legal authority to place some restrictions on soft money that would impact our current problem?

Mr. REICHE. I am aware, Congressman Turner, that the White House apparently believes that the Commission has that authority. From the very beginning, I have questioned it, although I would suggest that perhaps you may want to ask the officials of the Commission who will be testifying later, because my understanding is that they are now moving in this direction.

But I question that they have the authority, in and of themselves, to restrict it. The most they could do would be to issue regulations which might tend to curb it, and to increase the reporting required. But Larry Noble would be a better person to address that question to.

Mr. TURNER. I was visiting the day before yesterday, with a group of broadcasters who were on Capitol Hill making their rounds. I was interested in the frustration that they expressed regarding the advertisements that they receive during the campaign season. Interestingly enough, the majority of the station owners that were in my office said they have refused to accept such advertisements.

They seem to feel that it's such a gray area right now that they don't know what's correct to do. They expressed to me that if an ad came to them and it displayed a likeness of a candidate, they thought that it was a political ad and that it should be handled as such, and should have the proper disclosure. So there does seem to be some need out there for some clarification, recognizing, of course, that it is a difficult area.

Is there anyone else on the panel who would care to share a view on that subject?

Mr. Dahl.

Mr. DAHL. Well, I would point out that I think people don't understand sometimes that soft money really encompasses political activity outside the regulation of the Federal Election Campaign Act. I mean, we've already known what the limitations of the jurisdiction of the FECA are, we've been arguing over them for 20 years, but we know that it's supposed to be directed toward activity directly affecting Federal elections.

I think that for there to be a decision that that act should encompass something a little farther than the courts have already said is within the jurisdiction of the act is going to have to be decided by Congress. I mean, No. 1, frankly, I just don't think the Commission can handle it. No. 2, I just really believe it's not within their statutory authority to try to expand the jurisdiction of the act.

And their argument would be, those in favor of regulating soft money, that this activity has an impact on Federal elections. You may feel that way, and other panelists may feel that way, and the broadcasters may feel that way. And I think this would be a won-

derful subject of some hearings before Congress and some very focused attention on the constitutional ramifications of trying to go farther than the act has already been interpreted to regulate. But, I just think it's unfair to expect the Commission to do this by regulations, when, in fact, of course, the Senate couldn't decide this last week. You need to have Congress step in here. I think it's unfortunate that the FEC is even considering trying to exercise its regulatory authority to decide this issue.

Mr. TURNER. Certainly, we all respect that there are some difficult constitutional problems that have to be dealt with here, but the issue doesn't seem to me to be one that is really subject to too much debate. Most observers would say that the ads we're generally talking about, run in the last days of a campaign, are designed to influence an election.

Mr. DAHL. Then I think Congress should make sure it puts that congressional intent in full legislative history, expressing its opinion on the public record, and let that be the vehicle by which an agency would go to court to defend new regulations of that activity. I don't think they'd hold up in court.

I mean, I understand the policy position behind why people want to regulate soft money, but if you're going to do it, I'm certain that the FEC can't do it. The courts are not going to buy it from them. Maybe from Congress, after hearings and legislative history and explicit congressional intent on this issue, the courts will give some leeway, but not by regulation.

Mr. TURNER. It just seems to me that if common sense tells us that these ads do influence elections, which I think is hard to deny, it would be hard to be too critical of the FEC for trying to come up with some reasonable regulations, though they have to struggle with constitutional issues. If they did it and the court said they were wrong, it wouldn't be the first time a regulation had been struck down because it wasn't constitutional.

Mr. DAHL. Congressman, I think you're right, but you need to look at what's already happened. Look at the Christian Action Network case that was decided last April, what the courts have said repeatedly about whether the Commission can go farther than what the fundamental Supreme Court cases have said.

If there's any leeway here, and I don't think there is, it's going to have to be because you folks have explicitly decided there has to be, for a narrow governmental interest to be served. And it's not going to come by way of the Commission. It's not going to happen.

Mr. TURNER. Ms. Cain, do you have a comment?

Ms. CAIN. Yes. I would just like to note that many people discuss or blame, if you will, the Federal Election Commission on the increase in soft money, due to a regulation that they created. It was OK and constitutional when they did it, for those who lay it at their door. I would assume that it would be A–OK if they fixed it then.

So, you know, you can't have it both ways. Either they were responsible for a rule and regulation that caused the soft money loophole, or they weren't. And if they were, then certainly they ought to have the right to close that loophole, if they created it.

Mr. TURNER. Yes, sir.

Mr. COOPER. Congressman, I think you're right that the concerns of individual station owners are going to grow. They are going to be put in untenable positions throughout this year, as new groups come in who they don't have the slightest idea who they are, with ads that they want to run. And it's the same position that a voter or a citizen is put in when they see the ad. "Who is this group? What are they doing? Should I believe them? Do they have credibility? Are they totally off the wall? Who are they?"

That basic instinct of what is being put in front of me over the public airways, I think, calls out for some type of disclosure by those groups of at least who they are, and have some accountability so that radio stations, citizens, news reporters, and voters can go and say, "Aha, this is who that group is."

I might disagree or agree with what their viewpoint is, but there ought to be some central repository where a group is at least filing some kind of document about, "This is who we are. This is where our office is. Here's our 990 tax form disclosing who we are. These are our views," something that at least gives a little tag to who they are, so station owners and voters know what's there.

Again, that's using technology, whether it be a web-based system or some other electronic system, so someone can quickly, instantly check, "Who are these people? Are they registered in some sense?" Not necessarily disclosing donors, but at least a first step of, "Who are they?"

Mr. TURNER. Well, would it be your view that if we accept the commonsense approach that certain ads close to an election clearly are designed to influence an election—the FEC could implement those kinds of disclosure requirements, which, of course, would stay away from any severe free speech constitutional issue?

Mr. COOPER. Well, I certainly think so, and I think they could take even an earlier step of building a base of knowledge to buttress their case. Who are the groups? Annenberg Center did a study last year, documented $150 million in spending on this type of activity, $75 million of which was from registered filers with the FEC. The other $75 million weren't.

I think the FEC could require disclosures of this type, so that they build a record of knowing who they are, which would—when they felt it had crossed a line in their eyes, they could compare against the others and say, "Yes, this went beyond the line." So I think they could actually do more.

Mr. DAHL. I just want to reiterate this point, because I think it's extremely critical on this issue. I understand exactly what the policy arguments are. I understand probably your deep concerns on this issue, and many of your colleagues. All I'm trying to express to you today is, if you look at the court cases, they have told the Commission over and over again the limited scope of communications to the public that they are entitled to regulate.

Now, those court cases, in your opinion, may be wrong. There are members of the Commission who strongly believe those cases are wrong. The general counsel is firmly convinced they are wrong and keeps litigating these issues, and keeps losing. And it's never going to change, if it can change at all, unless Congress decides to articulate precisely why they feel this way, and the FEC can go back to court and say, "This is what Congress thinks about this, after 20

years of seeing how the Act operates." It's not going to happen by regulation.

Mr. TURNER. Ms. Cain.

Ms. CAIN. I'd just like to note that the courts have not been unanimous in terms of their decisions on these kinds off issues. And in fact, some—it depends—we could battle court cases at the district and Federal levels at this point, that there may indeed be a role that life has changed.

So I think that there has not been unanimous agreement from the courts as to what role, and what is and what isn't electioneering. I think they are beginning to see what most Americans believe, and that is, if you name a candidate and you're in the election season, then you're doing electioneering.

Mr. DAHL. There's not a single court that's taken that position in 10 years.

Ms. CAIN. Furgatch, which was the case in Massachusetts, I believe did.

Mr. DAHL. California, 1987.

Ms. CAIN. Dueling—I rest my case—dueling court cases.

Mr. TURNER. Thank you, Mr. Chairman.

Mr. HORN. Well, I thank you for raising that question. I'm going to pursue it a little, because I share your concerns.

If Congress said that these groups could not participate 90 days before the election, or 60 days, or 30 days before the election, what's your feeling on that? Suppose we spelled out that this kind of group, operating with no accountability, there's no disclosure who they are, there's no disclosure of the money. I regard it as a national scandal, personally.

You see where my bias is right now, and that bias started back in 1962; it did not start in 1974 or 1975, or it did not start with *Buckley* v. *Valeo*. It's just you know when it's wrong. And as a candidate, I happen to have a group that intervened on my behalf, as an independent expenditure.

I was outraged. They could have lost me the election. They had other motives for attacking my opponent, and I'm just the vehicle. My own strong feeling is, if you don't like the opponent, put your money toward the other candidate's campaign, and keep it legal. Because what they are doing is dumping millions of dollars into American politics, with no accountability.

I'm just curious how you feel about Congress—say we did wave a wand and brought up in the next month, which we hopefully will be bringing items up in the next month, and we said, "Ninety days before an election, the money has to come through the candidates," financial aspect, or 60 days, or 30 days? Any feelings?

Ms. CAIN. Mr. Chairman, we would commend you for doing that, and love the leadership role you've taken, and the stance for the American public that you've taken on this issue. And we would commend you and the Members of Congress for doing it, for restoring faith in the democratic process, for beginning to put some accountability in the election system. We would champion the cause.

Mr. HORN. Well, I just think the people have a right to know, and let them make the judgment. They might say, "Hey, that's great," or they might say, "They're a bunch of idiots, and I sure wouldn't listen to them." But right now all of this stuff is being

masked under free speech. That's not an intrusion on free speech. Give the candidate you like the money. Let them issue the free speech.

Now, I'll put in a plug for the Price-Horn "Stand by your ad," which the North Carolina Legislature—I think one house has passed it, and last I knew, the other house hadn't. But in brief, if you're going to do a negative attack on your opponent, you've got to give 10 percent of that videotape or the folder, and you've got to identify who is putting up the money.

I've never issued a negative ad. I've been bombarded by at least 20 negative ads in every campaign. People are fed up with it. Now, the consultant says, "Oh, yeah, they're fed up with it." I don't have a consultant. I can't stand them, because they get you into this kind of stuff. They say to the poor candidate that's paying big bucks for this great advice, "Oh, well, people say they don't like negative ads, but that's the way elections are decided."

I've got news for them, if you do it right on the other side, elections don't get decided that way. You've got to go out and say, "What do you stand for?" And that's the mistake all these people make. They think people are stupid. People are not stupid.

Right now, one of our leaders in the reform movement is being bombarded by an ally in his district because he wants disclosure. They don't want disclosure. I mean, it's like hiding behind a sheet in the Ku Klux Klan; that's what that's all about.

I'd just be curious, on that limitation, should it be 90, 60, or 30 days? They can do a lot of mischief. Let's face it, they are starting a year ahead of time, bombarding people on our side, and I'm sure we're doing some of it on the other side. But I know it from the Members that gripe to me on our side, that big bucks, million bucks start in January of election year.

Mr. DAHL. Let me tell you what I think the courts have made pretty clear. No. 1, of course, independent expenditures, per se, are already provided for under the Federal Election Campaign Act, and you will never be able to eliminate independent expenditures. I mean, the courts have made it clear that's a core, first amendment, free speech value.

Now, independent expenditures are defined as those communications that expressly advocate the election or defeat of a candidate. Those kinds of communications are already disclosed under the Federal Election Campaign Act, and groups that engage in them have to operate as PACs, if they are an organization. So that type of communication is already regulated by the FECA, and is permitted by the FECA, and will have to be permitted.

I will tell you what the courts have said about that communication that steps back from express advocacy. They have said that Congress is not entitled to regulate issue advocacy. Unless communications to the public expressly advocate the election or defeat of a candidate, they are not going to be regulated by Federal election law.

Now, if you folks feel really strongly that that's wrong, then you're going to have to say so. But it's not something that you can ask the FEC to write some rules about, and frankly, it's not something you can move to the 30-, 60-, 90-day sort of decisionmaking about quite yet, because it's more serious than that.

And I think people just—I understand the frustration. I understand why this seems to be a commonsense position. And I even understand why the general counsel keeps pushing it for years and years. But it's not going to happen if the FEC takes the lead, and it's not going to happen unless Congress somehow persuades the courts, "Yes, we hear what you're saying about the first amendment. We disagree. We think this is a narrowly tailored mechanism to fix a grievous harm to our political system."

You might have a shot. I don't think it's going to work, because I think the courts have already said, "We're sorry. This is the bright line."

Mr. HORN. Ms. Cain.

Ms. CAIN. Yes, Mr. Chairman. I think there are ways that you can craft pieces of legislation to help overcome some of those concerns, some of those constitutional concerns. First of all, you need to make it clear that really you're not hampering, in any way, free speech. People can do what they want to do; they just have to follow the rules like everybody else. That's rule No. 1. You're not stopping anybody from saying anything.

In terms of doing the bright line test, there is some concern as to whether it's 30, 60, or 90 days. What does that mean if Congress is in session during that time, and groups want to speak to particular pieces of legislation? So I think that's where we begin to look at how we craft that and whether you say during congressional sessions, and whether it's the 30, 60, or 90 days. That's where the concern is. We've supported 30, 60, and 90 because of those concerns.

Also, the courts have upheld the right for certain types of contributions to not be in the election system, corporate contributions and union contributions direct from their treasuries and their organizations. And that has been upheld. You could certainly say and restrict the fact that those contributions could not come, the soft money contributions, into the issue ads. You could restrict that. That's been upheld.

Then you could disclose. Disclosure has always been upheld. It's fine. It's on the record. That's not a problem. Require organizations that include the picture, the likeness of a candidate in their ad, within the bright line test, whether 30, 60, or 90 days, that they then, up to a certain threshold, disclose their contributors.

I think, on the Senate side, with the Snow-Jeffords compromise, they had contributors of $500 or more. So you would be able to—it's just merely disclosure. It's just saying where your money came from. Those concepts, restricting certain kinds of contributions, particularly from corporations and labor unions, and requiring disclosure, have been held constitutional. So that gets you around some of the constitutional issues.

Mr. HORN. Any other comments?

Ms. Brian.

Ms. BRIAN. Mr. Chairman, it would seem to me, if you limited it to 30 days, because we've seen it takes at least 30 days for the information to be disclosed.

Mr. HORN. You want to speak into the microphone a little more.

Ms. BRIAN. Sorry.

Mr. HORN. Pull it up close to you. There you go.

Ms. BRIAN. Because we've seen that the information, as it's disclosed to the FEC, takes at least 30 days to be processed and entered into the system, if you limited it to 30 days, the information, for the most part, would be available after the election is over. Just something to keep in mind.

Mr. HORN. Well, I think it's a good point. I had somebody dump—an organization I've never heard of in my life—for my opponent. And that's an independent expenditure, I realize. And they just dumped $200,000 in the last week of the campaign. Suddenly, I saw six mailings in my mail box. I found that fascinating.

But anyhow, I think that last-minute disclosure—when we get a check for a $1,000, as an individual candidate, you've got to immediately notify everybody in the world, practically. And it's important that the FEC have those files available. I guess I'd ask, why are we limiting it to $500, when we have to disclose everything at $200 and up?

Mr. REICHE. I think, also, that Becky Cain has put her finger on it when she talks about the fact that you are not restricting a particular activity. What you are requiring is the disclosure of that activity.

Mr. HORN. Right.

Mr. REICHE. No. 1. And second, in terms of some of the limitations that you might include in such legislation or regulations, as the case may be, yes, we do have to be careful about the first amendment, but there are ways in which you can balance those.

The sad feature, as far as I'm concerned, and I'd be other than candid if I didn't mention it, and that is that I have been very disappointed by the decisions of our judiciary. I don't think they recognize the fact that there is any other right in the world beside the first amendment. The problem you have is, when the rights that are granted by the first amendment come in conflict with some other right, what do you do? And they haven't answered that question.

Mr. DAHL. I think they've answered that question, and they've said the first amendment wins.

Mr. HORN. Well, let's face it. Congress, as you suggest, Mr. Dahl, has to have the guts to lay it out very specifically. We're not stopping free speech; we just think the public has a right to know. Is it the Ku Klux Klan that's attacking me, or who is it? It seems to me that when you find the organizations on the left and the right all in bed together, you know what they are doing usually, and it's not helpful to the political process.

I don't mind them having their issue ads, but let's not kid ourselves. When they go into particular districts, they are trying to destroy the Congressman incumbent in that district, and that's what reality is. They can give all the nonsense on free speech, I'm all for it, 18 years as a university president, there was never an incident of a violation of the first amendment on my campus. And even my severest critics recognized that.

But let's know what the game is. The game is to spend millions of dollars to destroy an incumbent Congressman if you don't like what they're doing in some area. That's exactly what's happening right now in some parts of the United States. It's been happening since January in some of my colleagues' districts, and that should

be known by the American people; who's playing that game, and what millionaires are putting $1 million into it. I think we should—I'll take $500, if that's what it takes, but I just as soon will have $200 and up disclosed, just like we do it.

Yes.

Mr. COOPER. Mr. Chairman, I think that is possible. I think that right now we have the technology where the Commission can require, or Congress can put it in legislation, requiring people doing independent expenditures, making last-minute, large contributions, doing independent expenditures that go beyond the key buzzwords, if Congress mandates that, the web-based filing technology can be done instantly by these groups. It can go up on the Internet and be there instantaneously, and the public can learn about it.

Mr. HORN. And I think a lot of you were saying, they've got a web site; let them use it to the fullest extent possible, so people could tap in, even get the data, and then manipulate it for terms papers or whatever they had to manipulate it for.

Mr. COOPER. And if they feel they can't do it, the Center for Responsible Politics will give them a system to do it.

Mr. HORN. Sure.

Mr. COOPER. We provided a system to the State of Missouri for their web-based lobbying filing. We have systems helping in Connecticut and in Maine, for web-based filing. This is using the technology that is at hand, with not a great deal of cost, and making it available to people. This is not a high-budget item. The system is already in place. It's something that can be done this year.

Mr. HORN. Well, we thank you all for coming. Each one of you has made a very significant contribution to our knowledge, and we appreciate that. What we need is a better-informed public. If we can get some of your ideas out to the public, maybe we'll have a better-informed public. So thank you very much.

We will now move to panel III. We have the chairwoman of the Federal Election Commission, Joan Aikens; John Surina, staff director, Federal Election Commission; Lawrence Noble, general counsel, Federal Election Commission; and they will all be accompanied by Lynne McFarland, the inspector general of the Federal Election Commission.

We have signs here, Ms. Aikens, Mr. Surina, Mr. Noble, Ms. McFarland. OK. I think we've got everybody. If you will rise and raise your right hands.

[Witnesses sworn.]

Mr. HORN. The clerk will note, all four have affirmed.

We will just go down the line. We're sorry to hold some of you up, but that's the way life is around here. So we're going to start with the chairwoman of the Federal Election Commission, Joan D. Aikens.

Welcome.

**STATEMENTS OF JOAN D. AIKENS, CHAIRWOMAN, FEDERAL ELECTION COMMISSION; JOHN C. SURINA, STAFF DIRECTOR, FEDERAL ELECTION COMMISSION; LAWRENCE M. NOBLE, GENERAL COUNSEL, FEDERAL ELECTION COMMISSION, ACCOMPANIED BY LYNNE McFARLAND, INSPECTOR GENERAL, FEDERAL ELECTION COMMISSION**

Ms. AIKENS. Thank you, Mr. Chairman.

I am the chairman of the Federal Election Commission for this year. You know we rotate our chairmanship. And I am chairman only until I am replaced. My term expired 3 years ago, and I have been waiting to be replaced ever since. It looks like it will move forward in the next couple of months, but in the meantime, I will continue to serve as chairwoman.

It's a pleasure to be here today to present testimony with respect to the management issues at the FEC. I am accompanied, as you have said, by Larry Noble, our general counsel; John Surina, our staff director; and Lynne McFarland, our inspector general. Mr. Noble will address the FEC's enforcement program. Mr. Surina will speak to our disclosure, audit, and public funding programs.

I want to thank the committee for holding this hearing today. I have been very interested in the comments of both our critics and our supporters. And I think it has been very constructive for the Commission. I can assure you we will consider all the points that have been brought up, and we will continue to try to improve our operations.

Congress created the Commission as an independent regulatory agency charged with administering and enforcing the Federal Election Campaign Act. And I would point out that we are the only entity that has civil enforcement powers. The Commission's mission, as was outlined by Chairman Horn in his opening remarks, and which Mr. Surina will address in more detail in a few moments, as to how we are carrying out that mission in enforcing limitations and prohibitions and the other provisions of the law, administering the public funding of Presidential campaigns, and assisting election administration officials throughout the country. As everyone has read, from the current campaign finance work being performed by the full committee, in the newspapers, fulfilling this mission places the agency at the center of constitutional, philosophical, and political debate.

With respect to policy and executive direction, the Commission is somewhat unique. Because we regulate those who campaign for Congress and for the presidency, the Congress took great pains, in creating the Commission, to ensure the impartiality and independence of the agency.

The six commissioners, no more than three of whom may be from any one political party, and with an annually rotating chairmanship, ensures that the decisions and operations of the Commission are outside the control of any one party or the administration. I believe this system works well. There are far fewer three-three vote splits along party lines than is perceived, as was brought up by the report from the Fair Government Foundation, by Mr. Dahl.

It takes four votes to accomplish anything. So as in the Congress, the commissioners must compromise to get anything done, and I think we do that most of the time. There are some philosophical

issues which we are not in agreement on, as was brought up earlier, and on those issues we still do split sometimes on a three-three vote, but it is not very often.

I would also, just very quickly, like to make a comment on the term limits. I have served 23 years at the Commission, so I'm not one to comment on term limits usually.

Mr. HORN. You and Strom Thurmond agree, I take it.

Ms. AIKENS. That's right. I would just like to point out that we are talking now about a one, 6-year term for the commissioners. I would like to caution the Congress—and this is my personal opinion; we have not taken this up at the Commission at all—but changing commissioners every 2 years is not very good for the system.

Bringing in two new commissioners every 2 years, for a 6-year term, and rotating the chairmanship on that basis, does not give very much historical perspective to what we are obliged to do. So I would urge that, if there are term limits imposed, that it be at least two terms, or a longer term than 6 years. As I say, that is only my personal opinion, and I just wanted the committee to be aware of it.

In the budget context, the FEC concurrently submits its budget request to the President and to the Congress. In this sense, the agency is not subject to prior approval of the President's budget officials, and this we feel is another protection built into the law to foster the Commission's relative independence from the party in power in the executive branch.

For the record, in fiscal year 1998, the Commission received an appropriation of $31,650,000, with $3.8 million earmarked for computerization, and $750,000 earmarked to be transferred to the General Accounting Office for an independent audit of the agency. We received a full-time equivalent staffing level not to exceed 313.5 FTE.

Our critics say that one of our most serious problems is that we are unable to achieve speedy justice. And to that, we all agree. Cases do take too long to complete. However, the growing number, the size, and the complexity of the many cases that have come before us require additional compliance resources, so that we can properly address the problem.

Mr. Chairman, in summary, I believe—we all believe—that we are managing the agency resources wisely. We have an excellent record for disclosing campaign finance information, we are commended consistently for our responsiveness to our constituency, and we secure compliance with the law the best we can with our resources. We do, however, require additional resources if we are going to be able to resolve the compliance backlog, which is made up of increasingly larger and complex cases.

This will conclude my brief remarks, and I would be happy to answer any questions. We had informed counsel that we have a Commission meeting going on right now, but given the way the questions were asked of the previous panel, I have made the decision to remain and not to leave at this point. I will remain until after the other testimony is finished.

Mr. HORN. Well, we appreciate that.

Ms. AIKENS. I would now like to turn the microphone over to John Surina, our staff director, who will provide a general overview of the agency's programs and give you an update on our computer modernization program; and then to Larry Noble, who will speak to some of the compliance issues before us, and possibly answer some of the questions that were asked about the court matters and our record there. And we will remain as long as you like to answer your questions.

[The prepared statement of Ms. Aikens follows:]

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**OPENING STATEMENT OF JOAN D. AIKENS**
**CHAIRMAN, FEDERAL ELECTION COMMISSION**

**BEFORE THE SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION AND TECHNOLOGY**
**COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT**
**ON THE OVERSIGHT OF THE FEDERAL ELECTION COMMISSION**

**THURSDAY, MARCH 5, 1998**

Good morning Mr. Chairman and members of the subcommittee. I am Joan Aikens, Chairman of the Federal Election Commission (FEC). It is a pleasure to be here today to present testimony with respect to the management issues at the FEC. I am accompanied this morning by Lawrence Noble, our General Counsel and John Surina, our Staff Director. Mr. Noble will address the FEC's enforcement program, while Mr. Surina will speak to our disclosure, audit and public funding programs.

For the benefit of those members who are less familiar with the FEC, Congress created it as an independent regulatory agency charged with administering and enforcing the Federal Election Campaign Act (FECA)--the statute that governs the financing of federal elections. The FEC has jurisdiction over the financing of campaigns for the US House of Representatives, the US Senate and the Presidency and Vice Presidency.

The FEC's mission, as Mr. Surina will address in more detail in a few moments, is to: (1) disclose campaign finance information; (2) enforce the limits , prohibitions and other provisions of the election law; (3) administer the public funding of Presidential campaigns; and (4) assist election administration officials

throughout the country. As you can see from the current campaign finance work being performed by the full Committee and by reading any newspaper, fulfilling this mission places the agency at the center of constitutional, philosophical and political debate.

With respect to policy and executive direction, the FEC is somewhat unique. Because the FEC regulates those who campaign for Congress and for the Presidency, Congress took great pains to ensure the impartiality and independence of the agency. With six commissioners, no more than three of whom may be from any one political party, and with an annually rotating chairmanship, the decisions and operations of the Commission are outside the control of any one party or administration.

In the budget context, the FEC concurrently submits its budget request to the President and to the Congress. In this sense, the agency is not subject to prior approval of the President's budget officials. This is another protection built into the law to foster the Commission's relative independence from the party in power of the executive branch.

For the record, in fiscal year 1998 the Commission received an appropriation of $31,650,000, with $3.8 million earmarked for computerization and $750,000 earmarked to be transferred to GAO for an independent audit of the agency. We received a full-time equivalent staffing level not to exceed 313.5.

Our critics say that one of our most serious problems is that we are unable to achieve "speedy justice." To that we all agree. Cases do take too long to complete. However, the growing number, size and complexity of many cases requires additional compliance resources so that we can properly address that problem.

Mr. Chairman, in summary, we believe that we are managing agency resources wisely. We have an excellent record for disclosing campaign finance information, and we secure compliance with the law the best that we can with limited resources. We do, however, require additional resources if we are going to be able to resolve the compliance backlog which is made up of increasingly larger and more complex cases.

That concludes my brief overview of the FEC. I now turn over the microphone to John Surina our Staff Director, who will provide a general overview of the agency's programs and point out some issues facing the agency. After Mr. Surina, Lawrence Noble, our General Counsel will speak to some of the compliance issues before us. Thereafter, both Mr. Surina and Mr. Noble will remain at the table as long as you like to field your questions.

Mr. HORN. We will be recessing at—well, maybe, hopefully, adjourning at 4:20. We've got a campaign finance reform meeting going on at 4:30. So we move from one to the other.

Ms. AIKENS. All right.

Mr. HORN. Yes, sir, Mr. Surina.

Mr. SURINA. Thank you, Mr. Chairman, Congressman Turner. I will summarize the comments that I provided in writing earlier.

The FEC is fast approaching its 25th anniversary. And although you wouldn't believe it here today, we have been praised in certain areas, but in other areas our performance has been mixed, and we've been criticized both from within the agency and from the outside.

Recently, the old standard of voluntary compliance has been too often disregarded by some of the players that we regulate and some that we don't regulate. For reasons that are not totally under our control, we have been unable to discourage this conduct thus far. Public cynicism is reportedly high, and it often manifests itself more in apathy now than in anger, and this may have a bearing on depressing voter turnouts, as we have seen.

Fiscal year 1999 is going to be a big year for the Commission. In addition to the problems we have right now, in fiscal year 1999, we are going to be overseeing the 1998 congressional elections and the heavy reporting that immediately precedes and follows after that election. We are also going to be trying to oversee the fund-raising in the run-up year to the 2000 Presidential election. And it is during fiscal year 1999 that most of the furious fund-raising by primary candidates will be undertaken.

Finally, and perhaps most labor-intensive, we will, during fiscal year 1999, still have many of the major compliance matters that came out of the 1996 elections still before us. And it's beginning to appear that we're going to have very similar issues before us out of the 1998 elections.

As a result, we have asked for a relatively large increase in our budget. Our budget has never been large. We are asking, however, $36.5 million and 360.5 staff. That's up almost $5 million over what we received last year, and about 47 more people.

I would like to briefly summarize the four program areas that Chairwoman Aikens spoke of, two of which are relatively small. The first one is support for the elections community. We have a small service-oriented unit, our Office of Elections Administration, that tries to help the many thousands of election administrators at both the State and county level do their job better.

In 1999, we will be preparing our second biennial report on how the operations of the national Voter Registration Act affected these operations. Also in 1999, we have been asked by this community to update our current performance standards for voting equipment. We developed that document in 1990. In the past 8 years, there have been tremendous advances in technology, and the elections community has asked us to help.

We will also, with what money may be left in that small unit, try and put out additional technical publications to help the election administrators. Our most recent publication has been a guide on how to develop statewide, automated voter registries, to help keep the voter registries up-to-date and purged of dead wood.

The next area is our public funding program. Public funding, this agency disbursed about $236 million for the 1996 election, to 11 primary candidates for the presidency, the two national party conventions, and three general election candidates. That program, as the Commission has reported, is somewhat at risk right now, because the status of the fund appears inadequate to fully fund all the various players in the 2000 election. There will be sufficient funds, clearly, for the general election candidates.

Mr. HORN. Let me interrupt at this point.

Mr. SURINA. Yes, sir.

Mr. HORN. Is that because—well, let me tell you what happened to me. Obviously, I wanted to contribute to that fund. And if I hadn't had to sign the IRS filing on April 15, I wouldn't have discovered it. Our tax accountant, with no consultation with my wife or myself, had just refused to check the thing, or said no, whatever it was. And that sent me through the ceiling, so I got that straightened out.

But I wonder how many Americans that have their tax accountants doing all their IRS filings realize that they need to say something to them, to put the right check mark there.

Mr. SURINA. Several years ago, sir, we did try to have a public education program, because neither the accountants nor the taxpayers really knew what that money was going for. And we actually found some tax preparation software that not only did not ask the taxpayer whether or not they wanted the box checked, but it automatically defaulted to an affirmative no on the form.

Now, I think the problems are probably far broader than that. The decline in the participation in the checkoff is at least one of several factors that is reducing the amount of money in that fund. A third-party participation, which looks likely for 2000, is going to put more demand on the fund.

But there is another problem, that the payouts are consistently adjusted upwards for inflation, but the checkoff, for 20 years, remained $1. So for 20 years you found an increasing drawdown on the fund, but the same static amount of money going into it. So it's really a threefold problem, and we're trying to bring this to the attention of Congress, hoping that it can be fixed before the 2000 election.

Mr. HORN. Well, thank you. I didn't mean to interject, but that just hit me, a little innocent thing like a tax accountant's software, or whatever. Thanks.

Mr. SURINA. We can address that more later. I'd like to roll on to the other three programs.

There was a lot of discussion today about the disclosure program. And we do take it a bit more broadly than simply turning around the tremendous volume of campaign finance data and putting it out to the public. We also include within that program the training sessions we hold for the regulated community, the publications we put out to the general public, and our rulemaking and advisory opinion process. We try to help both the regulated community and the public better understand the rules of the game.

On the disclosure program, which deals with campaign finance data, we do, in fact, believe we've made pretty good strides. It was mentioned that we now have the actual images of the reports that

are filed with the FEC available on a special section of our web site within 48 hours of receipt at the Commission, oftentimes within 24 hours. That exists for the Presidential candidates, the House candidates, political action committees and parties, all but Senate candidates, who continue to file with the secretary of the Senate.

We talked about electronic filing, or I heard a lot of comments about electronic filing. We just released our version 2.0 of electronic filing. The first version allowed filing by diskette. The new version, which is being released this month, permits filing over the Internet or over a dial-up modem by those committees that might be nervous about putting their information on the Internet.

Unfortunately, as was mentioned, out of 8,000 registered committees, we only have about 50 that actually are taking advantage of the system, because it is strictly voluntary. We have made efforts to promote the system, but we would very much like to see Congress intervene and make it mandatory above some dollar threshold.

The next area that I'd like to speak to is our compliance program. For the most part, I will defer to Larry, because he is the one facing the greatest workload in our enforcement and litigation matters. But I would like to speak briefly to our field audit program.

We have a small audit division of 34 people, some of whom are supervisory and administrative, that are fully engaged right now in auditing the Presidential candidates from 1996. The publicly funded candidates take first priority, and immediately following a Presidential election year, that staff is almost totally precluded from engaging in any discretionary audits.

When we're not in a Presidential cycle, the audit division can conduct about 25, perhaps 30, audits of candidate, PAC, and party committees. But they can now only conduct those audits for cause. As a result, we have no capacity of spot-checking whether the reports that are being filed with us are an accurate reflection of the financial activity of the committees.

We oftentimes end up auditing the committees that, through sloppiness, demonstrate their errors to us. But the savvy committee that can give a letter-perfect report will never have their books audited. We would recommend again, and have for years on end asked Congress to empower us to do a very limited random sample, spot-check, of reporting committees, to verify the record.

That concludes my prepared comments. I also, of course, will answer any questions the committee might have.

[The prepared statement of Mr. Surina follows:]

Mr. Chairman and Members of the Subcommittee, I am John Surina, Staff Director of the Federal Election Commission. The Commission appointed me to this post in 1983 and I serve at its pleasure. This is not my first management position in the federal government, but it has certainly been the most interesting.

The Federal Election Commission is fast approaching its 25th Anniversary. In many respects, members and staff of the agency can point with justifiable pride to the manner in which it has well served the public. In other areas, however, both members and staff are frustrated that the aims of the Federal Election Campaign Act are not being fully achieved. In the paragraphs to follow, I will briefly elaborate on those activities and functions where we believe we have done well and, candidly, on others where, with support of Congress, we hope to improve. Many members of the public, the regulated community and the Congress also view the Commission's performance as mixed, but perceptions vary widely as to the nature of the problems and what remedies should be sought. It is no overstatement to say the public is currently somewhat cynical about money and politics. Polls indicate that this cynicism is manifesting itself less in anger than in apathetic resignation. This is not healthy for democracy. In order to stem, and hopefully reverse this trend, we all wish to improve the transparency of the campaign finance process and secure greater compliance of the law's requirements regarding the permissible sources and amounts of financial support. In the coming fiscal year, FY 1999, the Commission faces extraordinary challenges to improve public disclosure and to advance general compliance with the letter and spirit of the law.

Fiscal Year 1999 will be a pivotal year for the FEC. During the period running from October 1, 1998, through September 30, 1999, Commission staff will process the financial reports immediately preceding and immediately following the 1998 Congressional elections. At the same time, we will begin processing the matching fund submissions by primary candidates for the 2000 Presidential Election. Simultaneously, we will be working on the complaints and audits associated with the 1998 election and will still be digging ourselves out from under the tremendous compliance fall out of the 1996 election cycle.

We have divided our various activities into four line programs. I will briefly describe each but will defer to our General Counsel, Larry Noble, to provide greater elaboration on the compliance program and the problems we are facing there.

## Election Administration

We have a small (five-person) office which provides technical and information support to the many thousands of elections administrators at the state and county level. During FY '99, this office will be responsible for compiling information for the second biennial report to the Congress on the impact of the National Voter Registration Act on election administration. The office will also move forward in its efforts to update the Voting Systems Standards Report published in January 1990 in order to address new

technologies introduced since then. The office will also conduct research on specific administrative and technical issues confronting election administrators according to the priorities established by its Advisory Panel comprised of 20 state and local officials responsible for elections in their jurisdictions.

## Public Funding

The Commission is responsible for administering the law that provides a public subsidy for the Presidential election campaign. In the 1996 election, $236 million were disbursed to 11 Primary candidates, the two major party conventions, and three General Election candidates. In the run-up year, the Commission certifies the eligibility of candidates for matching funds by primary candidates. This process has been made far more efficient by having primary candidate committees file their submissions on optical disks that contain both summary data and digital images of the individual contributor checks on which the match is based. In the year of, and the year immediately after, the Presidential election, this program shifts to the audit mode to verify that public funds were properly handled. Here also, our staff efficiency has improved by conducting computer analyses of automated disbursements data. The audits of the 1992 Presidential Election were concluded in half the time as were those of the 1988 Election.

Apart from the appropriated resources sought to administer this program, separate accounts are maintained by the Treasury Department which contain the grant funds for payment to the national nominating conventions, the general election candidates and, on a matching funds basis, the primary candidates. Funds for these accounts are derived by tallying the number of taxpayer check-offs on each year's personal income tax returns. As separately reported by the Commission in its A-123 vulnerability assessment report, we project a shortfall in this fund that is likely to impact primary candidates. This problem needs to be addressed by Congress.

## Disclosure

Broadly defined, our Disclosure Program encompasses not only the review and placement of campaign finance information on the public record, but also includes the staff who assist the public and the regulated community in understanding the law and the regulations. It is within our disclosure program that, with the support of Congress, we have made the greatest technical strides. This year, we rapidly and successfully inaugurated an Internet service whereby digital images of most campaign finance reports can be viewed by anybody with access to the World Wide Web. We have also successfully developed software that enables any registered committee except Senate Campaign Committees to file their reports on electronic media -- on diskette, dial up modem, or over the Internet. We make this software available free to registered committees and to the vendor community that services political committees. Creating this software and acquiring the hardware and telecommunications capability for

electronic filing has been quite expensive. The four-year contract costs for establishing and maintaining this capability is $1.9 million. Overall, our five-year contract expenditures for electronic filing are programmed at $2.5 million. This is quite a bit more than the approximate $100,000 that we normally spend annually for having this information manually keyed into our data base. That manual process, while accurate and inexpensive, is, however, relatively slow -- taking up to 30 to 45 days after a reporting date before 95% of all itemized contributions were captured. The new system buys the capability of instantly updating our data base and doing so with committee disbursements as well as receipts.

In order to yield the return in timeliness that this system affords, however, we need to get large committees to employ the system and to stop filing paper reports -- many of which are hand written. We have about 8,000 political committees registered with the FEC. Just about 5,500 filed 1997 year-end reports. Of these, only 42 filed electronically -- 34 PACs, 1 State Party Committee, 4 House challengers and 3 House incumbents. For all the others, filing on paper, we must continue our in-house coding and contract keyboarding of the data. Therefore, we certainly have not saved any money in data entry. More importantly, in order for the public to have speedy disclosure, which is the true return for our investment in this system, we urge Congress to require committees above a reasonable financial threshold to file electronically.

Finally, I can report that we successfully absorbed the receipt process of House candidate reports in 1996 and this not only enables them to file electronically, but also enables us to image all House reports for placement on our internal image file and on our website. Should Congress decide to shift the filing point for Senate candidates to the Commission, that workload can be absorbed with very minor resource increments.

## Compliance

Almost everybody engaged in the campaign finance debate believes that too many players have strayed from the fundamental rules of the game. While most members of the regulated community continue to make every effort to comply with the law, there are credible allegations that several of the larger registered committees and several large unregistered entities, may have pushed the envelope beyond the gray zone. Investigating allegations of multi-million dollar violations involving hundreds of players requires a great deal of resources. I will reserve for Mr. Noble a more thorough discussion of the changing dimensions of this gray zone and the extraordinary demands on our enforcement work.

I do, however, wish to speak briefly to the field audit aspect of our compliance program. Besides auditing Presidential candidates who receive public funds, four votes by the Commission will authorize field audits of PACs, party committees, or House or Senate candidate committees if their reports show "substantial non-compliance" with the law as evidenced by the poor quality of their reporting. Few such "for cause" audits can

be undertaken given our limited staff. More importantly, selecting committees to be audited based on the problems evidenced in their reports means we must take reports at face value. In effect, we will only audit committees who display their errors to us. If you will, sloppy, but honest, reports generate field audits -- oftentimes of new and unsophisticated committees. Committees filing facially perfect reports will not have the underlying documents and bank records reviewed to verify the completeness and accuracy of their reports. The Commission has repeatedly asked Congress to restore the authority to spot check reporting by randomly auditing a small sample of the 8,000 committees reporting to us.

This concludes my prepared testimony. I'll be happy to try to field any questions you may have now, or perhaps better, after Mr. Noble speaks.

Mr. HORN. Thank you very much.

Mr. Noble.

Mr. NOBLE. Thank you, Mr. Chairman and Congressman Turner.

I am pleased to appear before you to discuss the operation of the Federal Election Commission, and mainly the enforcement program. As you have heard, I am the FEC's general counsel, and it's my office that provides legal advice to the Commission, in the context of rulemakings, advisory opinions, audits, and civil enforcement cases. While all of these are critical areas, I would like to focus on the enforcement work.

Although the Department of Justice can seek criminal penalties for egregious violations of the law, and Congress can investigate and hold hearings, the day-to-day enforcement of the campaign finance laws falls squarely on the FEC. Enforcement cases are generated from our audits and reviews of reports, as well as from complaints filed by outside parties, and from referrals from other agencies.

The nature of the violations we deal with range from late filing of campaign reports, sometimes called the speeding ticket type cases, to the laundering of foreign money into Federal elections. By most standards, the FEC's enforcement staff is small, given its statutory mandate.

We are today only able to assign approximately 24 staff attorneys, assisted by 9 paralegals and 2 investigators, to handle all of our enforcement cases. These staff are directly supervised by approximately 5 assistant general counsels.

From the beginning, there have been concerns about the lack of strong and timely enforcement of the campaign finance laws. In my view, a large part of the problem is that the agency has been operating without the resources necessary to accomplish its task.

I would like to note here, in light of some of the criticism made, that regardless of the resources a law enforcement agency is given, you are not going to be able to finish most cases in weeks or in months, as many people would like. Most law enforcement agencies realize, especially with the more complicated cases, they may take years to do. But you need the resources to do those cases.

Dissatisfied with the way things were working, in 1993, the Commission adopted the enforcement priority system, which you've heard about, to help allocate our resources. Under this system, all cases coming to the agency are rated pursuant to confidential objective criteria that are approved by the Commission and are periodically reviewed by the Commission. No changes are made to that criteria without Commission approval.

Based on the review of the case under the prioritization system, some cases are routinely dismissed because they do not warrant the use of our resources. Now, frankly, many of these cases would be dismissed no matter how much resources we had, because they are just not worth pursuing. But at the same time, right now I think our thresholds for what we would take are too high.

Cases that are rated high enough to signal that they do deserve attention are held pending the availability of staff, because one of the main functions of the enforcement prioritization system is not to assign a case until somebody is available to work on it. If the

case is not assigned within a reasonable time, it may be dismissed without substantive action because it has grown stale.

To avoid all of the larger cases squeezing out all the smaller cases, the Commission has made a conscious decision to keep a small but active caseload of more routine type violations. So it is not true that the agency is just focusing on the major cases.

Now, under this system, we are still forced to dismiss too many cases because there is not staff available to work on them. For example, in fiscal year 1997, we only had about a third of our pending cases active at any given time, and we ended up dismissing 133 cases without substantive action, 32 of which were dismissed just because they were stale. Those were cases that were identified early in the process as important enough to work on, but we never found resources or staff available to work on them.

In addition, a number of our larger active cases are suffering because we cannot assign sufficient staff to do the job required in those cases. So those cases are moving along, but they are not moving along in the way that we would like them to move along.

A quick look at the aftermath of the 1996 election shows that our problems are only getting worse. The 1996 elections generally are perceived as a campaign finance disaster. But for fiscal year 1998, as you've heard, we are operating with a budget of $31.65 million. Keep in mind that this is for the entire operation of the agency, not just for the enforcement program.

For fiscal year 1999, we have asked for additional staff for audits, investigations, and litigation. Without an increase, we will still be able to only assign about 24 staff attorneys to handle all the caseloads. The 1998 elections are upon us, and the 2000 elections are right around the corner. Compare these numbers with the Department of Justice or Congress' spending on just the major issues that arose from the 1996 Presidential election. And I was happy to hear this morning that this was recognized.

According to press reports, the Department of Justice has more staff working on its investigation of the 1996 campaign than the Commission has in its entire Office of General Counsel for every case, nationwide. Likewise, as you heard this morning, the Senate Committee on Governmental Affairs has used 40 attorneys, 4 investigators, 8 FBI agents, and 2 GAO investigators for its investigation of the 1996 election.

I learned for the first time this morning that the full Committee on Government Reform and Oversight has more staff working on its one investigation than we have to work on our cases.

Mr. HORN. You should know most of them will be leaving by December 31. They were only authorized to have that through December 31.

Mr. NOBLE. I understand that. Our problem is that our work didn't stop with the 1996 election. Our work now continues. But I think it does show what you're able to assign to one investigation, that warrants that type of attention, but we are not able to put that type of attention to the same investigations.

What it also shows is that we are expected to handle hundreds of cases in a timely fashion with only a relative fraction of the resources others are given for more narrow tasks. I think it's difficult

to see how this signals that there is going to be credible and timely enforcement of the law.

But obviously our problems are not solely resource-driven, and you have heard a lot about this, this morning and this afternoon. By its very nature, this is an extremely difficult area to regulate. As campaign finance issues frequently pit first amendment interests against a long-recognized compelling interest in ensuring that our elections are open to the cleansing light of disclosure and free from real or apparent corruption, the courts take a special interest in our cases.

Given the interplay of these concerns, the campaign finance laws are as much a product of the courts as a product of the legislative process. The result is a system that is a product of no singular vision or necessarily consistent rationale. This is partly due to the fact that the courts have not been as consistent as others would have had you believe in ruling on these cases, and the court decisions do go in a lot of different directions.

Thus, it's not surprising that even the best-intentioned campaign and party people have problems figuring out what to do. And unfortunately, not everyone has the best of intentions. Over the years there have been too many people who view the law as an annoyance and a hindrance rather than a congressional mandate designed to ensure our rights as citizens to free and clean elections.

Let me make it clear from my experience, however, this is an attitude that crosses party lines. I'm not suggesting that everybody does it, but too many do.

While I don't see any simple solutions to the problem, I do have two starting suggestions. First, there must be real commitment to enforcing the laws, and this means providing the FEC with the resources necessary to do its job. We are also going to need a change in attitude by those working under the laws.

Campaign finance law should not be seen as inside-the-beltway rules whose only purpose is to give campaigns something to accuse their opponents of breaking. These rules go to the heart of our democracy. They are laws under which we elect our government, and they are important, and they need to be seen as such and regarded as such.

I will be glad to answer any questions you have. Thank you.

[The prepared statement of Mr. Noble follows:]

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you to discuss the operation of the Federal Election Commission and the enforcement of the campaign finance laws.

I am General Counsel of the Federal Election Commission ("FEC" or "Commission"). As you know, the FEC is the independent agency charged by the Federal Election Campaign Act ("FECA") with the administration and civil enforcement of the Federal campaign finance laws. The Office of General Counsel ("OGC") advises the Commission on the application of the campaign finance laws to election related activity in the context of rulemakings, advisory opinions, audits and civil enforcement cases. It is through the rulemaking process that the Commission construes the statute and attempts to reconcile it with court opinions. It is through the advisory opinion, audit and enforcement processes that the Commission applies its construction of the law to specific factual situations. While I will be glad to answer questions about any of these critical areas, I will focus my testimony on the Commission's enforcement work.

Although the Department of Justice can seek serious criminal penalties for egregious violations of the law, and Congress can investigate and hold hearings to focus public attention on problems and develop legislative solutions, the day-to-day nationwide enforcement of the campaign finance laws falls on the FEC. By most standards, the FEC's enforcement resources are small given its statutory mandate. For example, while the Office of General Counsel has approximately 100 FTE, our other responsibilities allow us to only assign the equivalent of approximately 24 staff attorneys, assisted by nine paralegals and two investigators, to handle all of our enforcement cases. These staff are directly supervised by five Assistant General Counsels.

During the past 22 years, over 4,700 enforcement matters have passed through the Office of General Counsel. Our enforcement cases are generated from audits and reviews of reports that the FEC routinely undertakes, as well as from complaints filed by outside parties and referrals from other agencies. The nature of the violations alleged range from the non-filing or late-filing of campaign reports to allegations of more egregious violations, such as the laundering of foreign money into federal campaigns and illegal corporate and labor union contributions.

From the beginning, there have been concerns about the lack of strong and timely enforcement of the campaign finance laws. In my view, a large part of the problem is that the agency has been operating without the resources necessary to accomplish its task. The Commission has attempted to deal with this problem in a number of ways. For many years, the Commission attempted to handle every case that came through the door. Every case was assigned to a staff member, regardless of the number of other matters assigned to that staff person. This resulted in virtually every case suffering for lack of adequate attention.

Not being satisfied with this situation, OGC undertook a comprehensive study of our workload and internal processes. In 1993, as a result of that study, the Commission adopted the Enforcement Priority System ("EPS"). The basic concept of the EPS is that not all cases are equal and that difficult resource allocation decisions must be made in the context of cases that deserve attention. Under the system, all cases coming into OGC are rated by the Central Enforcement Docket ("CED") pursuant to confidential objective criteria. Based on that review, some cases are routinely dismissed because they rate low, signifying that they are less important than others in the system and do not warrant the use of our resources. Other cases, however, rate high enough to signal that they do deserve attention, even though there may not be anyone available at that time to handle the case. These cases are held in CED, pending the availability of staff. However, if the case is not assigned within a reasonable time, it will be recommended for dismissal without substantive action because it has grown stale. To avoid having the larger and more complex cases squeeze out all of the more routine cases, we do keep an active, though small, group of cases that deal with more routine violations.

Overall, this system allows the Commission to allocate its limited resources in a fair and objective manner. Unfortunately, we are still forced to dismiss too many cases because no staff are available to work on them. For example, in FY 1997, we averaged approximately 319 cases in-house during any given month, of which we were able to activate only about a third. In that same year, we ended up dismissing 133 cases without substantive action, 32 of which were dismissed solely because they had grown too old waiting for assignment. Moreover, these numbers do not reflect the fact that we have a number of active cases which are suffering because we cannot assign sufficient staff to do the job that is required. All of this has given rise to the criticism that enforcement is still lagging too far behind the evolution of campaign finance violations. It is a criticism we share.

A quick look at the aftermath of the 1996 election shows that our problems are only getting worse. As everyone is aware, the 1996 elections generally are perceived as a campaign finance disaster. To the extent it was, a large part of our mandate is to clean up from that disaster. But for FY 1998, the FEC's budget is $31.650 million. Keep in mind that this is not just for investigations arising out of the 1996 election. It is for the entire operation of the agency, including disclosure, public funding, and election administration programs, as well as the nationwide enforcement of the Federal election laws. The FEC asked for an additional $5 million in FY 1998 to hire staff and buy equipment necessary to conduct the investigations arising from the 1996 election, but that request was not fully approved. For FY 1999, we have effectively renewed our request and have asked for an additional 37 staff for audits, investigations and litigation. Without that increase, we still will only be able to assign about 24 attorneys to cover all of our enforcement cases. And the 1998 and 2000 elections are just around the corner.

Compare these numbers with what the Department of Justice or Congress is spending on just the major issues that arose from the 1996 presidential election.

According to press reports, the Department of Justice has more staff working on its investigation of the 1996 campaign than the Commission has in its entire Office of General Counsel. Also, compare the FEC's resources to what the Senate Committee on Governmental Affairs has used for its investigation of the 1996 election. According to the Secretary of the Senate, the Committee used forty attorneys, four investigators, eight FBI agents, and two GAO investigators.

If you broaden the comparison to other areas of law enforcement, the results are equally striking. For example, according to published figures, the Independent Counsel's Whitewater investigation had cost over $31 million as of March 31, 1997. The Iran-Contra investigation cost over $47 million. These figures do not include the cost of employees assigned to work with the Independent Counsel by the FBI or other agencies.

What this all shows is that the FEC is expected to handle hundreds of cases in a timely fashion with only a relative fraction of the resources others are given for more narrow tasks. It is difficult to see how this signals that there will be credible enforcement of the campaign finance laws.

Obviously, problems in the enforcement of the campaign finance laws are not solely resource driven. By its very nature, this is an extremely difficult area to regulate. Regardless of which campaign finance issue is being addressed—be it disclosure, contribution limits, restrictions on political action committees, labor unions or corporations, or the use of soft money by the political parties—we are working in an area that frequently pits First Amendment interests against the long recognized compelling governmental interest in ensuring that our elections are free from real or apparent corruption. To paraphrase one court, the question is often seen as whether the First Amendment interest in unfettered speech "trumps" the congressional goal of an electoral process open to the cleansing light of disclosure and free from the effects of real or apparent corruption.

Given the interplay of these concerns, the courts have not been reluctant to trim, mold or even slash FECA and the FEC's actions when they believe the law or the agency is inappropriately encroaching on First Amendment interests. From the beginning, for better or worse, the campaign finance laws have been as much a product of the courts as a product of the legislative process. The result is a system that is the product of no singular vision or necessarily consistent rationale; a system with complex rules that are open to as many interpretations as there are lawyers doing the interpreting.

Thus, it is not surprising that sometimes even the best-intentioned campaign and party people have problems figuring out what they can and cannot do. While the vast majority of people want to try to comply with the law, not everyone has the best of intentions. Rather, some seem to embrace the all too natural inclination to push the envelope in the name of remaining competitive in an election. Over the years, there have been too many people who view the law as an annoyance and hindrance —something to

be gotten around—rather than a Congressional mandate designed to ensure our right as citizens to free and clean elections.

Let me make it clear, however, from my experience, this is not an attitude that can be ascribed to only one party or group. It is an attitude that crosses party lines and resides in the backrooms of too many campaigns. I am not suggesting that "everyone does it," but too many do.

While I don't see any simple solutions to these problems, I do have a few starting suggestions. First, there must be a real commitment to enforcing the laws. Indeed, timely and meaningful enforcement is the only way to convince some people that obeying the law must be an important goal of every campaign. This means providing the FEC with the resources it needs to do its job. If Congress expects more from the agency, then more attention will have to be paid to its needs.

We are also going to need a change in attitude by those working under those laws. Campaign finance laws should not be seen as "Inside the Beltway" rules whose only purposes are to help a candidate gain partisan advantage or give campaigns something to accuse their opponents of breaking. These rules go to the heart of our democracy. They are the laws under which we elect our government. They are important and they need to be seen and regarded as such. Part of our social contract is that we obey the laws our representatives enact, and that must include the laws by which we elect those representatives.

What we are doing is too important to be buried under partisan attacks and the search for a narrow advantage. If the situation does not change, the problems of the last election, as well as the public's cynicism, will only worsen in the future.

I will be glad to answer any questions you have.

Mr. HORN. We thank you.

And now the inspector general of the Federal Election Commission, Lynne McFarland.

Ms. McFarland.

Ms. MCFARLAND. I wasn't asked to testify. I was mainly just asked to accompany the agency. I'd be glad to answer any questions or give you a brief overlook of my office, if that would be helpful.

Mr. HORN. What I'd like to know is, and please file it for the record, how many years have you been inspector general?

Ms. MCFARLAND. Nine.

Mr. HORN. Nine. Was there an inspector general before you?

Ms. MCFARLAND. No, there was just an acting inspector general. The agency came under the Inspector General Act amendments of 1988, and I was appointed in February 1990. They had an Acting between April and February.

Mr. HORN. I'd like a list in the record at this point, without objection, of all of the studies, titles, of the inspector general since you came on.

Ms. MCFARLAND. I'd be glad to provide that.

Mr. HORN. Or if the acting person had some, put those in, too.

[The information referred to follows:]

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 18, 1998

The Honorable Stephen Horn
Chairman
Subcommittee on Government Management,
Information and Technology
House Committee on Government Reform and Oversight
B-373, Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

During the March 5, 1998 oversight hearing on the Federal Election Commission (FEC), you requested copies of all audits released over the last four years (3 sets of each) and a list of work completed by the Office of Inspector General (OIG) since its inception. I am pleased to provide you with these documents, as requested.

Also during the hearing you raised the issue of a violation of law committed by the FEC in relation to an earmark pertaining to the FY 1995 budget. You asked why the Office of Inspector General had not looked into this matter. As laid out in Chairman Aikens' letter to you, dated March 13, 1998, there was no earmark or fencing contained in the final appropriation. Consequently, the OIG would have had no reason to look into this matter.

I will be happy to provide you with any additional material or information should you so desire. I can be reached at 694-1015.

Sincerely,

Lynne A. McFarland

Lynne A. McFarland
Inspector General

Enclosure

## OIG WORK PRODUCTS

OIG 97-05 - FEC Quarterly Cash Count of Commission's Imprest Fund
OIG 97-04 - FEC Quarterly Cash Count of Commission's Imprest Fund
**OIG 97-03 - FEC Property Management Audit (Computer Inventory)**
**OIG 97-02 - FEC Performance Appraisal Audit**
OIG 97-01 - FEC Quarterly Cash Count of Commission's Imprest Fund

OIG 96-06 - FEC Quarterly Cash Count of Commission's Imprest Fund
OIG 96-05 - FEC Quarterly Cash Count of Commission's Imprest Fund
**OIG 96-04 - Audit of Accounts Payable as of 09/30/95**
**OIG 96-03 - Compliance Audit of the Freedom of Information Act (FOIA) (Calendar Year 1994)**
**OIG 96-02 - Review of Commission Travel (Fiscal year 1995)**
**OIG 96-01 - Compliance Audit of the FEC Enforcement of the Government in the Sunshine Act**

**OIG 95-02 - Peer Review of the Office of Inspector General Commodity Futures Trading Commission**
**OIG 95-01 - FEC'S FY 1994 Payroll Expense and Related Accounts**

**OIG 94-03 - Employee Transit Benefit Program**
**OIG 94-02 - Data Entry Contracts (SOL 90-1 & RFP 94-01)**
OIG 94-01R - Review of FEC Recreation Association (FECREC)

**OIG 93-02 - FEC Payroll & Accounting Office Compliance with the Prompt Payment Act**
**OIG 93-01 - Cash Handling & Internal Control Procedures of the Public Disclosure Division**

**OIG 92-02 - Performance Management and Recognition System (Merit Pay) at the FEC**
**OIG 92-01 - Procurement within the FEC**

**OIG 91-04 - FEC'S Program for the Collection of Civil Penalties**
**OIG 91-03 - FEC'S Internal Control and Accountability over Property and Equipment**
**OIG 91-02 - FEC Federal Managers' Financial Integrity Act Program within the FEC**
**OIG 91-01 - FEC Imprest Fund**

**Bold type represents Audits**

**FOLLOW-UP AUDITS** **(also see follow-up file)**

OIG 96-03 - Compliance Audit of the Freedom of Information Act (FOIA)(Calendar Year 1994)
OIG 96-02 - FEC Review of Commission Travel

OIG 91-04 - FEC'S Program for the Collection of Civil Penalties
OIG 91-03 - FEC'S Internal Control and Accountability over Property and Equipment
OIG 91-02 - FEC Federal Managers' Financial Integrity Act Program within the FEC
OIG 91-01 - FEC Imprest Fund

In addition to the above listed audits, reviews, etc. the OIG performs a variety of other functions. In part, we have provided comments to agency management on internal directives, participated in joint PCIE/ECIE reviews as requested, and on a rotational basis, performed peer reviews of other ECIE IG offices.

## AUDITS PERFORMED 1993 - 1997

| | |
|---|---|
| 97-03 | Audit Management of Desktop and Laptop Computers |
| 97-02 | Review of the Commission's Employee Appraisal Process |
| 96-04 | Audit of Accounts Payable Balance as of 09/30/95 |
| 96-03 | Compliance Audit of the Freedom of Information Act (FOIA) Calendar Year 1994 |
| 96-02 | Review of Commission Travel - Fiscal Year 1995 |
| 96-01 | Compliance Audit of the Government in Sunshine Act - Calendar Year 1995 |
| 95-01 | Financial Related Audit of the Federal Election Commission Payroll System |
| 94-03 | Audit of the Federal Election Commission's Employee Transit Benefit Program |
| 94-02 | Audit of the Federal Election Commission's Data Systems Development Division - Data Entry Contract SOL 90-1 & RFP 94-1 |
| 93-02 | Audit of the Federal Election Commission's Payroll and Accounting Office (Compliance with the Prompt Payment Act) |
| 93-01 | Audit of the Federal Election Commission's Public Disclosure Division (Cash Handling & Internal Control Procedures) |

Mr. HORN. Now, having taken care of that for the record, I'm curious, what have you done in the last few years, and what do you see your role as, and what issues are you looking at within the FEC?

Ms. MCFARLAND. Well, currently, we're starting to focus a little bit more on the modernization, the computer modernization project.

First, let me give you just a little bit of background. We're a small office in a relatively small agency. There are only four employees. Currently, there are only three. I have an auditor position posted. There's myself, two auditors, and I have a special assistant. So right there, there's a limit to how much you can do, because we are small.

We are trying to get more into the modernization program. As a matter of fact, in the audit position I have posted right now, I'm requesting for somebody with an information systems background, because we feel that's an important area. The Congress seems to be interested in it. They have allotted a lot of money to it, so we want to make sure that the money is being spent, what it's being spent for, and that the systems are being used as well as can be.

We've tried to cover a wide range of areas in the FEC, because prior to coming under the Inspector General Act amendments, there was no internal oversight of the agency, other than the Audit Division. If they had the chance, they would look at certain areas. That was not their priority, so they really didn't have a lot of opportunities.

So we've tried to touch a lot of different areas. We've looked at public disclosure. We've looked at the financial statements for the payroll and the Personnel Office. We've done some personnel issues. We've looked at the General Counsel's Office collection of civil penalties. So we've tried to touch a little bit into each area of the Commission, to just get a little bit of a feel for where the agency is going. And as I said before, we're trying to get more into the technology aspect of the agency at this time.

Mr. HORN. With whom do you file those reports?

Ms. MCFARLAND. I send copies of my reports to all six commissioners, when we have six. I give them to the staff director, the general counsel, and the auditee. I give them to anyone who requests them.

Mr. HORN. Are the relevant congressional committees automatically on your list?

Ms. MCFARLAND. They get my semiannual reports. They do not get the audit reports. But if I get a request for one, I do give it to anybody.

Mr. HORN. Please send a couple or three sets up here so the Democratic staff and the Republican staff have them.

Ms. MCFARLAND. OK.

Mr. HORN. Let's say the last 4 years of your reports, just so everybody can get a feel for the internal workings.

Ms. MCFARLAND. OK.

Mr. HORN. This is really your presentation time, so I'm asking you a few questions to get things on the record, because I'm going to yield to Mr. Turner first for the questions.

But let me ask you, when that $3 million was put up for computerization, and the agency spent it all on hiring people, did the inspector general know about that, look at that, and why not?

Ms. MCFARLAND. We did not look at it. I believe at that time my staff was 1.8 FTE.

Mr. HORN. Well, did you know about it?

Ms. MCFARLAND. I attend the finance committee meetings. I don't actually remember that particular case. But I do go to all the finance committee meetings. I do get all the budget documents. I do get all the management plan documents.

Mr. HORN. But they violated the law.

Ms. MCFARLAND. I'm sorry, we did not.

Mr. HORN. Well, that's what we count on—I'm very fond of inspectors generals.

Ms. MCFARLAND. Yes, sir, I understand.

Mr. HORN. I mean, this committee authorized them 20 years ago, and this is the IG's anniversary year.

Ms. MCFARLAND. Yes, it is.

Mr. HORN. And I just wonder why the inspector general didn't catch that and do something about it, like tell Congress.

Ms. MCFARLAND. I don't have an answer.

Mr. HORN. See, the problem when an agency does something stupid like that, the good things they do, people don't even see, because they are so mad at one dumb thing. And that was dumb. When the Appropriations Committee tells you to do it, you do it.

As I say, I was there when the steam went up. As a freshman, I was rather bemused by that situation, but I knew they were right, because when they tell an agency to do it and when they don't do it, they are violating the law.

So you should have caught that, is all I'm saying.

Ms. AIKENS. Mr. Chairman, could Mr. Surina address that?

Mr. HORN. Yes.

Mr. SURINA. Sir, in the 1995 appropriation, there was report language asking us to put more money into an electronic filing software package. I believe it was March 1—no, it was February 24, 1995, the fiscal year had just commenced not too much earlier, there was a proposal in the House Appropriations Subcommittee to rescind 10 percent of the FEC's budget.

At that point, the Commission put a hold on its hiring, and it put a hold on all its systems development projects at that time. Eventually, throughout the process, the Senate, in effect, argued against any rescission whatsoever, a compromise was struck, and 4 percent of our appropriation was, in fact, rescinded. But by that time, by the time the rescission finally went through in 1995, we were at August, I believe, at that time our staffing had dropped down precipitously, because we put a freeze on all hiring, and we engaged in no new systems development work.

Mr. HORN. But why didn't you follow the $3 million? You do need automation. Why didn't you use it?

Mr. SURINA. It was taken away from us before any projects were implemented.

Mr. HORN. No, it was taken away because, presumably, you used it to hire staff. Are you saying they are wrong? I mean, they gave it to you to automate.

Mr. SURINA. We received—I'd have to pull the actual amount of money we actually received that year. We were in the midst of staffing up under that appropriation. It was an increase over fiscal year 1994. We were prepared to invest more money in technology.

Both the staffing and the improvements in technology came to a screeching halt when the money was rescinded. In fact, it came to a screeching halt when it was threatened to be rescinded, because we were afraid of overcommitting ourselves, hiring people that we could then no longer pay. So, literally, 1995 was not a good year.

Mr. HORN. Well, if you've got a different interpretation than Chairman Livingston and others, please write it to me.

Mr. SURINA. Yes, sir.

Mr. HORN. Because they feel they told you to spend $3 million to catch up in automation, and you didn't spend a dime of it; you went out and hired more people, which they hadn't authorized. So let's hear the agency then. Sometime, send me a note on it.

Mr. SURINA. We certainly will, sir.

Mr. HORN. Because I was there when the steam blew.

Mr. SURINA. I saw it also.

[The information referred to follows:]

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OFFICE OF THE CHAIRMAN

March 13, 1998

The Honorable Stephen Horn
Chairman
Subcommittee on Government Management,
Information and Technology
House Committee on Government Reform and Oversight
B-373 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

At the March 5, 1998, oversight hearing on the Federal Election Commission (FEC), you asked the Commission to supply the committee with certain information regarding our Fiscal Year 1995 appropriation. That information follows.

During the hearing, you relayed an assertion that the FEC had violated appropriations law. Without question, the FEC never has violated appropriations law, particularly with regard to any fences or earmarks, or, for that matter, category B apportionments imposed by the Office of Management and Budget (OMB). In addition, the Commission never has ignored formal Congressional intent as expressed in committee report language.

The specific question raised was whether the FEC had violated provisions of the Fiscal Year 1995 Treasury, Postal Service, and General Government Appropriations Act, Public Law 103-329. For your information, the following chronology of events, leading up to and immediately following enactment of the Fiscal Year 1995 appropriations bill, is instructive.

The FEC is a concurrent submission agency. As mandated by the FECA we submit simultaneous budget requests to the President and Congress. We make every effort to agree with the Administration's proposed budget whenever we believe we can meet our responsibilities within the requested constraints. At the same time, however, the agency reserves the right to present its own request to Congress. The FEC was compelled to submit its own request for Fiscal Year 1995.

The Commission requested $31,793,000. This amount was $8,229,000 more than it had been appropriated in Fiscal Year 1994. This increase included $4,000,000 for computerization upgrades, including electronic filing. The Office of Management and Budget presented the Commission with a passback figure of $27,216,000, which included a proposed earmark of $4,000,000 for the computer upgrade. The Commission appealed the OMB passback, arguing that $27,216,000, with four million fenced, would not even meet basic agency needs. In fact, OMB's passback was less than the amount required to maintain current FEC operations at that time.

After numerous conversations with OMB, the Administration verbally agreed to remove the earmarking language because it could not give us the requested funding level. The Administration's final Fiscal Year 1995 budget for the FEC ultimately presented to Congress was for $27,216,000, and did not include "fencing" or earmarking language of any kind.

On May 18, 1994, during the Fiscal Year 1995 appropriations process, the House Subcommittee on Treasury, Postal Service and General Government marked up the FEC at $27,106,000. To help set the record straight, with respect to electronic filing, the Committee report stated:

> The Committee directs that any administratively imposed "fence" between personnel and equipment requirements be eliminated in FY 1995. The Committee's intent is that FEC meet its full complement of staffing as Congress intended in the passage of the FY 94 appropriations.

On June 15, 1994, during House floor debate on the Treasury bill, an amendment was offered and passed to reduce the FEC's funding by $3.5 million, which took FEC's funding level down to $23,564,000, the Fiscal Year 1994 level.

On June 22, 1994, the Senate passed the Treasury bill with the Commission funded at $27,106,000 and no funds fenced or earmarked.

On July 8, 1994, OMB sent a letter to then-Chairman Obey, House Appropriations Committee, stating: "The Administration urges the conferees to adopt the Senate position on funding for the Federal Election Commission (FEC) which is consistent with the Administration's requested level of funding." Again, please note the Senate did not include fencing language, nor did the Administration mention a fence in its July 8, 1994, Statement of Administration Policy to Congress.

On September 20, 1994, during the conference on the Treasury bill, the House receded to the Senate figure of $27,106,000. Language in the conference report stated:

> The conferees support the FEC's efforts to modernize its operations through computerization but are unable to earmark funds for the purpose at this time (emphasis added). The conferees have taken this step without prejudice and on the basis that any such earmark might undermine FEC's ability to carry out its statutory responsibilities in the upcoming fiscal year.
>
> Within available funds, the conferees urge the FEC to move as expeditiously as possible with their plans to modernize operations through computerization. The conferees encourage the FEC to develop options that will provide for the electronic filing of reports.

On February 23, 1995, the House Appropriations Subcommittee voted to rescind $2.8 million of the FEC's current (Fiscal Year 1995) funding. The amount of the rescission was split with the Senate during conference and the FEC ultimately had to rescind $1.4 million. The conferees noted that they expected the FEC to fulfill its commitment to spend not less than $972,000 on computerization. The conferees also directed the Commission to complete strategic plans, including both a requirements and cost-benefit analysis, on: (1) internal ADP modernization efforts; and (2) electronic filing. The FEC complied with that direction. Despite the severe impact of the rescission on Commission operations, the FEC did expend over $1,000,000 on computerization and electronic filing development in FY 1995.

For your information, every FEC appropriations bill and/or conference report beginning with Fiscal Year 1996 has included some type of earmarking language regarding computerization. The FEC has abided by all such language. In fact, the agency has made a good faith effort to comply with all committee direction and guidance regarding computerization and electronic filing. We have worked closely with Subcommittee staff to ensure the computerization process has proceeded both smoothly and in compliance with Appropriations Committee intent.

As requested, I also have enclosed six copies of "Campaign Finance Law 96," copies of our current Legislative Recommendations to Congress, excerpts from the testimony pertaining to reporting of PAC contributions from the Commission's February 11, 1998, hearing on Recordkeeping and Reporting, the General Counsel's report regarding Howard Glicken, and a listing of our outside contracts. The Inspector General will send information requested of her under separate cover.

I trust this information is responsive to your concerns. Please be assured the FEC takes the appropriations process very seriously. We will continue to make every effort to comply with appropriations law and committee intent. If you have any questions, do not hesitate to call me. My office number is 694-1045.

Sincerely,

Joan D. Aikens
Chairman

Enclosure

Mr. HORN. So we can all get our questions in, I'm going to go to a 10-minute rule and start with Mr. Turner questioning, then I'll take 10 minutes, and then he'll take 10, and so forth, until we finish with the questions.

Mr. TURNER. Thank you, Mr. Chairman.

I'd really like to get right into the discussion we had at the end with the other panel, on the soft money ban. I guess I'll start with Mr. Noble as the general counsel. Just kind of as a beginning point of the discussion, would there be any legal problem with the FEC requiring all groups that make independent expenditures to register their existence with the Commission?

Mr. NOBLE. Well, right now, all groups that make independent expenditures, as defined in the statute, have to report the independent expenditure over a certain amount. So they are reporting.

Mr. TURNER. They are reporting.

Mr. NOBLE. They are reporting—presumably, they are reporting independent expenditures. And when we're talking about independent expenditures, we're talking about an expenditure that expressly advocates the election or defeat of a candidate. That is the definition of an independent expenditure.

There is a question now that actually is before the Supreme Court about when a group that makes either expenditures or contributions becomes a political committee. And it's interesting, in hearing about how we are always overextending ourselves, that is a case where the Commission actually gave a rather narrow interpretation, thinking it was following what the courts were doing, to when an organization becomes a political committee, and looked at the major purpose of the organization.

The en banc Court of Appeals for D.C. ruled that the Commission was wrong, and that anytime an organization expends over $1,000, it becomes a political committee. That case now is before the Supreme Court. So it is not true that the courts are constantly chastising the Commission for going too far. Occasionally, it chastises the Commission for not going far enough.

But right now we're in a situation that may help resolve the issue of when these groups become political committees and have to report everything. Right now, if they are making independent expenditures, they have to report the independent expenditures.

Mr. TURNER. So the groups that we have not reached are those that fall outside the bounds of having an advertisement that attempts to influence an election?

Mr. NOBLE. I think the battleground area now falls basically into two big categories. One is, if it's an independent group, what is the definition of express advocacy. And you've heard some court cases thrown around. The FEC has a regulation that defines express advocacy, and this is a gross oversimplification, basically as any advocacy that urges someone to vote a certain way where there is no doubt, there's no reasonable doubt what the advertisement is for, what it is doing, what it is urging.

That is called, generally, the "Furgatch test," and that's the case that is 10 years old, that I don't think is frayed at all, as Mr. Dahl referred to it. The *Buckley* case is over 20 years old, and it's still considered good law. *Marbury* v. *Madison* is over 200 years old, and it's considered good law.

Mr. TURNER. Is that the rule that I've heard expressed as, if you say vote for a certain candidate or if you vote against a certain candidate, then that makes it covered.

Mr. NOBLE. That's right. And the debate there is whether it's a magic words test. The magic words test generally refers to, "vote for, elect, defeat, support, Smith for Congress." Those are considered magic words. There are those who would argue that express advocacy has to be magic words.

Then there are others who would argue, and I fall into this category, and the Commission's regulation now says that, yes, with those magic words, it's express advocacy, but there is something beyond that, where there is no other reasonable interpretation of what the ad is doing. Where there's a clearly identified candidate, and there's no other reasonable interpretation of what the ad is doing but urging somebody to vote for or against somebody, you don't need the magic words.

That is the standard that comes out of the Ninth Circuit. The First Circuit, in the Maine Right-To-Life case, disagreed with that, and expressly said it disagreed with the Ninth Circuit. What you now have is a split in the Circuits. The Supreme Court, interestingly enough, denied certiorari in both cases.

Mr. TURNER. Is there any basis for looking beyond the ad itself to the organization that's paying for the ad; that is, the opportunity, perhaps, to distinguish between a group that could be objectively determined to be a group that would advocate a certain issue versus a group, like Citizens for Reform, that's created solely for the purpose of funneling money into campaigns, for no specific reason other than the defeat of candidates?

Mr. NOBLE. I think when you move beyond the question of whether they are a political committee or not, it's hard to distinguish between groups, at least under the Federal Election Campaign Act. The IRS may be able to do it, in terms of tax-exempt status. But under the Federal Election Campaign Act, it's generally hard, with one exception.

The Supreme Court, in the Massachusetts Citizens for Life case did carve out what we believe is a small niche for groups that are not political groups, the small, ideological, nonprofit organizations. And even they can make, as corporations, independent expenditures without prohibition, where normally corporations can't. But that's really the only other type of exception that has been drawn under the act, once you get away from the question of whether they are political committees or not political committees.

Now, I do believe, and I'm speaking only for myself here, that when you're dealing with political parties, which are political committees by their very nature and have a very different purpose, then, yes, you may very well be able to regulate them differently.

Mr. TURNER. If an individual, a candidate or some other group sees an ad and they find it objectionable, I guess, currently, their only option is to file a complaint with the FEC?

Mr. NOBLE. They can file a complaint with the FEC, yes.

Mr. TURNER. Are there any private legal remedies available to individuals if they think there's a violation of the act?

Mr. NOBLE. There are only two possible private legal remedies. One, if the Commission takes too long on the complaint, we can be

sued in the U.S. District Court for the District of Columbia, where the suit will be that we're taking too long. If the court finds that we are taking too long, that we are arbitrary and capricious, or contrary to law in how long we're taking, it can order us to act within 30 days. If we don't comply with that, it can give the complainant a private right of action.

Likewise, if we dismiss a case, either under the prioritization system or because we think that the case just generally doesn't have merit, we can be sued, again, in the District Court in D.C. And if the court finds the dismissal is contrary to law or arbitrary and capricious, it can order the agency to act. If the agency refuses to act, it can then give a private right of action.

Mr. TURNER. What would you have told these broadcasters that I mentioned that I visited with a couple of days ago, who are frustrated with what ads to accept and some of them are saying they just don't accept them? What guidance do they have now as to what they should place and what they shouldn't?

Mr. NOBLE. I think, generally, broadcasters, under the Federal Election Campaign Act, have broad discretion in what they're going to do, basically as long as they treat everybody the same. Some of the issues may arise under the Federal Communications Commission more than they would rise under us, with some of the broadcasters.

I know that there have been in the past—we've heard about threats being made to broadcasters that if they run certain types of ads that complaints will be filed against them. But again, most of our cases do not deal with broadcasters. That's not really something that we get too involved in, because, frankly, there is a media exemption in our act. And also, if it's normal advertising, as long as they are treating them as they would treat anybody else, any other political candidate, we're not going to get involved in it.

Mr. TURNER. You've obviously done a lot of research in terms of what you believe the FEC could do in this area. Could you just briefly outline where you are in your thought process? I realize whatever you recommend, would ultimately have to be approved by the Commission. But what's your general feeling on where the lines should be drawn?

Mr. NOBLE. With the understanding that I'm speaking only for myself here, I'm sure there would be five differing opinions on the Commission about this. I think that it is a very difficult area. I think the constitutional issues are very, very difficult. I think the courts, most courts, have not been that friendly to this area. They are very concerned about it, but I think there is still some room for movement.

For example, talking about the soft money issue for a moment, I think there's a bit of an analytical problem with the way people present the soft money issue, because "soft money" is defined by most people as money that is raised outside the limits and prohibitions of the law, and not used for Federal elections. Under that analysis, I fully agree, we have no jurisdiction over soft money. The issue is, is it influencing Federal elections? And if it is, then I think we do have jurisdiction over it, and we can do something about it.

The same thing goes with some of these ads right now. It is clear, as was said, that if it's an independent expenditure by an in-

dividual, it cannot be limited. You can require disclosure. You can also, and Congress has, prohibit certain sources for those independent expenditures. Corporations and labor unions, with minor exception, are not allowed to use general treasury funds for independent expenditures. So we know that prohibition is allowed.

The other gray area that I think there is still some room for movement in is in the area where something is coordinated with the candidate. And that, frankly, is one of the big battlegrounds right now.

The concept of an independent expenditure is that it is not coordinated with any candidates, the theory being there that it may hurt the candidate as much as help the candidate, and there's less quid pro quo or possible quid pro quo. If you coordinate with the candidate, however, then it becomes, in my view, a contribution. And I don't believe you need the express advocacy standard when you have coordination.

And if that's the case, then some of the ads that you are talking about may very well have, in fact—and I'm not talking about any specific ones here—but may very well have been coordinated with a candidate, in which case, then, I do believe—and this is in the courts right now—I do believe there is more room for regulating that activity if it's coordinated with a candidate.

What you do then is, you say it is a contribution. And if it's a contribution and they are doing a lot of this activity, they may very well become a political committee. Or if it's a corporation or a labor union, they are prohibited from making that contribution.

So those are the areas right now that I think that you're going to see the court cases, and you're going to see some more movement, on the question of what happens when these issue ads are coordinated with candidates, and also, what is the definition of express advocacy, how broadly it's going to go. I don't think the battle is over yet.

Mr. TURNER. I'm sure my time has expired, Mr. Chairman.

Mr. HORN. Well, keep going.

Mr. TURNER. No, go right ahead.

Mr. HORN. You've got 1 minute on my watch.

Mr. TURNER. You go ahead.

Mr. HORN. OK. Let me just get into a few basics with all of you. In terms of the Office of General Counsel or any FEC division, what's the extent of outside contractors or part-time employees?

Mr. Surina, do you have that answer?

Mr. SURINA. I could provide for the record an itemization of all our contracts.

[The information referred to follows:]

**FEDERAL ELECTION COMMISSION**
**SIGNIFICANT CONTRACTS AWARDED IN FY 1997 AND FY 1998**

**FY 1998 CONTRACTS 3/12/98**

| DAC | DATE | TRN | DESCRIPTION | DIV | OBJ | OBLIGATED | PAID | UNLIQ BAL |
|---|---|---|---|---|---|---|---|---|
| C036 | 10/29/1997 | INFO ACCESS SVC | | 60 | 2521 | **ADP CONTRACT** | | |
| | C036 DAC TOTAL | | | | | 225,000.00 | 130,004.44 | 94,995.56 |
| C037 | 10/29/1997 | ILM CORP | | 60 | 2521 | **DATA ENTRY** | | |
| | C037 DAC TOTAL | | | | | 11,945.00 | 7,577.50 | 4,367.50 |
| C001 | 01/08/1998 | SDR TECHNOLOGIES INC | | 61 | 2521 | **INTERNET IMAGES** | | |
| | C001 DAC TOTAL | | | | | 172,000.00 | 154,000.00 | 18,000.00 |
| D338 | 02/25/1998 | AMERICAN MGMT SYS INC | | 62 | 2521 | **GROUPWARE** | | |
| | D338 DAC TOTAL | | | | | 317,210.05 | 0.00 | 317,210.05 |
| C002 | 02/12/1998 | INGROUP | | 70 | 2521 | **CAMPAIGN FINANCE 1998** | | |
| | C002 DAC TOTAL | | | | | 24,259.00 | 0.00 | 24,259.00 |
| D349 | 02/27/1998 | FRANK VOGT | | 90 | 2521 | **CONTRACTING CONSULTANT** | | |
| | D349 DAC TOTAL | | | | | 24,842.40 | 0.00 | 24,842.40 |

**FY 1997 CONTRACTS 3/13/98**

| DAC | DATE | TRN | DESCRIPTION | DIV | OBJ | OBLIGATED | PAID | UNLIQ BAL |
|---|---|---|---|---|---|---|---|---|
| A018 | 09/25/1997 | NATL FINANCE CTR | | 10 | 2521 | **PAYROLL TRANSFER** | | |
| | A018 DAC TOTAL | | | | | 55,000.00 | 0.00 | 55,000.00 |
| C039 | 09/25/1997 | MANTECH ADV SYS | | 50 | 2521 | **VSS STUDY** | | |
| | C039 DAC TOTAL | | | | | 117,883.92 | 0.00 | 117,883.92 |
| C036 | 10/09/1996 | INFORMATION ACCESS SVC | | 60 | 2521 | **ADP CONTRACT** | | |
| | C036 DAC TOTAL | | | | | 513,910.76 | 513,910.76 | |
| C037 | 10/09/1996 | ILM | | 60 | 2521 | **DATA ENTRY** | | |
| | C037 DAC TOTAL | | | | | 100,000.00 | 97,899.54 | 2,100.46 |
| D436 | 04/21/1997 | VC & A | | 60 | 2521 | **CONTRACTING CONSULTANT** | | |
| | D436 DAC TOTAL | | | | | 22,564.00 | 22,564.00 | |

D697 09/22/1997 VC&A 60 2521 **CONTRACTING CONSULTANT**
D697 DAC TOTAL 16,938.00 16,938.00

C038 07/30/1997 CARLYN & CO 95 2521 **EF SURVEY**
C038 DAC TOTAL 44,370.00 44,370.00

C040 09/25/1997 SDR TECHNOLOGIES 95 2521 **ELECTRONIC FILING**
C040 DAC TOTAL 457,000.00 309,031.00 147,969.00

C041 09/25/1997 LAW MANAGER INC 95 2521 **CASE MANAGEMENT**
C041 DAC TOTAL 355,884.00 215,422.00 140,462.00

C042 01/30/1997 SDR TECHNOLOGIES 95 2521 **OPERATE INTERIM EF**
C042 DAC TOTAL 24,600.00 6,000.00 18,600.00

D511 05/14/1997 AMER MGMT SYSTEMS INC 95 2521 **UPDATE ADP ASSESS.**
D511 DAC TOTAL 159,650.00 135,334.44 24,315.56

D732 09/25/1997 AMER MGMT SYTEMS INC 95 2521 **GROUPWARE STRATEGY**
D732 DAC TOTAL 82,492.50 0.00 82,492.50

D733 09/25/1997 AMER MGMT SYSTEMS INC 95 2521 **GROUPWARE**
D733 DAC TOTAL 359,954.63 0.00 359,954.63

A017 02/28/1997 DEPT OF JUSTICE--LSI 40 2531 **DOCUMENT INDEXING**
A017 DAC TOTAL 325,850.95 0.00 325,850.95

Mr. HORN. Yes, but do you have a number of outside contracts?

Mr. SURINA. We do, primarily in the systems area. We're finding that the marketplace provides us much more responsive and up-to-date technology by going out on competitive bids.

Mr. HORN. Have you solved the year 2000 problem?

Mr. SURINA. We're working on it. We're concerned about it, quite frankly, in two areas, not just our own Y2K problems, possibly, but we're concerned about the elections community, are they prepared? We will be meeting with election administrators this April, in Portland, and the State of Washington information systems director is going to be speaking to them on what they need to look for. Not so much, perhaps, for voter tabulation equipment, but voter registries themselves are large, date-driven data bases, and they have to be very careful on that.

Mr. HORN. Let me ask Inspector General McFarland, you mentioned that you've conducted an investigation of the Office of General Counsel. Now what was the scope of the investigation, and what did you find out?

Ms. MCFARLAND. It wasn't an investigation; it was an audit. We were looking at the procedures for collection of civil penalties. We found that they were being done in a timely manner; they were being accounted for correctly; the process was being followed. But it was not an investigation; it was an audit.

Mr. HORN. OK. So that was a programmatic audit, not a fiscal audit, or was it both?

Ms. MCFARLAND. It was a programmatic audit.

Mr. HORN. OK. And that was a policy the Commission had set?

Ms. MCFARLAND. Yes. We looked at, were they following the procedures of the agency? Were they being collected in a timely manner? And then, when they were collected, were the procedures being followed to be put it in the correct accounts, and from the accounting aspect of it, also.

Mr. HORN. Have you, in your audit, reviewed how that enforcement priority system works?

Ms. MCFARLAND. No, we have not yet. We have not looked at that.

Mr. HORN. Are you planning to look at it?

Ms. MCFARLAND. In the future, yes, that will be in one of our audit plans.

Mr. HORN. How much in the future?

Ms. MCFARLAND. I hope within the next year to 18 months.

Mr. HORN. What is your immediate number of audits that you will have underway in the next 6 months, let's say? A feel for your operation.

Ms. MCFARLAND. Well, I'd say probably one to one and one-half started, because, as I said, I only have one auditor right at the moment, and I hope to have another one on board, hopefully, by the end of April. So once that person comes on board, I would be able to start another one.

Mr. HORN. Let me ask Chairwoman Aikens, you've heard the discussion between Mr. Turner and the general counsel on soft money, what is your reading of the commissioners' views on this, and is this a subject matter for the commissioners? Have you been looking at this? And if so, tell us where you are.

Ms. AIKENS. The general counsel presented to the Commission a notice of proposed rulemaking about 2 weeks ago. It was discussed at an open session by the commissioners. The proposed rule would have banned all soft money to national party committees. I don't think the commissioners are of one mind on this issue.

Mr. HORN. When you say that, do you mean soft money could only be given to national committees, or what? I don't understand.

Ms. AIKENS. Could not be given to the national—the national party committees would be banned from raising soft money.

Mr. HORN. OK. All right. This is Federal ones.

Ms. AIKENS. The national party committees.

Mr. HORN. OK. Have you done anything about the State ones?

Ms. AIKENS. Well, the State party committees, I would think, could—it was not in the rule.

Mr. NOBLE. If I can very briefly explain the rule.

Mr. HORN. Sure.

Mr. NOBLE. The proposed—again, this is only a recommendation for a proposal to be put out be the Commission—is that with the six National party committees, you ban them from raising and spending soft money, with one limited exception for the building funds, which is statutory. We can't do anything about that. But it would ban the raising and spending of soft money.

With the State party committees, while we didn't have a proposed regulation there, we discussed an alternative that, one, would have more disclosure at the State level; and two, would deal with the question of transfers of hard money from the National party committees to the State party committees, which then is put together right now with soft money and spent on this mixed activity.

One of the proposals we put forward was the idea that anything that the National committee transferred hard money, the State committee also would have to use hard money for that activity that the national committee was transferring hard money for. The Commission has yet to see the actual proposed language, and that's what we're working on right now.

Ms. AIKENS. When this was discussed at the first meeting, two of us did not believe that we had the statutory authority to regulate soft money with the State party committees, or even with the National party committees. So we asked the general counsel—we resubmitted the project to the General Counsel's Office for some alternative language, so that, when we put the notice out for comments, we could have various comments on whether we can do this, statutorily, constitutionally, and without a change in the law by the Congress. That was my position as well as one other member.

Mr. HORN. Mr. Noble—oh, excuse me.

Ms. AIKENS. That's all right. We might not have the authority.

Mr. HORN. Yes. Well, Mr. Noble, I'm just curious, how many Federal court cases are there that relate specifically to the soft money issue? I mean, just give us the broad picture.

Mr. NOBLE. I think specifically—there's really one that everybody focuses on, which is *Common Cause* v. *FEC,* which was a District Court case. In that case, we were challenged because we had not—our regulations, at that time, basically said that they could allocate—the party committees could allocate on any reasonable basis

for mixed activity, the traditional mixed activity: get out the vote drive, voter registration activity.

Common Cause, at that time, argued that basically you could not have allocation. They argued for the 100 percent rule. The Court found that the Commission was not required to do 100 percent rule, but sent it back to the Commission finding that "any reasonable basis" was too vague.

Interestingly, the court had a couple of other things to say. One of the things it said was that the Commission could decide that no allocation would work, that basically 100 percent would be necessary. There's also a phrase in a later opinion, in the same litigation, that talks about money going to National party committees that's not to influence Federal elections, and how that money is not regulated under FECA.

I think, again, the question comes down to, in that case, the court was recognizing that you could decide, especially with the National party committees, that there is no way that they do things that do not influence Federal elections. Therefore, allocation just doesn't work with them.

I admit, it's still an open question. Obviously, it's an open question with the Commission. But my view, at present—and there are going to be comments on it. I'm sure a lot of people will argue to the Commission why we don't have jurisdiction. My view, at present, is that the stronger argument is that there is jurisdiction, if we can show that that money influences Federal elections.

Mr. HORN. Let me ask you, on the actual definition of "soft money," both in the law and by whatever court interpretations have been made of that law, how would you sum it up for us as for what purpose can soft money be used?

Mr. NOBLE. Soft money can be used for basically anything that does not influence Federal elections. Now, I have to say it is not a term of art. It is one of these terms that has grown up in the history of the agency, the difference between hard and soft money, so you could get a debate about what it means.

As I said earlier, I think soft money is money that's raised outside the limits and prohibitions of FECA that does not influence Federal elections. Given that definition, if that's the way the money is used, we don't have jurisdiction over that money. I think that's generally the definition everybody uses.

Mr. HORN. Let me ask you, on this point, one definition that people have used over the years, rightly or wrongly, is that this soft money is supposed to be for party building, at the State level or the Federal level, and party building is sort of described at least in two ways, as a starter.

One is to register voters. As you know, most State laws say, if you're a Republican or a Democratic registrar, you can't turn down somebody that wants to register in the opposite party, or throw their papers in the creek before you get to the county registrar to file them. And the other thing is, to get out the vote, figuring that's sort of good citizenship. Is that a correct view of the purpose of soft money?

Mr. NOBLE. Only in part. Under the present state of the law, with our allocation regulations, the party committees can use soft money to pay for a part of those things. They have to allocate.

Some has to be paid for out of hard money, and some can be paid for out of soft money, under the present rules.

So I don't think it's correct to say that you can pay for party building activities with soft money. Even what is commonly called the exempt activities under our statute, which there are no limits on, you still have to pay for part of them out of hard money, in the sense that it cannot be from prohibited sources.

So there's some confusion, I agree, about what soft money is. But in terms of the way you phrased it, you cannot use all soft money to pay for party building activities, even under the present rules. You have to use, in part, hard money.

Mr. HORN. How about paying for the bills of the State party administration, be it the financial side, or the ideological side, or the membership files, and all the rest of it?

Mr. NOBLE. Again, under the present rules, that has to be allocated. They can pay part of that out of soft money—they don't have to pay any of it out of soft money. They have to pay part of it out of hard money, and they can pay part of it out of soft money.

Mr. HORN. Is there a regulation as to the degree to which hard money must be put into that before the soft money can be used?

Mr. NOBLE. Yes, we have a regulation that deals with the percentages, and I believe, in terms of percentages, I believe it's 40 percent. At the National level, it's 60/40. At the National level, except for the Presidential year, they have to allocate 60 percent hard money, 40 percent soft money.

Mr. HORN. OK.

Mr. NOBLE. And the percentage is reversed when you get down to—effectively reversed when you get down to the State party level. They can use a lot more soft money than hard money.

Mr. HORN. Under the law, do you feel the Commission has jurisdiction over State party actions?

Mr. NOBLE. To the extent those State party actions influence Federal elections, yes.

Mr. HORN. OK. Let's say New Jersey has its gubernatorial, assembly, senate campaigns maybe in an off year. They certainly have their gubernatorial ones. So, conceivably, there wouldn't be a Federal candidate, Senator or House Member, running.

Yet, in California, it's all in the same year, so if you get out the vote for the State senator, in my district, she's a Democrat, and she has 800,000 constituents. We only have 600,000. That's because there's 40 State senators and 52 members of the House from California. Now, obviously, if they got out the vote in a particular area, obviously, that vote is helping a Federal candidate get out the vote.

Mr. NOBLE. Right.

Mr. HORN. And so what I'm leading to here is, if Congress passed a law that banned soft money federally, but did not ban it with the State parties, and left it up to the State legislative processes to decide whether they should ban soft money in the State, what would you think of that? Would that be legal, and would that affect your jurisdiction, or would you still be able to tell the States what to do on that, if there was a Federal candidate overlap, let's say?

Mr. NOBLE. If the Congress did it, I guess, in that sense, it would be legal, and Congress could remove our jurisdiction from it. Right now, if you have a situation where you're dealing purely with State

activity that doesn't affect Federal activity, the State rules apply. And the States vary. Some actually are more restrictive than the Federal rules; most are not.

Mr. HORN. Has the FEC ever published those State rules, just as a matter of interest?

Mr. NOBLE. Yes.

Ms. AIKENS. Yes. Our clearinghouse on election administration has a publication.

Mr. HORN. Do I finger Mr. Surina to get copies of that?

Ms. AIKENS. We will get copies of that to you.

Mr. SURINA. It's on its way.

Mr. HORN. Can you give us about five separate sets to share with our friends on the other side and the ones on this side?

Mr. SURINA. Yes, sir.

Mr. HORN. Thank you.

Mr. NOBLE. I think the problem that you have to look at, if you're going to give more leeway to the States, in terms of what they do with activity—and especially what we're talking about now is this mixed or generic activity, this get out the vote activity, the voter drive activity—is that you may have a situation where, if the rules are very restrictive on the Federal and much less restrictive on the State level, and this is partly what you have right now, the money gets transferred and funneled down to the State level where the rules are a lot less restrictive on what could be spent.

So that's been one of the arguments against, frankly, strict rules at the Federal level. My answer is, then you have to look at the State level, also. You don't want to just force all that money down to the State level where you may have less disclosure, and you may have much more lenient rules than at the Federal level. And that may, in the end, be counterproductive, if you just open at the State level what they can do.

Mr. HORN. I've exceeded my time, Mr. Turner. You're welcome to have 13 minutes, if you'd like, if you have any.

Mr. TURNER. I guess the next question I would ask—and perhaps Ms. Aikens would want to address this, too—is, what's your feeling on the jurisdiction of the commission in the area of issue advocacy?

Ms. AIKENS. In Larry's response to your former question, let me say that the magic words come from the *Buckley* case. That's where that phrase comes from. But as to issue advocacy, I think the courts, here again, have spoken very clearly that we have no authority over issue ads unless they are in connection with a Federal election or to promote a candidate.

I do feel very strongly that we have to be very careful when we try to get into regulating this area. The big discussion at the Commission is when those issue ads cross the line and become express advocacy.

If it is an issue ad that mentions a candidate, and it's right before the election, we have had lengthy discussions and some split votes on actually whether it was an ad for the campaign of the candidate, or whether it is simply an issue ad and has no magic words in it, has no call to action, which is one of the provisions in Furgatch, along with the others that Larry mentioned.

They also say there should be some call to action. Sometimes the call to action in those ads is, "Call your Congressman and tell him

what you think of this issue." Is that election campaigning? Is that an electioneering message, or is it just an issue message?

I tend to come down, personally, on the side of crossing that line very carefully. I must admit that I am very reluctant to go full bore onto anything that mentions a candidate is an electioneering message. However, if Congress wishes to pass that law, we will certainly abide by it.

Mr. HORN. Excuse me. If the gentleman will yield. I'm not quite clear on the answer. Maybe I haven't given it complete focus. But on that very example you've cited, which is increasingly what the type of issue ad is, it would be just, "Call your Congressman," and you would have a sneer with which you do the ad.

The name is not mentioned, but it's very clear who they are taking about since there is only one Congressman for that area. There would be several, if it was a big metropolitan area. But it's sort of fingering the local Congressman, who's the incumbent.

Now, do you think that's an ad that should be regulated?

Ms. AIKENS. It depends on what the ad says.

Mr. HORN. Well, I don't care what the ad says; I care whether the Congressman is the same as the name of the Congressman. That's what I'm curious about.

Ms. AIKENS. Yes, I would think the Congressman—if it says, "In this district, call your Congressman," then it's the same as naming the Congressman.

Mr. HORN. OK. I agree.

Ms. AIKENS. So it's the intent of the ad.

Mr. HORN. Yes, I agree. When they say "the Congressman," they might just as well say, "Ed Jones is a schlemiel," obviously, "and here's our position. If you don't like what's happening, call your Congressman." You don't have to mention his name. Would you include that?

Ms. AIKENS. If it is broadcast within that district, within his district.

Mr. HORN. Right. Absolutely. OK. I agree with you. I'm curious. I just wanted to make sure we're communicating or I'm getting it. Sorry. Go ahead.

Mr. TURNER. Thank you, Mr. Chairman.

It seems to me that there are real difficult questions here, in terms of where the line is. It almost seems to me that the Commission may be in a better position to actually look at the individual cases and make those judgments than for the Congress to try to draw the lines and hand it to you.

The issue advocacy ads that most of us object to are ones that I think a sixth grader would tell you are campaign ads, and they are influencing elections. So, in many respects, I can see how the Commission members would be very frustrated, but it almost seems to me that maybe that's what the Commission's job is, is to try to make the call.

If the Commission were willing to try to make some calls, it seems like the whole atmosphere of the explosion of issue advocacy ads that we're seeing in the political process might be tempered, that it would have a salutary effect, if the Commission would make an effort to draw some lines.

Ms. AIKENS. Mr. Turner, you're probably absolutely correct, except this is one of the basic philosophical differences that Mr. Dahl spoke of earlier, on the Commission. Some of us still strongly believe in the magic words of *Buckley,* and in *Bellotti,* that we do not have any jurisdiction over these issue ads, when they become issue ads or when they are strictly issue ads.

That whole position may change. We're going to have three new commissioners on the Commission in another 2 or 3 months, we think, maybe. So there may be a whole different perspective.

Mr. NOBLE. Congressman, may I also respond?

Mr. TURNER. Yes.

Mr. NOBLE. Contrary to popular belief, we have been out there on these ads, and we've been trying to do something about it. Mr. Dahl referred to some of them. In the Christian Action Network case, it's really an ad that I think you have to see. It was a television ad, though the court described it rather well. It was an ad that I think a lot of people felt was truly an election ad, an express advocacy ad. The Fourth Circuit, in an opinion that, bluntly, I just absolutely disagree with, the Fourth Circuit sanctioned us for bringing that case.

It is something that we've been trying to do, looking at this area. It is a very difficult area. Now, while I may think that the Commission does have authority to do something in this area, I would say this, I think it would be helpful if Congress did make the record about why this is important.

Because one of the problems we're running into in the courts is that we're seeing the courts, in essence, forgetting about what the reasons were for the law. When they are pitting the first amendment interests against the compelling governmental interest, they are almost forgetting the governmental interest.

In fact, in the Maine Right-To-Life case, the court, which struck down our express advocacy regulation because it went beyond the magic words, the District Court, in what I thought was a very blunt statement, said that it recognized that its decision was doing nothing for the Federal Election Campaign Act and was not recognizing any of the real goals of the Federal Election Campaign Act, recognizing that, effectively, limiting the statute to express advocacy made much of it meaningless. But the court said that the first amendment interests trump the governmental interest in regulating elections. I think that's a wrong decision. I think part of what's happened here is that the courts have forgotten what the interests were behind FECA, that the interest in free elections in an important interest. It is an incredibly important interest.

I think that if Congress continues to make the record in that respect—and the courts recognize that you are the best ones to do it; you are elected under these systems; you know what is going on out there—if Congress makes the record, we will have a much better chance of prevailing in the courts.

Mr. HORN. I think you're absolutely right on that, and we're at fault for not doing that, and we should try to do that. I think what the court, apparently, looked at was, what are the goals and charter of this Commission, in terms of the language, and didn't find something there, I gather from your testimony, that would back up your move in that area. Or is there language there?

Mr. NOBLE. Well, I think what the court said was that—or at least what the court didn't say was that there was real compelling interest here anymore. Remember, these laws were passed—well, actually, they date back to the turn of the century—but generally, these laws have been passed after there's been some scandal, there's been some big upheaval in the system. At that time, it's fresh in everybody's mind what's going on.

The first amendment, while it is of paramount importance, it's an incredibly important amendment, we have recognized in this country it does not trump everything. There are laws that do, if you will, infringe on first amendment interests. What I think is important, is that the court was saying is that it didn't see anymore that there was a compelling governmental interest strong enough to trump the first amendment interest in the Maine Right-To-Life case.

What I'm saying is, I think that you can put that record together. We will do our best, if the Commission does go forward on the rulemaking, we will do our best to try to put that record together. But I don't think there's any substitute for Congress doing that, for putting the record together to explain to the courts what is at stake here.

What is at stake is the public's belief in the process, the belief that we have a process that's free from real or apparent corruption, a process that is open to disclosure, that you see where the money is coming from, so you can make your decisions.

So all of this talk about what will go on the Internet, how fast we get these things out, all that's going to be irrelevant if we don't have the authority to get these people to report, if the stuff is not disclosed. And I think we sometimes have to go back to basics and convince the courts that this is something important.

Mr. HORN. Yes, I've watched the last four or five Supreme Court Justices' confirmation hearings, as many have, and the question always comes up, will you interpret the case before you in accordance with the statute as written by Congress? And "Oh, yes, we believe in legislative direction in this area." Then, of course, you get *Buckley* v. *Valeo.*

We've got partly ourselves to blame, because we haven't focused specifically on giving them enough background there so it would be hard for them to say that *Buckley* v. *Valeo* makes any sense, which it doesn't to me, I must say. Nobody's talking about shutting off the first amendment; we just want to know who's paying the bills.

Any other questions that you think we should raise that we haven't raised?

Mr. NOBLE. I would like to just talk about one other thing in terms of how the Office of General Counsel works. It's important to keep in mind—I'm fascinated—the Office of General Counsel I heard described today, I'd like to work in, but I don't.

This agency, more than most, has very tight control, for some very good reasons, very tight control over the work that is done within the agency. Our office cannot start an enforcement case. Yes, we can activate something to bring it to the Commission, but we cannot go outside the Commission. We cannot start an investigation unless we get four votes of the Commission.

We have to get four votes of the Commission to issue subpoenas, which is not true of most agencies. In most agencies, actually, the general counsel can issue subpoenas. Our subpoenas are not self-enforcing; we have to go to court to get the subpoenas enforced.

In terms of the type of investigatory agency we are, it is not a free-wheeling investigatory agency. The enforcement prioritization that you heard about has been approved by the Commission. The Commission just reviewed it again in November. We don't make any change to that system, to the criteria, without approval by the Commission.

Even when we activate cases, the Commission can tell us, no, it doesn't want that case. The Commission can also—and I've said this to the commissioners many times at the table—the Commission can tell us if they disagree, and they often do disagree with what we're doing, tell us they want us to activate a case that we weren't going to activate. They can decide not to dismiss a case that we're saying to dismiss.

Mr. HORN. That takes four votes or three votes?

Mr. NOBLE. Takes four votes.

Ms. AIKENS. Takes four votes.

Mr. HORN. Now, the Supreme Court permits a case coming up on certiorari by less than a majority, four votes; right?

Mr. NOBLE. Yes, four votes will bring the case to the Supreme Court.

Mr. HORN. So I just wonder, maybe we should change it so three votes can bring the case up, or something like that. Because it just seems to me, if three people are upset by something, there should be something the Commission looks at. Since it's a split Commission, I would think that would be one possible thing.

Now, the Office of General Counsel's budget has increased significantly, I hear, in the last 8 years, yet the Federal Election Commission's enforcement process tends to be the most criticized division. How would you respond to that phenomenon?

Mr. NOBLE. The most recent increase, which I think has been folded in, has been an increase in computers. What we did is basically spent about $1.5 million, total, in I guess a little over a year, for computer imaging systems and scanning systems, to help our enforcement process and our litigation process.

We're dealing with cases now that we're getting a half million or more pages of documents. Without an ability to scan them and have computers work on them, we just can't deal with it. So we added first to the litigation division, now for the enforcement division, scanning equipment. We spent about $1.5 million on that and scanning the documents.

That has been, in the last year, the major increase that we had. And it's wonderful, and frankly, allows us to do things we couldn't do before. But computers cannot take depositions. Computers cannot write reports. They cannot interview witnesses. They are not a substitute for people.

Mr. HORN. So do you use a key word index of what you're hunting for in documents?

Mr. NOBLE. Yes, basically, we can use indices.

Also, there is one other thing I was going to say about those who talk about—and again, I'm speaking only for myself here—those

who talk about the increase in the Office of General Counsel. If you've been eating one slice of bread a day, and somebody gives you a second one, yes, you've tremendously increased what we're eating; but you're still starving.

The fact of the matter is, instead of talking about percentages, look at the cases we have. Look at what it takes anybody, reasonably, to work on those types of cases, and say whether you can handle those cases with 24 staff attorneys, 2 investigators, about 5 supervisors, handle all of those cases in a timely fashion. It just can't be done.

Mr. HORN. Madam Chairman, does it take four votes to dismiss a case and say, "Don't pursue it any further"?

Ms. AIKENS. It takes four votes to close a case.

Mr. HORN. OK.

Ms. AIKENS. Under the enforcement priority system, any cases that the general counsel recommends be "dumped," as Ms. Cain said—we don't use that word except internally—but any cases that are to be dismissed, on the recommendation of the general counsel, it takes four votes to do that.

Mr. HORN. Given the work overload in some ways, I wish you'd also answer, on these enforcement cases, is there any assurance they are selected on a nonpartisan basis?

Ms. AIKENS. I would endorse the comment made earlier that our General Counsel's Office has been run in a nonpartisan matter. When it gets to the Commission level, we may have discussions and disagreements of it. But I think the general counsel has always brought forth cases on an objective criteria.

Mr. HORN. Yes, because if we feel short on resources, and we can't do all these things, somebody's got to decide, and I assume that's the general counsel.

Ms. AIKENS. Well, the general counsel makes the recommendation, but the commissioners decide.

Mr. HORN. Yes. You're saying, in his recommendations, you haven't found any bias against one party and not the other?

Ms. AIKENS. No, not on the part of the General Counsel's Office. Now, there are cases that are dismissed because we can't get four votes to proceed. Sometimes if we split on a matter three-three, that will be closed, the matter will be closed simply because we can't get four votes to proceed.

Mr. HORN. Now, Mr. Surina, some of the witnesses were saying—there was a criticism on the electronic filing, in the sense that they don't think a good job was done on comparing reports to ensure accuracy. How do you feel about that?

Mr. SURINA. Well, I think I can speak to that. We would not be opposed at all to looking at both sides of a transaction, and we're talking literally millions of transactions over the course of a cycle, contributions reported as being made to a candidate committee and contributions received by the candidate committee from the PAC.

There are some authority issues that we have, in part, I should tell you right up front, that we enter only the first side of that transaction right now. We enter the contributions as they are reported by the political action committee, in large part because we get them on a monthly basis from the monthly PACs, whereas can-

didate committees only file semiannually in an off-year, and quarterly in an on-year.

So it's much, much more efficient and sooner to get it on the public record when it's reported by the PAC. We could manually enter the receipt of that transaction as reported by the candidate committee months later, but it would, in fact, slow down the data entry timeframe.

I think Congress can do two things that would facilitate matching contributions, both sides of the transaction: One, if Congress could better harmonize the reporting frequency so that both large PACs and large candidate committees are perhaps filing on the same timeframe, perhaps monthly. And second, as was stated earlier, electronic filing would certainly cut down that lag time in data capture, and make it more efficient, generally, for everybody.

Mr. HORN. Now, has the Commission made that recommendation to Congress?

Mr. SURINA. Yes, we have, sir.

Mr. HORN. And to what forum was it?

Mr. SURINA. We present every year a list—we're up to about 60 legislative recommendations, and they go about as far as campaign finance has gone.

Mr. HORN. That bad, huh? [Laughter.]

Are they sent to the House Oversight Committee?

Mr. SURINA. Yes, sir.

Mr. HORN. I see. Why don't you send us a few copies. Give us about five.

Mr. SURINA. We will, in fact, have a whole new set probably within 2 weeks. The Commission just approved them last week. We're making some fine-tuning adjustments, and we'll have them up to you.

Mr. HORN. Well, send me some of the old ones, too.

Mr. SURINA. OK.

Mr. HORN. I just want to see what my colleagues are missing.

Ms. AIKENS. They are all included in the same list.

Mr. HORN. Are they?

Mr. SURINA. They are repeated.

Mr. HORN. Madam Chairman, as a former university president, I'm interested in grades. I also was a professor for a number of years. We just recently graded the agencies on their year 2000 compliance, and I take it you're working on that, from what I heard earlier.

Ms. AIKENS. Yes.

Mr. HORN. Have you allowed enough time for testing and implementation of that test?

Ms. AIKENS. I believe so. We've been discussing it now for over a year.

Mr. HORN. Well, discussing doesn't do it, does it?

Ms. AIKENS. Well, I've been urging the staff, and we've been getting reports that we are right on schedule.

Mr. HORN. OK. Because we've had some major disasters in the executive branch. They finally woke up about 3 weeks ago, after 2½ years of prodding them, and it's going to be a major disaster on January 1, 2000, the way they are going now. So I just hope you aren't caught in that.

Ms. AIKENS. I would hope not, sir. As a matter of fact, I was at a board of directors meeting of my college recently, and the question was asked, what about the infrastructure? The lights are all on computers. And the elevators are on computers.

Mr. HORN. Right. Elevators have embedded chips.

Ms. AIKENS. I came back to the staff director, and I said, "Check with GSA. Make sure they are on board, too."

Mr. HORN. Some people have said they will just stay in bed on that day, and see what happens to the rest of the world.

Ms. AIKENS. That's right.

Mr. HORN. Well, since I believe in grades, how would you grade the performance of the FEC?

Ms. AIKENS. Well, in certain divisions, like our disclosure division, I think we get an A. In our information divisions, in getting information out to our constituency and in aiding them on our 800 lines, I think, there again, we would get a B+ or an A.

Data systems, probably—well, I've just gone through training for Windows 95, and I'm trying to catch up to modern technology, as well. The training was excellent; the trainees a little less than perfect yet, and probably never will be. But I think data systems, I would give them a B.

I'm just doing this off the top of my head. I haven't thought about this very much. But just from the reports that I get regularly from the staff director, I think, in the General Counsel's Office, I'd give them a C+ maybe, maybe a C with effort. So I think there is room for—I think that the area that most of the testifiers today have concentrated on, which is the enforcement area, I think there is room for improvement.

I think, we asked for the extra money for the 1996, 1997, and 1998 elections. We presented to the committee at that time the proposal that this be a 2-year increase, in order to quickly resolve these issues, in these cases, and of course, we were denied that. Now 2 years have passed, so we're still asking for more resources, but the cases won't be done in as quickly a time period as we had hoped.

Mr. HORN. What does data systems have to do, in your judgment, in order to get an A?

Ms. AIKENS. Well, get to the end of our modernization program. And it was a 5-year program, so before it is completed—I mean, when it is completed, within 5 years, or sooner, then I think I would give them an A or an A+, if they complete it in less than the time programmed.

Mr. HORN. How about the General Counsel's Office? What does the General Counsel's Office have to do to get an A, in your judgment?

Ms. AIKENS. If the General Counsel's Office is given the resources, and with those resources manages to increase the number of cases they handle, and increase the speed in which they handle them, then they would most definitely get an A.

Parts of the General Counsel's Office—and when I say a C or a C+, that is only for the enforcement portions of the General Counsel's Office. The advisory opinion section has managed, throughout the years, to get the advisory opinion responses within the timeframe allotted by the statute. They have always been current. The

litigation division has done a great job. They are understaffed, as well as the enforcement division. I think I would give them a higher grade than enforcement, because they have deadlines they have to meet, and they do meet them.

Mr. HORN. Does the general counsel want to have a few comments on the record?

Mr. NOBLE. Yes.

Ms. AIKENS. I have never discussed this with the general counsel.

Mr. HORN. Well, we're glad to have you meet here and discuss. It's like professors from Berkeley. They meet at national conferences; they don't see each other on the campus.

Mr. AIKENS. No, we see each other every day.

Mr. NOBLE. I obviously would give the enforcement division a much higher grade, given the resources it works with, using the analogy, it's a little like asking somebody to take tests without the books, and without the building, and with a lot of distractions.

I have to say, we have a fantastic staff. I think sometimes what happens is that the staff gets short-changed. We have people working under extraordinarily difficult conditions, who are working long hours, and the Government doesn't pay very well. They are working long hours because they believe in what they are doing.

They get frustrated often. They do not like the fact that their cases take too long. They want to do a good job on their cases. They want to get them done in time. The most frustrating thing to happen to a staff person is to work very hard on these cases and have it dismissed, and it happens, because it just took too long. We just ran into a roadblock. We didn't have the proper resources. And it really depresses them. They want to feel like they are doing a good job.

I would give them an A for effort. I would give our overall performance a C, in terms of what we're able to turn out, because we just don't have the resources to do it. But I don't want it to be forgotten that there are people there who work late into the night trying to keep up, trying to keep their heads above the water, and find it very discouraging. And it's sometimes hard to hold on to good people, but we've managed to do it, because we have people who believe in what they're doing.

Ms. AIKENS. I would add to that, Mr. Chairman, that I quite agree with Larry. I was doing it on performance only, not on the effort that the staff puts into it. We do have, throughout the Commission, we have a very, very dedicated staff.

Mr. HORN. Well, we appreciate that. Let me ask about this detail summary page on FEC Form 3. Do you have control over what the questions are on that page and the blanks?

Ms. AIKENS. Yes.

Mr. HORN. Congress didn't write it for you. You wrote it; right?

Ms. AIKENS. Yes.

Mr. HORN. Yes.

Mr. NOBLE. Let me respond to that. We actually have a rulemaking project going on right now on recordkeeping and reporting.

Ms. AIKENS. Yes.

Mr. NOBLE. And one of the proposals out there is to change the line that you're talking about, to separate out PACs from candidate committees.

Mr. HORN. Well, political candidate committees.

Mr. NOBLE. Well, we get into the question of how many sublines you're going to do. But we do have a proposal out there.

Mr. HORN. You've got a half-inch right down here, trust me.

Mr. NOBLE. It's interesting, we do have a proposal out there to separate that out, because we recognize the problem.

Mr. HORN. It is absolutely misleading, and it has caused me, as a no-PAC person—there's only about 30 of us you have to appease on this, but their names are McCain and Horn, among others, and Goodling, and Nick Smith, and so forth. But that should be separated out.

There's so much confusion, so much misinformation. I mean, my God, the PACs are the biggest unit practically in the country, and they should have their own little line, and then deal with other political committees, such as a candidate committee. It doesn't mean the candidate committee doesn't have PAC money in that committee, but they've also got a lot of individual contributions in that committee. And it just isn't fair the way it works now, and I'm delighted you have that out there.

Mr. NOBLE. We just had a hearing on it last week.

Mr. HORN. Was there any objection to splitting them?

Mr. NOBLE. Actually, as it turned out, there was only one person who testified, and he did not see the need for that change. It doesn't mean that will prevail, but the only person that testified wasn't sure there was a need for the change.

Mr. HORN. Did he represent a particular group, or what?

Ms. AIKENS. He's an accountant or—not an attorney, an accountant to many committees.

Mr. HORN. Yes, well, I don't know why he would think that, but my understanding is, you've got all the PACs or the non-PAC candidate committees on the same line, and it's just plain dumb and wrong. So I hope that's changed.

Mr. NOBLE. We understand the problem, and as I say, it's something that is now actively being looked at in the rulemaking process.

Ms. AIKENS. We'd be glad to supply you with his testimony, if you'd like, Mr. Chairman.

[The information referred to follows:]

FEDERAL ELECTION COMMISSION

HEARING ON RECORDKEEPING AND

REPORTING REQUIREMENTS

999 E Street, N.W.
Washington, D.C.
February 11, 1998

1 PARTICIPANTS:

2 JOAN D. AIKENS, Commission Chairman
SCOTT E. THOMAS, Commission Vice Chairman
3 DANNY LEE McDONALD, Commissioner
LEE ANN ELLIOTT, Commissioner
4 JOHN WARREN McGARRY, Commissioner
LAWRENCE M. NOBLE, General Counsel
5 JOHN C. SURINA, Staff Director

6 KEITH DAVIS, Huckaby, Davis, and Associates

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1 be, though, that regardless of which avenue
2 you choose, the direct placement with the
3 stations or going through a media vendor,
4 that if you're telling the public that this
5 is how much money you're spending on media,
6 then you are telling them where your money is
7 going.
8 MR. NOBLE: Thank you.
9 CHAIRMAN AIKENS: John Surina, you
10 have no more questions?
11 MR. SURINA: No more.
12 CHAIRMAN AIKENS: I just have two
13 real quick points, Keith, and if you want to
14 think about it and do it later, that's fine.
15 But it really concerns the forms, the
16 reporting forms.
17 One is, in several areas we propose
18 cross-referencing so that certain items are
19 on two schedules, cross-referenced. Can you
20 comment on that? Is that helpful, or is that
21 an unnecessary --
22 MR. DAVIS: From my standpoint?

1 CHAIRMAN AIKENS: From the vendor
2 point of view, from the candidate point of
3 view.
4 MR. DAVIS: From the committee's
5 standpoint, having to list information
6 more than one time seems redundant and
7 unnecessary. I would refer to the example I
8 gave earlier, of what the proposed
9 requirements are for a situation where you
10 make a credit card payment, but you don't pay
11 the entire balance, so there is some
12 remaining.
13 And if my understanding is correct,
14 under the NPRM, you would be required to show
15 the outstanding balance as a memo entry on
16 Schedule B, while, of course, simultaneously
17 disclosing it on Schedule D. And that's one
18 example that it seems to me, if it's in one
19 place, it doesn't need to be in two.
20 CHAIRMAN AIKENS: The other
21 question is on the form 3X, page 2, the
22 summary page where we are adding federal

1 candidate committees, a whole new set of
2 committees. I don't know how many there are
3 or how often this is used, but it seems to me
4 that those contributions are all itemized on
5 the itemized receipt pages, and do you have a
6 comment on adding a new category that's not
7 in the statute?
8 MR. DAVIS: I don't mean to
9 discount the issue that was raised by
10 Congressman Wamp's campaign, but this was not
11 a concern that I had, or that any of the
12 committees with which we worked raised. And
13 some of them, at least, do not take PAC
14 funds, and did not find it a problem that
15 there were entries on the line for 11C and
16 the current form that represented funds that
17 were not from PACs.
18 My sense is that, if I may use the
19 colloquial, "if it's not broke, don't fix
20 it." It didn't seem to me that there was any
21 great need for the revisions that are laid
22 out in the NPRM. I just can't say that from

1 working with the committees, that we have
2 gotten the sense that these were problems
3 that they felt needed to be addressed.
4 And this goes back to, again, it
5 doesn't seem to me that adding additional
6 line numbers to the reporting forms
7 simplifies anything.
8 CHAIRMAN AIKENS: Well, John Surina
9 did have a question.
10 MR. SURINA: Well, actually, it
11 goes back to the electronic filing issue, the
12 point you raised as far as carrying a balance
13 over to multiple parts of a form, and your
14 interest in not having to enter information
15 twice.
16 The electronic filing program that
17 we had devised is basically, you enter the
18 information once, and if the number has to be
19 carried over to another schedule or
20 cross-referenced, that's taken care of
21 automatically. And I should also point out
22 that a payee or a contributor, once entered

1 once, multiple payments to that payee, for
2 example, would not require rekeying who the
3 payee is.
4 So there is an absolute economic
5 advantage for committees to use that sort of
6 a program, whether it's filed electronically
7 or whether it generates a computer report for
8 the accounting system.
9 CHAIRMAN AIKENS: Now, maybe you
10 can ask some questions of us now.
11 We thank you very much for giving
12 us your expertise and knowledge, and you're
13 very, very helpful. Give our regards to
14 Stan.
15 MR. DAVIS: Thank you very much.
16 CHAIRMAN AIKENS: The hearing is
17 adjourned.
18 (Whereupon, at 11:40 a.m., the
19 PROCEEDINGS were adjourned.)
20 * * * * *
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federal register

Friday
September 26, 1997

Part IV

# Federal Election Commission

11 CFR Parts 102, 104, and 108
Recordkeeping and Reporting; Proposed Rule

50708 Federal Register / Vol. 62, No. 187 / Friday, September 26, 1997 / Proposed Rules

**FEDERAL ELECTION COMMISSION**

**11 CFR Parts 102, 104 and 108**

**[Notice 1997–14]**

## Recordkeeping and Reporting

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Federal Election Commission requests comment on proposed revisions to regulations that govern recordkeeping, reporting, and filing with State officers under the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"). The proposed revisions, many of which are technical in nature, would clarify and simplify requirements for recording, reporting, and filing reports of campaign-related receipts and disbursements. The revisions are intended to address issues that have arisen since the rules were last amended. Please note that the draft rules which follow do not represent a final decision by the Commission on issues presented in this rulemaking.

**DATES:** Comments must be received on or before October 27, 1997. If the Commission receives requests to testify, it will hold a hearing on November 5, 1997 at 10:00 a.m. Persons wishing to testify should so indicate in their written comments.

**ADDRESSES:** Comments should be addressed to Ms. Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Commission's postal service address: Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. Faxed comments should be sent to (202) 219-3923. Commenters submitting faxed comments should also submit a printed copy to the Commission's postal service address to ensure legibility. Comments may also be sent by electronic mail to "reprec@fec.gov". Commenters sending comments by electronic mail should include their full name, electronic mail address and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, or Ms. Teresa A. Hennessy, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 219-3690 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The FECA's principal requirements for recording and reporting contributions and expenditures in connection with Federal elections currently appear at 11 CFR 102.9 and 104.3. The first rule prescribes procedures for committees that qualify as political committees under the Act to follow in recordkeeping. The second sets forth procedures for political committees to follow in reporting campaign-related receipts and disbursements. The procedures apply to authorized committees, i.e. committee(s) designated by a candidate to receive contributions and make expenditures on his or her behalf, and unauthorized committees, those not so designated by a candidate. 11 CFR 100.5(f).

Although the Commission has made several changes to these sections in earlier rulemakings, it is now taking a comprehensive look at the recordkeeping and reporting requirements. Disclosure of campaign finance in connection with Federal elections is a major goal of the FECA, as recognized by the Supreme Court. See *Buckley* v. *Valeo*, 424 U.S. 1, 67–69 (1976). Hence, the Commission is undertaking to clarify—and where possible, to simplify—the requirements. The Commission is aware of the ongoing need to balance the public interest in effective and timely disclosure with the concerns of the regulated community about reporting burdens. Thus, the draft rules propose several key changes: reorganizing the reporting requirements by retaining the provisions applicable to unauthorized committees at 11 CFR 104.3 and moving the reporting requirements for candidates' authorized committees to new 11 CFR 104.17; permitting alternatives for reporting loan repayments; simplifying the reporting requirements for draws on a line of credit; and clarifying procedures for reporting disbursements paid by credit card(s).

Concurrently, a review is underway of the relevant reporting forms: Form 3 for authorized committees and Form 3X for unauthorized committees. Under the proposed revisions, the rules and forms would be revised in a parallel manner. Draft revised Form 3 and Form 3X are available on request from the Commission's Public Records Branch at 999 E Street, NW, Washington, DC 20463 (202/219-4140 or 800/424-9530).

Lastly, the Act's requirements for filing reports with State officers appear at 11 CFR part 108. The regulations provide that any reports required under the Act are also required to be filed with the Secretary of State, or other State officer, of the appropriate State(s). The regulations identify the "appropriate" State(s) and set forth duties for State officers regarding the reports. *See, e.g.*, 11 CFR 108.2 and 108.6. The Commission seeks to comport these rules with recent amendments to the FECA, providing that these requirements do not apply in certain circumstances. Public Law No. 104-79, 109 Stat. 791 (1995).

The Commission seeks comment on the proposed regulations. It requests that any comments on the reporting forms be forwarded with comments on the proposed reporting rules. The Commission also welcomes comments on the recordkeeping and reporting process, in general, including any issues not covered by the proposed regulations. A summary of the proposed revisions follows.

### A. Proposed 11 CFR 102.9—Accounting for Contributions and Expenditures

Proposed § 102.9, governing recordkeeping for contributions and expenditures, would redesignate current paragraphs (a)(1)–(3) as paragraphs (a)(2)–(4), respectively. The draft rule also would propose several substantive changes for procedures set forth at current paragraphs (a), (b) and (d).

*1. Proposed Recordkeeping for Contributions*

The proposed revisions first would codify recordkeeping requirements for contributions of $50 or less. A committee would have two options for maintaining this information. It may retain the information specified for contributions in excess of $50 at redesignated paragraph (a)(2). Or, for many small contributions received at a fundraising event, the committee may record the name of the event, the date(s) contributions are received at the event, and the total amount of contributions received on each day of the event.

The Act requires that a treasurer of a political committee maintain an account of all contributions received by or on behalf of the committee but does not specify how records should be kept of receipts under $50. 2 U.S.C. 432(c)(1). Currently, the rule elaborates that the treasurer may use "any reasonable accounting procedure" to maintain these records. 11 CFR 102.9(a). The Commission has suggested methods of recording receipts under $50 in Advisory Opinions ("AO") 1981-48 and 1980-99. This section would codify that guidance at new paragraph (a)(1).

*2. Proposed Recordkeeping for Disbursements*

The draft rule would continue the current rule's definition of "payee". See proposed paragraph (b)(2)(i)(A). The rule would provide that a "payee" is a

person who receives payment directly from the committee, or indirectly from an agent of the committee, in return for goods or services extended to the committee or its agent. To comply with the proposed section, a committee therefore must retain records for all disbursements it makes, including those by its agent, or primary payee, to other vendors that perform work for the committee, or secondary payees. As presented later, a committee similarly would be required to report all disbursements: payments to primary payees would be reported as disbursements and, under certain circumstances, payments to secondary payees would be reported as memo entries. See proposed §§ 104.3(c)(2) and 104.17(c)(2).

The Commission has addressed recording and reporting disbursements to payees in AO 1996-20, AO 1983-25 and in audits. In AO 1996-20, the Commission determined that the principal campaign committee ("PCC")—the committee designated by the candidate as his main authorized committee—for the re-election of a Member of Congress was permitted to reimburse the Member's Chief of Staff ("COS") for his campaign-related travel expenses. See 11 CFR 100.5(e)(1), 101.1 and 102. The Commission stated that the PCC must report as memo entries the COS' payments to vendors for the travel expenses "* * * to achieve full disclosure but not inflate disbursement figures." See AO 1996-20, note 3. The Commission reached a different conclusion in AO 1983-25. There, the Commission determined that, after a presidential PCC made direct payments to certain media consultants, it was not required to itemize payments by the consultants to other vendors which performed work for the PCC as long as records were maintained for the latter disbursements.

The draft rule would codify the guidance of AO 1996-20 for two reasons. First, the reporting method referenced in this opinion would indicate how a committee's disbursements are actually used and, thus, would serve the disclosure policy underlying the Act. Relying alone on the recordkeeping requirements in AO 1983-25 would not as effectively result in such disclosure.

Next, the two committees in the opinions are different legal entities under the Act. The Presidential campaign committee was a recipient of public funding and, therefore, was required to undergo a mandatory audit. 26 U.S.C. 9007 and 9038. It also was required to maintain records of disbursements to secondary payees. See 11 CFR 9003.5, 9033.1(b)(7) and 9033.11. Hence, even if publicly funded committees were not required to report disbursements to secondary payees, the Commission could rely on audits to examine these disbursements. On the other hand, Title 2 committees, such as the PCC in AO 1996-20, do not receive public funding and are not required to be audited by statute. Compare 2 U.S.C. 438(b). Thus, the mechanism of a recordkeeping and reporting requirement is necessary so that the Commission may examine how Title 2 committees directly, and indirectly, use funds. The Commission welcomes comments on the proposed clarification.

The draft rule would revise the recordkeeping requirements in other respects. The draft rule would more clearly state that an individual who receives an advance from a committee for his or her own travel or subsistence would be a "payee". The draft rule would raise the amount of the qualifying advance from $500 or less to $1,000 or less, to accommodate inflationary increases. See proposed paragraph (b)(2)(i)(B).

The documentation requirements for disbursements also would be revised. The draft rule would require that if a committee makes an advance for travel or subsistence expenses, it must keep all expense account documentation related to the advance. The present rule requires only that the committee maintain "the expense voucher or other expense account documentation" (emphasis added). Thus, committees now may satisfy their recordkeeping obligations by retaining only one type of documentation, even if more records originally existed for a particular expense. The Commission proposes this change because the present rule may conflict with the general requirement to maintain records stated at 11 CFR 104.14. Moreover, the Commission has discovered that an expense voucher may have required information that other expense account documentation lacks, or vice-versa. The proposed documentation requirement would not require committees to create new records. Rather, it would clarify that committees must preserve all records related to disbursements, consistent with § 104.14.

The draft rule specifically would address documentation requirements for disbursements by bank draft accounts and debit cards. These financial instruments are more commonly used today by committees and have unique characteristics. Therefore, the Commission is providing guidance on how to retain required information for transactions based on these. The Commission also would welcome comments on suitable documentation for these transactions. Please note that the proposed requirements for bank draft accounts are distinct from those for share draft accounts at credit unions, addressed at current paragraph (b)(2)(iii). The new provisions would address a current concern of committees and lead to more complete, useful information for committees and the Commission. See proposed paragraph (b)(2) and new paragraphs (b)(2)(iv) and (v).

Further, the draft rule would clarify that a committee treasurer must comply with both the "best efforts" rule and the requirements of 11 CFR 104.14. Principally, a treasurer would be required to meet the recordkeeping duties set forth at proposed § 102.9 and, at the same time, to maintain bank records and other documents related to reports required under 11 CFR part 104. See proposed paragraph (d).

The proposed revisions also would require that, in recording contributions to candidates, a committee identify the election(s) for which these are made. See proposed paragraph (b)(1)(iii). In addition, the proposed revisions would amend paragraph (b)(1)(iv) of the section to cross-reference the new citations for the definition of "purpose" in proposed §§ 104.3 and 104.17. The final rules will contain conforming amendments to other sections of the regulations to reflect the revisions proposed for this section.

**B. Proposed 11 CFR 104.3—Contents of Reports for Unauthorized Committees**

*1. Proposed Restructuring of Current 11 CFR 104.3*

The Commission proposes to restructure, into two sections, 11 CFR 104.3 which governs the contents of reports political committees must file. Proposed 11 CFR 104.3 would state the requirements applied to all unauthorized committees for reporting receipts and disbursements. The corresponding requirements for authorized committees would appear at new 11 CFR 104.17. (Please note that the Commission recently repealed former 11 CFR 104.17 as an obsolete rule. 60 FR 56506 (November 9, 1995).) The purpose of the proposed restructuring is to clarify points of Commission policy, simplify the preparation of reports pursuant to 2 U.S.C. 434, and facilitate committees' efforts to locate the rules that apply to each. The Commission welcomes comments on the proposed restructuring.

*2. Proposed Reporting Requirements for Unauthorized Committees*

As amended, the section would follow the organization of current 11 CFR 104.3 except for the changes discussed below. Most of the proposed changes would appear at draft paragraphs (b), (c), (k) and (l) to address procedures for reporting receipts and disbursements, amending reports and reporting disbursements paid by credit card(s), respectively. New paragraph (a) would state the rule's scope and refer authorized committees to the reporting requirements at new § 104.17.

a. Reporting Receipts of Unauthorized Committees

The proposed amendments would delete the reference to traveler's checks in the definition of "Cash on hand". Under this amendment, a committee may hold traveler's checks only after receiving these as contributions, see 11 CFR 104.8, and before depositing these pursuant to 11 CFR 103.3(a). The proposed amendment is intended to comport with the Act and to address substantial problems raised by the use of traveler's checks for disbursements. The Act requires that, except for petty cash fund expenditures, a committee issue a check from an account at its campaign depository to make a disbursement. 2 U.S.C. 432(h). See also 11 CFR 102.10 and 103.3. Traveler's checks are unlike these checks: traveler's checks are not forwarded to a committee's campaign depository and are unavailable for review. Thus, at times committees have been unable to identify payees or the purpose of disbursements by traveler's checks, and the Commission's efforts to evaluate a committee's compliance with the Act have been frustrated. The Commission welcomes comment on the proposal to limit the role of traveler's checks in campaign finance. See redesignated paragraph (b)(2).

The categories and itemizations of receipts for unauthorized committees would be reorganized and revised in draft paragraphs (b) (3) and (4). Concurrently, Form 3X would be revised to conform to the proposed rule. Similar provisions for authorized committees would be addressed in new § 104.17.

Paragraph (b)(3) would set forth the revised categories of receipts that must be reported on the Detailed Summary Page of Form 3X. The revisions would reflect the types of receipts received by unauthorized committees in recent years. For example, the draft rule would add two new categories: "loan repayments received" and "refunds of contributions made by the reporting committee to political committees". See proposed paragraphs (b)(3) (vi) and (viii). In addition, the Commission proposes to reduce the burden on committees by deleting the itemized and unitemized sub-categories for "offsets to operating expenditures" and "other receipts". *See* proposed paragraphs (b)(3) (vii) and (ix). The draft rule also would clarify that the category of "contributions from persons" would include contributions from committees that do not qualify as political committees under the Act, and that "offsets to operating expenditures" would refer to rebates and refunds from vendors. See proposed paragraphs (b)(3) (i), (ii) and (vii). Further, the draft paragraph would require year-to-date reporting for itemized and unitemized sub-categories.

The proposed itemizations of receipts for unauthorized committees, which must be reported on Schedule A of Form 3X, would follow the revisions proposed for reporting categories of receipts, discussed above. Thus, the proposed rule would add an itemization for loan repayments received, clarify that the current itemization for "offsets" refers to rebates and refunds from vendors, and add an itemization for refunds of contributions. See proposed paragraphs (b)(4) (v)–(vii).

b. Reporting Disbursements of Unauthorized Committees

The draft rule would reorganize and revise requirements for reporting categories and itemizations of disbursements at proposed paragraphs (c) (1) and (2). The proposed revisions would appear on Form 3X, concurrently under revision. (Similar requirements for authorized committees would be moved to new section 104.17.) The draft rule also would cross-reference new reporting requirements for disbursements paid by credit card found at new paragraph (l).

The categories of disbursements, which are reported as total amounts on the Detailed Summary Page of Form 3X, would be revised to reflect contemporary disbursement practices by committees. Illustratively, the categories for refunds of contributions to persons and to political committees would replace "offsets". See proposed paragraphs (c)(1) (ix) and (x). These revisions also would correspond to amendments proposed for reports of receipts. To ease committees' reporting burdens, the draft rule would delete itemized and unitemized sub-categories for "other disbursements". See proposed paragraph (c)(1)(xii). The proposed amendments additionally would clarify which disbursements are covered by categories in the current rule for operating expenditures, transfers to affiliated or party committees, coordinated party expenditures under 11 CFR 110.7, and other disbursements. See proposed paragraphs (c)(1) (ii), (iii), (vi), and (xii). As for receipts, the proposed rule would require year-to-date reporting for itemized and unitemized sub-categories of disbursements.

The revised itemizations of disbursements for unauthorized committees, which must be reported on Schedule B of Form 3X, would appear at proposed paragraph (c)(2). The amended rule would clarify that a committee may report a loan repayment in two ways: report the sum of the principal and interest as a single loan repayment, or report the principal as a loan repayment and the interest as an operating expenditure. (Committees would continue to report on Schedule C repayments of principal and the outstanding principal balance for each loan.) In the past, the Commission has instructed that each interest payment be reported as a separate operating expenditure. See AO 1991–9 and AO 1986–45. Although the latter method is consistent with the Act's requirements, the former may be easier for reporting committees. The Commission seeks to ease the reporting burden on committees and requests comment on the proposal to permit alternative reporting methods for loan repayments. See proposed paragraph (c)(2)(vi).

The Commission seeks comments on related points raised by Schedule D. For example, should a committee report as a payment toward a debt incurred for goods or services only the principal paid and report as an operating expenditure the finance charges paid? Or, should a committee report the sum of these as a debt payment? The Commission is considering permitting both reporting methods, and requiring that payments (including accrued interest) on debts owed *to* a committee be reported along similar lines.

The revisions proposed for itemizations of disbursements generally would follow the revisions proposed for categories of disbursements, discussed above. Thus, a committee would itemize "refunds of contributions" to persons and to political committees in place of "offsets to contributions". See proposed paragraphs (c)(2) (viii) and (ix). The proposed rule would add a requirement that, for certain itemized disbursements, a committee identify the election for which the disbursement was made. See proposed paragraphs (c)(2) (iii)–(v) and (vii). Where a disbursement is a

contribution, a committee would be required to identify the election for which it made the contribution and, hence, the particular contribution limit against which the contribution must be counted, e.g. 1998 General Election. See 2 U.S.C. 441a.

c. Additional Revisions to Section 104.3

Significant changes are proposed at paragraphs (e), "Reporting debts and obligations", (h), "Legal and accounting services", (k), "Amending reports", and (l), "Credit card payments", of the draft rule. With respect to paragraph (e), the provision governing loans to candidates would be moved to new § 104.17. The proposed revisions also would simplify the current rule to require that, for a line of credit, a committee file Schedule C-1 only when it reports the receipt of a line of credit or a restructuring of the line. As revised, the rule would require a committee to report each draw on a line of credit only as a receipt on Schedule A.

The Commission proposes to simplify the reporting requirements because it appears that committees often make numerous draws on a line of credit in a single day. The draws usually are made without restructuring the line of credit, i.e. changing the repayment terms such as the interest rate. The Commission therefore has questioned the present practice of requiring a Schedule C-1 for every routine draw. The Commission believes that it would be more informative to require that, after the initial Schedule C-1, a committee file a subsequent Schedule C-1 only to report a restructuring of the line. This approach would ease the burden on committees while protecting the public interest in disclosure. The Commission emphasizes that a committee would remain obligated to report, as with any debt or obligation, the outstanding balance on a line of credit on Schedule C.

The reporting requirements would be streamlined for a committee that receives legal and accounting services pursuant to 11 CFR 100.7(b) (13) and (14). Draft paragraph (h) would delete the current requirement that a committee report each person providing the services. The Commission also is proposing to institute a $200 threshold for "itemizing" receipts of these services: a committee would specify in a memo entry, on Schedule A, the regular employers of persons providing the services which have spent more than $200 for the services during the calendar year. For "unitemized" receipts of the services, or those from employers which have not met the $200 threshold, a committee instead would report as a memo entry, on Schedule A, the total of amounts paid by regular employers for the services and maintain all records of the services as described in 11 CFR 102.9(c). A memo entry is supplemental information about a specific transaction, and the dollar amount recorded in the memo entry is not included in the totals reported on the Detailed Summary Page for Form 3X (or Form 3). Thus, for an employer meeting the $200 threshold, a committee would report a memo entry: Employer A/Address, $50, on 11/22/96 (where Employer A had spent $250 for the services in 1996). For regular employers not meeting the threshold, a committee would report a memo entry: $500 received in "unitemized" exempt legal and accounting services (for example, to reflect 5 employers which individually had not spent more than $200 for the services in 1996).

New paragraph (k) would be added to clarify the process for amending reports that are filed with the Commission in hard-copy form. The new paragraph would present: the deadline for filing an amendment, optional methods for filing amendments, and a provision for identifying the specific changes in the amended report(s). These provisions would apply both to amendments prompted by a Commission notice and to those initiated by a committee after discovering an error, omission or change in information. The Commission proposes to standardize the amendment process to simplify a committee's reporting obligations. The proposed revisions also are intended to address an issue that frequently arises concerning amendments to longer reports as well as shorter reports, such as Schedule H-4 ("Joint Federal and NonFederal Activity Schedule"). A mechanism to quickly and clearly identify the changes on amended pages, or reports, submitted by a committee is necessary to ensure the accuracy of the Commission's database and to assist the review of disclosure reports. The draft rule provides one mechanism for ensuring that the Commission and the public are able to locate easily new or amended information in a report. The Commission welcomes suggestions as to other effective methods for achieving this result, and seeks comment generally on the proposed amendment process. In addition, the Commission notes that a committee which amends an electronically filed report must follow a different procedure set forth at 11 CFR 104.18.

New paragraph (l) would clarify and simplify reporting obligations for disbursements paid by credit card. These provisions would apply to all disbursements subject to the requirements proposed for categories of disbursements, and itemized entries for the categories, discussed earlier. The new paragraph would define a credit card as representing a credit account with a depository institution or other corporation that is not a depository institution. See 11 CFR 103.2. For some credit cards, the monthly balance must be paid in full; for others, it may be paid in part or in full. A committee would be required to itemize on Schedule B each payment to a credit card company, the depository institution or other corporation receiving the payment, the date and the amount of payment. For example, for a payment that covers an entire monthly balance, the committee would report: ABC National Bank (VISA), Anytown, Any State, 12/05/96, $2,000.00. The committee also would include the payment in the total for the appropriate category on the Detailed Summary Page of Form 3X (or Form 3).

Under the new provisions, if the disbursement is a partial payment of a monthly credit card balance, the committee first would report the information required for a full payment, as noted above, and next report a memo entry on Schedule B. The memo entry would report the creditor, the outstanding credit balance, and the corresponding date. In the example above, the committee would report as a memo entry: ABC National Bank (VISA), $1,000 balance, as of 12/05/96. It would not include $1,000 in the appropriate totals on the Detailed Summary Page, but it would report the unpaid balance as a debt under 11 CFR 104.11(b).

Whether paying its bill in full or in part, a committee also would be required to report, as a memo entry on Schedule B, each expenditure that is separately listed on a monthly credit card statement and that would be required to be itemized under proposed paragraph (c)(2). In the example above, the committee would report as a memo entry: $600 to XYZ Printing Company, Anytown, Any State, 12/01/96, by ABC National Bank VISA, for campaign literature. If a committee made multiple expenditures to a particular vendor during a single reporting period and each was required to be itemized, the committee would report a memo entry for each expenditure. Thus, a committee would itemize a disbursement to pay all, or part, of a credit card balance and would identify the itemizable, underlying expenditures that were paid by credit card. See new paragraphs (l)(2) and (3).

In the Commission's experience, many committees pay for disbursements with credit card(s) and subsequently

make partial payments to the credit card company. Thus, regulations tailored to these transactions would disclose more information about a committee's disbursements as well as identify a committee's outstanding credit balances. The Commission welcomes comment on the proposal to include the new paragraph in the reporting requirements.

Lastly, the proposed amendments would modify section 104.3 in several other respects. The draft rule would substitute the term "savings association" for "savings and loan institutions" to reflect current regulatory practice. See 12 CFR 561.43 (Regulations Applicable to All Savings Associations, Office of Thrift Supervision, U.S. Department of Treasury). In addition, the draft provision for reporting "cash on hand" would cross-reference to 11 CFR 104.13 to clarify that, when a committee receives a non-liquid asset (such as a computer) as an in-kind contribution, it should report the contribution in a memo entry rather than as cash. See proposed paragraph (b)(2). Current paragraph (c), "Summary of contributions and operating expenditures", would be adjusted to reflect the amendments proposed for reporting categories of receipts and disbursements. See proposed paragraph (d). Finally, the proposed amendments would move current paragraph (f), "Consolidated reports", to new § 104.17 as it relates solely to authorized committees, and add guidance for national party committees in proposed paragraph (g), "Building funds".

**C. New 11 CFR 104.17—Contents of Reports for Authorized Committees**

The new rule would contain all the reporting provisions applicable to authorized committees of candidates. Also, Form 3 would be revised to reflect these provisions. New § 104.17 generally would follow the organization of proposed § 104.3, thus simplifying the reporting process for authorized committees. The discussion below concentrates on the provisions unique to authorized committees and not discussed in the preceding discussion of proposed § 104.3.

*1. Reporting Receipts of Authorized Committees*

The new rule would address reporting receipts by authorized committees at new paragraph (b) and would correspond to current 11 CFR 104.3(a)(3) and (4). The categories of receipts at new paragraph (b)(3) would be reported as total amounts on the Detailed Summary Page of Form 3. The new section would specify more clearly which categories include the following receipts: contributions from the candidate; loans made, guaranteed or endorsed by the candidate; Federal matching funds for presidential candidates; and the new factor of contributions refunded by authorized committees for other Federal candidates. See new paragraphs (b)(3)(iii), (vi), (vii), and (ix). The draft categories also would provide for transfers from other committees authorized by the candidate, to the extent permitted by Commission regulations. See new paragraph (b)(3)(v) and 11 CFR 110.3(c)(4) and (5) and 110.8(d)(2). In addition, reimbursements by any person for "personal use" of committee funds would be added to the category of "other receipts". See new paragraph (b)(3)(x). "Personal use" consists of the use of campaign funds for an obligation of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder. Certain payments for travel or vehicle expenses may include both legitimate officeholder or campaign activities and personal business. The portion of these costs associated with personal activities must be reimbursed under 11 CFR 113.1(g)(1)(ii)(C) or (D).

As drafted, the categories would continue to state that coordinated party expenditures, made pursuant to 11 CFR 110.7, are not contributions and would add that loan repayments received are included as "other receipts". See new paragraph (b)(3)(ii) and (x). To ease reporting burdens, the draft rule would delete the requirements for reporting total itemized and unitemized "offsets to operating expenditures" and "other receipts". See new paragraphs (b)(3)(viii) and (x).

The draft rules for itemizing receipts, which must be reported on Schedule A of Form 3, would follow the changes proposed for categories of receipts. The new section also would add that an authorized committee specify the election for which contributions from persons and from political committees are made when it itemizes the contributions. See draft paragraphs (b)(4)(i) and (ii). In addition to the requirements at proposed § 104.3, a committee would be required to itemize all loans it has received including those made to the candidate as the committee's agent. If any loan itemized under draft paragraph (b)(4)(v) represents a contribution by a lender, endorser or guarantor, the committee would be required to report the election for which the contribution was made. As drafted, the section would add a provision governing the itemization of contributions by the candidate, excluding any loans by the candidate. See new paragraph (b)(4)(iii) and (v).

*2. Reporting Disbursements of Authorized Committees*

The new rule would govern reporting disbursements at new paragraph (c). This new paragraph would correspond to current 11 CFR 104.3(b)(2) and (4).

One issue on which the Commission seeks comment concerns the requirement that authorized committees report the "purpose" of committee disbursements. See new paragraphs (c)(2)(i)(A) and (B). In particular, the Commission seeks comment on whether to require more information on committees' statements of "purpose" in the interests of monitoring adequately possible instances of personal use of campaign funds. 11 CFR 113.1(g)(1)(i) and (ii). It is intended that any new requirement would generate meaningful disclosure about committee disbursements, as intended by the Act, without significantly increasing committees' reporting burdens.

The Commission's current regulations closely follow the legislative guidance on this point:

> It is the opinion of the Committee that the purpose requirement will be satisfied by a short statement or description, no more than one or two words in most cases, of why the money was spent. The particulars, i.e., the details, of the disbursement are not required by the statute.

H.R. Rep. No. 422, 96th Cong., 1st Sess. 18 (1979). Despite suggestions in comments received in the Commission's rulemaking on "personal use", 60 FR 7862 (February 9, 1995), the Commission has been reluctant to conclude that the purpose statement serves only to regulate personal use of campaign funds. These statements provide required information about other committee disbursements, such as a committee's contributions to a committee authorized by another candidate. Over the years, however, purpose statements often have lacked sufficient detail to enable the Commission to determine whether a certain disbursement represents a candidate's personal use of campaign funds. See Matter Under Review 3107. In addition, a more informative purpose statement may be necessary to determine whether a disbursement by an authorized committee for an office-holder not seeking re-election is impermissible personal use.

The Commission is obligated to enforce the Act's prohibition on personal use of campaign funds. 2 U.S.C. 439a. Currently, the only

reporting provisions addressing this ban are the requirement for statements of purpose and the requirement to describe certain disbursements for travel and vehicle expenses for which the committee expects reimbursement. See 11 CFR 104.17(c)(2)(i) (A) and (B); 11 CFR 113.1(g)(1)(ii) (C) and (D). Hence, the Commission requests comment on possible mechanisms for generating more disclosure of the purpose of committee disbursements without heavily burdening reporting committees.

As drafted, the new rule would cross-reference to draft paragraph (l) governing disbursements paid by credit card. The categories of disbursements, at new paragraph (c)(1), would be reported as total amounts on the Detailed Summary Page of Form 3. The draft rule would specify which categories include the following receipts: transfers to other committees authorized by the candidate; repayments of loans made or guaranteed by the candidate; and disbursements by authorized committees for presidential candidates not subject to the limitations at 11 CFR 110.8. See new paragraphs (c)(1) (ii)–(iv). Also, the new rule would add a category for contributions to committees authorized by other candidates for Federal office. See new paragraph (c)(1)(viii). The new categories of refunds of contributions to persons and to political committees would replace the current category of "offsets to contributions". See new paragraphs (c)(1) (v) and (vi). To ease committees' reporting burdens, the new rule would eliminate reporting itemized and unitemized subcategories for "other disbursements". See draft paragraph (c)(1)(ix).

Paragraph (c)(2) would contain the reporting requirements for itemizing disbursements on Schedule B of Form 3. The draft rule would add a requirement that a committee identify the election for which contributions and loans to authorized committees for other candidates are made. See new paragraphs (c)(2) (iii) and (v). A committee would be required to itemize repayments for all loans used in the campaign, whether these were made to the committee or to the candidate. See draft paragraph (c)(2)(iv).

*3. Additional Revisions to New Section 104.17*

Generally, new paragraphs (d)–(l) would correspond to proposed paragraphs (d)–(l) of § 104.3 with certain exceptions. The draft rule would provide for reporting loans to candidates and would move "Consolidated reports" from current 11 CFR 104.3(f). See new paragraphs (e)(2), (3) and (g).

The final rules will contain conforming amendments to other sections of the regulations to reflect changes in cross-reference citations, resulting from the reorganization of 11 CFR 104.3 into two sections and the proposed revisions included therein.

**D. 11 CFR Part 108—Filing Copies of Reports and Statements With State Officers**

The FECA governs, *inter alia*, the filing of campaign finance reports and statements by political committees with Secretaries of State or equivalent State officers. Similarly, the Act specifies the duties of State officers to maintain the duplicate reports. 2 U.S.C. 439. On December 28, 1995, Public Law No. 104–79, 109 Stat. 791 (1995), amended the FECA to provide that the filing and maintenance requirements no longer apply where the Commission determines that a State maintains a system that permits electronic access to, and duplication of, reports and statements filed with the Commission. Public Law No. 104–79, section 2 (codified at 2 U.S.C. 439(c)).

The proposed rule would revise 11 CFR part 108 to conform to the statutory amendments. It also would ease reporting burdens for political committees and other persons as well as filing responsibilities for State offices. For example, an unauthorized committee or other person, making independent expenditures under 11 CFR part 109, would not be required to file a copy of campaign finance reports with the relevant State officer where the Commission has determined that the State office maintains a system that can receive and duplicate optically imaged reports from the Commission. Optically imaged reports are stored on special optical disks. See proposed §§ 108.1(b)(1) and 108.3(b). These are unlike microfilm and microfiche. This method also is distinct from electronic filing of reports, which was the subject of a separate rulemaking by the Commission. See 61 FR 42371 (August 15, 1996). Current technology requires that the images be stored and maintained on specialized equipment at the Commission. To access and retrieve these images, states must have the equipment necessary to connect to the Commission's imaging system. Although currently no state office has the necessary capability, the Commission expects that states will begin to gain the capability in the near future.

The proposed revisions would apply to reports filed in connection with primaries for presidential and vice-presidential candidates as well as reports by unauthorized committees in connection with a presidential election. See proposed §§ 108.2 and 108.4. The revisions also would apply to reports filed in connection with a candidate's campaign for the office of Representative in, Delegate or Resident Commissioner to the Congress. The 1995 amendments and a subsequent rulemaking on the point of entry for campaign finance reports provide that these reports now are filed with the Commission rather than the Clerk of the House of Representatives. Public Law 104–79, section 3; 61 FR 3549 and 6095 (February 1 and 16, 1996). Hence, the Commission includes the reports in the optical imaging process and is able to make the reports available to State offices.

However, reports filed by a candidate, or authorized committee(s) of a candidate, to the office of Senator would not be covered. Since these reports are filed with the Secretary of the Senate, the Commission does not receive the original reports and cannot optically image the copies it receives. Consequently, it is unable to make the reports available to State offices by this method. See proposed § 108.3.

Lastly, the provisions governing the duties of state officers to maintain the duplicate reports would be modified to correspond to the 1995 amendments. See proposed § 108.6.

The Commission seeks comment on all proposed revisions to the regulations concerning recordkeeping, reporting, and filing with State offices and on the proposed conforming amendments. The Commission also welcomes comment on these requirements generally, including any issues not covered by the proposed regulations. Please note that a subsequent rulemaking may cover other issues addressed by parts 102 and 104.

**Certification of No Effect Pursuant to 5 U.S.C. 605(b)**

(Regulatory Flexibility Act)

The attached proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The majority of the attached proposed rules would clarify recordkeeping and reporting requirements under the Federal Election Campaign Act, and any affected entities already are required to comply with the Commission's requirements in this area. The remaining attached proposed rules for filing copies of reports with State officers would conform to statutory amendments and reduce any reporting burden of affected entities. Therefore, these rules would not have a significant

economic effect on a substantial number of small entities.

**List of Subjects**

*11 CFR Part 102*

Political candidates, Reporting and recordkeeping requirements.

*11 CFR Part 104*

Campaign funds, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

*11 CFR Part 108*

Elections, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, it is proposed to amend subchapter A, chapter I of title 11 of the Code of Federal Regulations as follows:

## PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

1. The authority citation for part 102 would continue to read as follows:

**Authority:** 2 U.S.C. 432, 433, 438(a)(8), 441d.

2. Section 102.9 would be amended by redesignating paragraphs (a)(1) through (3) as paragraphs (a)(2) through (4), respectively, by adding new paragraph (a)(1), by revising newly designated paragraphs (a)(2) through (4), the last sentence of (b)(1) introductory text, (b)(1) (iii) and (iv), (b)(2) introductory text and (b)(2)(i) (A) and (B), by adding new (b)(2) (iv) and (v), and by revising paragraph (d) to read as follows:

**§ 102.9 Accounting for contributions and expenditures (2 U.S.C. 432(c)).**

* * * * *

(a) * * *

(1) For contributions of $50 or less, a committee may satisfy the requirements of this section by keeping either: the name and address of each contributor, the date of receipt and the amount of each contribution; or, if the committee received many small contributions under $50 each through a fundraising event, the name of the event, the date(s) contributions were received at the event, and the total amount of contributions received on each day of the event.

(2) For contributions in excess of $50 each, the account shall include the name and address of the contributor, the date of receipt and amount of each contribution.

(3) For contributions from any person whose contributions aggregate more than $200 during a calendar year, the account shall include the identification of the person, the date of receipt and amount of each contribution.

(4) For contributions from a political committee, the account shall include the identification of the political committee, the date of receipt and amount of each contribution.

(b)(1) * * * The account shall consist of a record of:

* * * * *

(iii) if the disbursement is made for a candidate, the name, the election (e.g. primary or general) and office (including State and Congressional district, if any) sought by the candidate.

(iv) For purposes of 11 CFR 102.9(b)(1), purpose has the same meaning given the term at 11 CFR 104.3(c)(2)(i)(A) and (B) and 104.17(c)(2)(i)(A) and (B).

(2) In addition to the account to be kept under paragraph (b)(1) of this section, the receipt(s) or invoice(s) from the payee or the canceled check(s) to the payee shall be obtained and kept for each disbursement in excess of $200, by or on behalf of, the committee, except that credit card transactions shall be documented in accordance with paragraph (b)(2)(ii) of this section, disbursements by share draft or check drawn on a credit union account shall be documented in accordance with paragraph (b)(2)(iii) of this section, bank draft account disbursements shall be documented in accordance with paragraph (b)(2)(iv) of this section, and debit card transactions shall be documented in accordance with paragraph (b)(2)(v) of this section.

(i)(A) For purposes of paragraph (b)(2) of this section, payee means the person who provides the goods or services to the committee or its agent in return for payment, except that an employee of a political committee, or other individual, who receives an advance from the committee of $1,000 or less for his or her own travel and subsistence shall be considered the payee for that advance.

(B) For any advance to an employee of a political committee, or other individual, of $1,000 or less for travel and subsistence, the committee shall obtain and keep all expense account documentation including the expense voucher and the canceled check(s) to the recipient of the advance.

* * * * *

(iv) For purposes of paragraph (b)(2) of this section, a copy of the draft drawn on a bank draft account may be used as a duplicate record of the draft provided that the monthly account statement showing that the draft was paid by the bank also is retained.

(v) For purposes of paragraph (b)(2) of this section, the point of sale receipt for a debit card transaction may be used as a duplicate record of the transaction provided that the monthly account statement reflecting the debit charge also is retained.

* * * * *

(d) * * * The treasurer, or his or her authorized agent, also shall meet the requirements of 11 CFR 104.14.

* * * * *

## PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

3. The authority citation for part 104 would continue to read as follows:

**Authority:** 2 U.S.C. 431(1), 431(8), 431(9), 432(d), 432(i), 434, 438(a)(8), 438(b), 439a.

4. Section 104.3 would be revised to read as follows:

**§ 104.3 Contents of reports for political committees other than authorized committees (2 U.S.C. 434(b), 439a).**

(a) *Scope.* The requirements of this section apply to all political committees other than authorized committees. Authorized committees shall meet the requirements for reporting receipts and disbursements set forth at 11 CFR 104.17.

(b) *Reporting of Receipts.* (1) *General.* Each report filed under this section shall disclose the total amount of receipts for the reporting period and for the calendar year and shall disclose the information set forth at paragraphs (b)(2) through (4) of this section. The first report filed by a committee shall also include all amounts received prior to becoming a political committee under 11 CFR 100.5, even if these amounts were not received during the current reporting period.

(2) *Cash on hand.* The amount of cash on hand at the beginning of the reporting period, including: currency; balance on deposit in banks, savings associations and other depository institutions; certificates of deposit, treasury bills and any other committee investments valued at cost. Non-liquid assets on hand, if received as in-kind contributions, should be reported in accordance with 11 CFR 104.13.

(3) *Categories of receipts.* Each report shall disclose the total amount of receipts received during the reporting period and during the calendar year for each of the following categories:

(i) Contributions from persons other than political committees, including individuals and committees that do not qualify as political committees under the Act:

(A) Itemized contributions;

(B) Unitemized contributions;

(ii) Contributions from political committees:

(A) Party committees;
(B) Authorized committees;
(C) Unauthorized committees other than party committees;
(iii) Total contributions (add contributions from persons to contributions from political committees);
(iv) Transfers from affiliated committees and, where the reporting committee is a political party committee, transfers from other party committees of the same party, regardless of whether the committees are affiliated;
(v) Loans received;
(vi) Loan repayments received;
(vii) Offsets to operating expenditures, such as vendor refunds and rebates;
(viii) Refunds of contributions made by the reporting committee to political committees;
(ix) Other receipts (such as dividends and interest);
(x) The total sum of all receipts.

(4) *Itemization of receipts.* The identification (as defined at 11 CFR 100.12) of each contributor and the aggregate year-to-date total for the contributor in each of the following categories shall be reported.

(i) Each person other than a political committee, including individuals and committees which do not qualify as political committees under the Act, who makes a contribution to the reporting committee during the reporting period, whose contribution(s) aggregate in excess of $200 per calendar year, together with the date of receipt and amount of the contribution(s), except that the reporting committee may elect to report this information for contributors of lesser amount(s) on a separate schedule;
(ii) All political committees which make contributions to the reporting committee during the reporting period, together with the date of receipt and amount of the contribution(s);
(iii) Each affiliated political committee which transfers funds to the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds to the reporting committee from another party committee of the same party regardless of whether the committees are affiliated, together with the date and amount of the transfer;
(iv) Each person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of the loan, the date the loan was made, and the amount or value of the loan;
(v) Each person who makes a loan repayment to the reporting committee during the reporting period, together with the date and amount of the repayment;
(vi) Each person who provides an offset to operating expenditures, such as vendor rebates and refunds, to the reporting committee in an aggregate amount in excess of $200 within the calendar year, together with the date and amount of the offset;
(vii) Each political committee, including authorized committees, which refunds during the reporting period a contribution made by the reporting committee, together with the date of receipt and amount of the refund; and
(viii) Each person who provides any dividend, interest, or other receipt to the reporting committee, in an aggregate amount in excess of $200 within the calendar year, together with the date and amount of the receipt.

(c) *Reporting of Disbursements.* Each report filed under this section shall disclose the total amount of all disbursements for the reporting period and for the calendar year and shall disclose the information set forth at paragraphs (c)(1) and (2) of this section. If a committee has paid any disbursements by credit card, the committee shall report the disbursements in accordance with paragraph (l) of this section. The first report filed by a committee shall also include all amounts disbursed prior to becoming a political committee under 11 CFR 100.5, even if these amounts were not disbursed during the current reporting period.

(1) *Categories of disbursements.* Each report shall disclose the total amount of disbursements made during the reporting period and during the calendar year in each of the following categories:
(i) Shared Federal and nonfederal operating expenditures.
(A) Federal share;
(B) Nonfederal share;
(ii) Other Federal operating expenditures;
(A) Itemized expenditures;
(B) Unitemized expenditures;
(C) Total Federal operating expenditures;
(iii) Transfers to affiliated political committees and, where the reporting committee is a political party committee, transfers to other party committees of the same party, regardless of whether the committees are affiliated;
(iv) Contributions to political committees including authorized committees and unauthorized committees, such as party committees;
(v) Independent expenditures made (2 U.S.C. 434(b)(4)(H)(iii));
(vi) Coordinated party expenditures made (2 U.S.C. 441a(d));
(vii) Loan repayments made;
(viii) Loans made by the reporting committee;
(ix) Refunds of contributions to persons, including individuals, other than political committees;
(A) Itemized refunds;
(B) Unitemized refunds;
(x) Refunds of contributions to political committees;
(A) Party committees;
(B) Authorized committees;
(C) Unauthorized committees other than party committees;
(xi) Total contribution refunds (add contribution refunds to persons and contribution refunds to political committees);
(xii) Other disbursements, including any disbursements to nonfederal candidate committees;
(xiii) Total disbursements;
(xiv) Total Federal disbursements.

(2) *Itemization of disbursements.* Each report shall disclose the full name and address of each person in each of the following categories, as well as the information required by each category. For each disbursement governed by paragraphs (c)(2)(i) or (x) of this section, the report shall disclose this information for each vendor or other person to whom a disbursement is made directly by the committee, and shall contain a memo entry for each vendor or other person to whom a disbursement is made by an agent of the committee.

(i) Each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet the committee's operating expenses, together with the date, amount, and purpose of the operating expenditure;

(A) As used in paragraph (c)(2) of this section, purpose means a brief statement or description of why the disbursement was made.

(B) Examples of statements or descriptions which adequately describe the purpose of a disbursement include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs. However, statements or descriptions such as advance, election day expenses, other expenses, expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote and voter registration would not meet the requirements of paragraph (c)(2) of this section for reporting the purpose of an expenditure.

(ii) Each affiliated political committee to which a transfer is made by the reporting committee during the reporting period and, where the

reporting committee is a political party committee, each transfer of funds by the reporting committee to another party committee of the same party regardless of whether the committees are affiliated, together with the date and amount of the transfer;

(iii) Each political committee, which has received a contribution from the reporting committee during the reporting period, together with the date and amount of the contribution and, for contributions to authorized committees, the candidate's name, the election (e.g. primary or general) and office sought (including State or Congressional district, where applicable);

(iv) (A) Each person who receives any disbursement during the reporting period in an aggregate amount or value in excess of $200 within the calendar year in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of the independent expenditure(s);

(B) For each independent expenditure reported, the committee must also provide a statement which indicates whether the independent expenditure is in support of, or in opposition to, a particular candidate, as well as the name of the candidate, the election and office sought by the candidate (including State and Congressional district, where applicable), and a certification, under penalty of perjury, as to whether the independent expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or any authorized committee or its agent.

(C) The information required by paragraph (c)(2)(iv)(A) and (B) of this section shall be reported on Schedule E as part of a report covering the reporting period in which the aggregate disbursements for any independent expenditure to any person exceed $200 per calendar year. Schedule E shall also include the total of all such expenditures of $200 or less made during the reporting period.

(v) Each person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under 11 CFR 110.7 (2 U.S.C. 441a(d)), together with the date, amount, and purpose of the expenditure as well as the name of, and the election and office sought by (including State and Congressional district, where applicable), the candidate on whose behalf the expenditure is made;

(vi) Each person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of repayment;

(A) For each loan repayment, the committee shall either report the principal and the interest as separate disbursements, or, it shall report the sum of these as a single disbursement. If the committee applies the former method, the principal shall be reported on Schedules B and C as a loan repayment and the interest shall be reported on Schedule B as an operating expenditure. If the committee applies the latter method, the sum of the principal and the interest shall be reported on Schedule B as a loan repayment and only the principal shall be reported on Schedule C;

(B) The committee shall use one reporting method for the duration of a loan;

(vii) Each person who has received a loan from the reporting committee during the reporting period, together with the date and amount or value of the loan, and for any authorized committee that has received a loan, the candidate's name, the election and office sought (including State or Congressional district, where applicable);

(viii) Each person, other than a political committee, who receives a contribution refund from the reporting committee during the reporting period where the receipt of the contribution was reported under paragraph (b)(4)(i) of this section, together with the date and amount of the refund;

(ix) Each political committee which receives a contribution refund from the reporting committee during the reporting period where the receipt of the contribution was reported under paragraph (b)(4)(ii) of this section, together with the date and amount of the refund; and

(x) Each person, including nonfederal candidate committees, who has received any disbursement during the reporting period not otherwise disclosed under paragraph (c)(2) of this section, to whom the aggregate amount or value of disbursements made by the reporting committee exceeds $200 within the calendar year, together with the date, amount, and purpose of the disbursement(s).

(d) *Summary of contributions and operating expenditures.* Each report filed under this section shall disclose for both the reporting period and the calendar year:

(1)(i) The total contributions to the reporting committee;

(ii) The total of contribution refunds;

(iii) The net contributions (subtract total of contribution refunds from total contributions);

(2)(i) The reporting committee's total Federal operating expenditures;

(ii) The total offsets to operating expenditures; and

(iii) The net Federal operating expenditures (subtract total offsets from total Federal operating expenditures).

(e) *Reporting debts and obligations.* Each report filed under this section shall, on Schedule C or D, as appropriate, disclose the amount and nature of outstanding debts and obligations owed by or to the reporting committee. Where these debts and obligations are settled for less than their reported amount or value, each report filed under this section shall contain a statement as to the circumstances and conditions under which the debts or obligations were extinguished and the amount paid. See 11 CFR 116.7.

(1) In addition, when a committee obtains a loan or a line of credit from a lending institution as described in 11 CFR 100.7(b)(11) and 100.8(b)(12), it shall disclose in the next due report the following information on Schedule C-1:

(i) The date and amount of the loan or line of credit;

(ii) The interest rate and repayment schedule of the loan or line of credit;

(iii) The types and value of traditional collateral or other sources of repayment that secure the loan or the line of credit, and whether that security interest is perfected.

(iv) An explanation of the basis upon which the loan was made or the line of credit established, if not made on the basis of either traditional collateral or other sources of repayment described in 11 CFR 100.7(b)(11)(i) (A) and (B) and 100.8(b)(12)(i) (A) and (B); and

(v) A certification from the lending institution that the borrower's responses to paragraphs (e)(1) (i) through (iv) of this section are accurate, to the best of the lending institution's knowledge, that the loan was made or the line of credit established on terms and conditions (including interest rate) no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness; and that the lending institution is aware of the requirement that a loan or line of credit must be made on a basis which assures repayment and that the lending institution has complied with Commission regulations at 11 CFR 100.7(b)(11) and 100.8(b)(12).

(2) The committee shall submit a copy of the loan or line of credit agreement which describes the terms and conditions of the loan or line of credit when it files Schedule C-1.

(3) The committee shall file with the next due report a Schedule C-1 each

time a loan or a line of credit is restructured to change the terms of the repayment.

(4) The committee shall report a receipt of funds in the next due report, on Schedule A, each time it makes a draw on a line of credit.

(f) *Use of pseudonyms.* (1) To determine whether the names and addresses of its contributors are being used in violation of 11 CFR 104.15 to solicit contributions or for commercial purposes, a committee may submit up to ten (10) pseudonyms on each report filed under this section.

(2) For purposes of this section, a pseudonym is a wholly fictitious name which does not represent the name of an actual contributor to a committee.

(3) If a committee uses pseudonyms it shall subtract the total dollar amount of the fictitious contributions from the total amount listed on line 11(a)(ii) of the Detailed Summary page, "Contributions from Individuals/Persons, Unitemized". Thus the committee will, for this purpose only, be overstating the amount of itemized contributions received and understating the amount of unitemized contributions received.

(4) No committee which files reports under this section shall attribute more than $5,000 in contributions to the same pseudonym in any calendar year.

(5) A committee using pseudonyms shall send a list of the pseudonyms under separate cover directly to the Reports Analysis Division, Federal Election Commission, 999 E Street, N.W., Washington, DC 20463, on or before the date on which any report containing such pseudonyms is filed with the Secretary of the Senate or the Commission. The Commission shall maintain the list, but shall exclude it from the public record. A committee shall not send any list of pseudonyms to the Secretary of the Senate or to any Secretary of State or equivaler.: State officer.

(6) A committee shall not use pseudonyms for the purpose of circumventing the reporting requirements or the limitations and prohibitions of the Act.

(g) *Building funds.* Gifts, subscriptions, loans, advances, deposits of money or anything of value made to defray costs of construction or purchase of office facilities received by a political committee in accordance with 11 CFR 100.7(b)(12) shall be reported as a memo entry on Schedule A. National party committees shall report building fund receipts and disbursements in accordance with 11 CFR 104.8(f) and 104.9(d).

(h) *Legal and accounting services.* A committee which receives legal or accounting services pursuant to 11 CFR 100.7(b) (13) and (14) during the reporting period shall report the services in accordance with paragraphs (i) (1) or (2) of this section.

(1) If the regular employer of person(s) who provide the services has paid in excess of $200 for the services during the calendar year, the committee shall report as a memo entry, on Schedule A, the amounts paid for the services by the regular employer together with the date(s) the services were performed.

(2) For each regular employer who has paid no more than $200 for the services during the calendar year, the committee shall report as a memo entry, on Schedule A, the sum of the amount(s) paid by each regular employer of person(s) who provide the services. The committee shall preserve all records of these services, for the period required by 11 CFR 102.9(c), to reflect the name of each regular employer, the amounts paid by each, and the date(s) the services were performed.

(i) *Cumulative reports.* The reports required to be filed under 11 CFR 104.5 shall be cumulative for the calendar year to which they relate, but if there has been no change in a category reported in a previous report during that year, only the amount thereof need be carried forward.

(j) *Earmarked contributions.* Earmarked contributions shall be reported in accordance with 11 CFR 110.6. See also 11 CFR 102.8(c).

(k) *Amending reports.* A committee shall change or correct a report previously filed under this section, no later than the next due report, after the committee discovers an error, omission or change in the information submitted in the report. A committee may submit only those pages that have been changed or corrected, or it may refile the entire, amended report. The committee shall identify the changes, either in a cover letter or on the amended pages or report, by specifying the lines on the Schedule(s) or Form(s) that have been amended.

(l) *Credit card payments.* (1) Where a committee has paid, by credit card, any disbursement(s) subject to paragraphs (c) (1) and (2) of this section, the committee shall report these disbursements in accordance with this paragraph. For the purposes of this section, a credit card represents a credit account with a depository institution (see 11 CFR 103.2) or other corporation that is not a depository institution. A credit account may permit the committee to make a partial payment of each monthly balance or may require the committee to pay each monthly balance in full.

(2) The reporting committee shall itemize on Schedule B each payment to a credit card issuer by specifying the depository institution or other corporation to which payment was made, the date and amount of payment. Where the committee has made a partial payment of a monthly balance, the committee shall report a memo entry for the outstanding credit balance on Schedule B and report the outstanding balance as a debt to the extent required by 11 CFR 104.11(b).

(3) Any disbursement reflected on a monthly account statement for a credit card, that otherwise is required to be itemized by paragraph (c)(2) of this section, shall be reported as a memo entry on Schedule B in addition to the information required under paragraph (l)(2) of this section.

5. New § 104.17 would be added to read as follows:

**§ 104.17 Contents of reports for authorized committees (2 U.S.C. 434(b), 439a).**

(a) *Scope.* The requirements of this section apply to all authorized committees of candidates for Federal office. All other political committees shall meet the requirements for reporting receipts and disbursements set forth at 11 CFR 104.3.

(b) *Reporting of Receipts.* (1) *General.* Each report filed under this section shall disclose the total amount of receipts for the reporting period and for the calendar year and shall disclose the information set forth at paragraphs (b)(2) through (4) of this section. The first report filed by a committee shall also include all amounts received prior to becoming a political committee under 11 CFR 100.5, even if these amounts were not received during the current reporting period.

(2) *Cash on hand.* The amount of cash on hand at the beginning of the reporting period, including: currency; balance on deposit in banks, savings associations and other depository institutions; certificates of deposit, treasury bills and any other committee investments valued at cost. Non-liquid assets on hand, if received as in-kind contributions, should be reported in accordance with 11 CFR 104.13.

(3) *Categories of receipts.* Each report shall disclose the total amount of receipts received during the reporting period and during the calendar year for each of the following categories:

(i) Contributions from persons other than political committees, including individuals and committees that do not qualify as political committees under the Act, but excluding the candidate

who authorized the reporting committee;

(A) Itemized contributions;

(B) Unitemized contributions;

(ii) Contributions from political committees:

(A) Party committees, except that expenditures made under 11 CFR 110.7 (2 U.S.C. 441a(d)) by a party committee shall not be reported as contributions by the authorized committee on whose behalf they are made;

(B) Authorized committees of other candidates;

(C) Unauthorized committees other than party committees;

(iii) Contributions from the candidate, excluding loans which are reported under paragraph (b)(3)(vi)(A) of this section;

(iv) Total contributions (add contributions from persons, political committees and the candidate);

(v) Transfers from other committee(s) authorized by the candidate, regardless of amount;

(vi) Loans received:

(A) Loans made, guaranteed, or endorsed by the candidate to his or her authorized committee;

(B) All other loans to the committee;

(C) Total loans;

(vii) For authorized committee(s) of Presidential candidates, Federal funds received under chapters 95 and 96 of the Internal Revenue Code of 1954 (Title 26, United States Code);

(viii) Offsets to operating expenditures, such as vendor refunds and rebates;

(ix) Refunds of contributions made by the reporting committee to committees authorized by other candidates for Federal office and to other political committees;

(x) Other receipts (such as dividends, interest, loan repayments and reimbursements received pursuant to 11 CFR 113.1(g));

(xi) The total sum of all receipts.

(4) *Itemization of receipts.* The identification (as defined at 11 CFR 100.12) of each contributor and the aggregate year-to-date total for the contributor in each of the following categories shall be reported.

(i) Each person other than a political committee, including individuals and committees that do not qualify as political committees under the Act but excluding the candidate who authorized the reporting committee, who makes a contribution to the committee during the reporting period, whose contribution(s) aggregate in excess of $200 per calendar year, together with the date of receipt, the amount of the contribution(s) and the election(s) (e.g. primary or general) for which each contribution is made, except that the committee may elect to report this information for contributors of lesser amount(s) on a separate schedule;

(ii) All political committees which make contributions to the reporting committee during the reporting period, together with the date of receipt, amount of the contribution and the election(s) for which each contribution is made;

(iii) Each contribution by the candidate to the reporting committee during the reporting period, together with the date of receipt and amount of the contribution;

(iv) Each committee authorized by the candidate which transfers funds to the reporting committee during the reporting period, together with the date and amount of the transfer;

(v) Each person who makes a loan during the reporting period to the reporting committee or to the candidate acting as an agent of the committee, together with the identification of any endorser or guarantor of the loan, the date the loan was made, the amount or value of the loan, and, where applicable, the election(s) for which the loan was made;

(vi) Each person who makes a loan repayment to the reporting committee during the reporting period, together with the date and amount of the repayment;

(vii) Each person who provides an offset to operating expenditures, such as vendor rebates and refunds, to the reporting committee, in an aggregate amount in excess of $200 within the calendar year, together with the date and amount of the offset;

(viii) Each authorized committee for other candidates for Federal office and any other political committee which, during the reporting period, refunds a contribution made by the reporting committee, together with the date of receipt and amount of the refund; and

(ix) Each person who provides any dividend, interest, reimbursement received pursuant to 11 CFR 113.1(g) or other receipt to the reporting committee, in an aggregate amount in excess of $200 within the calendar year, together with the date and amount of the receipt.

(c) *Reporting of Disbursements.* Each report filed under this section shall disclose the total amount of disbursements for the reporting period and for the calendar year and shall disclose the information set forth at paragraph (c)(1) and (2) of this section. If a committee has paid any disbursements by credit card, the committee shall report these in accordance with paragraph (l) of this section. The first report filed by a committee shall also include all amounts disbursed prior to becoming a political committee under 11 CFR 100.5, even if these amounts were not disbursed during the current reporting period.

(1) *Categories of disbursements.* Each report shall disclose the total amount of disbursements made during the reporting period and during the calendar year in each of the following categories:

(i) Operating expenditures;

(A) Itemized expenditures;

(B) Unitemized expenditures;

(C) Total operating expenditures;

(ii) Transfers to other committees authorized by the candidate;

(iii) Loan repayments made;

(A) Repayment of loans made by or guaranteed by the candidate;

(B) Repayment of all other loans;

(C) Total loan repayments;

(iv) For an authorized committee of a candidate for the office of President, disbursements not subject to the limitations of 11 CFR 110.8 (2 U.S.C. 441a(b));

(v) Refunds of contributions to persons, including individuals but excluding the candidate and political committees;

(A) Itemized refunds;

(B) Unitemized refunds;

(vi) Refunds of contributions to political committees;

(A) Party committees;

(B) Authorized committees for other candidates for Federal office;

(C) Unauthorized committees other than party committees;

(vii) Total contribution refunds (add contribution refunds to persons and contribution refunds to political committees);

(viii) Contributions to committees authorized by other candidates for Federal office and to other political committees;

(ix) Other disbursements, including any disbursements to nonfederal candidate committees;

(x) Total disbursements.

(2) *Itemization of disbursements.* Each report shall disclose the full name and address of each person in each of the following categories, as well as the information required by each category, whether the disbursement was made by the reporting committee or the candidate acting as its agent. For each disbursement governed by paragraphs (c)(2)(i) or (viii) of this section, the report shall disclose this information for each vendor or other person to whom a disbursement is made directly by the committee, and shall contain a memo entry for each vendor or other person to whom a disbursement is made by an agent of the committee.

(i) Each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet the committee's operating expenses, together with the date, amount, and purpose of the operating expenditure;

(A) As used in paragraph (c)(2) of this section, purpose means a brief statement or description of why the disbursement was made.

(B) Examples of statements or descriptions which adequately describe the purpose of a disbursement include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs. However, statements or descriptions such as advance, election day expenses, other expenses, expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote and voter registration would not meet the requirements of paragraph (c)(2) of this section for reporting the purpose of an expenditure.

(C) In addition to reporting the purpose described in paragraph (c)(2)(i)(A) and (B) of this section, whenever the reporting committee itemizes a disbursement that is partially or entirely a personal use for which reimbursement is required under 11 CFR 113.1(g)(1)(ii)(C) or (D), it shall provide a brief explanation of the activity for which reimbursement is required.

(ii) Each committee authorized by the same candidate to which a transfer is made by the reporting committee during the reporting period, together with the date and amount of the transfer;

(iii) Each authorized committee for other candidates for Federal office and any other political committee which has received a contribution from the reporting committee during the reporting period, together with the date and amount of the contribution and, for any authorized committee that has received a contribution, the candidate's name, the election (e.g. primary or generall and office sought (including State or Congressional district, where applicable);

(iv) Each person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of the loan repayment;

(A) All loan repayments from the reporting committee;

(B) All loan repayments from the candidate, if the proceeds of the loan were used in connection with the candidate's campaign.

(C) For each loan repayment, the committee shall either report the principal and the interest as separate disbursements, or, it shall report the sum of these as a single disbursement. If the committee applies the former method, the principal shall be reported on Schedules B and C as a loan repayment and the interest shall be reported on Schedule B as an operating expenditure. If the committee applies the latter method, the sum of the principal and the interest shall be reported on Schedule B as a loan repayment and only the principal shall be reported on Schedule C;

(D) The committee shall use one reporting method for the duration of a loan;

(v) Each person who has received a loan from the reporting committee during the reporting period, together with the date and amount or value of the loan, and for any authorized committee that has received a loan, the candidate's name, the election and office sought (including State or Congressional district, where applicable);

(vi) Each person who receives a contribution refund from the reporting committee during the reporting period where the receipt of the contribution was reported under paragraph (b)(4)(i) of this section, together with the date and amount of the refund;

(vii) Each political committee which receives a contribution refund from the reporting committee during the reporting period where the receipt of the contribution was reported under paragraph (b)(4)(ii) of this section, together with the date and amount of the refund; and

(viii) Each person, including nonfederal candidate committees, who has received any disbursement during the reporting period not otherwise disclosed under paragraph (c)(2) of this section, to whom the aggregate amount or value of disbursements made by the reporting committee exceeds $200 within the calendar year, together with the date, amount, and purpose of the disbursement(s).

(d) *Summary of contributions and operating expenditures.* Each report filed under this section shall disclose for both the reporting period and the calendar year:

(1)(i) The total contributions to the reporting committee;

(ii) The total of contribution refunds;

(iii) The net contributions (subtract total of contribution refunds from total contributions);

(2) (i) The reporting committee's total Federal operating expenditures;

(ii) The total offsets to operating expenditures; and

(iii) The net Federal operating expenditures (subtract total offsets from total Federal operating expenditures).

(e) *Reporting debts and obligations.* (1) Each report filed under this section shall, on Schedule C or D, as appropriate, disclose the amount and nature of outstanding debts and obligations owed by or to the reporting committee. Where these debts and obligations are settled for less than their reported amount or value, each report filed under this section shall contain a statement as to the circumstances and conditions under which the debts or obligations were extinguished and the amount paid. See 11 CFR 116.7.

(2) A loan obtained by an individual prior to becoming a candidate for use in connection with that individual's campaign shall be reported as an outstanding loan owed to the lender by the candidate's principal campaign committee, if the loan is outstanding at the time the individual becomes a candidate.

(3) When a candidate or a committee obtains a loan or a line of credit from a lending institution as described in 11 CFR 100.7(b)(11) and 100.8(b)(12), it shall disclose in the next due report the following information on Schedule C-1 or C-P-1:

(i) The date and amount of the loan or line of credit;

(ii) The interest rate and repayment schedule of the loan or line of credit;

(iii) The types and value of traditional collateral or other sources of repayment that secure the loan or the line of credit, and whether that security interest is perfected;

(iv) An explanation of the basis upon which the loan was made or the line of credit established, if not made on the basis of either traditional collateral or other sources of repayment described in 11 CFR 100.7(b)(11)(i) (A) and (B) and 100.8(b)(12)(i) (A) and (B); and

(v) A certification from the lending institution that the borrower's responses to paragraphs (e)(1)(i) through (iv) of this section are accurate, to the best of the lending institution's knowledge; that the loan was made or the line of credit established on terms and conditions (including interest rate) no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness; and that the lending institution is aware of the requirement that a loan or line of credit must be made on a basis which assures repayment and that the lending institution has complied with Commission regulations at 11 CFR 100.7(b)(11) and 100.8(b)(12).

(4) The committee shall submit a copy of the loan or line of credit agreement which describes the terms and conditions of the loan or line of credit when it files Schedule C-1 or C-P-1.

(5) The committee shall file with the next due report a Schedule C-1 or C-P-1 each time a loan or a line of credit is restructured to change the terms of the repayment.

(6) The committee shall report a receipt of funds in the next due report, on Schedule A, each time it makes a draw on a line of credit.

(f) *Use of pseudonyms.* (1) To determine whether the names and addresses of its contributors are being used in violation of 11 CFR 104.15 to solicit contributions or for commercial purposes, a committee may submit up to ten (10) pseudonyms on each report filed under this section.

(2) For purposes of this section, a pseudonym is a wholly fictitious name which does not represent the name of an actual contributor to a committee.

(3) If a committee uses pseudonyms it shall subtract the total dollar amount of the fictitious contributions from the total amount listed on line 11(a)(ii) of the Detailed Summary page, "Contributions from Individuals/Persons, Unitemized". Thus the committee will, for this purpose only, be overstating the amount received and understating the amount of unitemized contributions received.

(4) No committee which files reports under this section shall attribute more than $5,000 in contributions to the same pseudonym in any calendar year.

(5) A committee using pseudonyms shall send a list of the pseudonyms under separate cover directly to the Reports Analysis Division, Federal Election Commission, 999 E Street, N.W., Washington, DC 20463, on or before the date on which any report containing such pseudonyms is filed with the Secretary of the Senate or the Commission. The Commission shall maintain the list, but shall exclude it from the public record. A committee shall not send any list of pseudonyms to the Secretary of the Senate or to any Secretary of State or equivalent State officer.

(6) A committee shall not use pseudonyms for the purpose of circumventing the reporting requirements or the limitations and prohibitions of the Act.

(g) *Consolidated reports.* Each principal campaign committee shall consolidate in each report those reports required to be filed with it. These consolidated reports shall include reports submitted to it by any authorized committees and the principal campaign committee's own report. The consolidation shall be made on FEC Form 3-Z and shall be submitted with the reports of the principal campaign committee and with the reports, or applicable portions thereof, of the committees shown on the consolidation.

(h) *Legal and accounting services.* A committee which receives legal or accounting services pursuant to 11 CFR 100.7(b)(14) during the reporting period shall report the services in accordance with paragraphs (i) (1) or (2) of this section.

(1) If the regular employer of person(s) who provide the services has paid in excess of $200 for the services during the calendar year, the committee shall report as a memo entry, on Schedule A, the amounts paid for the services by the regular employer together with the date(s) the services were performed.

(2) For each regular employer who has paid no more than $200 for the services during the calendar year, the committee shall report as a memo entry, on Schedule A, the sum of the amount(s) paid by each regular employer of person(s) who provide the services. The committee shall preserve all records of these services, for the period required by 11 CFR 102.9(c), to reflect the name of each regular employer, the amounts paid by each, and the date(s) the services were performed.

(i) *Cumulative reports.* The reports required to be filed under 11 CFR 104.5 shall be cumulative for the calendar year to which they relate, but if there has been no change in a category reported in a previous report during that year, only the amount thereof need be carried forward.

(j) *Earmarked contributions.* Earmarked contributions shall be reported in accordance with 11 CFR 110.6. *See* also 11 CFR 102.8(c).

(k) *Amending reports.* A committee shall change or correct a report previously filed under this section, no later than the next due report, after it discovers an error, omission or change in the information submitted in the report. A committee may submit only those pages that have been changed or corrected, or it may refile the entire, amended report. The committee shall identify the changes, either in a cover letter or on the amended pages or report, by specifying the lines on the Schedule(s) or Form(s) that have been amended.

(l) *Credit card payments.* (1) Where a committee has paid, by credit card, any disbursement(s) subject to paragraphs (c) (1) and (2) of this section, the committee shall report these disbursements in accordance with this paragraph. For the purposes of this section, a credit card represents a credit account with a depository institution (see 11 CFR 103.2) or other corporation that is not a depository institution. A credit account may permit the committee to make a partial payment of each monthly balance or may require the committee to pay each monthly balance in full.

(2) The reporting committee shall itemize on Schedule B each payment to a credit card issuer by specifying the depository institution or other corporation to which payment was made, the date and amount of payment. Where the committee has made a partial payment of a monthly balance, the committee shall report a memo entry for the outstanding credit balance on Schedule B and report the outstanding balance as a debt to the extent required by 11 CFR 104.11(b).

(3) Any disbursement reflected on a monthly account statement for a credit card, that otherwise is required to be itemized by paragraph (c)(2) of this section, shall be reported section, shall be reported as a memo entry on Schedule B in addition to the information required under paragraph (l)(2) of this section.

## PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (2 U.S.C. 439)

6. The authority citation for part 108 would continue to read as follows:

**Authority:** 2 U.S.C. 434(a)(2), 438(a)(8), 439, 453.

7. Section 108.1 would be amended by redesignating the text as paragraph (a), revising the first sentence of newly designated paragraph (a), and adding new paragraph (b) to read as follows:

**§ 108.1 Filing requirements (2 U.S.C. 439(a)(1)).**

(a) Except as provided in paragraph (b)(1) of this section, a copy of each report and statement required to be filed by any person under the Act shall be filed either with the Secretary of State of the appropriate State or with the State officer who is charged by State law with maintaining state election campaign reports. * * *

(b)(1) The filing requirements and duties of State officers under 11 CFR part 108 shall not apply to a State if the Commission has determined that the State maintains a system that can electronically receive and duplicate reports and statements filed with the Commission.

(2) The provisions of paragraph (b)(1) of this section shall not apply to reports filed by candidates, and the authorized

committees of candidates, for nomination for election, or election, to the office of Senator. See 11 CFR 108.3(a)(1).

8. Section 108.2 would be amended by revising the first sentence to read as follows:

**§ 108.2 Filing copies of reports and statements in connection with the campaign of any candidate seeking nomination for election to the Office of President or Vice-President (2 U.S.C. 439(a)(2)).**

Except as provided in 11 CFR 108.1(b)(1), a copy of each report and statement required to be filed under the Act (including 11 CFR part 104) by a Presidential or Vice Presidential candidate's principal campaign committee, or under 11 CFR 104.4 or part 109 by any other person making independent expenditures, in connection with a candidate seeking nomination for election to the office of President or Vice-President, shall be filed with the State officer of each State in which an expenditure is made in connection with the campaign of a candidate seeking nomination for election to the office of President or Vice-President. * * *

9. Section 108.3 would be revised to read as follows:

**§ 108.3 Filing copies of reports and statements in connection with the campaign of any congressional candidate (2 U.S.C. 439(a)(2)).**

(a)(1) A copy of each report and statement required to be filed under 11 CFR part 104 by candidates, and the authorized committees of candidates, for nomination for election, or election, to the office of Senator, shall be filed with the appropriate State officer of that State in which an expenditure is made in connection with the campaign.

(2) Except as provided in 11 CFR 108.1(b)(1), a copy of each report and statement required to be filed by any unauthorized committee under 11 CFR part 104, or by any other person under 11 CFR part 109, in connection with a campaign for nomination for election, or election to, the office of Senator, shall be filed with the appropriate State officer of that State in which an expenditure is made in connection with the campaign.

(b) Except as provided in 11 CFR 108.1(b)(1), a copy of each report and statement required to be filed under 11 CFR part 104 by candidates, and authorized committees of candidates, for nomination for election, or election, to the office of Representative in, Delegate or Resident Commissioner to the Congress, or by unauthorized committees, or by any other person under 11 CFR part 109, in connection with these campaigns shall be filed with the appropriate State officer of that State in which an expenditure is made in connection with the campaign.

(c) Unauthorized committees that file reports pursuant to paragraph (b) of this section are required to file, and the Secretary of State is required to retain, only that portion of the report applicable to candidates seeking election in that State.

10. Section 108.4 would be revised to read as follows:

**§ 108.4 Filing copies of reports by committees other than principal campaign committees (2 U.S.C. 439(a)(2)).**

Except as provided in 11 CFR 108.1(b)(1), any unauthorized committee, which makes contributions in connection with a Presidential election and which is required to file a report(s) and statement(s) under the Act, shall file a copy of the report(s) and statement(s) with the State officer of the State in which both the recipient and contributing committees have their headquarters.

11. Section 108.6 would be amended by revising the introductory text to read as follows:

**§ 108.6 Duties of State officers (2 U.S.C. 439(b)).**

Except as provided in 11 CFR 108.1(b)(1), the Secretary of State, or the equivalent State officer, shall carry out the duties set forth in 11 CFR 108.6(a) through (d):

* * * * *

12. Section 108.8 would be revised to read as follows:

**§ 108.8 Exemption for the District of Columbia.**

Any copy of a report required to be filed with the equivalent officer in the District of Columbia under 11 CFR part 108 shall be deemed to be filed if the original has been filed with the Secretary or the Commission, as appropriate.

Dated: September 22, 1997.

**John Warren McGarry,**

*Chairman, Federal Election Commission.*

[FR Doc. 97-25477 Filed 9-25-97; 8:45 am]

BILLING CODE 6715-01-P

Mr. HORN. That's fine. That's fine. Glad to hear it.

OK. Let me move, then, to the last question. This is from Chairman Burton, who wanted to join us, but he couldn't. And it's directed at Mr. Noble as general counsel. What Chairman Burton would like to know is a few answers here on the Thomas Kramer case. I don't know if you're familiar with that.

Mr. NOBLE. Yes, I am.

Mr. HORN. Mr. Burton notes, "As you know, Mr. Kramer paid over $320,000 in fines for illegal political contributions to candidates and political parties, Democrat and Republican. Two things trouble me," says Chairman Burton, "the first is a statement you made about a fund-raiser close to the Vice President, named Howard Glicken. The second is, why didn't you go after a Democratic National Committee fund-raiser who allegedly advised Mr. Kramer on how to break the law?"

As for Howard Glicken, Mr. Burton notes that in the Federal Election Commission report about the investigation of Mr. Glicken, the following comment was made: "Because of Mr. Glicken's high profile as a prominent Democratic fund-raiser, including his potential fund-raising involvement in support of Gore's expected Presidential campaign, it is unclear that this individual would agree to settle this matter short of litigation."

Mr. Burton notes, "This troubles me." And he says, "Mr. Noble, why didn't you pursue the investigation of Mr. Glicken?"

Mr. NOBLE. I'll answer the question directly, then I'll give some background on it. We did not pursue the investigation of Mr. Glicken because most of the activity at issue was 1993 activity, some was 1994. We have a 5-year statute of limitations. Mr. Glicken's name came up late in the process. We had not found reason to believe against Mr. Glicken. We would have had to start from the beginning with Mr. Glicken. The statute of limitations on the main part of the solicitation runs this April.

The reason that comment was made, and it really has to be read in the context of the whole report, is, we cited a number of reasons for not going any further on this. Among those were that the evidence we had, while there was some evidence there, was not solid evidence. There was a question of one witness who was not going to testify unless they got immunity from criminal prosecution, which is something we can't give, and that gets complicated.

As I say, he came up late in the investigation. We were closing out a case in which we got over half a million dollars in civil penalties. I think that was a very, very successful case. And to start at that point again, to throw the whole case back to the beginning, where we only had several months to go on Mr. Glicken before the statute would run, did not seem like a wise use of our resources.

We are trying to move, desperately trying to move away from the 1994 election, trying to take care of the 1996 election, and looking to the 1998 election. And it just did not make any sense to us.

The actual statement there, though, I do want to comment on. What that statement says is, we've learned through experience certain people are easier to deal with than other people are. And it cuts both ways. If the man is an active fund-raiser, then you may want to send a message, and you may want to take into consideration the fact that this person is out there. By the same token, you

also know or you have a good indication that the person is not just going to come in and say, "Yeah, I did it; it's all over," you're going to really have to do an investigation on this.

So I don't think there was anything improper about what we did. As I said in a letter I wrote, which some have quoted, that unlike other prosecutorial agencies, we put the reasons we do things out in the public record. It may not always be pretty why we have to do things, but it was a resource decision; it was prosecutorial discretion, given all the facts in the case.

Mr. HORN. Well, Mr. Burton, expecting that answer, says, "It appears that Mr. Glicken played hard ball with the FEC. The FEC knew he was close the Vice President, and you backed off. Please explain what happened."

Did you know he was close to the Vice President?

Mr. NOBLE. As we said, what—we didn't know much about Mr. Glicken at that time. What we said was, we had information that he was a fund-raiser or a potential fund-raiser for the Vice President. That did not influence our decision, in the sense that we were afraid of the fallout of the case. What we were trying to assess is the likelihood that this man would settle a case early, before the statute of limitations.

People play hard ball with us all the time. One of the—Mr. Dahl earlier said, you don't know what the Commission is going to do. And that's, frankly, good for a prosecutor, because you take a gamble when you're going to play hard ball with us. There are some people who played hard ball with us, who have been taken to the courts and have paid high civil penalties. We've been very tenacious with some people.

There are other people that we have to make the judgment, especially when you're staring down a statute of limitations that's coming in months, and you've only just seen his name, you're just beginning. Like the case with Mr. Glicken, you have to make a decision.

And sometimes we have to back down. It's a resource question, too. I mean, that's the problem when you don't have the resources for it. Are you going to spend all those resources to try to rush a case through? I think, at that point, we had maybe 8 or 9 months before the statute would run.

Mr. HORN. You don't have to rush the case just to file. It seems to me you can file anytime up to the last day there.

Mr. NOBLE. We can't. We have to go through the whole process. We had not found reason to believe against this person, so we'd have to launch an investigation. And we'd have to do an investigation. The evidence we had—I mean, it's easy for the newspapers to report something. It's easy, outside of a context where you actually have to prove it, to make a lot of statements about somebody.

We would have to prove that this man was the man who did the solicitations. We would have to do the investigation. And then we have to go to probable cause to believe, because that is statutorily required. Then we'd have to attempt to—we'd have to give him a chance to respond. Then, we'd have to attempt to settle the matter.

And our experience was, as I say—where the statute would have run in April of this year for a large part of it, and then the statute would keep running on some of the violations, April of this year—

it wasn't worth starting. Again, it's a 1993 violation. That's not to say that we are not dealing with those types of violations now from the 1996 election or we won't be dealing with from the 1998 election.

Mr. HORN. Let's move now to the—this is Mr. Burton again. He said,

> There's another thing that really bothers me. In Mr. Kramer's affidavit, he made the following statement: "I believe that I was informed directly or indirectly by a Democratic party fund-raiser that the Democratic Senatorial Congressional Committee would accept contributions only from U.S. citizens. I understood that the solicitor suggested, in the presence of myself and my secretary, that since the DSCC accepted contributions only from U.S. citizens, a U.S. citizen should contribute on my behalf."
>
> As you know, Mr. Kramer had his secretary, who is a U.S. citizen, make contributions on his behalf. Mr. Noble, who's the DSCC fund-raiser referred to by Mr. Kramer?

Mr. NOBLE. It's not clear. And actually there is—I'm looking at the report right now. I'll read you a sentence in the report. "Accompanying this response of documents relating to contributions, however, these documents do not confirm Mr. Glicken as the solicitor. Instead, they show two unidentified entries under the fund-raising heading, 'Cooper,' for the $20,000-contribution, and 'MJV,' for the $3,000-contribution."

There were unanswered questions here. Yes, there was some evidence that Glicken was involved. I don't know what would have happened, or I have some suspicions what would have happened had we been able to go forward with it, but it wasn't that black and white.

Mr. HORN. So did you do anything to find out the identity of the person?

Mr. NOBLE. At this stage—as I say, we talked to the secretary. At this stage, we were at a point where one of the—I believe it was her, I'd have to go back and exactly look, but one of the people refused to talk to us without a grant of immunity from criminal prosecution, which we could not give.

So we would have to have started a long process to go to either subpoena enforcement, bring them before the court. But I'll tell you, when somebody takes the fifth amendment with us, it's very difficult for us to do anything about that. I possibly, begin negotiations, which really do not go on very often, with the Justice Department about giving criminal immunity to her. And again, this came up, I believe, last summer. This whole part of it came up, I believe it was last summer, and we were facing down the statute of limitations.

I know this doesn't look very good. I have to tell you, and this is not going to be very comforting, there are probably worse situations that we've had to let go because of resources. There are cases we've actually had more of an investigation done, and the statute of limitations ran out on us, and we weren't able to do anything about it.

What we do do, which gets us the criticism, but I think it's a worthwhile thing, is, we put it out on the public record, and people can make their own judgments about what we did.

Mr. HORN. Mr. Burton notes this is a matter of great importance to him. He said, "This committee," that's the full Committee on

Government Reform and Oversight, "the Senate, and the Department of Justice are all investigating fund-raising improprieties from the 1996 election cycle. Here you have what appears to be a clear case of a fund-raiser from one of the major parties telling someone what the law was, and telling them to break it. That appears to be a lot more important than fining people who didn't know that the money they received was from a foreign national."

Mr. NOBLE. Well, what we did do in this case, which I think is not being recognized, is, we also went after the law firm who was advising Mr. Glicken. And we got a civil penalty against the law firm—I'm sorry, advising Mr. Kramer—and we got a civil penalty against the law firm on the grounds that they were the ones that should have known that he was a foreign national. There was evidence they did know he was a foreign national, since they were handling his immigration matters, and we did proceed against them.

Also, I agree with Mr. Burton about the seriousness of allegations from 1996. One of the reasons we're letting a case from 1993 go, and not spending more resources on trying to keep digging into 1993, is, we are focused on 1996 now. We've asked for more resources for 1996. I agree, there are a lot of serious alleged violations coming out of 1996. My fear is, frankly, not necessarily what happens to Mr. Glicken, but what happens with similar situations coming out of 1996 and that may be coming out of 1998. Those are the ones now we're trying to focus on.

My view of it, and this is what I recommended to the Commission, is, we had to move off of 1993 and 1994, at that point, when we have to move on to 1996. We are working on the 1996 cases now.

Mr. HORN. Well, doesn't this sort of communicate to the average citizen that's involved with campaign finance matters that if you procrastinate long enough, if you tie them up in an exchange of whatever they do with you, that pretty soon they will just give up and say, "Well, we've got to go to the next election cycle"?

Mr. NOBLE. Part of all law enforcement is the mystery of what's going to happen. Again, we got over $500,000 in civil penalties in that case. There are a lot of other cases we've gone after where we've gotten civil penalties. In the whole foreign national issue, we have been very active in compliance, and we have gotten, since 1993, over $800,000 in civil penalties in foreign national cases. So we have been very active in that.

You take your chances. Unless we have the resources, which I'm not even suggesting we should have, to cover everything, to be able to get everybody for everything, then anybody who breaks the law has to take their chance whether they are going to get caught.

But the reality is, and we fought against this, there is a 5-year statute of limitations that we have to deal with. We cannot do anything about that. It is true, there have been cases where people have dragged us through the courts, in subpoena enforcement cases, where the courts have taken years to resolve the subpoena enforcement cases, where after we won the subpoena enforcement case, and this just recently happened in one, we ended up dropping the enforcement matter, because it took so long to get it through

the courts. We got the information, but the statute of limitations had run.

Mr. HORN. But here you've got a German immigrant that isn't a citizen, that paid $320,000 in fines for illegal political contributions to candidates of both parties, and then the person that's advising him, Mr. Glicken, who is close to the Vice President, if you had pursued the case, that would have been a felony; wouldn't it?

Mr. NOBLE. Well, first of all, it's alleged, and there's some evidence that he has. I can't at this point say that he was the one who advised him. We don't know. And if it was a felony, that's not for us to decide. That is not within our jurisdiction. I don't know what the Justice Department is doing about this. If they decide that it's something worth criminal prosecution, they can go forward on criminal prosecution.

Mr. HORN. But you don't know where the status of that is now, I take it?

Mr. NOBLE. For the Department of Justice?

Mr. HORN. Yes.

Mr. NOBLE. No, I do not.

Mr. HORN. OK. And at least it isn't before the FEC, then. You dropped the case.

Mr. NOBLE. We dropped the case. As the violation is before you, for 1993, we dropped the case. I have to say, and I am constrained by the confidentiality provisions, but I can tell you that there are similar types of issues that are arising in 1996.

Mr. HORN. Mr. Burton notes that—let's see here—well, "you don't have any evidence as to someone else who was the fund-raiser; you just didn't pursue it?"

Mr. NOBLE. That's right. But as I noted to you, there were some things in the reports that referred to other people or other names that we weren't sure what they were.

Mr. HORN. But did you ever interview the secretary as a start?

Mr. NOBLE. I do believe, and I'd have to go back to the case file, that the situation was one where, through her lawyer, she refused to talk to us without immunity from prosecution.

Mr. HORN. OK. Well, we'd appreciate that little statement being in the record, if that's the way you plan to file.

Mr. NOBLE. I will get you a copy of the report that will explain that.

[The information referred to follows:]

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

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| In the Matter of | ) | |
| | ) | |
| Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., *et al.* | ) | MUR 4638 |
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GENERAL COUNSEL'S REPORT

I. INTRODUCTION

On October 30, 1997, the Commission entered into conciliation with Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel ("Greenberg & Traurig" or "Respondent") in connection with violations of 2 U.S.C. § 441e resulting from Respondent's involvement in contributions made by Thomas Kramer, a foreign national, to Federal, state and local elections during the 1993-1994 election cycle.[1] At the same time Respondent was provided with the Commission's proposed conciliation agreement. *See* the General Counsel's Report in this matter ("GCR") dated October 27, 1994

Additionally, this report analyzes the remaining issues and participants involved in Mr. Kramer's contributions and recommends closing the matter without further proceedings.

[1] Mr. Kramer's contributions were addressed in predecessor MUR 4398.

**MUR 4638**

Pages 2 and 3 of the General Counsel's Report in MUR 4638, dated 12/19/97, contain specific discussion of conciliation negotiations, which is exempt from disclosure pursuant to 2 U.S.C. §437g(a)(4)(B)(i).

**B. Remaining Participants**

As noted in previous reports in this matter and in predecessor MUR 4398, in his *sua sponte* submission Mr. Kramer suggests that an unnamed individual associated with the Democratic Senatorial Campaign Committee ("DSCC") had instructed him to make his $20,000 April 28, 1993 contribution in the name of his secretary, in violation of 2 U.S.C. § 441f. During the course of the matter, this Office sought information concerning this transaction, including the identity of the individual involved. While this Office has discovered information identifying an individual credited for soliciting four of Mr. Kramer's contributions to the Democratic Party (two each to the DSCC and the Democratic National Committee ("DNC")), including the contribution made in the name of his secretary, the available evidence is inconclusive as to this individual's actual involvement in suggesting that the contribution be made in the name of another.[2]

Specifically, the available evidence obtained from the DSCC suggests that Howard Glicken, a south Florida fundraiser, was responsible for both of Mr. Kramer's contributions to the DSCC, including the $20,000 contribution made in the name of his secretary. However, this information is not conclusive. In its response to the Commission's interrogatories, the DSCC notes that it is "without any specific information responsive to this request other than to state its belief that Howard Glicken may have been involved in soliciting these contributions." DSCC response dated July 16, 1997, at 4. Accompanying this response are documents relating to the contributions; however, these documents do not confirm Mr. Glicken as the solicitor, instead

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[2] These contributions include Mr. Kramer's April 28, 1993 $20,000 contribution (made in the name of his secretary) and September 17, 1993 $3,000 contribution to the DSCC and Mr. Kramer's April 14, 1993 $25,000 contribution (made through Portofino Group, Inc.) and March 15, 1994 $40,000 contribution to the Democratic National Committee.

they show two unidentified entries under the fundraising heading—"Cooper" for the $20,000 contribution and "MJV" for the $3,000 contribution.

Moreover, there is only limited evidence regarding the Section 441f scheme. Mr. Kramer in his *sua sponte* submission, while suggesting that the he was instructed by a DSCC fundraiser to make his $20,000 contribution in the name of his secretary -- Terri Bradley, fails to identify this individual or provide details of the conversation. Similarly, in conversations with this Office, counsel for Ms. Bradley, while noting that his client recalls the suggestion being made to Mr. Kramer, refuses to provide further information or the identity of the fundraiser without a grant of immunity from criminal prosecution. While further inquiry of the DSCC may clarify the apparent inconsistency concerning Mr. Glicken's attribution as the solicitor, because of the discovery complications concerning the Section 441f issue, this Office does not believe that sufficient time remains within the statute of limitations period to adequately investigate the more substantial April 1993 contribution made in the name of another.

While this Office would generally recommend a reason to believe finding against Mr. Glicken and conduct an investigation into the two DSCC contributions, because of the discovery complications and time constraints addressed above, and the fact that the transactions at issue took place during the 1993-1994 election cycle, this Office does not now recommend proceeding against this identified individual or the DSCC.

Similarly, this Office does not recommend further proceedings concerning the two DNC contributions apparently solicited by Mr. Glicken. Unlike the DSCC contributions, the larger of these two contributions would not be time barred until March of 1999 -- approximately a year and four months from now. However, because of Mr. Glicken's high profile as a prominent

Democratic fundraiser, including his potential fundraising involvement in support of Vice President Gore's expected presidential campaign, it is unclear that this individual would agree to settle this matter short of litigation. Therefore, rather than continuing this matter for an unspecified period in pursuit of one participant and because of the low prospect for timely resolution, the age of the matter and the already successful resolution concerning all principals in this case, this Office does not recommend further proceedings concerning these two DNC contributions either. Instead, this Office recommends closing the entire file in MUR 4638

Therefore, this Office recommends that should the Commission agree with the above assessment concerning further proceedings in this matter, it close MUR 4638. Should the Commission not agree with this assessment, this Office recommends that the Commission close the matter only as to Greenberg and Traurig.

III. RECOMMENDATIONS

1. Accept the attached conciliation agreement with Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A. in settlement of MUR 4638 and close the matter as to this Respondent.

2. Close MUR 4638

3. Approve the appropriate letter(s)

Lawrence M. Noble
General Counsel

2/[illegible]/[illegible]
Date

BY: [illegible]
Lois G. Lerner
Associate General Counsel

Attachment:

1. Greenberg & Traurig Proposed Signed Conciliation Agreement

Staff Member: Jose M. Rodriguez

BEFORE THE FEDERAL ELECTION COMMISSION

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| In the Matter of | ) | |
| | ) | |
| Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., et al. | ) | MUR 4638 |
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CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on December 31, 1997, the Commission decided by a vote of 4-0 to take the following actions in MUR 4638:

1. Accept the conciliation agreement with the Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A. in settlement of MUR 4638 and close the matter as to this Respondent, as recommended in the General Counsel's Report dated December 19, 1997.

2. Close MUR 4638.

3. Approve the appropriate letter, as recommended in the General Counsel's Report dated December 19, 1997.

Commissioners Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens did not cast a vote.

Attest:

12-31-97
Date

Lisa R. Davis
for Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Mon., Dec. 22, 1997 10:52 a.m.
Circulated to the Commission: Mon., Dec. 22, 1997 4:00 p.m.
Deadline for vote: Tues., Dec. 30, 1997 4:00 p.m.

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Mr. HORN. OK. Then, as I said, Mr. Burton notes that, "Here we are with the Committee on Government Reform and Oversight, the Senate, Justice, all running these investigation into improprieties that we're trying to dig out, where people are taking the fifth amendment too, and if they aren't running away to China or Malaysia, or someplace, why, we have our own problems. So we know what you go through on that one."

But this looked like a clear case, and Mr. Burton's feeling—and he just wonders why, "If you want to set examples to these people that were engaged in a conspiracy to thwart the laws of the United States—there's no question. Everybody that's been in this thing, when you get them to either tell you off the record, or whatever it is, it was a massive conspiracy."

And I would think the FEC, and I think Mr. Burton would think that ought to be setting an example to pick some of those cases, even if they're the buddies of the President or the Vice President.

Mr. NOBLE. Mr. Chairman, if I may, I can read you a paragraph very quickly for the record.

Mr. HORN. Yes. Fine. Sure.

Mr. NOBLE. This is from our report to the Commission.

Moreover, there is only limited evidence regarding the Section 441(f) scheme. Mr. Kramer, in a sui sponte submission, while suggesting that he was instructed by a DSCC fund-raiser to make his $20,000-contribution in the name of his secretary, Terri Bradley, fails to identify this individual or provide details of the conversation.

Similarly, in conversations with this office, counsel for Ms. Bradley, while noting that his client recalls the suggestion being made to Mr. Kramer, refuses to provide further information or the identity of the fund-raiser without a grant of immunity from criminal prosecution.

While further inquiry of the DSCC may clarify the apparent inconsistencies concerning Mr. Glicken's attribution as the solicitor, because of the discovery complications concerning the Section 441(f) issue, this office does not believe that sufficient time remains in the statute of limitations period to adequately investigate the more substantial April 1993 contribution made in the name of another.

That was, in essence, what was happening there.

Mr. HORN. Well, Mr. Burton is wondering, you know, as he says here, "if you don't think it's worth going after someone from one of the national parties who appears to have knowingly urged a foreign national to break the law, then what's your mission?"

Mr. NOBLE. I do believe it is very important. I don't believe it makes, frankly, managerial sense to start that investigation 6 or 8 months before you have to stop it because of the statute of limitations problem, when you're working in a process that does not allow us to run out the next day and file suit against the man to stop the statute of limitations.

But again, this is something we're very concerned about, and it's the reason that we're asking for more resources, because this will repeat itself. If we don't have resources to deal with the 1996 election, or the 1998 election, or the 2000 election, this will repeat itself, because often we don't find out about these things until late in the process. You're doing an investigation on one thing, and somebody's name pops up.

And we are making decisions, the Commission is making decisions every day to narrow investigations, is what we like to say, that we bring up and we say, we could broaden this investigation to include hundreds of people. In calendar 1997, the average number of total respondents in pending cases was over 2,000.

We have to make a decision. We will say to the Commission, we could recommend reason to believe against 100 people or 100 committees, but we have no way of handling a case that big, so let's narrow the focus; we're going to go after these few. We recognize, in doing that—it's triage—we recognize, in doing that, that we may very well be letting people go that we shouldn't be letting go.

Hopefully, generally, we're making good judgments about where to go. Sometimes, as you move along, you realize one of the decisions you made, maybe you should have gone after somebody. Sometimes you have enough time, you have the resources to start doing it. Other times, you have to make the decision, especially with something that's already almost 5 years old, that we just can't do it.

It doesn't mean we don't think that's an important alleged violation. It's a critical alleged violation. It's one of the most important we deal with. But what we want to do is move the resources now to ones where we can go after those types violations in a timely fashion, where hopefully, if we get the resources, we will not have to repeat that type of dismissal, and we will be able to get to the bottom of those types of cases, for 1996, 1998, 2000.

Mr. HORN. Well, you obviously were well-prepared with your answer on that. You have a rather thick briefing book there. Did somebody tell you we were going to ask that question? Because I didn't know till I walked in the room.

Mr. NOBLE. Well, actually, no. But as the committee may very well know, I received a letter from counsel to the Vice President, and I responded to that, and some newspaper—a newspaper in Florida mainly picked it up. I think, actually, BNA here picked it up. So being aware of that, and being aware that there were some concerns about that, I felt it was important to be prepared for it. Very little in this briefing book—most of this briefing book is what you haven't asked me about, which is statistics.

Mr. HORN. I'm beginning to think maybe we should have subpoenaed the briefing book and find out what's really going on. [Laughter.]

But you did an interesting job in that. And I imagine if I ever see you at a cocktail party, you'll have that briefing book with you.

Mr. NOBLE. No.

Ms. AIKENS. It's all filed up here.

Mr. HORN. But you're well prepared. You're well prepared.

Mr. NOBLE. Thank you.

Mr. HORN. But I will leave the rest to Mr. Burton. Now, all of you—and we will be asking questions of the first panel, too—should understand the ground rules, that if questions come as a result of what transpired in the hearing, we'd like you to answer them. And you are all still under oath in answering those questions, and so was the previous panel.

[The information referred to follows:]

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 26, 1998

The Honorable Stephen Horn
Chairman
Subcommittee on Government Management,
Information, and Technology
Committee on Government Reform and Oversight
U.S. House of Representatives
B-373 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Chairman Horn:

Enclosed are the FEC's responses to the pre-hearing questions you submitted to this agency on February 10, 1998, in preparation for the Subcommittee's March 5, 1998, hearing on "Oversight of the Federal Election Commission."

Should you have any questions, or need additional information, please do not hesitate to contact me.

Sincerely,

Tina VanBrakle
Congressional Affairs Officer

Enclosure

**Subcommittee on Government Management, Information and Technology**
**Hearing on "Oversight of the Federal Election Commission"**
**March 5, 1998**

**Prehearing Questions Submitted by Congressman Stephen Horn**

**Question 1.** In order of importance, what are the five most important functions of the Federal Election Commission? For each function provide a brief explanation.

**Response:** Five most important functions:

(1) Disclosing campaign finance information - Within 48 hours of receipt, the Commission indexes and places on the public record the reports filed by some 8,000 registered political committees. For those committees filing directly with the Commission, computer images of those reports are simultaneously available on the Commission Internet website. In addition, we also create and maintain a data base itemizing all individual contributions of $200 or more and every contribution made by PACs and political party committees. This latter data base is currently manually captured, but we have high hopes for electronic filing to speed this process in the future. Reports are subjected to a desk audit by our Reports Analysts to identify and, through amendments, correct, any missing or ambiguous information. Under the disclosure program, we also include those Commission programs that provide the public, the press and the regulated community with guidance and instructional materials about the law aiming thereby to foster voluntary compliance. Finally, we include here also our rulemaking and advisory opinion process.

(2) Securing compliance with the law - The Commission has two principal means to secure compliance. First, we must conduct field audits of all publicly funded committees engaged in Presidential campaigns and may, for cause, conduct field audits of PACs, Party Committees and House and Senate Committees to the extent that limited resources permit. Second, the Commission has exclusive civil enforcement jurisdiction. Enforcement proceedings may be generated by external complaint or internal referral from information gathered either by our desk or field auditors or otherwise ascertained in the course of our normal responsibilities. Our enforcement process seeks to resolve matters by investigation and informal negotiations leading to a written conciliation agreement and civil penalty. If a negotiated settlement is impossible, the Commission may exercise its exclusive right to file a civil suit in the federal courts to resolve the matter.

(3) Administering the Presidential public funding law - The Commission certifies the eligibility for a public subsidy to political parties, primary candidates and general election candidates seeking the Presidency. Primary candidates, once passing a threshold demonstrating a minimum amount of support, are eligible for matching funds for individual contributions of $250 or less. Convention committees and the general election nominees are eligible for outright grants. Accepting public funds entails accepting an inflation adjusted spending limit and a post election audit by our staff. In the 1996 cycle, about $236 million in public funds were disbursed to 11 primary candidates, the two major party national conventions and three general election campaigns. Audits of those committees are now ongoing.

(4) Improving election administration nationwide - The Commission maintains a small unit of election experts that aid state and local election officials in meeting their responsibilities through information sharing and contracting for the development of technical information on a wide variety of administrative issues. Currently, at the request of the elections community, this unit is focusing on updating our voluntary performance standards for voting systems. The Office of Election Administration also serves as an informal link between the Congress and the elections community on pending legislation and, on a more formal basis, compiles information on the impact of the National Voter Registration Act of 1993 following each election.

(5) Administration and Resources Management - This program encompasses policy and managerial oversight of all Commission units, the administrative overhead of running an agency, and our management improvement and system development projects.

**Question 2.** What does the Federal Election Commission see as the biggest problems with the current Federal campaign finance system?

**Response:** The Commission perceives the biggest problems with campaign finance system to be:

(1) the decline in public confidence in the system (as evidenced by polls indicating public apathy and cynicism regarding any positive change);

(2) political activity moving outside the system (loss of transparency and accountability perhaps contributing to next above);

(3) insufficient resources resulting in a lack of strong enforcement to serve as a deterrent;

(4) the gradual judicial erosion of the effectiveness of the limits and prohibitions on contributions and the comprehensiveness of campaign finance reporting; and

(5) practical political difficulties in keeping the law up to date.

**Question 3.** What problems, if any, are there with the Federal Election Campaign Act?

**Response:** Problems with the FECA include the:
(1) inherent tension between First Amendment concerns and protections against real and apparent corruption in the political process;
(2) structural problems in public financing law leading to fund shortfall;
(3) absence of adequate remedies and tools to deter violations (including random audits); and
(4) several other specific matters covered in the Commission's annual legislative recommendation package.

**Question 4.** Suggest ways that the Federal Election Commission can improve the present campaign finance system?

**Response:** The FEC can improve the present system (under the present law) by:
(1) improving public access to, and awareness of, that which is disclosed;
(2) expanding voluntary compliance by strengthening enforcement and audit; and
(3) better educating the regulated community and the general public on the requirements of the law.

**Question 5.** What are the five biggest problems with the Federal Election Commission?

**Response:** The five biggest problems with the Federal Election Commission are the:
(1) lack of adequate resources and tools which fosters a decline in voluntary compliance because there is less and less credible likelihood of prosecution of violations;
(2) unrealized benefits of applying new information technologies to disclosure because: (a) electronic filing is not mandatory, and (b) the Commission is not the sole receipt point for reports;
(3) uncertainty over the comprehensiveness of the disclosure program because groups are failing to register and report political advertising which they contend to be beyond FEC jurisdiction;
(4) anticipated public funding shortfall in the 2000 Presidential Primaries which undercuts the inducements to limit spending and rely more upon small individual contributions; and
(5) lack of stability in, and costs of securing, proper agency funding which distorts agency planning and administration.

**Question 6.** How does the Federal Election Commission recommend addressing the problems listed in question 5?

**Response:** Recommended solutions to the problems noted above include:

(1) additional resources for staff auditors, investigators and attorneys and legislation to strengthen the enforcement process, such as random audit authority;
(2) legislation to compel or induce electronic filing by larger committees and establishing the Commission as the point-of-entry for Senate reports;
(3) a resolution to the controversy over what constitutes regulated electioneering versus Constitutionally-protected issue advocacy;
(4) legislation restoring solvency to the Fund; and
(5) a multi-year budget authority or some semi-automatic funding mechanism.

**Question 7.** Compliance cases. For each of the past five years, please provide the following information:

**(a) Question.** The total number of cases pending at the beginning of the year.

**Response.** The numbers provided include both active and inactive cases.

| | |
|---|---|
| 1993 | 366 |
| 1994 | 217 |
| 1995 | 347 |
| 1996 | 251 |
| 1997 | 361 |
| 1998 | 207 |

**(b) Question.** The total number of complaints filed during the year, including the number of the total that were externally filed (complaints) or internally generated (RAD referrals).

**Response.** As a preliminary matter, the numbers for internally generated matters include referrals from other agencies and referrals from the Commission's Audit Division, as well as RAD referrals.

| 1993 | |
|---|---|
| Total: | 117 |
| Internally Generated: | 55 |
| Externally Generated: | 62 |

1994
Total: 356
Internally Generated: 97
Externally Generated: 259

1995
Total: 147
Internally Generated: 94
Externally Generated: 53

1996
Total: 314
Internally Generated: 56
Externally Generated: 258

1997
Total: 147
Internally Generated: 84
Externally Generated: 63

1998 (through 2/18/98)
Total: 8
Internally Generated: 1
Externally Generated: 7

(c) **Question**. The total number of cases referred to the Department of Justice Public Integrity Section.

**Response**. As a preliminary matter, the response numbers include cases reported over to the Department of Justice pursuant to 2 U.S.C. § 437d(a)(9), as well as matters referred over pursuant to 2 U.S.C. § 437g(c).

| | |
|---|---|
| 1993 | 7 |
| 1994 | 0 |
| 1995 | 1 |
| 1996 | 7 |
| 1997 | 3 |
| 1998 (through 2/18/98) | 0 |

**(d)** **Question.** The total number of complaints that were dismissed during the year. Please break down the total number into the following categories:

1. Number of dismissals due to a faulty complaint.

   **Response.** As a preliminary matter, the response figures reflect complaints that did not meet the statutory prerequisites for proper complaints and complaints whose allegations did not fall within the Commission's jurisdiction. Complainants were notified of the defect and the matters were closed with no substantive action. Furthermore, figures for this category reflect fiscal year rather than calendar year figures.

| | |
|---|---|
| FY 1993 | 87 |
| FY 1994 | 98 |
| FY 1995 | 81 |
| FY 1996 | 141 |
| FY 1997 | 132 |
| FY 1998 (through 2/18/98) | 4 |

2. Number of dismissals due to a finding of "no reason to believe" a violation has occurred.

   **Response.**

| | |
|---|---|
| 1993 | 21 |
| 1994 | 13 |
| 1995 | 8 |
| 1996 | 9 |
| 1997 | 3 |
| 1998 (through 2/18/98) | 0 |

3. Number of dismissals where there has been a finding of "reason to believe" but the case does not qualify under the case priority system.

   **Response.** Cases that do not rate high enough to qualify under the Enforcement Priority System (EPS) are never activated. Rather they are recommended for closing without substantive action, so there are no "reason to believe" findings in such cases.

4. Number of dismissals during the investigative phase.

**Response.**

| | |
|---|---|
| 1993 | 18 |
| 1994 | 16 |
| 1995 | 34 |
| 1996 | 42 |
| 1997 | 19 |
| 1998 (through 2/18/98) | 3 |

5. Number of dismissals where there has been a finding of probable cause.

**Response.**

| | |
|---|---|
| 1993 | 1 |
| 1994 | 0 |
| 1995 | 3 |
| 1996 | 5 |
| 1997 | 2 |
| 1998 (through 2/18/98) | 0 |

(e) **Question.** Of the cases where the Commission has determined that there is reason to believe a violation of the FECA has occurred, please provide the following information:

1. Number of cases where there has been no further action taken.

**Response.**

| | |
|---|---|
| 1993 | 18 |
| 1994 | 16 |
| 1995 | 34 |
| 1996 | 42 |
| 1997 | 19 |
| 1998 (through 2/18/98) | 3 |

2. Number of cases conciliated both pre-probable cause and post probable cause.

**Response.**

| | |
|---|---|
| 1993 | 40 |
| 1994 | 62 |
| 1995 | 65 |
| 1996 | 46 |
| 1997 | 52 |
| 1998 (through 2/18/98) | 5 |

3. Amount of civil penalty obtained from conciliation.

**Response.**

| | |
|---|---|
| 1993 | $596,099.00 |
| 1994 | $1,693,354.00 |
| 1995 | $1,339,300.00 |
| 1996 | $1,229,753.78 |
| 1997 | $863,250.00 |
| 1998 (through 2/18/98) | $275,400.00 |

4. Number of suits filed.

**Response.** 36 (Not including the 13 cases which did not originate through the enforcement process). *Please note that these figures represent only offensive litigation cases, pursuant to Congressman Horn's specifications.*

**(f) Question.** Please provide the following information for the civil suits filed by the FEC:

1. Total number of suits initiated in each year: (including subpoena enforcement actions)

**Response.**

| | | |
|---|---|---|
| 1997 | 9 | |
| 1996 | 7 | |
| 1995 | 21 | (includes 12 subpoena enforcement cases arising from one investigation) |
| 1994 | 8 | |
| 1993 | 4 | |
| | 49 | total |

| 1997 | Date Filed |
|---|---|
| FEC v. Public Citizen | 2/4/97 |
| FEC v. Charles Woods/Senate (91-182) | 2/10/97 |
| FEC v. Charles Woods (merged w/FEC v. Woods/Senate) | 5/5/97 |
| FEC v. California Democrats | 5/9/97 |
| FEC v. Nat'l. Right to Work Comm. (97-160) | 5/29/97 |
| *In Re Coopers and Lybrand (Christian Coalition) | 6/5/97 |
| *In Re Coehlo (Colorado Reps.) | 7/2/97 |
| FEC v. Licht | 8/5/97 |
| *In Re Coopers and Lybrand (Christian Coalition) | 7/31/97 (reopened) |
| FEC v. National Medical PAC | 12/9/97 |

* *Refers to collateral discovery litigation*

| 1996 | |
|---|---|
| FEC v. Parisi | 1/18/96 |
| FEC v. California Demo. Voter Checklist | 5/8/96 |
| FEC v. Murray/Congress | 6/20/96 |
| FEC v. McCallum | 7/12/96 |
| FEC v. Christian Coalition | 7/30/96 |
| FEC v. Kalogianis | 8/15/96 |
| FEC v. Fund for a Conservative Majority | 11/5/96 |

| 1995 | Date Filed |
|---|---|
| FEC v. Free the Eagles | 2/13/95 |
| FEC v. RUFF PAC | 2/13/95 |
| FEC v. Nuttle | 3/16/95 |
| FEC v. Automated Business Service | 3/30/95 |
| FEC v. Cakim Manag. | 3/30/95 |
| FEC v. Castillo International | 3/30/95 |
| FEC v. Castillo Comm. | 3/30/95 |
| FEC v. Castillo Cultural Center | 3/30/95 |
| FEC v. Ilene Advertisement. | 3/30/95 |
| FEC v. International Peoples Law Inst. | 3/30/95 |
| FEC v. Fred Newman | 3/30/95 |
| FEC v. New Alliance | 3/30/95 |
| FEC v. Rainbow Lobby | 3/30/95 |
| FEC v. National Alliance | 3/30/95 |
| FEC v. Fulani/President | 6/13/95 |
| FEC v. Hartnett | 9/25/95 |
| FEC v. Orton | 10/25/95 |
| FEC v. Democratic Senatorial Campaign Committee (95-2881) | 11/8/95 |

| | |
|---|---|
| **1995** (*Continued*) | |
| FEC v. Fred Newman | 11/27/95 |
| FEC v. Francine Miller | 11/7/95 |
| FEC v. Durand | 7/11/95 |
| **1994** | |
| FEC v. Michigan Rep.State Comm. | 2/17/94 |
| FEC v. GOPAC | 4/14/94 |
| FEC v. Jesse Jackson | 4/26/94 |
| FEC v. LaRouche (94-658-A) | 5/23/94 |
| FEC v. Christian Action Network | 10/18/94 |
| FEC v. Multimedia | 11/7/94 |
| FEC v. Rick Montoya | 12/13/94 |
| FEC v. Wofford | 12/20/94 |
| **1993** | |
| FEC v. BlackPAC | 1/25/93 |
| FEC v. NRSC (93-365) | 4/21/93 |
| FEC v. Larry Williams | 10/19/93 |
| FEC v. Americans for Robertson | 10/20/93 |

2. The number of suits completed in each year (please indicate the date the suits were initially filed.

**Response**. See chart below; composed of both post-probable cause enforcement suits and subpoena enforcement suits.

| | |
|---|---|
| 1997 | 11 |
| 1996 | 12 |
| 1995 | 21 (includes 12 subpoena enforcement cases arising from one investigation). |
| 1994 | 9 |
| 1993 | 8 |

3. The win/loss record:

**Response**. (Categories for the following list include "win," "loss," "settled," and "win/loss" referring to part win and part loss cases.)

| | | | |
|---|---|---|---|
| 1993 | win | district court | 7 |
| | settled | district court | 1 |
| | loss | district court | 0 |
| 1994 | win | district court | 9 |
| | loss | ct. of appeals | 2 |

| | | | |
|---|---|---|---|
| 1995 | win | district court | 19 |
| | loss | district court | 1 |
| | voluntary dismissal/district court | | 1 |
| 1996 | win | district court | 9 |
| | loss | district court | 2 |
| | loss | court of app. | 1 |
| | win/loss district court | | 1 |
| | win/loss court of app. | | 1 |
| 1997 | win | district court | 9 |
| | loss | district court | 1 |
| | win/loss district court | | 1 |
| | loss | court of app. | 1 |
| | vacated as moot/court of app. | | 1 |
| 1998 | win | district court | 1 |

4. The total monetary recovery.

**Response.** This figure represents money awarded by court, but not necessarily collected by the Commission.

1993 $ 89,075.35
1994 $139,300.00
1995 $ 45,500.00 (Plus $146,464.44 repayment determination)
1996 $110,000.00
1997 $ 68,675.00
1998 $ 50,000.00

5. The number of cases appealed.

**Response.** (Includes appeals filed by either side)

1997 3
1996 2
1995 12 (withdrawn by respondents after stay pending appeal was denied by Court of Appeals)
1994 2
1993 1

6. The won/loss record on appeal.

**Response.**

| | | |
|---|---|---|
| 1997 | loss | 2 |
| | vacated as moot | 1 |
| 1996 | loss | 1 |
| | win/loss | 1 |
| 1995 | withdrawn | 12 (withdrawn by respondents after stay pending appeal was denied by Court of Appeals). |
| 1994 | loss | 2 |
| 1993 | win | 1 |

7. The number of cases where the FEC had to pay attorneys' fees.

**Response.**

FEC v. CAN (amount not yet determined)
FEC v. PCD ($48,547.39)

8. The number of cases where the FEC received attorneys' fees (identify cases).

**Response.**

FEC v. Christian Coalition ($6,000-discovery sanctions)

**Question 8.** Case Priority System.

**(a) Question.** Please describe the criteria the Commission uses to classify cases under the case prioritization system.

**Response.** The Enforcement Priority System (EPS) rates all incoming cases against objective criteria to determine whether they warrant use of the Commission's limited resources. Because the ratings are crucial to the Commission's decisions regarding its prosecutorial discretion, as with other law enforcement thresholds, the specifics of the rating criteria are not public. However, the Commission has made public the general elements covered by the EPS ratings. Those elements are: Respondents/Players; Impact on the Process; Intrinsic Seriousness of the Violations; Topicality of the Issues or the Activity; Development of the Law; Subject Matter; and Countervailing Considerations.

**(b) Question.** Describe in detail how resources are allocated to a case that falls under the case priority system.

**Response.** A major premise of EPS is that cases are not activated and assigned until staff actually are available to work on them. In order to ensure that cases are activated as soon as possible under that prerequisite, senior Enforcement managers and Central Enforcement Docket (CED) staff meet on a monthly basis to assess staff availability and match that availability with unassigned cases. With regard to any specific staff person who is available for additional work, that consideration would take into account numerous factors such as the staff person's existing caseload and experience level, as well as the difficulty of the cases available for assignment. In addition, consideration is given to the scope of the investigation anticipated in the available cases. For example, cases with a high level of legal and factual complexity and cases involving potential criminal liability often require wide ranging investigations with substantial formal discovery. In order to ensure that such cases are completed as expeditiously as possible, they are assigned to more than one staff person. Because of our limited staff resources, however, we are constrained in the number of cases of this magnitude that we can assign at any one time. Consideration also is given to making certain that the overall office caseload covers a broad spectrum of possible FECA violations to ensure compliance coverage for all areas of the FECA.

(c) **Question.** Explain your case docketing and case management systems.

**Response.**

**DOCKETING**

When a case comes into the Commission, it is forwarded to the Office of the General Counsel (OGC) Docket. If it is a complaint, it is reviewed to determine whether it qualifies under the FECA as a proper complaint. If it does not qualify, the Docket staff notify the complainant of the deficiency and send a copy to the potential respondents. If it does qualify as a proper complaint, Docket staff assign a number to the case, and send a letter to the potential respondents providing them with a copy of the complaint and notifying them that they have an opportunity to respond prior to Commission consideration of the complaint. Once the response time has elapsed, or in the case of an internally generated matter as soon as possible after receipt, the case file is forwarded to the Central Enforcement Docket (CED) to be rated under EPS. After the case is rated, if it appears to fall below the threshold for pursuing, the CED staff prepare a report to the Commission recommending the case be closed without substantive action. If the Commission approves the recommendations, CED staff sends appropriate letters and closes the file. If the case rates above the thresholds, it is included in the list of cases available for assignment and considered at the next monthly assignment meeting. CED staff prepare a brief synopsis of the cases, including the allegations and apparent statutory provisions involved in the allegations, as well as a listing of the EPS ratings, to assist in case assignment considerations. For cases that have remained in CED for a significant period without being assigned because staff were not available, CED prepares a report to the Commission recommending closing those cases without substantive action. Once a

case is assigned, Docket functions, other than providing copies of incoming documents, are moved to the Enforcement team where the staff person assigned to the case is working. At this time, we do not have any automated docketing and all case tracking is done by hand.

## CASE MANAGEMENT

The Commission is in the process of implementing an electronic case management system that will be used by the Office of General Counsel. In November 1997, the Commission awarded a contract to Law Manager to modify its off-the-shelf legal management software program to meet the needs of the Office of General Counsel. Law Manager has subcontracted the requirements development tasks to Price Waterhouse, whose representatives are working closely with Commission staff to develop the functional and technical specifications. The system is currently scheduled to be fully installed at the Commission by the end of August 1998.

This system will enhance OGC's ability to manage its caseload by tracking more data related to case status. This will give management staff greater insight into current processes and enable OGC to measure more efficiently the resources and length of time it takes to complete cases in their entirety, as well as to complete the different stages of cases. In addition, the system should enable supervisors and staff to track the progress of cases more readily and manage their time more efficiently. For example, staff will be able to quickly determine electronically their upcoming deadlines and whether respondents and witnesses have responded on a timely basis to all outstanding Commission requests for information. Work assignments can be planned accordingly.

**Question 9.** Duration of Compliance Cases and Audits. Please provide answers to the following questions as they relate to compliance cases and audits.

(a) **Question.** Please provide a chart laying out the different phases of a compliance case (include all phases beginning with the filing of a complaint either internally or externally and ending with final case disposition).

**Response.** See Attachments 1 and 2.

(b) **Question.** The length of time it takes to complete each phase.

**Response.** As a preliminary matter, the Commission's Enforcement Docket encompasses a wide range of cases running the gamut from relatively simple, single respondent/violation cases to highly complex cases involving numerous respondents and violations. In addition, the amount of time it takes to complete any one case or a particular phase is affected by many factors, such as whether respondents are cooperative, the breadth of the investigation and the staff person's responsibilities regarding other cases. Furthermore, the type of violation involved as well as the stage at which a case

settles will impact the amount of time it takes. Finally, a single, multi-respondent case may be in several different phases at one time. Because of these variances, it is not possible to specify a single length of time it takes to complete a case or a phase of a case.

Consequently, the figures provided reflect a range of time frames. For purposes of gathering this information, we used only cases in which the Commission had found there was reason to believe. We calculated the time elapsed from the earliest point any respondent in the case entered the next phase. Because of all the variables cited, the provided statistics are not reflective of the life of a case.

Our ability to respond to this question is further impaired by the constraints of our current case docketing systems, the EPS computer system and the MUR Tracking System (MTS). The EPS system provides primary case information, and tracks cases up to the point that they are assigned to staff. MTS is designed to be used during the time a case is active, but has limited input and reporting functions. Although MTS provides some limited capability to assess the current status of a case, it is difficult to use as an analytical tool. MTS will be replaced later this year with Law Manager, the new case management system. This new system, based on a tailored commercially available software program, will provide greater flexibility and insight into case-specific information such as time per phase of each case.

1. Activation to Circulation of Reason to Believe Recommendation: 10-740 days
2. Preprobable Cause Conciliation: 33- 468 days
   *The information provided is limited to those cases where the case closed through pre-probable cause conciliation.*
3. Investigative Phase: 42 - 659 days
   *The information provided is limited to those cases that reached the probable cause phase.*
4. Probable Cause Brief Mailed to Probable Cause Vote: 32 - 145 days
5. Post-Probable Cause Conciliation Period: 4 - 254 days
6. Date of Closeout Letters to Placing the File on the Public Record: 0 - 55 days

**(c) Question.** The total length of time it takes to complete a compliance case which fits into the case priority system.

**Response.** 28 - 1386 days

*See preliminary remarks to question 9b, above.*

**(d) Question.** What is the longest a case has been active? (Include the top ten longest cases).

**Response.** The response to this question reflects only cases that were opened on or after May 1, 1993, the date of inception of the Enforcement Priority System, wherein the Commission found reason to believe, and which are now closed.

To underscore the wide variations in cases resulting from the factors discussed in response to question 9b above, we have also included the ten shortest active cases for calendar years 1994 - 1997.

**TEN LONGEST CASES**

| | | |
|---|---|---|
| 1. | MUR 3974: | 1386 days |
| 2. | MUR 3918: | 1166 days |
| 3. | MUR 4209: | 1068 days |
| 4. | MUR 4167: | 992 days |
| 5. | MUR 3837: | 958 days |
| 6. | MUR 4060: | 925 days |
| 7. | MUR 4295: | 901 days |
| 8. | MUR 4048: | 898 days |
| 9. | MUR 4297: | 889 days |
| 10. | MUR 4398: | 823 days |

**TEN SHORTEST CASES**

| | | |
|---|---|---|
| 1. | MUR 4376: | 28 days |
| 2. | MUR 4344: | 41 days |
| 3. | MUR 4154: | 44 days |
| 4. | MUR 4046: | 44 days |
| 5. | MUR 3772: | 48 days |
| 6. | MUR 4301: | 49 days |
| 7. | MUR 4581: | 51 days |
| 8. | MUR 4288: | 55 days |
| 9. | MUR 4084: | 57 days |
| 10. | MUR 4654: | 60 days |

**(e) Question.** How many active cases are there at any given time?

**Response.** The response to this question reflects the monthly average active caseload for the years specified.

| | |
|---|---|
| 1995 | 139 |
| 1996 | 121 |
| 1997 | 98 |
| 1998 (through 1/31/98) | 92 |

(f) **Question**. How long does it take to complete presidential audits? Please provide specific examples using the last four presidential election cycles.

**Response**. Audits of publicly funded Presidential committees are the first priority of the Commission's Audit Division. The goal of the Audit Division is to complete all audits of publicly funded Presidential committees within two years of the end of the Presidential election year. The 1996 cycle includes 11 Primary Committees, 2 convention committees, 2 host committees, and 3 general election committees. The Audit Division is on track for the public release of final audit reports on these committees by December 31, 1998. To date, final audit reports on seven primary committees and one general election committee have been released. Fieldwork has been completed on one other primary committee and one primary committee's audit is in the fieldwork stage. Field work will be completed shortly on the Dole and Clinton primary and general election committee audits. The Democratic and Republican convention and host committee audit reports are under review within the Commission.

Final audit reports on the 1984 and 1988 Presidential elections were not publicly released until up to four years after the election. An increase in staff and the implementation of a number of changes to our audit procedures after the 1988 election cycle resulted in all of the audit reports for the 1992 election cycle being publicly released within two years. Additional changes were made to the audit procedures for the 1996 election cycle which further reduced the processing time for audit reports. A major change was to eliminate the interim audit report which has been replaced with an exit conference memorandum. In addition, granting of extensions to committees for responding to findings is now limited, and the use of subpoenas to obtain documents from both committees and vendors has increased. The audit staff has also taken advantage of considerable advances in computer technology in the audit process which has contributed significantly to reducing the time to complete an audit.

Following is a schedule showing the public release dates for the 1984, 1988, and 1992 election cycles.

**Publicly Funded Presidential Committees--Audit Report Release Dates**

| 1984 | Release Date | 1988 | Release Date | 1992 | Release Date |
|---|---|---|---|---|---|
| Glenn | 8/19/85 | Dupont | 3/9/89 | Agran | 6/15/93 |
| Dem Conv | 9/5/85 | Babbitt | 5/25/89 | Rep Host | 1/14/94 |
| Askew | 7/24/84 | Haig | 6/22/89 | Kerrey | 3/8/94 |
| Hollings | 9/10/84 | Gore | 7/13/89 | Harkin | 3/15/94 |
| McGovern | 1/19/85 | Rep Conv | 10/25/89 | Dem Conv | 4/11/94 |
| Johnson | 6/14/85 | Fulani | 11/3/89 | Dem Host | 4/11/94 |
| Jackson | 7/12/85 | Dem Conv | 11/21/89 | Fulani | 4/21/94 |
| Cranston | 8/15/85 | Hart | 1/25/90 | Wilder | 4/21/94 |
| Dem Host | 9/5/85 | LaRouche | 5/17/90 | Brown | 5/24/94 |
| Rep Host | 6/20/85 | Rep Host | 9/5/90 | Rep Conv | 7/6/94 |
| LaRouche | 10/29/85 | Dem Host | 9/28/90 | Hagelin | 9/14/94 |
| Rep Conv | 4/28/86 | Dole | 2/25/91 | Buchanan | 10/18/94 |
| Hart | 6/26/86 | Gephardt | 5/23/91 | La Rouche | 12/5/94 |
| Reagan Primary | 7/7/86 | Kemp | 7/25/91 | Clinton/Gore | 12/24/94 |
| Mondale Primary | 10/28/86 | Simon | 10/22/91 | Tsongas | 12/28/94 |
| Mondale/Ferraro | 2/5/87 | Bush/Quayle | 11/6/91 | Clinton | 12/29/94 |
| Reagan/Bush | 5/11/87 | Dukakis Primary | 12/12/91 | Bush | 12/29/94 |
| | | Dukakis/Bentsen | 12/17/91 | Bush/Quayle | 12/29/94 |
| | | Bush | 2/18/92 | | |
| | | Robertson | 4/7/92 | | |
| | | Jackson | 4/9/92 | | |

(g) **Question**. Describe the Federal Election Commission's procedure for the review and audit process of committee reports. How long does it take to process these audits? Give statistics on the number of audits released and made available for public inspection.

**Response**. Once a committee has been approved for audit under 2 U.S.C. 438b, the first step is to notify the committee of a start date. The Audit Division will then begin the pre-audit stage by gathering all committee disclosure reports and other documents on file with the Commission to familiarize themselves with the committee's filings. During the fieldwork stage, the auditors will perform reconciliations and testing to evaluate the committee's compliance with recordkeeping and disclosure requirements. Further testing is conducted to detect whether any prohibited contributions have been received. Once the field work phase is complete an exit conference is held, at which time the auditors will present their findings. The committee has ten days to provide any additional information related to the findings prior to the audit staff drafting an interim audit report. Upon receipt of the interim audit report, the committee has 30 days to respond to the report. Once the committee's response is received a final audit report is prepared which incorporates the committee's response. The final audit report is forwarded to the Commissioners for approval and subsequent public release.

The amount of time to complete an audit will vary based on the size of the committee, level of cooperation with the audit staff, the condition of the records, and the number an complexity of the findings. For your information, following is a status report which shows the time lines for 2 U.S.C. 438b audits for which final audit reports have been released for the 1992, 1994, and 1996 election cycles.

Federal Election Commission - Audit Division

Audit Status Report - Authorized & Non-Authorized

(Basic)

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | Field Work Dates | | | Processing of Interim Audit Report | | | | | Final Audit Report to Public | | | |
| | Committee Name | Legislative Branch (if applicable) | Type of Committee | Election Year | Pre-Audit Inventory | Beginning | Ending | Exit Conference | Committee Response to Exit Conf. | Preparation of Interim Audit Report | OGC Review of Interim Audit Report | Commission Review and Approval of Interim Rpt | Committee Response to Interim Audit Report | Final Report to OGC for Analysis | OGC Review of Final Report | Commission Review and Approval of Final Report | Final Audit Report Released to Public |
| 1 | California Democrats | N/A | NON-AUTH | 1992 | 08/08/94 | 09/08/94 | 10/20/94 | 10/20/94 | 11/03/94 | 05/31/95 | 07/11/95 | 08/08/95 | 10/26/95 | 03/08/96 | 04/22/96 | 08/01/96 | 08/22/96 |
| 2 | Dade County Republicans | N/A | NON-AUTH | 1992 | N/A | 02/08/95 | 04/14/95 | 04/14/95 | 04/28/95 | 10/25/95 | 12/07/95 | 01/23/96 | 04/11/96 | 05/17/96 | 05/26/96 | 07/19/96 | 08/01/96 |
| 3 | Delaware | N/A | NON-AUTH | 1992 | N/A | 06/08/94 | 07/15/94 | 07/15/94 | 07/28/94 | 05/03/95 | N/A | N/A | 07/18/95 | N/A | N/A | 08/08/95 | 08/14/95 |
| 4 | Florida Democrats | N/A | NON-AUTH | 1992 | N/A | 01/11/95 | 02/10/95 | 02/10/95 | 02/23/95 | 08/30/95 | N/A | N/A | 08/02/95 | N/A | N/A | 09/11/95 | 09/18/95 |
| 5 | Minnesota DFL | N/A | NON-AUTH | 1992 | N/A | 02/15/94 | 04/15/94 | 04/15/94 | 04/29/94 | 11/15/94 | 03/08/95 | 07/06/95 | 10/02/95 | 11/20/95 | 01/11/96 | 02/05/96 | 02/12/96 |
| 6 | Montana | N/A | NON-AUTH | 1992 | N/A | 03/08/94 | 04/28/94 | 04/28/94 | 05/13/94 | 08/14/94 | 09/09/94 | 06/06/95 | 08/29/95 | 01/31/96 | 03/22/96 | 04/01/96 | 04/10/96 |
| 7 | Nevada Democrats | N/A | NON-AUTH | 1992 | N/A | 05/23/94 | 08/15/94 | 08/15/94 | 08/25/94 | 07/06/95 | N/A | N/A | 09/26/95 | 01/26/96 | 03/13/96 | 04/02/96 | 04/16/96 |
| 8 | New Jersey Democrats | N/A | NON-AUTH | 1992 | N/A | 05/22/95 | 08/24/95 | 08/24/95 | 09/06/95 | 08/27/96 | 07/19/96 | 07/28/96 | 10/17/96 | 05/07/97 | 05/11/97 | 06/20/97 | 07/07/97 |
| 9 | N. Carolina Democrats | N/A | NON-AUTH | 1992 | N/A | 08/13/94 | 08/03/94 | 08/03/94 | 08/16/94 | 08/30/95 | 09/04/95 | 05/11/95 | 11/06/95 | 09/06/96 | 09/26/96 | 11/07/96 | 11/25/96 |
| 10 | United Rep. Fund of Illinois | N/A | NON-AUTH | 1992 | 09/19/94 | 10/20/94 | 05/30/95 | 05/30/95 | 06/12/95 | 01/22/96 | N/A | N/A | 04/09/96 | N/A | N/A | 05/14/96 | 05/31/96 |
| 11 | Abraham | S | AUTH | 1994 | N/A | 05/15/95 | 08/08/95 | 08/29/95 | 07/14/95 | 08/08/95 | N/A | N/A | 08/11/95 | 07/02/96 | 07/15/96 | 07/17/96 | 08/02/96 |
| 12 | Barr | H | AUTH | 1994 | N/A | 08/12/95 | 08/30/95 | 08/30/95 | 07/15/95 | 08/28/95 | 11/01/95 | 11/28/95 | 02/16/96 | N/A | N/A | 04/08/96 | 04/19/96 |
| 13 | Brown | H | AUTH | 1994 | N/A | 08/12/95 | 08/30/95 | 08/30/95 | 07/15/95 | 08/21/95 | N/A | N/A | 10/24/95 | N/A | N/A | 11/06/95 | 12/04/95 |
| 14 | Burns | S | AUTH | 1994 | N/A | 08/15/95 | 08/08/95 | 08/08/95 | 08/30/95 | 11/01/95 | 12/11/95 | 02/13/96 | 03/18/96 | N/A | N/A | 04/17/96 | 04/30/96 |
| 15 | English | H | AUTH | 1994 | N/A | 05/01/95 | 05/12/95 | 05/12/95 | 05/26/95 | 07/26/95 | N/A | N/A | 08/28/95 | N/A | N/A | 09/21/95 | 09/27/95 |
| 16 | Flanagan | H | AUTH | 1994 | N/A | 09/01/95 | 08/16/95 | 08/16/95 | 08/30/95 | 08/21/95 | N/A | N/A | 10/24/95 | N/A | N/A | 01/05/96 | 01/22/96 |
| 17 | Franks | H | AUTH | 1994 | N/A | 07/05/95 | 08/07/95 | 08/07/95 | 09/21/95 | 04/02/96 | N/A | N/A | 08/24/96 | 07/22/96 | 08/24/96 | 11/27/96 | 12/04/96 |
| 18 | Hamburg | H | AUTH | 1994 | N/A | 08/05/95 | 06/07/95 | 06/27/95 | 07/13/95 | 08/18/96 | N/A | N/A | 10/03/96 | N/A | N/A | 11/18/96 | 11/25/96 |
| 19 | Jude | H | AUTH | 1994 | N/A | 05/01/95 | 05/18/95 | 05/18/95 | 05/30/95 | 08/31/95 | N/A | N/A | 10/03/95 | 11/02/95 | 12/20/95 | 01/02/96 | 01/25/96 |
| 20 | Little | H | AUTH | 1994 | N/A | 05/01/95 | 05/18/95 | 05/18/95 | 06/02/95 | 08/30/95 | N/A | N/A | 08/03/95 | 08/07/95 | 09/07/95 | 09/08/95 | 09/27/95 |
| 21 | Metcalf | H | AUTH | 1994 | N/A | 08/12/95 | 08/30/95 | 08/30/95 | 07/05/95 | 08/24/95 | N/A | N/A | 11/10/95 | 01/04/96 | 02/22/96 | 03/05/96 | 03/12/96 |
| 22 | Parker | H | AUTH | 1994 | N/A | 04/17/95 | 04/28/95 | 04/28/95 | 05/12/95 | 06/07/95 | N/A | N/A | 07/11/95 | N/A | N/A | 07/19/95 | 08/01/95 |
| 23 | American Hospital PAC | N/A | NON-AUTH | 1994 | N/A | 09/18/95 | 10/16/95 | 10/16/95 | 10/30/95 | 05/18/96 | N/A | N/A | N/A | N/A | N/A | 06/05/96 | 06/19/96 |
| 24 | Dem. Rep. Ind. Voter Ed. Cmte | N/A | NON-AUTH | 1994 | N/A | 04/15/96 | 06/17/97 | 06/17/97 | 07/01/97 | 07/23/97 | N/A | N/A | 08/24/97 | N/A | N/A | 09/11/97 | 09/16/97 |
| 25 | Idaho Republican Party | N/A | NON-AUTH | 1994 | N/A | 09/18/95 | 09/29/95 | 09/29/95 | 10/13/95 | 01/18/96 | N/A | N/A | 04/05/96 | 05/02/96 | 07/16/96 | 07/19/96 | 08/01/96 |
| 26 | Illinois Democratic Party | N/A | NON-AUTH | 1994 | N/A | 10/10/95 | 01/19/96 | 01/19/96 | 02/02/96 | 09/07/97 | N/A | N/A | 10/24/97 | 12/29/97 | 02/02/98 | 02/03/98 | 02/19/98 |
| 27 | Massachusetts Republicans | N/A | NON-AUTH | 1994 | N/A | 10/10/95 | 11/09/95 | 11/09/95 | 12/01/95 | 05/03/96 | 06/24/96 | 09/03/96 | 10/11/96 | N/A | N/A | 11/20/96 | 12/04/96 |
| 28 | Mississippi Dem Pac | N/A | NON-AUTH | 1994 | N/A | 01/08/96 | 01/24/96 | 01/24/96 | 02/08/96 | 10/10/96 | N/A | N/A | 12/27/96 | N/A | N/A | 01/10/97 | 01/24/97 |
| 29 | NC Dems. Victory Fund | N/A | NON-AUTH | 1994 | N/A | 12/04/95 | 01/26/96 | 01/26/96 | 02/14/96 | 04/16/96 | 07/01/96 | 09/03/96 | 10/08/96 | N/A | N/A | 11/26/96 | 12/03/96 |
| 30 | New Hampshire Dems | N/A | NON-AUTH | 1994 | N/A | 02/26/96 | 03/08/96 | 03/08/96 | 03/21/96 | 10/08/96 | N/A | N/A | 11/13/96 | N/A | N/A | 03/14/97 | 03/19/97 |
| 31 | New Mexico Republicans | N/A | NON-AUTH | 1994 | N/A | 09/18/95 | 10/05/95 | 10/05/95 | 10/23/95 | 04/08/96 | N/A | N/A | 06/28/96 | N/A | N/A | 07/31/96 | 08/07/96 |
| 32 | San Bernadino Republicans | N/A | NON-AUTH | 1994 | N/A | 09/18/95 | 09/29/95 | 09/29/95 | 10/13/95 | 01/18/96 | 02/29/96 | 03/11/96 | 05/15/96 | N/A | N/A | 06/03/96 | 06/18/96 |
| 33 | West Virginia Democrats | N/A | NON-AUTH | 1994 | N/A | 09/18/95 | 09/29/95 | 09/29/95 | 10/13/95 | 02/11/96 | N/A | N/A | 04/05/96 | N/A | N/A | 04/11/96 | 04/26/96 |
| 34 | Bob Barr - Congress | H | AUTH | 1996 | N/A | 04/26/97 | 05/23/97 | 05/23/97 | 06/06/97 | 10/06/97 | N/A | N/A | 12/24/97 | N/A | N/A | 02/11/98 | 02/27/98 |
| 35 | Dennis Hastert For Congress | H | AUTH | 1996 | N/A | 06/23/97 | 07/10/97 | 07/10/97 | 07/24/97 | 08/29/97 | N/A | N/A | 10/02/97 | N/A | N/A | 10/29/97 | 11/03/97 |
| 36 | Joe Rogers For Congress | H | AUTH | 1996 | N/A | 04/28/97 | 05/19/97 | 05/19/97 | 06/26/97 | 09/19/97 | N/A | N/A | 10/22/97 | N/A | N/A | 11/17/97 | 11/21/97 |
| 37 | Kevin Quigley For Congress | H | AUTH | 1996 | N/A | 07/09/97 | 07/18/97 | 07/18/97 | 08/01/97 | 10/07/97 | N/A | N/A | 10/07/97 | N/A | N/A | 10/15/97 | 10/18/97 |
| 38 | Addenda: | | | | | | | | | | | | | | | | |
| 39 | | | | | | | | | | | | | | | | | |
| 40 | | | | | | | | | | | | | | | | | |

**Question 10.** Federal Election Commission Budget.

**(a) Question.** What was the FEC's total budget for each of the last five years?

**Response.**

FY 1999 Budget Request(Agreed with OMB and President): $31,650,000 and 360.5 FTE
FY 1998 Appropriation: $31,650,000 and 313.5 FTE ($750,000 transferred to GAO)
FY 1997 Appropriation: $28,165,000 and 296.7 FTE actual
FY 1996 Appropriation: $26,521,000 and 308.5 FTE actual
FY 1995 Appropriation: $25,648,483 and 314.8 FTE actual (post-Rescission)
FY 1994 Appropriation: $23,564,000 and 293.3 FTE actual

**(b) Question.** How was the budget allocated (resources, staffing, etc.)?

**Response.** In order to assist in the understanding of the FEC's FY 1999 Budget Request, we broke the budget down by major Commission Objectives and Programs. These major objectives include: Promoting Public Disclosure of campaign finance information, Obtaining Compliance with the FECA, Implementing Public Financing of presidential elections, operating the Elections Administration Clearinghouse to improve federal and state elections administration, and the Commission Policy Guidance and Administrative functions. In addition, we have major computerization initiatives, including electronic filing, underway. The FEC FY 1999 Budget Request allocated staffing (FTE) and resources (dollars) to these objectives. As a comparison, the FY 1997 and 1998 appropriations are depicted in a similar format for both dollars and FTE below:

| COMMISSION BUDGET BY OBJECTIVE | | | | | | |
|---|---|---|---|---|---|---|
| | | | FY 1997-1999 | | | |
| | FY 1997 | | FY 1998 | | FY 1999 | |
| OFFICE/DIVISION | $ | FEC % | $ | FEC % | $ | FEC % |
| PROMOTE DISCLOSURE | $ 6,580,035 | 23% | $ 6,934,311 | 22% | $ 7,432,324 | 20% |
| OBTAIN COMPLIANCE | $ 6,496,224 | 23% | $ 8,527,878 | 28% | $ 10,560,929 | 29% |
| PUBLIC FINANCING | $ 2,552,575 | 9% | $ 2,054,123 | 7% | $ 1,795,168 | 5% |
| ELECTIONS ADMIN. | $ 523,963 | 2% | $ 506,500 | 2% | $ 572,000 | 2% |
| ADP/EF PROJECTS | $ 2,556,660 | 9% | $ 2,672,000 | 9% | $ 4,402,500 | 12% |
| COMM. POLICY/ADMIN. | $ 9,433,937 | 34% | $ 10,205,188 | 33% | $ 11,741,079 | 32% |
| COMMISSION TOTAL | $ 28,143,394 | | $ 30,900,000 | | $ 38,504,000 | |

| COMMISSION BUDGET BY OBJECTIVE | | | | | | |
|---|---|---|---|---|---|---|
| FY 1997-1999 | | | | | | |
| | FY 1997 | | FY 1998 | | FY 1999 | |
| OFFICE/DIVISION | FTE | FEC % | FTE | FEC % | FTE | FEC % |
| | | | | | | |
| PROMOTE DISCLOSURE | 99.8 | 34% | 106.5 | 34% | 107.0 | 30% |
| OBTAIN COMPLIANCE | 75.1 | 25% | 89.5 | 29% | 134.0 | 37% |
| PUBLIC FINANCING | 34.0 | 11% | 24.0 | 8% | 25.0 | 7% |
| ELECTIONS ADMIN. | 4.8 | 2% | 5.0 | 2% | 5.0 | 1% |
| ADP/EF PROJECTS | 6.2 | 2% | 8.5 | 3% | 8.5 | 2% |
| COMM. POLICY/ADMIN. | 77.2 | 26% | 80.0 | 26% | 81.0 | 22% |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| COMMISSION TOTAL | 297.1 | | 313.5 | | 360.5 | |

We have also included a copy of a summary chart for the FEC budget by object class, from FY 1995-1999. OMB redefined the object class definitions and categories in FY 1995 (and to a smaller extent in FY 1996 and 1997), therefore it is difficult to compare FY 1995 and later to FY 1994 and prior fiscal years. The table below depicts the FEC appropriations and budget request by object class since FY 1995:

## Summary of Request by Object Class

| 25-Feb-98 | | | | | |
|---|---|---|---|---|---|
| | FY 1995 | FY 1996 | FY 1997 | FY 1998 | FY 1999 |
| OBJECT CLASS | ACTUAL | ACTUAL | ACTUAL | M. PLAN | REQUEST |
| | Sep-95 | Sep-96 | Sep-97 | 7-Nov-97 | AGREEMENT |
| SALARIES AND BENEFITS | 18 276,666 | 18,654,291 | 19,088,747 | 21,047,000 | 24,391,000 |
| OVERTIME | 79,202 | 73,249 | 130,514 | 72,000 | 90,000 |
| WITNESSES | 2,515 | 997 | 1,569 | 2,500 | 5,000 |
| CASH AWARDS | 126,920 | 170,789 | 187,581 | 200,000 | 275,000 |
| OTHER | 10,000 | 27,146 | 27,000 | 45,000 | 35,000 |
| TOTAL PERSONNEL | 18,495,303 | 18,926,472 | 19,435,411 | 21,366,500 | 24,796,000 |
| | | | | | |
| 21.01 TRAVEL | 259,120 | 140,939 | 248,074 | 258,500 | 385,000 |
| 22.01 TRANS. OF THINGS | 26,872 | 21,122 | 23,312 | 24,500 | 21,000 |
| 23.11 GSA SPACE | 2,271,600 | 2,527,167 | 2,514,448 | 2,685,000 | 3,183,000 |
| 23.21 COMMERCIAL SPACE | 23,869 | 24,502 | 24,000 | 26,000 | 27,000 |
| 23.31 EQUIPMENT RENTAL | 94,440 | 83,762 | 185,934 | 86,500 | 96,500 |
| 23.32 TELEPHONE LOCAL | 192,348 | 180,633 | 172,940 | 165,000 | 221,000 |
| 23.33 LONG DIST./TELEGRAPH | 7,248 | 11,277 | 29,070 | 32,000 | 23,000 |
| 23.34 TELEPHONE INTERCITY | 75,393 | 78,514 | 51,050 | 60,000 | 80,000 |
| 23.35 POSTAGE | 212,942 | 229,159 | 204,730 | 225,000 | 250,000 |
| 24.01 PRINTING | 368,550 | 293,669 | 238,920 | 274,000 | 312,500 |
| 24.02 MICROFILM PRINTS | 29,711 | 29,167 | 20,833 | 22,000 | 28,000 |
| 25.11 TRAINING | 92,767 | 48,537 | 58,791 | 64,500 | 105,000 |
| 25.12 ADMIN. EXPENSES | 47,845 | 80,127 | 45,116 | 39,000 | 54,000 |
| 25.13 DEPOSITIONS/TRANS. | 68,248 | 28,700 | 55,633 | 54,000 | 107,500 |
| 25.21 CONTRACTS/OTHER | 887,522 | 1,107,161 | 2,432,487 | 1,023,500 | 880,000 |
| 25.23 OTHER REPAIRS/MAINT. | [redacted] | [redacted] | 4,400 | 5,000 | 7,500 |
| 25.24 TUITION | 6,630 | 6,413 | 3,080 | 3,000 | 5,000 |
| 25.31 FED. AGENCY SERVICES | 270,897 | 298,892 | 523,216 | 1,506,500 | 268,000 |
| 25.41 FACIL. MAINT. | 18,411 | 18,901 | 49,720 | 10,000 | 5,000 |
| 25.71 EQUIP. REPAIRS/MAINT. | 260,400 | 281,389 | 198,055 | 216,500 | 280,000 |
| 25.72 SOFTWARE, HARDWARE | 339,386 | 209,169 | 351,948 | 1,153,000 | 1,489,500 |
| 26.01 SUPPLIES AND MATERIALS | 456,880 | 496,023 | 307,364 | 281,000 | 321,500 |
| 26.02 PUBLICATIONS | 116,727 | 128,472 | 137,338 | 133,000 | 147,500 |
| 26.03 PUBLICATIONS SERVICES | 136,896 | 122,082 | 116,887 | 121,000 | 144,500 |
| 31.01 EQUIPMENT PURCHASES | 888,678 | 1,103,941 | 710,637 | 1,065,000 | 3,268,000 |
| TRANSFER TO GAO | | | | 750,000 | |
| NON-PERSONNEL TOTAL | 7,133,180 | 7,549,718 | 8,707,983 | 10,283,500 | 11,708,000 |
| | | | | | |
| TOTAL FEC | 25,628,483 | 26,476,190 | 28,143,394 | 31,650,000 | 36,504,000 |

**(b) Question.** For each of the Divisions, break down the budget allocation into each subdivision as well, e.g. allocation for the Office of the General Counsel and for each of the four subdivisions in the Office of General Counsel.

**Response.** In response to this question, we have provided dollar cost data for major programs in each Commission Division/Office. We do not break down Divisions into

their component sub-units for budget purposes, but do break them down according to which program objective is being advanced. Staff from one sub-unit may work on programs of another sub-unit, and/or be assigned to other sub-units for specific cases or tasks. In general, the Enforcement staff works on the enforcement programs below, the PFESP staff works on PFESP enforcement and audit and legal review, the Litigation staff works on litigation programs, and the Policy staff works on policy programs (AO's, Regulations, Admin. Law, etc.), although PFESP staff are assigned to the Ethics program under the "Policy" program grouping below. Following are major program totals for FY 1994-1999 for each office.

Summary Budgets by Division/Office FY 1994-99

| AS OF 12/31/97 | FEC DIVISIONAL COSTS FY 94-99 | | | | | |
|---|---|---|---|---|---|---|
| | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 # | FY 99 |
| OFFICE | ACTUAL | ACTUAL | ACTUAL | ACTUAL | M. PLAN | REQUEST |
| PROGRAM | 30-Sep | 30-Sep | 30-Sep | 30-Sep | 313.5 FTE | 360.5 FTE |
| COMMISSIONERS | | | | | PLANNED | |
| FTE TOTALS: | 18.7 | 19.2 | 20.0 | 19.5 | 20.0 | 20.0 |
| | | | | | PROJECTED | |
| PERSONNEL $ | $ 1,847,467 | $ 1,880,223 | $ 1,637,569 | $ 1,601,067 | $ 1,908,495 | $ 1,916,600 |
| COMMISSIONERS | $ 32,423 | $ 10,229 | $ 12,358 | $ 10,907 | $ 17,500 | $ 22,500 |
| REPRESENTATIONAL FUND | $ 2,383 | $ 1,055 | $ 2,510 | $ 242 | $ 2,000 | $ 5,000 |
| NON-PERSONNEL $ | $ 34,806 | $ 11,284 | $ 14,868 | $ 11,149 | $ 19,500 | $ 27,500 |
| | | | | | | |
| COMMISSION TOTALS | $ 1,882,273 | $ 1,891,507 | $ 1,652,437 | $ 1,612,216 | $ 1,927,995 | $ 1,944,100 |
| | | | | | | |
| INSPECTOR GENERAL | | | | | PLANNED | |
| FTE TOTALS: | 3.0 | 3.8 | 4.0 | 4.0 | 3.5 | 4.0 |
| | | | | | PROJECTED | |
| PERSONNEL $ | $ 172,428 | $ 212,329 | $ 240,334 | $ 264,653 | $ 292,533 | $ 302,300 |
| | | | | | | |
| NON-PERSONNEL $ | $ 16,545 | $ 8,078 | $ 5,858 | $ 3,547 | $ 6,500 | $ 9,500 |
| | | | | | | |
| ADMIN. TOTALS | $ 188,973 | $ 220,407 | $ 246,192 | $ 268,200 | $ 299,033 | $ 311,800 |
| # FY 98 PROJECTED AS OF 12/31/97 | | | | | | |

| AS OF 12/31/97 | | | | | | |
|---|---|---|---|---|---|---|
| | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 # | FY 99 |
| OFFICE | ACTUAL | ACTUAL | ACTUAL | ACTUAL | M PLAN | REQUEST |
| PROGRAM | 30-Sep | 30-Sep | 30-Sep | 30-Sep | 313.5 FTE | 360.5 FTE |
| STAFF DIRECTOR | | | | | PLANNED | |
| FTE TOTALS: | 25.5 | 26.1 | 25.8 | 24.0 | 24.5 | 25.0 |
| PERSONNEL $ | | | | | PROJECTED | |
| SDO/COMMISSION SECRETARY | $ 816,890 | $ 789,774 | $ 779,763 | $ 726,945 | $ 827,411 | $ 815,000 |
| PLANNING AND MANAGEMENT | $ 152,037 | $ 155,724 | $ 163,502 | $ 167,930 | $ 211,315 | $ 185,600 |
| PERSONNEL OFFICE | $ 325,066 | $ 372,179 | $ 391,396 | $ 410,969 | $ 438,693 | $ 416,000 |
| EEO OFFICE | $ 30,121 | $ 71,369 | $ 76,867 | $ 79,898 | $ 85,000 | $ 88,100 |
| SDO PERSONNEL | $ 1,324,114 | $ 1,389,046 | $ 1,411,528 | $ 1,385,742 | $ 1,560,419 | $ 1,504,700 |
| NON-PERSONNEL $ | | | | | | |
| SDO/COMMISSION SECRETARY | $ 72,892 | $ 63,511 | $ 44,820 | $ 54,731 | $ 38,000 | $ 55,000 |
| PLANNING AND MANAGEMENT | $ 1,472 | $ 1,624 | $ 4,085 | $ 772 | $ 3,000 | $ 3,000 |
| PERSONNEL OFFICE | $ 46,742 | $ 42,533 | $ 52,182 | $ 54,808 | $ 47,091 | $ 51,000 |
| EEO OFFICE | $ 17,527 | $ 15,605 | $ 12,360 | $ 11,338 | $ 13,500 | $ 20,000 |
| SDO NON-PERSONNEL | $ 140,633 | $ 123,273 | $ 113,427 | $ 121,647 | $ 101,591 | $ 129,000 |
| | | | | | | |
| SDO TOTALS | $ 1,464,747 | $ 1,512,319 | $ 1,524,955 | $ 1,507,389 | $ 1,662,010 | $ 1,633,700 |
| | | | | | | |
| ADMINISTRATION | | | | | PLANNED | |
| FTE TOTALS: | 18.7 | 19.2 | 20.0 | 19.5 | 20.0 | 20.0 |
| | | | | | PROJECTED | |
| PERSONNEL $ | $ 909,163 | $ 967,184 | $ 1,094,025 | $ 1,084,151 | $ 1,162,000 | $ 1,231,800 |
| SPACE RENTAL | $ 2,210,000 | $ 2,271,600 | $ 2,527,167 | $ 2,514,448 | $ 2,685,000 | $ 3,183,000 |
| OTHER NON-PERSONNEL | $ 1,555,109 | $ 1,272,301 | $ 1,182,151 | $ 1,233,301 | $ 1,228,094 | $ 1,630,600 |
| NON-PERSONNEL $ | $ 3,765,109 | $ 3,543,901 | $ 3,709,318 | $ 3,747,749 | $ 3,913,094 | $ 4,813,500 |
| | | | | | | |
| ADMIN. TOTALS | $ 4,674,272 | $ 4,511,085 | $ 4,803,343 | $ 4,831,900 | $ 5,075,094 | $ 6,045,300 |
| # FY 98 PROJECTED AS OF 12/31/97: CASH AWARDS NOT DISTRIBUTED IN FY 1998 YET (SDO AND P AND M TOTALS). | | | | | | |

| AS OF 12/31/97 | | | | | | |
|---|---|---|---|---|---|---|
| | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 # | FY 99 |
| OFFICE | ACTUAL | ACTUAL | ACTUAL | ACTUAL | M. PLAN | REQUEST |
| PROGRAM | 30-Sep | 30-Sep | 30-Sep | 30-Sep | 313.5 FTE | 360.5 FTE |
| AUDIT DIVISION | | | | | PLANNED | |
| FTE TOTALS: | 28.5 | 31.3 | 37 3 | 34.3 | 34.0 | 42.0 |
| PERSONNEL $ | | | | | | |
| TITLE 26 PROGRAMS | | | | | PROJECTED | |
| CERTIFICATION | $ 5,875 | $ 155,418 | $ 336,819 | $ 44,751 | $ - | $ 262,412 |
| POST PRIMARY AUDITS | $ 505,288 | $ 127,665 | $ 561,032 | $ 1,112,377 | $ 1,051,243 | $ 179,265 |
| POST GENERAL AUDITS | $ 135,135 | $ 44,405 | $ - | $ 191,789 | $ 479,138 | $ 71,706 |
| CONVENTION AUDITS | $ 17,626 | - | $ - | $ 274,898 | $ 178,783 | $ - |
| 1988 FOLLOW-UP | $ - | $ - | $ - | $ - | $ - | $ - |
| 1992 FOLLOW-UP | $ - | $ - | $ 5,610 | $ - | $ - | $ - |
| 1996 FOLLOW-UP | $ - | $ - | $ - | $ - | $ - | $ - |
| OTHER PRESIDENTIAL | $ - | $ - | $ - | $ - | $ - | $ 143,412 |
| SUBTOTAL TITLE 26 | $ 663,925 | $ 327,488 | $ 903,261 | $ 1,623,815 | $ 1,709,164 | $ 656,794 |
| | | | | | | |
| TITLE 2 PROGRAMS | | | | | | |
| AUTHORIZED COM AUDITS | $ 329,025 | $ 471,804 | $ 123,427 | $ 242,933 | $ 193,085 | $ 700,167 |
| UNAUTHOR. COM. AUDITS | $ 323,149 | $ 488,456 | $ 650,797 | $ 76,718 | $ 14,303 | $ 690,686 |
| 437G AUDITS | $ - | $ 49,956 | $ - | $ - | $ 64,362 | $ 71,706 |
| OTHER | $ 64,630 | $ 72,158 | $ 50,493 | $ 12,786 | $ - | $ 107,559 |
| SUBTOTAL TITLE 2 | $ 716,804 | $ 1,082,374 | $ 824,717 | $ 332,435 | $ 271,750 | $ 1,570,118 |
| | | | | | | |
| OTHER | $ - | $ - | $ - | $ - | $ 135,875 | $ - |
| ADMIN/TRAINING | $ 293,772 | $ 344,139 | $ 387,112 | $ 249,326 | $ 235,993 | $ 466,088 |
| | | | | | | |
| AUDIT PERSONNEL | $ 1,674,501 | $ 1,754,001 | $ 2,115,090 | $ 2,205,576 | $ 2,352,782 | $ 2,693,000 |
| | | | | | | |
| AUDIT NON-PERSONNEL | $ 157,802 | $ 162,078 | $ 101,323 | $ 163,637 | $ 123,828 | $ 151,000 |
| | | | | | | |
| AUDIT TOTALS | $ 1,832,303 | $ 1,916,079 | $ 2,216,413 | $ 2,369,213 | $ 2,476,610 | $ 2,844,000 |
| | | | | | | |
| # FY 98 PROJECTED AS OF 12/31/97 | | | | | | |

AS OF 12/31/97

| | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 # | FY 99 |
|---|---|---|---|---|---|---|
| OFFICE | ACTUAL | ACTUAL | ACTUAL | ACTUAL | M. PLAN | REQUEST |
| PROGRAM | 30-Sep | 30-Sep | 30-Sep | 30-Sep | 313.5 FTE | 360.5 FTE |
| INFORMATION | | | | | PLANNED | |
| FTE TOTALS: | 12.5 | 13.5 | 12.7 | 13.0 | 13.0 | 13.0 |
| PERSONNEL $ | | | | | PROJECTED | |
| PHONES | $ 267,870 | $ 279,899 | $ 332,322 | $ 348,605 | $ 313,435 | $ 387,357 |
| CORRESPONDENCE | $ 10,505 | $ 5,180 | $ 5,633 | $ 11,620 | $ 6,146 | $ 12,495 |
| OFFICE VISITS | $ - | $ - | $ 5,633 | $ 5,810 | $ 6,146 | $ 6,248 |
| RESPONSE SUBTOTAL | $ 278,375 | $ 284,878 | $ 343,587 | $ 366,035 | $ 325,726 | $ 406,100 |
| | | | | | | |
| RECORD | $ 57,776 | $ 62,155 | $ 58,326 | $ 69,721 | $ 55,312 | $ 74,972 |
| ANNUAL REPORT | $ 31,514 | $ 36,257 | $ 39,428 | $ 17,430 | $ 30,729 | $ 31,238 |
| GUIDES/BROCHURES | $ 47,271 | $ 31,078 | $ 33,795 | $ 29,050 | $ 18,437 | $ 37,486 |
| REGS/ACT | $ 5,252 | $ - | $ 5,633 | $ 5,810 | $ 6,146 | $ 6,248 |
| VIDEO TAPES | $ 5,252 | $ - | $ - | $ - | $ - | $ - |
| OTHER PUBLICATIONS | $ 10,505 | $ 41,437 | $ 5,633 | $ 11,620 | $ 12,292 | $ 12,495 |
| PUBLICATIONS SUBTOTAL | $ 157,571 | $ 170,927 | $ 140,814 | $ 133,632 | $ 122,916 | $ 162,440 |
| | | | | | | |
| MAILING/DISTRIBUTION | $ 84,038 | $ 56,976 | $ 56,326 | $ 34,860 | $ 36,875 | $ 62,477 |
| INVITATIONS/SPEAKING | $ 10,505 | $ 5,180 | - | $ 5,810 | $ 12,292 | $ 12,495 |
| SEMINARS/WORKSHOPS | $ 36,787 | $ 25,898 | $ 45,061 | $ 46,481 | $ 116,770 | $ 62,477 |
| CONFERENCES | $ - | $ - | $ - | $ - | $ - | $ - |
| OUTREACH SUBTOTAL | $ 131,309 | $ 88,053 | $ 101,388 | $ 87,151 | $ 165,936 | $ 137,449 |
| | | | | | | |
| RESEARCH | $ 5,252 | $ 10,359 | $ 11,265 | $ 17,430 | $ 18,437 | $ 18,743 |
| OTHER | $ 21,009 | $ 67,335 | $ 50,693 | $ 69,721 | $ 88,041 | $ 24,991 |
| | | | | | | |
| ADMIN/TRAINING | $ 73,533 | $ 77,894 | $ 67,591 | $ 81,341 | $ 49,166 | $ 62,477 |
| (MIS REPORT TOTALS) | | | | | | |
| INFOR. PERSONNEL | $ 667,050 | $ 699,247 | $ 715,337 | $ 755,310 | $ 768,222 | $ 812,200 |
| | | | | | | |
| INFOR. NON-PERSONNE | $ 231,862 | $ 181,401 | $ 205,756 | $ 209,778 | $ 223,269 | $ 253,000 |
| | | | | | | |
| INFOR. TOTALS | $ 898,912 | $ 880,648 | $ 921,093 | $ 965,088 | $ 991,491 | $ 1,065,200 |

# FY 98 PROJECTED AS OF 12/31/97

| AS OF 12/31/97 | | | | | | |
|---|---|---|---|---|---|---|
| | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 # | FY 99 |
| OFFICE | ACTUAL | ACTUAL | ACTUAL | ACTUAL | M. PLAN | REQUEST |
| PROGRAM | 30-Sep | 30-Sep | 30-Sep | 30-Sep | 313.5 FTE | 360.5 FTE |
| GENERAL COUNSEL | | | | | PLANNED | |
| FTE TOTALS: | 94.8 | 104.3 | 95.3 | 93.3 | 96.0 | 130.0 |
| PERSONNEL $ | | | | | PROJECTED | |
| ENFORCEMENT | $ 2,477,976 | $ 2,433,829 | $ 2,078,378 | $ 2,267,562 | $ 2,501,757 | $ 4,209,090 |
| CENTRAL ENF. DOCKET-CED | $ 44,025 | $ 261,702 | $ 330,013 | $ 374,185 | $ 314,686 | $ 407,688 |
| DEBT SETTL./ADMIN TERM. | $ 100,628 | $ 32,713 | $ 42,129 | $ 37,419 | $ 7,867 | $ 72,401 |
| ENFORCEMENT POLICY | $ - | $ 157,021 | $ 91,280 | $ 89,804 | $ 110,140 | $ 153,939 |
| | | | | | | |
| PFESP ENFORCEMENT | $ - | $ 431,808 | $ 379,164 | $ 466,441 | $ 511,365 | $ 656,523 |
| AUDIT/LEGAL REVIEW | $ 402,514 | $ 399,096 | $ 301,927 | $ 231,995 | $ 283,218 | $ 366,919 |
| | | | | | | |
| | | | | | | |
| LITIGATION | $ 680,374 | $ 706,596 | $ 744,284 | $ 980,365 | $ 959,794 | $ 1,439,576 |
| | | | | | | |
| POLICY (AO'S REGS FOIA) | $ 805,028 | $ 830,904 | $ 842,566 | $ 823,207 | $ 857,520 | $ 978,450 |
| | | | | | | |
| LIBRARY AO/MUR INDEX | $ 113,207 | $ 130,851 | $ 126,388 | $ 142,190 | $ 133,742 | $ 154,921 |
| | | | | | | |
| OTHER | $ 94,339 | $ 274,787 | $ 561,724 | $ 419,087 | $ 708,044 | $ 252,766 |
| | | | | | | |
| GC/ADMIN/TRAINING | $ 1,264,145 | $ 1,164,574 | $ 1,193,663 | $ 1,130,039 | $ 1,164,340 | $ 1,288,327 |
| | | | | | | |
| OGC PERSONNEL | $ 5,962,237 | $ 6,823,881 | $ 6,691,535 | $ 6,982,296 | $ 7,552,474 | $ 9,978,600 |
| | | | | | | |
| OGC NON-PERSONNEL | $ 488,408 | $ 453,455 | $ 320,522 | $ 807,055 | $ 1,709,775 | $ 651,000 |
| | | | | | | |
| OGC TOTALS | $ 6,450,645 | $ 7,277,336 | $ 7,012,057 | $ 7,789,351 | $ 9,262,249 | $ 10,629,600 |
| | | | | | | |
| # FY 98 PROJECTED AS OF 12/31/97. | | | | | | |

| AS OF 12/31/97 | FEC DIVISIONAL COSTS DATA SYSTEMS AND ADP/EF FY 94-99 | | | | | |
|---|---|---|---|---|---|---|
| (INCLUDES ADP/EF) | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 # | FY 99 |
| OFFICE | ACTUAL | ACTUAL | ACTUAL | ACTUAL | M. PLAN | REQUEST |
| PROGRAM | 30-Sep | 30-Sep | 30-Sep | 30-Sep | 313.5 FTE | 360.5 FTE |
| DATA SYSTEMS | | | | | PLANNED | |
| FTE TOTALS: | 32.1 | 35.0 | 36.8 | 38.0 | 43.5 | 47.5 |
| PERSONNEL $ | | | | | PROJECTED | |
| OPERATIONS | $ 105,394 | $ 103,296 | $ 99,838 | $ 122,791 | $ 148,044 | $ 141,743 |
| CONTRACTS | $ 14,372 | $ 9,838 | $ 15,764 | $ 10,677 | $ - | $ 28,349 |
| ADMIN/TRAINING | $ 234,741 | $ 290,213 | $ 409,863 | $ 523,195 | $ 572,864 | $ 566,871 |
| OPERATIONS SUBTOTAL | $ 354,507 | $ 403,347 | $ 525,465 | $ 656,663 | $ 720,908 | $ 737,063 |
| | | | | | | |
| FOIA/LEGISL REQUESTS | $ 9,581 | $ 14,757 | $ 5,255 | $ 5,339 | $ - | $ 11,339 |
| DISCLOSURE DATABASE | $ 81,441 | $ 78,702 | $ 73,565 | $ 85,420 | $ 70,803 | $ 85,046 |
| DBASE MONITORING | $ 38,325 | $ 59,026 | $ 52,547 | $ 42,710 | $ 38,620 | $ 56,697 |
| RFA | $ 9,581 | $ 4,919 | $ 5,255 | $ 10,677 | $ - | $ 11,339 |
| STATE/DIRECT ACCESS | $ 57,488 | $ 63,945 | $ 52,547 | $ 58,726 | $ 57,930 | $ 62,367 |
| DISCL/DBASE SUBTOTAL | $ 196,416 | $ 221,349 | $ 189,168 | $ 202,872 | $ 167,354 | $ 226,789 |
| | | | | | | |
| FILE ROOM | $ - | $ 9,838 | $ 5,255 | $ 5,339 | - | $ 11,339 |
| PASS I CODING | $ 110,185 | $ 118,053 | $ 105,093 | $ 112,113 | $ 83,677 | $ 124,734 |
| PASS III CODING | $ 354,507 | $ 398,428 | $ 430,882 | $ 437,776 | $ 411,947 | $ 487,595 |
| PASS I ENTRY | $ 114,975 | $ 127,891 | $ 115,602 | $ 112,113 | $ 102,987 | $ 130,403 |
| PASS III ENTRY | $ 71,860 | $ 78,702 | $ 115,602 | $ 117,452 | $ 154,480 | $ 124,734 |
| ENTRY AND CODING | $ 651,527 | $ 732,911 | $ 772,434 | $ 784,793 | $ 753,091 | $ 878,808 |
| | | | | | | |
| SUPPORT OTHER OFFICES | $ 129,347 | $ 132,809 | $ 94,584 | $ 85,420 | $ 122,297 | $ 317,394 |
| | | | | | | |
| IMAGING/POINT OF ENTRY | $ - | $ 9,838 | $ 42,037 | $ 64,065 | $ 122,297 | $ 78,500 |
| ADP ENHAN./ELEC FILING | $ - | $ 68,864 | $ 152,385 | $ 149,484 | $ 386,201 | $ 436,714 |
| SPECIAL PROJECTS/ADP | $ 162,882 | $ 167,241 | $ 131,366 | $ 117,452 | $ 45,057 | $ 72,786 |
| ADP/EF/POE/IMAGING | $ 162,882 | $ 245,943 | $ 325,789 | $ 331,001 | $ 553,554 | $ 588,000 |
| | | | | | | |
| OTHER | $ 43,116 | $ 9,838 | $ 26,273 | $ 26,694 | $ 122,297 | $ 28,349 |
| | | | | | | |
| DATA PERSONNEL | $ 1,537,796 | $ 1,746,198 | $ 1,933,713 | $ 2,087,442 | $ 2,439,500 | 2,776,400.0 |
| | | | | | | |
| DATA NON-PERSONNEL | $ 1,157,567 | $ 1,305,262 | $ 1,103,071 | $ 1,021,811 | $ 1,014,000 | $ 1,467,500 |
| ADP/EF NON-PERS. | | $ 919,353 | $ 1,545,678 | $ 2,219,160 | $ 2,105,000 | $ 3,814,500 |
| DATA TOTALS | $ 2,695,363 | $ 3,970,813 | $ 4,582,462 | $ 5,328,413 | $ 5,558,500 | $ 8,058,400 |
| # FY 98 PROJECTED AS OF 12/31/97. | | | | | | |

| AS OF 12/31/97 | | | | | | |
|---|---|---|---|---|---|---|
| | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 # | FY 99 |
| OFFICE | ACTUAL | ACTUAL | ACTUAL | ACTUAL | M. PLAN | REQUEST |
| PROGRAM | 30-Sep | 30-Sep | 30-Sep | 30-Sep | 313.5 FTE | 380.5 FTE |
| PUBLIC DISCLOSURE | | | | | PLANNED | |
| FTE TOTALS: | 14.1 | 14.6 | 14.6 | 13.3 | 14.0 | 14.0 |
| PERSONNEL $ | | | | | PROJECTED | |
| ASSIST PUBLIC | $ 117,179 | $ 129,333 | $ 163,616 | $ 171,531 | $ 159,504 | $ 194,010 |
| PROVIDE PRINTOUTS | $ 22,680 | $ 53,255 | $ 41,953 | $ 20,918 | $ 41,015 | $ 23,096 |
| FILING DOCUMENTS | $ 26,460 | $ 38,039 | $ 29,367 | $ 12,551 | $ 22,786 | $ 23,096 |
| COPYING DOCUMENTS | $ 86,940 | $ 83,686 | $ 71,320 | $ 54,388 | $ 72,916 | $ 69,289 |
| PUBLIC RECORDS SUBTOTAL | $ 253,259 | $ 304,312 | $ 306,255 | $ 259,389 | $ 296,221 | $ 309,492 |
| | | | | | | |
| PROCESS EXT. DOCUMENTS | $ 86,940 | $ 38,039 | $ 54,539 | $ 100,409 | $ 91,145 | $ 115,482 |
| PROCESS INT. DOCUMENTS | $ 11,340 | $ 15,216 | $ 8,391 | $ 16,735 | $ 22,786 | $ 23,096 |
| FILM PROCESSING | $ 34,020 | $ 34,236 | $ 33,562 | $ 20,918 | $ 13,672 | $ 23,096 |
| PAPER PRINT PROCESSING | $ 30,240 | $ 22,823 | $ 12,586 | $ 12,551 | $ 4,557 | $ 13,858 |
| SCANNING DOCUMENTS | - | $ 26,627 | $ 37,757 | $ - | $ - | $ - |
| PROCESSING SUBTOTAL | $ 162,539 | $ 136,941 | $ 146,835 | $ 150,613 | $ 132,160 | $ 175,533 |
| | | | | | | |
| STATE DISCLOSURE | $ 22,680 | $ 26,627 | $ 25,172 | $ 29,286 | $ 27,344 | $ 32,335 |
| STATE ACCESS | $ 3,780 | $ 3,804 | $ - | $ - | $ - | $ 4,619 |
| CANDIDATE INDENTIF. | $ 11,340 | $ 3,804 | $ 20,976 | $ 4,184 | - | $ 4,619 |
| STATE DISCL. SUBTOTAL | $ 37,800 | $ 34,235 | $ 46,148 | $ 33,470 | $ 27,344 | $ 41,574 |
| | | | | | | |
| OTHER | $ - | $ - | $ 4,195 | $ 16,735 | $ 22,786 | $ 9,239 |
| | | | | | | |
| ADMIN/TRAINING | $ 105,839 | $ 114,117 | $ 109,077 | $ 96,225 | $ 118,489 | $ 110,883 |
| | | | | | | |
| DISCL. PERSONNEL | $ 559,437 | $ 589,605 | $ 612,510 | $ 556,431 | $ 597,000 | $ 646,700 |
| | | | | | | |
| DISCL. NON-PERSONNEL | $ 246,126 | $ 185,060 | $ 272,503 | $ 177,406 | $ 152,721 | $ 167,500 |
| | | | | | | |
| DISCLOSURE TOTAL | $ 805,563 | $ 774,665 | $ 885,013 | $ 733,837 | $ 749,721 | $ 814,200 |
| | | | | | | |
| # FY 98 PROJECTED AS OF 12/31/97. | | | | | | |

| AS OF 12/31/97 | | | | | | |
|---|---|---|---|---|---|---|
| | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 # | FY 99 |
| OFFICE | ACTUAL | ACTUAL | ACTUAL | ACTUAL | M PLAN | REQUEST |
| PROGRAM | 30-Sep | 30-Sep | 30-Sep | 30-Sep | 313.5 FTE | 360.5 FTE |
| REPORTS ANALYSIS | | | | | PLANNED | |
| FTE TOTALS: | 40.1 | 41.9 | 40.4 | 41.0 | 42.0 | 42.0 |
| PERSONNEL $ | | | | | PROJECTED | |
| DOCUMENT FILING | $ 102,345 | $ 110,845 | $ 119,515 | $ 112,888 | $ 129,669 | $ 150,871 |
| REPORTS REVIEW | $ 864,250 | $ 934,285 | $ 947,584 | $ 968,515 | $ 1,117,148 | $ 1,131,538 |
| RFAI'S | $ 102,345 | $ 150,433 | $ 162,199 | $ 121,358 | $ 114,707 | $ 150,871 |
| PHONE ASSISTANCE | $ 60,649 | $ 59,381 | $ 55,489 | $ 56,344 | $ 59,847 | $ 75,436 |
| INDEX MAINTENANCE | $ 11,372 | $ 15,835 | $ 17,074 | $ 13,002 | $ 14,962 | $ 25,145 |
| PASS I DATA ENTRY | $ 11,372 | $ 15,835 | $ 21,342 | $ 21,671 | $ 14,962 | $ 25,145 |
| DISCLOSURE SUBTOTAL | $ 1,152,333 | $ 1,288,594 | $ 1,323,203 | $ 1,291,576 | $ 1,451,295 | $ 1,559,005 |
| | | | | | | |
| REFERRALS | $ 121,298 | $ 126,680 | $ 46,952 | $ 112,888 | $ 44,885 | $ 150,871 |
| NON-FILERS | $ 26,534 | $ 11,876 | $ 38,416 | $ 17,337 | $ 4,987 | $ 25,145 |
| DEBT SETTLEMENTS | $ - | $ 23,753 | $ 17,074 | $ 8,668 | $ 14,962 | $ 25,145 |
| COMPLIANCE SUBTOTAL | $ 147,832 | $ 162,309 | $ 102,442 | $ 138,893 | $ 64,834 | $ 201,162 |
| | | | | | | |
| OTHER | $ 3,791 | $ - | $ 12,805 | $ 43,341 | $ 94,758 | $ 25,145 |
| | | | | | | |
| ADMIN/TRAINING | $ 242,596 | $ 241,484 | $ 285,983 | $ 303,390 | $ 329,160 | $ 328,888 |
| | | | | | | |
| RAD PERSONNEL | $ 1,546,552 | $ 1,690,387 | $ 1,724,432 | $ 1,777,001 | $ 1,940,047 | $ 2,112,200 |
| | | | | | | |
| RAD NON-PERSONNEL | $ 45,433 | $ 21,349 | $ 13,801 | $ 28,859 | $ 31,000 | $ 23,500 |
| | | | | | | |
| RAD TOTALS | $ 1,591,985 | $ 1,711,736 | $ 1,738,233 | $ 1,805,860 | $ 1,971,047 | $ 2,135,700 |
| | | | | | | |
| # FY 98 PROJECTED AS OF 12/31/97. | | | | | | |

| AS OF 12/31/97 | FEC DIVISIONAL COSTS PRESS OFFICE AND CLEARINGHOUSE FY 94-99 | | | | | |
|---|---|---|---|---|---|---|
| | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 # | FY 99 |
| OFFICE | ACTUAL | ACTUAL | ACTUAL | ACTUAL | M. PLAN | REQUEST |
| PROGRAM | 30-Sep | 30-Sep | 30-Sep | 30-Sep | 313.5 FTE | 360.5 FTE |
| PRESS OFFICE | | | | | PLANNED | |
| FTE TOTALS: | 4.6 | 5.0 | 4.5 | 4.7 | 5.0 | 5.0 |
| PERSONNEL $ | | | | | PROJECTED | |
| PHONES | $ 145,081 | $ 201,513 | $ 225,562 | $ 214,615 | $ 218,892 | $ 238,800 |
| OFFICE VISITS | $ 27,635 | $ 20,846 | $ 24,167 | $ 30,659 | $ 26,267 | $ 23,880 |
| FOIA REQUESTS | $ 20,726 | $ 13,897 | $ 8,056 | $ 7,665 | $ 17,511 | $ 15,920 |
| NEW RELEASES | $ 41,452 | $ 55,590 | $ 56,390 | $ 38,324 | $ 52,534 | $ 63,680 |
| INTERNAL COMMUN. | $ 34,543 | $ 34,744 | $ 32,223 | $ 38,324 | $ 43,778 | $ 39,800 |
| OTHER | $ - | $ - | $ - | $ - | $ - | $ - |
| ADMIN./TRAINING | $ 48,360 | $ 20,846 | $ 16,112 | $ 30,659 | $ 26,267 | $ 15,920 |
| | | | | | | |
| PRESS PERSONNEL | $ 317,797 | $ 347,437 | $ 362,510 | $ 360,247 | $ 385,250 | $ 398,000 |
| | | | | | | |
| PRESS NON-PERSONNEL | $ 56,391 | $ 31,815 | $ 39,142 | $ 47,717 | $ 34,500 | $ 41,500 |
| | | | | | | |
| PRESS TOTAL | $ 374,188 | $ 379,252 | $ 401,652 | $ 407,964 | $ 419,750 | $ 439,500 |
| | | | | | | |
| CLEARINGHOUSE | | | | | PLANNED | |
| FTE TOTALS. | 5.1 | 6.0 | 5.2 | 4.8 | 5.0 | 5.0 |
| PERSONNEL $ | | | | | PROJECTED | |
| INFOR/EDCUATION PROG. | $ 169,918 | $ 230,863 | $ 223,782 | $ 172,102 | $ 176,313 | $ 186,340 |
| RESEARCH PROG. | $ 135,934 | $ 46,173 | $ 74,594 | $ 70,405 | $ 100,750 | $ 59,290 |
| VSS STUDIES | $ - | $ - | $ - | $ - | $ 41,979 | $ 84,700 |
| NVRA | $ - | $ 46,173 | $ 44,756 | $ 86,051 | $ 41,979 | $ 50,820 |
| POLL ACCESSABILITY | $ 6,797 | $ 65,961 | $ 7,459 | $ 7,823 | $ - | $ 8,470 |
| ADMIN/TRAINING | $ 33,984 | $ 6,596 | $ 37,297 | $ 39,114 | $ 41,979 | $ 33,880 |
| | | | | | | |
| CHOUSE PERSONNEL | $ 346,632 | $ 395,765 | $ 387,889 | $ 375,495 | $ 403,000 | $ 423,500 |
| | | | | | | |
| CHOUSE NON-PERSONNEL | $ 314,613 | $ 186,871 | $ 104,451 | $ 148,468 | $ 103,500 | $ 159,000 |
| | | | | | | |
| CHOUSE TOTALS | $ 661,245 | $ 582,636 | $ 492,340 | $ 523,963 | $ 506,500 | $ 582,500 |
| # FY 98 PROJECTED AS OF 12/31/97 | | | | | | |

**(c) Question.** For each of the last ten years, please provide the total number of Full Time Equivalent FEC employees. Include a breakdown of staff per division.

**Response.** Below is a table which depicts FTE for the Commission and the Divisions/Offices for the last 10 fiscal years.

FEC Staffing FY 1991-1999

18-Feb

FEC HISTORICAL FTE

| OFFICE | FY 90 ACTUAL 30-Sep | FY 91 ACTUAL 30-Sep | FY 92 ACTUAL 30-Sep | FY 93 ACTUAL 30-Sep | FY 94 ACTUAL 30-Sep | FY 95 ACTUAL 30-Sep | FY 96 ACTUAL 30-Sep | FY 97 ACTUAL 30-Sep | FY 98 M. PLAN 313.5 FTE | FY 99 REQUEST 360.6 FTE |
|---|---|---|---|---|---|---|---|---|---|---|
| COMMISSIONERS | 20.0 | 20.0 | 20.0 | 20.0 | 18.9 | 19.1 | 16.3 | 15.6 | 18.0 | 18.0 |
| STAFF DIRECTOR | 21.3 | 21.2 | 22.5 | 21.7 | 25.5 | 26.1 | 25.8 | 24.0 | 24.5 | 25.0 |
| ADMINISTRATION | 14.3 | 14.6 | 15.8 | 18.3 | 18.7 | 19.2 | 20.0 | 19.5 | 20.0 | 20.0 |
| AUDIT | 21.5 | 23.7 | 32.4 | 29.6 | 28.5 | 31.3 | 37.3 | 33.8 | 34.0 | 42.0 |
| INFORMATION | 12.8 | 13.0 | 12.8 | 13.0 | 12.5 | 13.5 | 12.7 | 12.9 | 13.0 | 13.0 |
| GENERAL COUNSEL | 71.2 | 75.1 | 75.8 | 81.8 | 94.6 | 104.3 | 95.3 | 92.8 | 98.0 | 130.0 |
| CLEARINGHOUSE | 4.2 | 4.4 | 5.0 | 5.0 | 5.1 | 6.0 | 5.2 | 4.6 | 5.0 | 5.0 |
| DATA SYSTEMS | 28.5 | 28.2 | 29.7 | 28.9 | 32.1 | 35.0 | 30.7 | 31.8 | 35.0 | 39.0 |
| PUBLIC DISCLOSURE | 11.1 | 12.2 | 12.7 | 12.1 | 14.1 | 14.8 | 14.6 | 12.5 | 14.0 | 14.0 |
| REPORTS ANALYSIS | 35.7 | 37.3 | 37.7 | 39.8 | 40.1 | 41.9 | 40.4 | 39.0 | 42.0 | 42.0 |
| I.G. OFFICE | 1.1 | 2.0 | 1.8 | 1.8 | 3.0 | 3.8 | 4.0 | 4.0 | 3.6 | 4.0 |
| SUBTOTAL | 241.7 | 252.9 | 266.2 | 270.8 | 293.3 | 314.8 | 302.3 | 290.8 | 308.0 | 352.0 |
| ADP/EF | N.A. | N.A. | N.A. | N.A. | N.A. | N.A. | 6.2 | 6.2 | 5.5 | 8.5 |
| TOTAL | 241.7 | 252.9 | 266.2 | 270.8 | 293.3 | 314.8 | 308.5 | 296.7 | 313.5 | 360.6 |

**Question 11.** Enforcement Division.

**(a) Question.** How many staff members work on compliance cases? How many investigators are there?

**Response.** As of 2/18/98, there are the equivalent of 24 staff attorneys, assisted by nine paralegals and two investigators who work on compliance cases. These staff are directly supervised by five Assistant General Counsels.

**(b) Question.** Is there a training session for Enforcement staff on investigative techniques?

**Response.** Yes, there is training for Enforcement staff. Upon entering employment with the Commission, OGC staff are given several sessions of training regarding the various sections of the office, including how to use internal investigative resources. In past years, when the training budget allowed, OGC hired private consultants, who were experts in their fields, to provide the entire staff with formal deposition and negotiations training. More recently, as training funds have been more limited, we have had less formal training sessions put on by our investigative staff and senior attorneys.

(c) **Question**. How do Enforcement staff manage their time? Is there a case management or case docketing system?

**Response**. Preliminarily, see response to question 8c, above. Although we do not yet have an automated system for tracking cases, staff do have some tools at their disposal. There are overall time goal ranges for the various levels of cases, as well as the stages within those cases. To assist staff in keeping on track with their cases, team leaders and staff set quarterly goals for their cases and report to the Associate General Counsel as to whether those goals have been met. Staff also meet periodically with their supervisors and report on case progress. The Central Enforcement Docket also puts out monthly status sheets reflecting the overall stage of the cases and the status of the respondents. Unfortunately, because these systems are cumbersome and require a lot of manual input, they are far from optimal. We are optimistic that the case management system that is presently being developed will enable us to better track the progress of cases and assist staff in meeting their established goals.

**Question 12**. Reports Analysis Division

(a) **Question**. How many reports were filed during each of the last five years? Give statistics on the number of reports reviewed and made available for public inspection?

**Response**.

| Calendar Year | Reports Filed | Other Documents Filed |
|---|---|---|
| 1993 | 31,797 | 4,827 |
| 1994 | 51,922 | 17,625 |
| 1995 | 31,081 | 5,181 |
| 1996 | 53,372 | 18,675 |
| 1997 | 34,500 | 4,566 |

Note: *The column labeled "Other Documents Filed" include Statements or Organization and Candidacy as well as various miscellaneous documents filed by committees.*

**Statistics on the Number of Reports Reviewed and Made Available for Public Inspection**

| Calendar Year | Reports Reviewed |
|---|---|
| 1993 | 45,705 |
| 1994 | 44,137 |
| 1995 | 45,524 |
| 1996 | 34,761 |
| 1997 | 51,130 |

Note: *All are available for public inspection.*

(b) **Question.** How many staff members are there in the Reports Analysis Division and how many of these staff members review reports?

**Response.** At the present time there are 42 staff members in the Division and 26 of those review reports.

(c) **Question.** Explain the reports analysis process.

**Response.** At the conclusion of each election cycle, the Authorized and Unauthorized Branches of the Reports Analysis Division forward to the Commission recommendations for changes to its review and referral procedures. Once approved by the Commission, these procedures form the basis of review and strive to ensure uniform and even-handed treatment of all committees. The procedures detail the types of reporting problems that need correction or clarification, as well as the circumstances under which committees may be referred to the Office of General Counsel and the Audit Division.

The review of a report is conducted manually by the analyst. A calculator is used to verify the accuracy of the committee's reported financial activity, both for the period in question and for the calendar year. Additionally, all entries on the supporting schedules are calculated to ensure that the totals concur with the various summary page figures. Once the amounts are verified, the analyst reviews the report for proper disclosure of information, examples of which include occupation and name of employer for contributors, dates of receipt, full mailing addresses for disbursements to vendors and continuous reporting of debts and obligations.

Computer indices are used to assist the analyst in tracking financial activity between reports, ensuring that reports are filed in a timely manner, monitoring contribution limitations to and from political committees as well as committees affiliated with one another, and reconciling the reporting of activity between committees (a contribution reported being made by the donor committee is properly reported as being received by the recipient committee).

The type of activity the committee engages in is also examined to ensure that it is operating within the parameters of the regulations. For example, a separate segregated fund need not spend any funds on administrative expenses, whereas a state party committee would not only be expected to disclose money being spent for overhead, but may even show that the payments are made with allocated shares of federal and non-federal funds.

If the analyst discovers problems with the reported information, or that certain information is omitted or requires clarification, the procedures may require that the analyst prepare a Request for Additional Information ("RFAI") that is sent to the committee which asks that the problem be corrected by filing an amendment to the original report. These letters, as well as any committee responses, are made part of the

public record. Committees that fail to respond to repeated inquiries or have committed apparent violations of the statute or regulations, may be referred to the Audit Division or Office of General Counsel for further review.

**(d) Question.** What quality assurance measures are there to ensure the accuracy of reporting? How does the Reports Analysis Division address the issue of erroneous or inaccurate reporting (returned checks, contribution designations, joint fund raisers).

**Response.** A good portion of the review process as explained in the previous answer is done to ensure the accuracy of the reports.

One of the primary objectives of the Reports Analysis Division is to provide assistance to committees in an effort to help them achieve the Commission's goal of voluntary compliance with the statute and regulations. To accomplish this, the analysts spend a great deal of time on the phone with committees in an attempt to head off problems ***before*** they occur. An analyst is assigned to each committee that is registered, and that analyst is available to provide specific guidance and answer any questions that the committee may have regarding reporting questions or questions involving whether certain activities are permissible.

The analysts may also send committees "Informational Notices." These notices, like RFAI's, are placed on the public record, but do not require a committee to amend its reports. As such, it is more instructional in nature and offers recommendations and guidance for more accurate reporting in the future.

Mr. HORN. Now, are there any last questions that the staff feel are absolutely necessary? This is the absolutely necessary one. Five hours here, and here it comes. Can the statute of limitations be tolled under any circumstances?

Mr. NOBLE. There are some theories under which you could try to toll a statute of limitations. It's difficult. Also, we are not done litigating the issue of the application of the statute of limitations. One of the arguments that still exists, and there's a split in the Circuits on this, is about whether or not you can get injunctive relief, even if you can't get civil penalty relief, although the statute has run. There again, there's a split in the Circuits on it.

One thing Congress could do—we argued for a long time that we did not fall under the general statute of limitations. The courts have disagreed. Congress could set—it's purely statutory—Congress could set a very different statute of limitations for the FEC, put one in our statute with a longer time period. Given the procedures that Congress has put in for us that we have to follow, reasonable cause, probable cause, and conciliation, Congress could extend the statute of limitations for us. That is not a constitutional issue.

Mr. HORN. Last question: Could the Federal Election Commission work in conjunction with the full committee on this issue, given the FEC's lack of resources?

Mr. NOBLE. With a constraint about confidentiality, we can work with the committee. Everything we do, or virtually everything we do, after the case is closed, is put on the public record. There is some concern about what we could do while a case is ongoing, about whether or not we could actually provide information to the committee because of the confidentiality provisions.

But within those criteria, we would be glad to work to the committee, and talk to the committee about problems we're having and issues that we have to deal with.

Mr. HORN. Right. Well, I thank each one of you. We appreciate your spending the time with us. I think we all have a better feel for what some of the problems are that face the agency and some of the things that need to be done. That's where we need to get on the same track as you in order to solve some of these things.

So thanks very much for coming.

Ms. AIKENS. Thank you, Mr. Chairman.

Mr. NOBLE. Thank you.

Mr. HORN. Mr. Turner.

Mr. TURNER. I just had a couple of questions I wanted to follow-up on.

Mr. HORN. Sure. Please.

Mr. TURNER. I was interested in the discussion about the Glicken matter, and I wanted to be clear. When the Glicken matter was not pursued, was that matter brought before the commissioners? Were they aware?

Mr. NOBLE. Oh, yes. It was a Commission decision.

Mr. TURNER. So it's not a prosecutor's—in the sense of the general counsel—decision; it's the Commission's decision, at that point.

Mr. NOBLE. Absolutely. What I was reading to you was from a report that went before the Commission, with our recommendation.

Ms. AIKENS. Which we approved.

Mr. NOBLE. And the Commission voted on the report.

Mr. TURNER. And just for the record, was there any—is there any evidence that the Commission, or any staff of the Commission, had any communication or influence from the Vice President, or the President, or the White House, or anyone acting on their behalf, regarding that decision?

Mr. NOBLE. None that I am aware of.

Ms. AIKENS. No, none that I'm aware of.

Mr. TURNER. Thank you, Mr. Chairman.

Mr. HORN. Thank you. With that, we're adjourned. Thank you very much.

[Whereupon, at 4:15 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

*State of New Jersey*

**ELECTION LAW ENFORCEMENT COMMISSION**

RALPH V. MARTIN
Chair

DAVID LINETT
Vice Chair

PAULA A. FRANZESE
Commissioner

LYNNAN B. WARE
Commissioner

Respond to:
P.O. Box 185
Trenton, New Jersey 08625-0185

(609) 292-8700

Website: http://www.state.nj.us/lps/elec/

FREDERICK M. HERRMANN, Ph.D.
Executive Director

JEFFREY M. BRINDLE
Deputy Director

GREGORY E. NAGY
Legal Director

JAMES P. WYSE
Counsel

February 27, 1998

Congressman Stephen Horn
Subcommittee on Government Management, Information & Technology
B-373 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Horn:

I am writing to you as the executive director of the New Jersey Election Law Enforcement Commission. I have been in this position for almost 14 years and have researched and written about the proper structuring of state ethics agencies. Enclosed please find a copy of a background paper that I have prepared on this topic. I respectfully request that it be included as part of the record for your March 5th hearing on the oversight of the Federal Election Commission. Allow me also to take this opportunity to commend to you the fine staff work of Randy Kaplan, with whom I discussed my submission.

Best wishes,

Frederick M. Herrmann, Ph.D.
Executive Director

Enclosure

*State of New Jersey*
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**BACKGROUND INFORMATION ON THE STRUCTURING OF STATE-LEVEL ETHICS AGENCIES FOR THE HOUSE GOVERNMENT MANAGEMENT, INFORMATION & TECHNOLOGY SUBCOMMITTEE**
**5 MARCH, 1998**

It is a fact of American political life that the great weakness in the regulation of ethics at the state level in this country is not so much the provisions of the law but the lack of concern for their administration and enforcement. The purpose of this testimony is to describe the nature of this serious problem and to suggest some remedies as a context for the House Government Management Information, and Technology Subcommittee's review of the Federal Election Commission. In order to guarantee the viability of governmental ethics laws and to reestablish public trust in the political process, it will be argued that state ethics regulatory agencies need to be empowered. These agencies are too small, too weak, and insufficiently independent. Although those intimately engaged in this type of work are aware of the dilemma, the general public is not.

The inability of state governmental ethics agencies to administer and enforce workable and equitable laws should be of grave concern to anyone interested in the future of our democratic political system. Having tough campaign financing, lobbying, and ethics laws without strong, independent agencies to administer and enforce them is a serious contradiction. Anemic ethics agencies are more showdogs than watchdogs and these vital institutions should not be treated as the poor stepchildren of government. It should be heartening then that there is an emerging national consciousness being led by scholars, practitioners, and good government groups that thinks governmental ethics agencies must be strengthened.

In order to assure the integrity of governmental ethics laws and to restore public confidence in the democratic process, ethics regulatory agencies need to be empowered. Their effectiveness rests on the three pillars of autonomy, adequate funding, and enforcement capability. Ethics agencies should be established as independent authorities. They have to be insulated from any possibility or appearance of undue influence by other governmental officials. According to Common Cause "an independent commission removes the responsibility of basic enforcement . . . from public officials who may have a motivation to

overlook the laws." Bodies that regulate governmental ethics need to have sufficient budgets to carry out their duties with the necessary staff and up-to-date computer resources. As one member of a public interest group recently testified in New Jersey, "the first expense of . . . government should be to maintain the integrity of our democratic process." Finally, an ethics commission needs to be able to enforce the law "by issuing advisory opinions, looking into allegations of violations, informing the public when standards have been violated, and ensuring enforcement of the standards where violations have been found."

State regulation of governmental ethics is severely burdened by the lack of empowerment. Robert J. Huckshorn has found "considerable variation across states in the way campaign finance laws are administered and enforced" and it is the details of such variation that can determine the effectiveness of a jurisdiction's attempt to protect an open and honest political system. Most states administer campaign finance laws through either their Secretaries of State or through independent boards or commissions. A little more than half of the states use a Secretary of State, while the rest use an independent agency. There appears to be little evidence that the former method of enforcement works, while reformers generally prefer the latter because "it is important to ensure the independence of . . . [those who] enforce campaign finance laws."

A unifying characteristic of almost all campaign finance agencies is that they are headed by a bipartisan commission or a board. The two exceptions to this rule are the states of Delaware and Montana in which a single commissioner runs the agency. Membership ranges from three members in Indiana to nine members in Kansas, Maine, and Nebraska. Three-quarters of the boards have an odd number of members. Only Delaware and Montana have a full-time commission. In Virginia, the head of the state's three-member board sits in a full-time capacity, while the Chairperson of the California Fair Political Practices Commission is also in the same situation. Term length ranges from two years in Kansas, Maine, and New York to 14 years in Rhode Island, and the majority of agencies allow for reappointment.

The appointment process is a crucial area to an agency's independence. In half of the states, the chief executive appoints the commissioners; and, in a majority of these, the appointments are confirmed by the Legislature. The authority to name commissioners in the remaining states is divided among the chief executive, other executive branch officials, the legislative branch, and/or the judiciary. Unfortunately, in many state agencies, the political parties play a major role in appointments either through party committee officials or legislative leaders. In some cases, the parties are even required to recommend individuals and in others to appoint them directly.

A strong and effective code of conduct is essential to the preservation of an agency's autonomy. Sadly, almost a quarter of the boards do not have such guidelines in effect. In Wisconsin, a member of the elections board ran for the Legislature and was actually able to keep his seat on the agency until he took office. When a code does exist, it is common to prohibit political contributions and various forms of participation in partisan functions. Members and staff of the New York City Campaign Finance Board are not even allowed to sign candidate nominating petitions.

It is less common to have limitations on political activity before and after serving on a commission, although it appears to be a good idea. About 25 percent of the agencies have appointment eligibility restrictions. Kansas, for example, prohibits anyone who has ever held a political party office from serving on its commission, while Minnesota both requires and restricts prior political service. Two members in that state must be past legislators and two others must be persons who have not held public office for at least three years. The same percentage of agencies limit a commission member's political activity after leaving an agency. In Montana, a retiring commissioner cannot run for public office for five years, and in Tennessee one is not allowed to lobby for a year. A number of states prohibit former commissioners from dealing with specific matters with which their agencies dealt during their tenure.

According to Huckshorn, the quality of state-level commissioners is quite good. This situation is important because as Frank P. Reiche has correctly observed, "your commission will be as good as the people who are the commissioners and your principal staff." The median age of commissioners across the country Huckshorn found was 51. They were very well educated with almost all holding college degrees. Moreover, half possessed graduate degrees, a third were lawyers, and two-thirds covered "a broad range of occupational pursuits" including college administrators, professors, and business executives. Most commissioners had prior political experience as legislators or county/local elected officials. Interestingly, few had requested appointment. The median term of service was a little over four years, the longest was eleven years, and only five commissioners were discovered who had served over eight years.

A serious deficiency faced by almost every state ethics regulatory agency is that they are, in the words of Reiche, "notoriously underfunded." For most ethics commissions, this situation dates from their inceptions. A classic case is the statute that created the New Jersey Election Law Enforcement Commission. During a Legislative public hearing to consider its passage, one astute witness frankly stated that:

> I submit that this bill is an absolute and total administrative nightmare. I notice where the bill calls for $50,000 to administer the law. I feel the sum should be more like $500,000 to $1 million . . . . This is absolutely insane. Who is going to do it all? You are going to [need] a bigger staff than you have collecting the State Sales Tax. It is just ridiculous.

These agencies, which were severely handicapped from the beginning, are particularly vulnerable as their respective governments downsize and tighten their financial belts. At the same time, many jurisdictions are strengthening and expanding their ethics laws while normal workloads continue to grow because of increased financial activity among regulated entities. Plainly, the hazard is that there is much more work to do with less and less means. One of the "most troubling findings" in a recent study by Thomas L. Gais and Michael J. Malbin "is the near absence of any relationship between agency resources and the laws they are responsible for administering." A major consequence of having more elaborate campaign financing regulations and skyrocketing campaign costs is the existence of more filing entities which means that states and localities have "more financial reports to receive, check, manage, and make available to the public."

As the Red Queen tells Alice in *Through the Looking Glass*, "here, you see, it takes all the running you can do to stay in the same place. If you want to get somewhere else, you must run at least twice as fast as that." Regulating governmental ethics is a growth industry; more resources are clearly needed if agencies are to stay productive. Yet, the signs are that they are losing ground. The average number of candidate reports per campaign financing agency staff person grew from 562 in 1977-78 to 799 in 1993-94. If boards were understaffed in the 1980's, they face even greater problems today as they strain in managing and publicizing increased amounts of information. Receiving, filing, distributing, and analyzing reports is only a small part of most agencies' responsibilities as many are also charged with enforcing complicated restrictions on fundraising by candidates, political parties, and PAC's.

The most recent figures on the staffing of and budgeting for state and local governmental ethics agencies highlight their lack of adequate resources when compared with their broad missions. Two-thirds of them have fewer than 10 staff members, and the average staff size is only 13. The Michigan State Board of Ethics has one half-time person, while the New Castle County Ethics Commission in Delaware has no full-time staff and only one part-time person. Moreover, many staffs across the country are not comprised mostly of professional positions but have an equal number of clericals. Almost two-thirds of the agencies have budgets under one-half million dollars with the average budget being only $809,125. The Hawaii Campaign Spending Commission's budget is just $28,844. Incredibly, about one-half of the agencies had their budgets reduced between 1987 and 1992, making governmental expenditures on ethics move in the opposite direction of campaign financing and lobbying costs.

The Center for Responsive Politics, a major proponent of using high technology to enhance disclosure, has called an ethics agency without computer technology merely "a warehouse for thousands of pieces of paper." Nevertheless, there are agencies today whose disclosure operation is no more than several filing cabinets and a table leading one public official to characterize them as "leaning towers of political pulp." Adequate funding is absolutely necessary for the creation of a computerized campaign financial disclosure system. The purpose of disclosure laws is defeated when governments fail to provide funds for the use of computers to process and disseminate collected information. Fundraising and lobbying activities are too often obscured by a jumble of data in reports that can be hundreds of pages long. Following the money without modern technology is a daunting task for the media, good government groups, the public, and even the agencies themselves. Converting large amounts of information from paper reports to a computer database is the key to providing adequate and timely disclosure.

However, many lawmakers are still hesitating to provide the necessary resources to computerize disclosure agencies throughout the country. According to one agency official, legislators have both "computer phobia and disclosure phobia." Hence, public officials in the past have often been unwilling to support legislation and funding to support electronic technology. Efforts in some states to computerize disclosure agencies have encountered political resistance.

For four consecutive years, computerization funds requested by the New York State Board of Elections were deleted in the Governor's budget, while efforts to restore the money failed in the Legislature. In Maryland, the Legislature rejected for three years in a row bills enabling electronic filing. Nevertheless, many states have recently given support to electronic filing and disclosure and have begun to take significant steps toward implementing electronic reporting systems. For example, Governor Christine Todd Whitman of New Jersey included in her budget message for the 1999 fiscal year a generous one million dollar appropriation for computerized enhancement of campaign financial disclosure at the Election Law Enforcement Commission.

If it is true that an agency's success or failure is ultimately judged on its enforcement record, many boards and commissions are in deep trouble. The Center for Responsive Politics in a survey of 33 state and local regulatory agencies found that three were not authorized to investigate, nine could not conduct hearings, 12 did not have the power to impose fines, 18 were not able to charge penalties for late reports, 10 could not conduct random audits, and six were not even authorized to render advisory opinions. In his study of state boards, Herbert E. Alexander lamented that many agencies "appear to rely on newspaper articles and public complaints rather than initiating actions on their own." It is particularly startling when a commission cannot even render advisory opinions, an ability which is integral to an agency's authority as these formal, interpretive opinions serve as "a kind of case law" that may be cited as precedent in similar situations. This power is crucial for educating the regulated community, supporting the development of regulations, and preserving the autonomy of an agency in setting policy and interpreting the law. In Illinois, for example, the Attorney General issues advisory opinions not the State Board of Elections resulting in ambiguities surrounding interpretation and enforcement as well as questions about the inappropriate role of a cabinet officer in rulings that must be nonpartisan.

Simply enacting new or reformed ethics laws will prove meaningless unless the regulatory agencies charged with administering and enforcing those laws are empowered to do so. The effectiveness of an agency depends on its having necessary autonomy, funding, and enforcement capability. Naturally, there are numerous ways to achieve these goals. Although there is probably no optimal, universal approach to empowering an agency, many useful suggestions for improvement even after only two and a half decades of experience and experimentation with such bodies have been made by scholars, practitioners, and good government groups.

An ethics agency should be established as an independent authority. As much as the parameters of constitutional authority allow, it has to be insulated from any possibility or appearance of undue influence by other governmental officials. Therefore, the selection, compensation, supervision, and removal of employees should be under the exclusive control of the agency with the possible exception that non-managerial positions be subject to the classified state service. An ethics agency should also have the authority to retain its own legal staff rather than being forced to rely upon the vagaries of the state legal structure and being tainted in the eyes of the public if legal advice comes from partisan officials outside the agency.

The method of appointing members to an ethics agency is crucial in determining its degree of autonomy. Of overriding importance to the effectiveness of a commission is the quality of those appointed to oversee the agency. Ideal choices for a commissioner would be: a university president, a retired judge, a prominent member of the clergy, or a past leader of a public interest group--persons who do not have political ambitions. Some experts believe that the best way to obtain "the best and the fairest" is by giving the chief executive sole authority to appoint. The more dispersed the appointing authority is the more elusive public accountability becomes. It is also argued that a nonpartisan, blue ribbon advisory panel could be created to recommend nominees representing opposite political parties and that a commission should consist of an odd number of members to reinforce the understanding that the parties do not have equal control over an agency thereby creating a disinterested environment. However, Reiche makes the telling point that "it is not the number, but rather the openness, independence, and intellectual curiosity of the commissioners that matter."

Other important elements in preserving an ethics agency's independence are: the length of members' terms, the selection of officers, and a code of ethics including before and after service employment restrictions. The term of each member should be longer than the term of the appointing authority and members' terms should be staggered. A limit on service to no more than two consecutive terms also makes sense to prevent board members from becoming dependent on those who appoint them. A chairperson and vice chairperson from opposite parties should be chosen by the appointing authority for fixed terms. An agency code of ethics should include a ban on participation in partisan events as well as a prohibition against making campaign contributions. Persons who are regulated by an agency should be ineligible for appointment to it for two years and retiring members should be prohibited from representing regulated individuals or groups before the agency for five years. In sum, bodies regulating governmental ethics should be bipartisan in their composition but nonpartisan and independent in their conduct.

Ethics agencies must be given enough funding to do their jobs properly. These guardians of open and honest democracy invariably are among the lowest budgeted bodies in state government. An effective ethics board should have a guaranteed base budget adjusted annually for inflation based on the current practice in place for the California Fair Political Practices Commission. Moreover, any increase in administrative or enforcement responsibilities or the expansion of jurisdiction should result in an increase in the funding base. Agencies desperately need additional revenue and a source of money that is independent of the control of the regulated. The guaranteed base budget approach may well be the key for agencies to obtain the resources they need free of improper restraints.

One of the most important expenditures for an ethics agency responsible for handling massive amounts of data is computerization. Without a computer, it is a practical impossibility for anyone to find information. Agencies have to make maximum practicable use of modern technology to aid the public in tracking donations and expenditures. They must be provided with sufficient funds and allowed adequate time by their respective governments so that computers can be installed to facilitate the entry, manipulation, and retrieval of financial data through electronic filing and remote accessing technologies. Staff resources should be freed to educate candidates, investigate violations, and develop analyses of public reports.

Enforcement authority is critical to the effectiveness of an ethics commission. It must be vested with substantive investigatory and enforcement powers including the ability to: conduct hearings, perform investigations, issue subpoenas, do random audits, write advisory opinions, assess meaningful fines, and refer evidence of criminal violations to the appropriate prosecutorial authorities. A commission should be able to respond to complaints from the media or individual citizens, generate complaints internally, and act on anonymous information. According to a study by the Council on Governmental Ethics Laws (COGEL), "the ability to directly impose significant monetary penalties against violators is the most potent tool for the effective enforcement of ... campaign finance laws." Brooks Jackson has argued that penalties should be "at least equal to the amount of any knowing and willful violation," while COGEL has suggested that civil penalties should not exceed $5,000 or three times the amount of an unlawful contribution or expenditure, whichever is greater.

Although many American citizens do not realize it, democracy is a fragile possession. It must be carefully maintained and protected. In a period when public opinion polls continue to demonstrate not a healthy skepticism but a harmful cynicism toward government, a prudent person should be concerned. But, in an era when distrust of public officials and institutions has gone so far that militia groups have been formed and domestic terrorism has begun, it is time for clear and decisive action. The empowerment of state ethics agencies would be an important step in regaining the public trust and confidence which is essential to the preservation of our democratic institutions. Thomas Jefferson's firebell is again resounding in the night. Nothing less than the survival of our two hundred year old experiment in self-governance may depend on whether or not we awaken and heed its call.

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