



THE FEDERAL ELECTION COMMISSION

*The Presidential
Public Funding
Program*

APRIL 1993

Executive Summary

The current system of financing Presidential elections will all but collapse in 1996, unless Congress takes action.

I. Background

Every Presidential election since 1976 has been financed with public funds. While the concept of public funding dates back to the turn of the century, a public funding program was not implemented until the early 1970's. The Watergate scandal--replete with allegations of political misdeeds--provided much of the impetus for the program's enactment.

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

- The disproportionate influence (or the appearance of influence) of wealthy contributors;
- The demands of fundraising that prevented some candidates from adequately presenting their views to the public; and
- The increasing cost of Presidential campaigns that effectively disqualified candidates who did not have access to large sums of money.¹

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

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

All recipients of public funds must agree not only to abide by the limits on contributions and expenditures, but also to comply with an FEC audit and to make any necessary repayments to the U.S. Treasury.

The program is funded by the one dollar checkoff that appears on federal income tax forms.

II. Issues

During the seventeen years that the Federal Election Commission has administered the public funding program, the agency has had to deal with a variety of issues. While the Commission has often resolved these matters, some issues ultimately require legislative resolution. This section focuses on some of the key issues that have not been fully resolved through Commission action and offers the Commission's suggestions for legislative remedies.²

A. The Projected Shortfall for 1996

Clearly, the most pressing issue at the moment is the projected funding deficit for 1996. The Commission estimates the shortfall will be \$75-100 million. As a result, only the nominating conventions (the highest funding priority) will be fully funded. General election nominees (the second priority) will not receive their full entitlements and primary candidates (the third priority) will not receive any public funds at all.

The principal explanation for the projected deficit lies in a structural flaw in the system itself: disbursements from the Presidential Election Campaign Fund are indexed to inflation, but deposits from the \$1 tax checkoff are not. Had deposits been indexed to inflation over the years, a shortfall would not occur in 1996.

Under the existing system, as the consumer price index (CPI) increases, more and more taxpayers must designate dollars to keep pace with the increasing demand for funds. Checkoff participation, however, has gradually declined, hastening the program's inevitable slide toward insolvency. According to the IRS, the percentage of tax forms on which the taxpayer(s) checked yes has fallen from a high of 28 percent in 1980 to below 18 percent in 1992.

Commission Action. Since 1988, the Commission has predicted a shortfall in the Presidential Election Campaign Fund, and has repeatedly notified Congress and the President of its forecast.

In 1989, the agency conducted focus groups around the country to assess public understanding of the tax checkoff and the program it finances. Based on the results of this study, the Commission undertook a nationwide public information program in 1991 and 1992 to encourage taxpayers to make "an informed choice" when deciding whether to designate one dollar of their taxes to the Presidential public funding program.

Recommendation. Again in 1993, the Commission asked Congress to enact legislation that would ensure the financial viability of the public funding program.

B. Soft Money

Money raised and spent outside the limitations and prohibitions of the federal election law is commonly called "soft money." It often consists of large donations from individuals, corporations and labor unions. These funds, which are usually given to state and national party committees, cannot legally be raised or spent to influence federal elections, but are acceptable under some state election laws. In recent years, however, critics have argued that soft money is being raised and spent in ways that may affect federal candidates, including those running for President.

- Raising Soft Money: Presidential candidates and/or their campaign staff help raise soft money for their party. Critics believe this type of active participation by candidates and their associates, at the very least, creates an appearance of undue influence on the candidates involved.
- Spending Soft Money: Soft money may be spent to finance the nonfederal share of certain grass-roots activities that benefit both federal and nonfederal candidates. Critics contend that committees have often overstated the nonfederal share of the expenses and, as a result, have subsidized federal activity with soft money.

Commission Action. The Commission promulgated new regulations in 1991 that address the soft money spending problem. The regulations, in part, specify the minimum percentage of federal funds required to be spent for any activity that benefits both federal and nonfederal candidates. The rules also require expanded reporting of soft money receipts and disbursements.

Recommendation. The Commission has asked Congress to consider whether legislation is needed to deal not only with the way soft money is spent, but also with the way it is raised. The Commission has offered a broad range of specific suggestions, including:

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

C. State Expenditure Limits

To be eligible for matching funds, candidates must agree to limit their spending to specified amounts in each state and nationwide. Many campaigns have attempted to circumvent state limits, particularly in Iowa and New Hampshire. The Commission, in turn, has had to devote considerable resources to determine whether campaigns have exceeded the limits and to enforce any violations discovered.

Commission Action. In 1991, the Commission amended its regulations to simplify and liberalize the process of allocating expenses to the state spending limits.

Recommendation. The Commission recommends that Congress eliminate the state expenditure limits. Based on the Commission's experience, such a change would have little material impact on the electoral process. Candidates would still be subject to the national expenditure limit, which, incidentally, is less than the sum of all state limits combined.

D. Eligibility for Primary Matching Funds

Under the Act, the Commission is required to determine whether candidates have met certain eligibility criteria and, if so, to certify the candidates eligible to receive matching funds. Some critics contend that the eligibility criteria have become too easy for candidates to meet, permitting "fringe candidates" to qualify for public funds.

Commission Action. The Commission has certified every candidate that has met the eligibility criteria, except when the candidate has abused the system by repeatedly violating the law.

Recommendations. The Commission recommends that Congress raise the current \$100,000 eligibility threshold in order to sustain the original legislative intent that only candidates demonstrating broad national support would receive matching funds.

The Commission also asks Congress to clarify the eligibility criteria to ensure that candidates who have been convicted of a willful violation of the public funding laws will not be eligible for future funding.

E. Eligibility for General Election Funding

To qualify for general election funding, candidates must be the nominee of a major, minor or new political party. In some instances, candidates who are listed as "independents" on some state ballots--or who identify themselves as such--have asked the Commission to determine whether they also could qualify for general election funding.³

Commission Action. Based on the statute, the Commission has had to determine whether these "independent" candidates were, in fact, nominees of a political party. The Commission has found that these candidates could qualify as nominees of a political party--even if they were listed as independents on some state election ballots--if their campaign organization(s) met the statutory definition of political party.⁴

Recommendation. The Commission has asked Congress to consider clarifying whether an independent candidate, without any party affiliation, could qualify for general election funding.

F. Audits and Enforcement

The Commission audits every committee that receives public funding to ensure that the funds are not misused. If an apparent violation is discovered, it may become an enforcement matter (Matter Under Review or MUR). Some have criticized the Commission for taking too long to complete Presidential audits and enforcement matters, particularly those of primary campaigns. It should be noted, however, that the Commission must grant due process of law to committees involved in audits and enforcement matters and that audit and enforcement issues--particularly for primary campaigns--tend to be very complex.

Commission Action. Over the years, the Commission has introduced a variety of innovations to increase the efficiency of the audit and enforcement processes. Most recently, in 1991, the agency revised its regulations, amended its audit procedures, expanded its use of technology and increased staffing to hasten the completion and disclosure of Presidential audits and MURs.

Recommendations. The Commission has proposed a number of legislative recommendations that could further hasten completion of audits and enforcement matters. They include:

- Eliminating the state expenditure limits (see above);
- Combining the separate "fundraising limit" with the overall primary spending limit; and
- Eliminating the requirement that primary matching funds be spent only for "qualified campaign expenses."

1. See S. Rep. No. 93-689, pp. 1-10 (1974).

2. This summary offers only a broad outline of the issues discussed. The text of this report offers a more complete discussion. (The Commission's 1993 legislative recommendations are included in this report as Appendix 2.)

3. In *Buckley v. Valeo*, the circuit court opinion suggested that failure to fund independent candidates could raise constitutional questions. 519 F.2d 821, 887 (D.C. Cir. 1975). The Supreme Court, in its subsequent decision, did not explicitly rule on this issue.

4. Title 26 does not define the term "political party." Consequently, the Commission has relied on the definition found at 2 U.S.C. Sec.431(16).

Introduction

The role of money in a democracy has been a topic of philosophical debate for centuries. In this country, historians say that concern over the sources and amounts of campaign contributions dates back at least as far as the late 1800's. At that time, voters were concerned that their elected officials might be controlled by the donors who financed their campaigns.¹

Out of this concern came the notion of taxpayer-financed elections. The first bill to include a public funding provision was introduced in December 1904 by Representative William Bourke Cockran of New York. He believed that "it might be possible for the government of the United States to do away with any excuse for soliciting large subscriptions of money" by financing elections with public funds.² In 1907, President Theodore Roosevelt advocated "an appropriation for the proper and legitimate expenses of each of the great national parties."³ Similar sentiments were expressed, and legislative proposals introduced, during much of the first half of this century.

Yet, despite its enduring appeal with some lawmakers, a public funding law was not passed until 1966, and much of that statute was subsequently repealed. The momentum it generated, however, led to the eventual passage of the Federal Election Campaign Act of 1971 (FECA) and the Revenue Act of 1971. Then, in 1974, as a reaction to the events of Watergate,⁴ Congress enacted the 1974 amendments to the FECA, which established public financing of Presidential primaries, nominating conventions and the Presidential election itself by amending the Presidential Election Campaign Fund Act and by enacting the Presidential Primary Matching Account Act.⁵

This funding program, which has financed every Presidential election since 1976, consists of three parts:

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

The Federal Election Commission (FEC) administers the public funding program. The Commission determines which candidates and committees are eligible for public funds, and in what amounts. The U.S. Treasury then makes the necessary payments, giving first priority to the party conventions, second priority to general election nominees, and third priority to primary candidates. Later, the Commission audits all of the committees that received public funds to ensure that they used the funds properly. Based on the Commission's findings, committees may have to repay amounts to the U.S. Treasury.

The program is funded by the checkoff that appears on federal income tax forms. Using the checkoff, individuals may designate one dollar of their tax money to the Presidential Election Campaign Fund. Since 1973, taxpayers have designated more than \$660 million to the fund. The Commission, in turn, has certified about \$661 million to 83 campaigns and national party conventions.⁶ Payments per election cycle have ranged from \$71.4 million in 1976 to \$176.9 million in 1988.⁷ When repayments are taken into account, the fund balance stands at roughly \$3.5 million.

While disbursements from the fund are indexed to inflation, the one-dollar tax checkoff is not. Consequently, as inflation increases, more and more taxpayers must participate to keep the fund solvent. In recent years, however, public participation in the tax checkoff has gradually decreased from a high of 28 percent in 1980 to less than 18 percent in 1992, hastening the inevitable shortfall. As a result, the Commission projects a deficit for the 1996 election, unless Congress takes legislative action.

As we enter a period of broad re-evaluation of campaign finance law, the Commission offers this report to chronicle its experience with the Presidential public funding program. The report focuses on persistent problems, how the Commission has dealt with them and, in some cases, Commission suggestions for legislative remedies.⁸

The report is organized into five sections. The first three document the three phases of the public funding program; the fourth attempts to evaluate Presidential public funding in light of its original goals; and the final chapter examines the tax checkoff and the projected funding deficit for 1996.

1. Robert E. Mutch, *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law* (New York: Praeger, 1988), p. xvii.
2. House Election Committee hearings, 1906, 41, as quoted in Mutch, p. 35.
3. *Congressional Record*, December 3, 1907, 78, as quoted in Mutch, p. 36.
4. See, for example, *Final Report of the Senate Select Comm. on Presidential Campaign Activities*, S. Rep. No. 981, 93d Cong., 2d Sess. 581 (1974), regarding President Nixon's price supports for milk and contributions by the milk industry to the Committee to Re-elect the President.
5. For a more complete historical summary, see Appendix 4.
6. See Chart 5-2, pp. 38-39.
7. See Appendix 3.
8. For a more detailed description of the Commission's administration of the public funding program, see Appendix 1 of this report and the relevant chapter in each of the Commission's annual reports, 1975-1992.

Chapter 1

Primary Matching Funds

How the Matching Fund System Works

Partial public funding is available to Presidential primary candidates in the form of federal matching payments. Candidates seeking their party's nomination to the Presidency can qualify to receive matching funds by raising over \$5,000 in each of 20 states (i.e., over \$100,000). Only contributions from individuals apply toward this threshold. Although an individual may contribute up to \$1,000 to a candidate, only a maximum of 250 counts toward the threshold and is matchable.¹

Primary election candidates seeking matching funds must also submit a letter of agreements and certifications. This document is a contract with the government. In exchange for public funding, the candidates promise to comply with the provisions of the Federal Election Campaign Act and the Presidential Primary Matching Payment Account Act. As part of this agreement, candidates pledge to limit national spending for all primary elections and to limit spending in each state based on its voting age population.² Moreover, candidates must agree not to spend more than \$50,000 of their personal funds in connection with the campaign.³ The candidates must also facilitate an audit of their campaigns and make any necessary repayments (see below).

Once the Commission determines that a candidate has met the eligibility criteria, he or she may submit contributions from individuals for matching. The Commission's audit staff reviews these submissions to see if the requests meet the standards for matchability. The contributions, for example, must be in the form of a check or other negotiable written instrument made payable to the candidate or his or her campaign committee. Once the Commission is satisfied that the submissions comply with the law, it certifies to the U.S. Treasury an amount due the candidate.⁴

Candidates may present documentation to establish their eligibility for matching funds and submit matchable contributions during the year before the election is held. The first payments, however, are not made until January of the election year. From that point forward, candidates may submit additional matching fund requests and receive payments on a monthly basis. Even if a candidate is no longer actively campaigning in primary elections, he or she may continue to request matching funds to pay off campaign debts and to wind down the campaign until early in the year following the election.⁵

The maximum amount of matching funds a candidate may receive is limited to half of the overall spending ceiling.⁶

After the campaign, the Commission audits each candidate's committee to ensure that funds were not misused and that the committee maintained proper records and filed accurate reports.⁷

At the conclusion of a fieldwork audit, FEC auditors hold an exit conference to discuss preliminary findings with the committee. Later, these findings are incorporated into an interim audit report. Interim reports are reviewed by the Office of General Counsel and approved by the Commission before being sent to the committee treasurer. The committee may dispute the findings contained in the interim audit report.⁸

The Commission considers final audit reports in open meetings and then releases the approved final report to the public. The final report may include an initial determination by the Commission that the committee repay funds.⁹

A repayment may be required if the Commission determines that a committee:

- Received public funds in excess of the amount to which it was entitled (e.g., received matching funds for contributions that were later determined to be nonmatchable or received amounts beyond that necessary to pay campaign debts);
- Had surplus funds remaining on the date of ineligibility; or
- Incurred nonqualified campaign expenses by spending in excess of the limits, by using public funds for expenses not related to the campaign or by insufficiently documenting the expenditure of public funds.¹⁰

The committee must repay only the portion of nonqualified campaign expenses that were defrayed with public funds. A ratio formula is used to determine the amount of the repayment.¹¹

A committee may dispute the Commission's initial repayment determination by submitting legal and factual materials to support its view. The committee may also request an oral presentation before the Commission.¹²

The Commission will take into account the committee's arguments when making its final repayment determination.¹³ The committee, however, must repay the amount specified in the final determination within the payment deadline unless it obtains a stay from the Commission pending an appeal of the agency's decision.¹⁴

Statistical Wrap-up

The charts that appear in this section provide statistical information related to the Presidential primary election process.

CHART 1-1
Primary Matching Fund Certifications

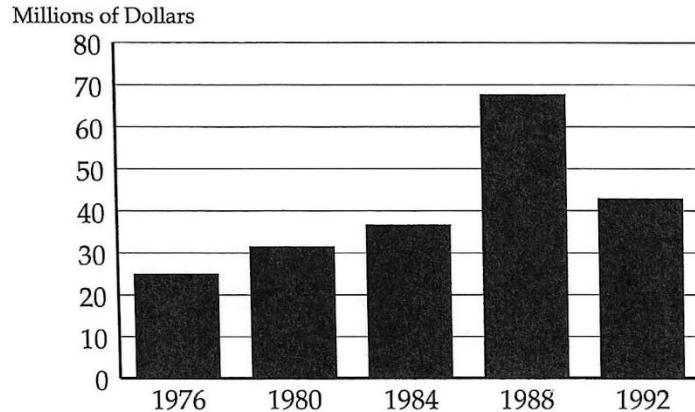


Chart 1-1 shows the total amount of primary matching funds certified by the Commission in each Presidential campaign. It suggests that the type of campaign (i.e., a completely open race in both parties versus an incumbent seeking reelection, and the perceived vulnerability of the incumbent) is the most important factor in determining how much matching fund spending will occur. For example, the primary spending limit increased by over 80% between 1976 and 1984 (because of inflation) while the amount certified increased only 46% during that time. In 1988, however, because of the competitive nature of the campaign in both parties, certifications were much higher than ever before, and much higher than in 1992.

CHART 1-2
Overall Primary Election Spending Limit

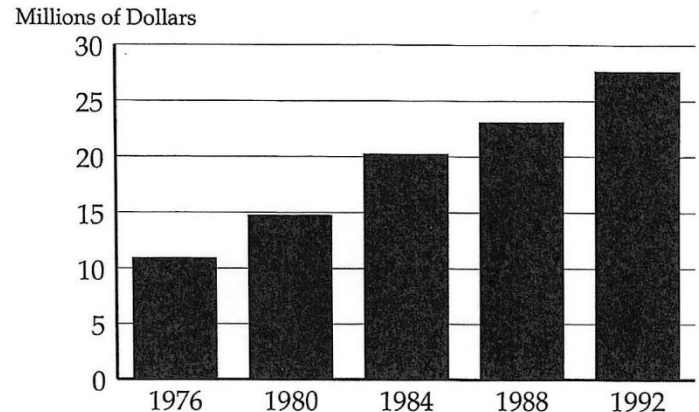


Chart 1-2 demonstrates the effect of inflation on the overall primary election spending limit. A hypothetical campaign in 1992 which spends \$27 million is equivalent to a 1976 campaign spending about \$11 million. These adjustments are based on a general broad definition of inflation. The actual costs of campaign activities may have risen faster (or slower).

CHART 1-3
Primary Campaign Spending and the Overall Spending Limit

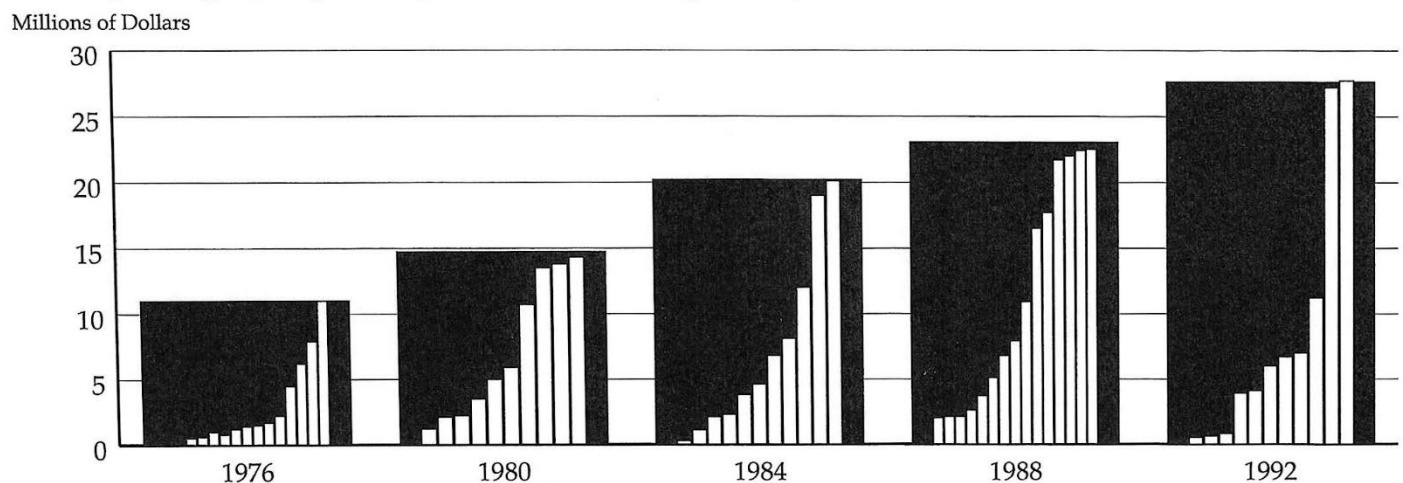


Chart 1-3 shows what each publicly funded candidate spent in relation to the overall primary election spending limit. Each large, black bar represents the spending limit for the given primary election. The white bars depict the spending by the candidates. (The spending totals reported by the candidates do not necessarily reflect final Commission determinations regarding expenditures subject to the limits.) In most election cycles, the two major party nominees made expenditures approaching the national limit.

CHART 1-4 Spending by Leadership PACs

Millions of Dollars

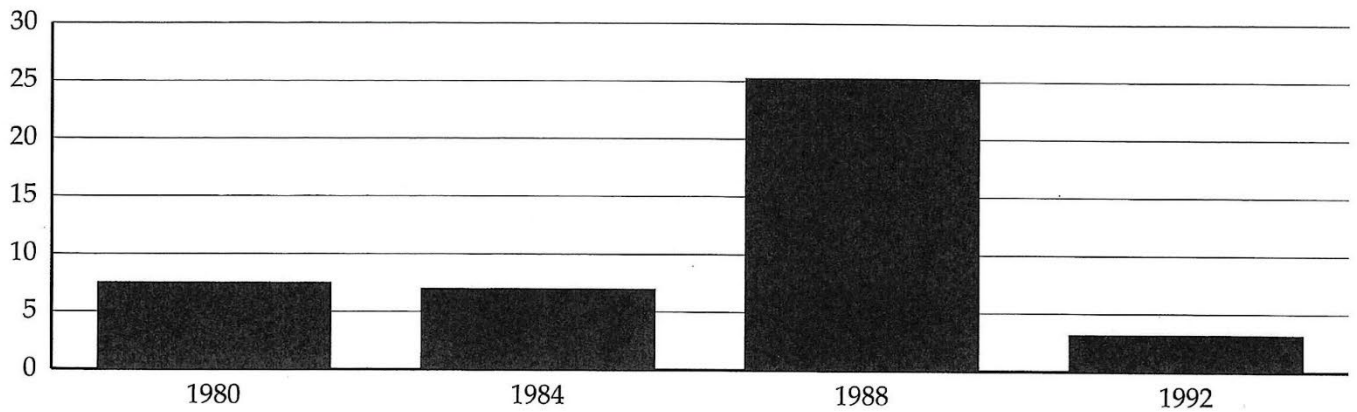


Chart 1-4 tracks spending by Presidential leadership PACs—committees organized by prospective Presidential candidates in the years before the campaign. This method of political activity prior to the campaign was especially important in the most competitive recent race, i.e., 1988.

CHART 1-5 Individual Contributions to Presidential Primary Campaigns by Size of Contribution: 1976 versus 1992

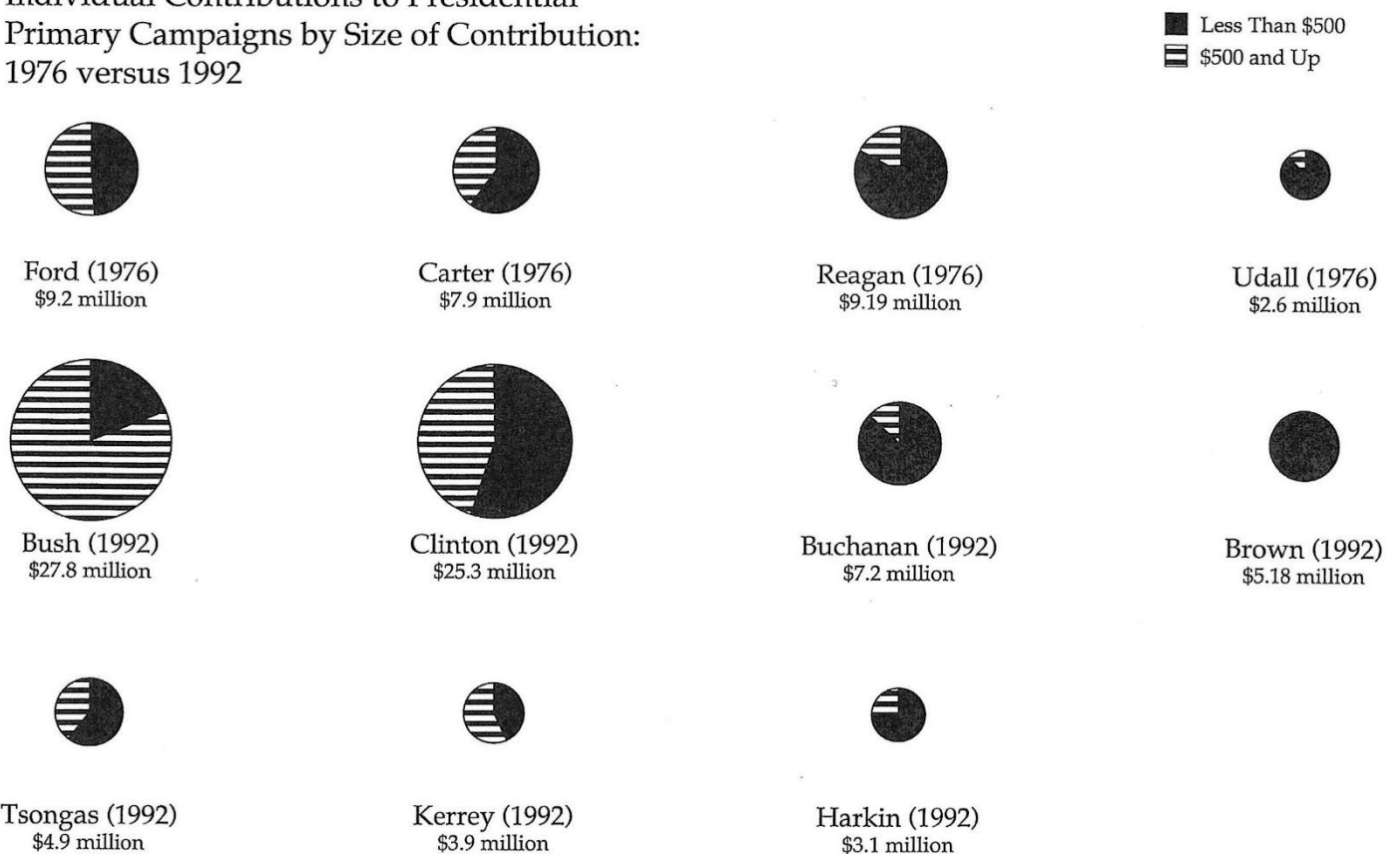


Chart 1-5 compares fundraising by 1976 and 1992 Presidential candidates. As illustrated by the chart, the availability of matching funds may encourage candidates to raise matchable contributions of \$250 or less, but it does not require such a strategy.

Issues

The Commission has faced a myriad of challenges while administering the primary matching fund program. Having opened its doors after the 1976 campaign had already begun, the Commission had to establish administrative procedures and policies very quickly. Since that time, the Commission has refined these procedures and policies to address changing circumstances and to find more efficient ways of accomplishing its duties. The Commission has responded to questions regarding the eligibility requirements, the expenditure limits, the date a candidate becomes ineligible for payments and much more. This section describes some of the most difficult and persistent challenges the Commission has encountered, and the steps it has taken to address them.

Eligibility

In most cases, the Commission has had little difficulty determining whether candidates qualify for primary matching funds. But questions regarding the eligibility of certain minor party candidates and candidates who have violated the election laws in the past have proven difficult.

Under the Act, the Commission is required to determine whether candidates have met the eligibility criteria (described in the "How the Matching Fund System Works" section) and, if so, to certify the candidates eligible to receive matching funds. The Commission conducts a 100 percent, item-by-item review of each eligibility submission to ensure that the candidates have, in fact, met the \$100,000 threshold. Despite the labor-intensive nature of this review, Commission regulations specify that these submissions be processed as quickly as possible, usually within 15 business days during the election year.¹⁵ The Commission has been consistently successful in meeting this deadline, frequently completing its review in less than 15 days.

While the Commission has received high marks for its administration of this process, some observers have criticized the system for certifying so-called "fringe candidates."¹⁶ These critics contend that the eligibility threshold, which is not indexed to inflation, has become too easy for candidates to meet.¹⁷ This, they argue, subverts the legislative intent that only candidates who demonstrate broad-based support should qualify for public funding. The Commission, for its part, has recommended that Congress raise the eligibility threshold to correct the perceived inflationary distortions. (See Appendix 2.)

Some observers are concerned, however, that raising the eligibility threshold might discourage minor party candidates. This, they argue, would negate the legislative intent to open the process to a wide variety of candidates. Although the statute does require candidates to be "seeking nomination by a political party" for President, there is no statutory distinction drawn between various types of parties.¹⁸

Over the years, the Commission has been asked to determine whether various third party candidates would qualify for matching funds. To make such a determination, the Commission has examined whether the candidate's party qualified as a "political party" under FEC regulations.¹⁹ In Advisory Opinion (AO) 1983-47, for example, the Commission found that the Citizens Party qualified because it planned to hold a nominating convention and had a record of political activity. As a result, the Citizens Party candidate (Sonia Johnson), having met the other eligibility requirements, became the first third party candidate to qualify for primary matching funds. In AO 1984-11, the Commission determined that a candidate (Dennis Serrette) could also meet this eligibility requirement by seeking the nomination of several independent parties organized in different states.²⁰

Critics contend that the Commission has been too lenient in granting "political party" status, exacerbating the "fringe candidate" problem, described above. Not only are more minor party "fringe candidates" qualifying for matching funds, but these candidates also are often able to maintain eligibility longer than some major party candidates. This occurs as a result of the application of the 10 percent rule: Candidates become ineligible for matching funds if they fail to receive 10 percent of the vote in two consecutive primaries.²¹ Since a minor party candidate is frequently unopposed for his or her party's Presidential nomination, the 10 percent rule does not apply. Thus, the argument goes, these "fringe candidates" maintain eligibility

throughout the primary campaign season, while certain major party candidates soon become ineligible because they fail to receive 10 percent of the vote in two consecutive elections.

On the other hand, the statute does permit candidates facing opposition to notify the Commission that they would like to exclude particular primaries from the 10 percent requirement and thereby maintain eligibility, despite poor electoral performance.²² Some observers view this as a statutory loophole benefiting major party candidates.

In some cases, candidates have attempted to establish eligibility for matching funds after failing to receive more than 10 percent of the vote in two consecutive primaries. The Commission has, nevertheless, certified these candidates' eligibility, explaining that the 10 percent rule applies only to elections held after a candidate becomes eligible for matching funds.²³

The timing of an eligibility submission was at issue again in 1992. The Commission certified John Hagelin's eligibility for matching funds, even though he had become ineligible prior to the certification date. Since Dr. Hagelin had made his threshold submission several weeks before his party had nominated him (the date of his ineligibility), the Commission concluded that he was eligible at the time of his submission and certified his eligibility for funds.

Another eligibility issue the Commission has faced involves the certification of candidates who have violated the law in the past. Although the statute does not specifically address this issue, the Commission does have an obligation to ensure that tax money is not misused.²⁴ Recognizing this obligation, the Commission rejected Lyndon LaRouche's 1984 threshold submission, based on violations related to his 1980 publicly funded campaign. Mr. LaRouche subsequently paid an outstanding civil penalty and made the required repayments of public funds to clear his 1980 campaign. The Commission then certified his eligibility for 1984 matching funds.

Based on this experience, the Commission promulgated new regulations in 1987 codifying its intention to consider all relevant information in its possession, including a candidate's past actions in previous publicly funded campaigns, when determining a candidate's eligibility for matching funds.²⁵

The Commission invoked this provision to reject Mr. LaRouche's 1992 threshold submission. The Commission cited the candidate's past abuses of the public funding law, his status as an imprisoned, convicted felon, and the agency's obligation to ensure that tax money is not misused, as the basis for its finding. Mr. LaRouche argued that the agency's actions were contrary to the statute and appealed the decision to the U.S. Court of Appeals.²⁶

The FEC has encouraged Congress to clarify the eligibility requirements to ensure that candidates who have been convicted of a willful violation of the public funding laws will not be eligible for future funding. The Commission believes that public confidence in the system would be compromised if such candidates could receive public funding. (See Appendix 2.)

Matching Fund Submissions

Once the Commission certifies the eligibility of candidates, they may submit requests for matching funds. The agency's Audit Division staff reviews these submissions to ensure that the candidates receive only those funds to which they are entitled. This labor-intensive review process has strained agency resources, despite markedly improved Commission efficiency.

In the 1976 election cycle, the newly formed Commission's 28 auditors worked nights and weekends to meet their deadlines. At times, the Commission pulled all available staff from other agency projects to help review matching fund submissions. In addition, the Commission enlisted the services of six staff employees of the General Accounting Office and an average of eight temporary employees.

These measures became necessary, in part, because staff were conducting 100 percent, item-by-item reviews of all matching fund submissions. Although the agency met its statutory obligations during this period, the

Commission soon recognized that a 100 percent review of each submission was unworkable and, as a result, began to use statistical sampling procedures.

In 1979, the Commission asked the accounting firm Ernst & Whinney to review the agency's certification procedures. Based on the firm's findings, the Commission adopted a Probability Proportional to Size (PPS) statistical sampling method and increased its use of computers to process submissions more efficiently.²⁷

Expenditure Limits

To be eligible for matching funds, candidates must agree to limit their spending to specified amounts (discussed in the "How the Matching Fund System Works" section of this chapter). Primary candidates are subject to both state-by-state limits and to an overall, national ceiling. These limits have presented challenges both for the Commission and for the Presidential campaigns.

Although the limits are indexed to inflation, some campaigns have argued that the ceilings are too low. Since 1980, many potential Presidential candidates have established political action committees (sometimes referred to as Presidential leadership PACs), ostensibly to support various federal and nonfederal candidates.²⁸ While these committees have, in fact, contributed to such candidates, many observers contend that these PACs are actually formed to benefit the Presidential aspirants who sponsor them.²⁹ They argue that the PACs often incur expenses that lay the foundation for a subsequent campaign and build the potential candidate's name recognition and support base. A PAC might, for example, pay the potential candidate's travel expenses or help compile a donor list that could later be used in the campaign. In addition, the PAC might employ key political personnel who later move to the Presidential campaign staff. Critics maintain that these PAC expenditures represent one way of circumventing the spending limits. If the PAC's sponsor becomes a candidate, however, such expenditures may be considered "testing the waters" activity and, as such, count against the limits.³⁰

Some critics also contend that potential candidates have used "draft committees" (independent groups formed to encourage an individual to seek office) to raise and spend funds outside the law's limitations and prohibitions.³¹ Several courts have held that such pre-candidacy activity is permissible and does not count against the spending limits because the draft committees are not raising or spending funds to support a "candidate" for federal office. Instead, they are spending funds to support an individual who may or may not become a candidate in the future. As a result, they are not "political committees" within the scope of the statute.³² The Commission has recommended, however, that Congress amend the statute to bring these committees within the agency's regulatory purview to ensure public disclosure and to avoid possible circumvention of the spending limits. (See Appendix 2.)

Spending by delegate committees (groups formed to support individuals campaigning to become delegates to their party's Presidential nominating convention) has generated similar concerns regarding the expenditure limits. Commission regulations permit a delegate committee to spend unlimited amounts to prepare and distribute certain campaign materials (such as pins, bumper stickers and yard signs) that refer to a Presidential candidate.³³ These expenditures are not attributable to the Presidential spending limits unless the delegate committee is controlled by or otherwise affiliated with the Presidential campaign. If a delegate committee is affiliated with a Presidential campaign, its expenditures do count against the spending limits. In 1984, for example, the Mondale campaign did not count expenditures made by several delegate committees against the spending limits. A Commission investigation, however, revealed that the delegate committees were affiliated with the Mondale campaign, and that their spending caused the campaign to exceed the expenditure limits. As a result, the campaign was required to pay a total of \$398,140 in payments and penalties related to delegate activity.³⁴ The Commission subsequently revised its regulations to clarify the criteria used to determine affiliation between a delegate committee and a Presidential campaign. Since that time, delegate spending has generated considerably less controversy.

While some campaigns may have sought legal ways to spend beyond the campaign limits, the essential administrative and enforcement problem for the Commission has been to monitor the state-by-state limits. These limits, based on each state's voting age population, were intended to prevent candidates from focusing

only on large, delegate-rich states. Over the years, however, the timing of elections has become at least as important to campaigns as the number of delegates at stake. Iowa and New Hampshire, the first two states to hold elections, have relatively small populations and, consequently, low spending limits. Presidential campaigns, however, typically view these states as important momentum-builders and thus want to spend heavily. To avoid the restriction of the state limits, campaigns have often devised complex schemes to reduce amounts allocated to the Iowa and New Hampshire limits. Some, for example, have established campaign offices in neighboring states in hopes of excluding the related expenditures from the Iowa or New Hampshire limit. The Commission, in turn, has had to devote considerable resources to monitoring these kinds of activities in order to determine whether campaigns have exceeded state limits and to enforce any violations discovered.

The Commission has grappled with this problem for many years. In 1991, the Commission amended its regulations to simplify and liberalize the process of allocating expenses to the state spending limits. Under the revised rules, expenses are allocable only if they fall within one of five specific categories: media expenses, mass mailings, overhead expenses, special telephone programs and public opinion polls.³⁵ By contrast, previous rules had required allocation of all expenses unless an expense was covered by a specific exemption. The rules also permit primary campaign committees to treat up to 50 percent of their allocable expenditures for a particular state as exempt fundraising costs and thus exclude them from the state spending limit.³⁶

Despite the benefits these regulatory changes may yield, the Commission recommends that Congress eliminate the state-by-state limits. The Commission believes that this change would benefit all parties concerned: relieving a significant accounting burden for campaigns and an equally difficult audit and enforcement task for the Commission. Moreover, based on the agency's experience, the change would have little material impact on the electoral process. Candidates would still be subject to the national expenditure limit, which, incidentally, is less than the sum of all state limits combined. (See Appendix 2.)

Ineligibility: Winding Down the Campaign

Once declared eligible for matching funds, a candidate may continue to receive payments until his or her date of ineligibility. Thereafter, a candidate may receive additional funds only to pay off campaign debts and to wind down the campaign.

Under the statute and Commission regulations, primary candidates become ineligible to receive matching funds on the earliest of the following dates:

- 30 days after the candidate fails to receive 10 percent of the votes cast in two consecutive primary elections (unless the candidate receives 20 percent or more of the vote in a subsequent primary);
- The date the candidate publicly withdraws from the race;
- The date on which the candidate notifies the Commission, or the Commission determines, that the candidate has ceased to campaign actively in more than one state;³⁷ or
- The date on which the party nominates its candidate at the national convention.³⁸

Once candidates become ineligible, they may, nonetheless, continue to receive matching fund payments to retire debts incurred prior to their date of ineligibility.³⁹ Such matching payments are made only if the sum of private contributions plus matching funds does not equal or exceed the qualified debt reported on the candidate's date of ineligibility.

Commission regulations also permit campaigns to receive additional matching funds to pay "winding down" expenses incurred after the date of ineligibility.⁴⁰ These expenses include the costs associated with FEC audits and fundraising to retire debts. Some observers believe that the prospect of additional matching funds encourages campaign lawyers and accountants to contest the Commission's audit and enforcement findings. This practice has been criticized as providing a monetary disincentive for campaigns to conclude business and terminate their committees.

Others, however, see this as part of the Commission's obligation to grant due process of law to the committees it audits. By providing public funds to pay "winding down" expenses, the Commission ensures that committees will have ample opportunity to present their arguments without financial impediment.

Audits and Enforcement

The Commission has faced persistent criticism regarding the timeliness of its Presidential audits and related enforcement matters (Matters Under Review or MURs). Despite the agency's efforts to improve, audits have often taken two to four years to complete, and related MURs, sometimes longer.

Primary election audits and MURs have typically taken the longest to complete, because they are the most complex. Ensuring compliance with all of the requirements of the matching fund program--in effect, protecting the public purse--is a particularly time consuming task. Added to this problem is the Commission's obligation to grant due process of law to the committees it audits and to ensure their right to confidentiality. Meeting this obligation invariably delays the processing of both audits and MURs. In the audit process, for example, the Commission must give committees an opportunity to respond both to the interim audit report and to the final audit report. (See page 8.) Similarly, in enforcement, the Commission must provide respondent campaigns with an opportunity to present their case, and attempt to reach a conciliation agreement with them, before releasing MUR findings to the public.

Balancing all of these responsibilities-- protecting the public purse, ensuring due process of law for campaigns and executing timely disclosure of audit and MUR findings--has proven to be one of the most difficult challenges to the Commission. Nevertheless, the agency has sought ways to accelerate the release of audits while still ensuring compliance with the law and protection of campaigns' legal rights. In 1979, for example, the Commission asked Arthur Andersen and Company and Accountants for the Public Interest (API) to assess the agency's audit procedures. Based on their findings, the Commission revised many of its procedures, substantially reducing the time needed to complete audits and release them to the public.⁴¹ More recently, in 1991, the agency revised its regulations, adjusted its audit procedures, expanded its use of technology and increased staffing to further hasten the completion and disclosure of Presidential audits and MURs. Some of the most significant changes:

- Expanded disclosure to include all audit findings in the publicly released audit report, including those that might later be subject to enforcement;
- Placed limits on the extensions of time granted to committees responding to audit findings;
- Required committees being audited to provide records upon request or face a Commission subpoena;
- Expanded the use of computerized records in audits; and
- Adopted statistical sampling as a basis for audit findings concerning excessive or prohibited contributions.

More timely disclosure of audit findings will enhance compliance with the law. Enforcement of the statute relies, in part, on public disclosure. Negative publicity can be a strong deterrent. Without timely disclosure, however, the impact of negative publicity and the incentive to comply with the law diminish. Thus, the Commission believes its efforts to expedite the release of Presidential audit reports will add "bite" to the enforcement process and, in turn, encourage compliance.

While the Commission anticipates that the steps it has taken will speed up the audit and enforcement process, the agency believes that legislative action could improve the situation even more. For example, eliminating the state-by-state spending limits and combining the current "fundraising limit" with the overall spending limit would greatly reduce the time and resources the Commission devotes to primary election audits. (See Appendix 2.)

1. 26 U.S.C. Sec.9033(b) and 9034(a).

2. The national spending limit is \$10 million increased each election cycle by a cost-of-living adjustment (COLA). In 1992, that limit was \$27.62 million. Each state's spending limit is the greater of \$200,000 plus COLA or \$.16 times the state's voting age population. In 1992, the lowest state limit was \$552,400. 2 U.S.C. Sec.441a(b)(1)(A).
3. 26 U.S.C. Sec.9033(a) and 9035(a).
4. 26 U.S.C. Sec.9036 and 9037(b).
5. All money raised during the year before the election and during the election year is potentially matchable.
6. 26 U.S.C. Sec.9034, 9036 and 9037(b).
7. In order to be eligible for public funds, candidates must agree to keep certain records and furnish them to Commission auditors. 26 U.S.C. Sec.9033(a).
8. 11 CFR 9038.1.
9. The Commission may issue addenda to final audit reports based on follow-up fieldwork.
10. 26 U.S.C. Sec.9038.
11. 11 CFR 9038.2(b)(2). Amounts received in excess of a candidate's entitlement must be fully repaid.
12. 11 CFR 9038.2(c)(2) and (3).
13. The basis for the Commission's final determination is set forth in a statement of reasons prepared by the Office of General Counsel.
14. 11 CFR 9038.2(c)(4), (d) and (h).
15. 11 CFR 9033.4(c).
16. See, for example, testimony of Representative Bob Livingston: House Subcommittee on Elections, Hearing on Presidential Election Campaign Fund, May 1, 1991, p. 54.
17. In 1974 dollars, the original \$100,000 threshold would have been only \$36,205 in 1992.
18. The requirement that candidates be affiliated with a political party has raised constitutional questions. Some have argued that it discriminates against independent candidates. For a discussion of this issue, see Chapter 2.
19. For purposes of 11 CFR Sec.9033.2(b)(1), "political party" means an association or organization that nominates a candidate for President, and has "a procedure for holding a primary election...for nomination to that office."
20. The Commission has applied these same criteria to other third party candidates. In 1992, for example, Lenora Fulani (New Alliance Party) and John Hagelin (Natural Law Party) qualified for matching funds.
21. 26 U.S.C. Sec.9033(c)(1)(B).
22. It should be noted that the 10 percent rule applies only to primaries, not to caucuses.
23. Lyndon LaRouche, 1988, and Larry Agran, 1992.
24. See, for example, *Committee to Elect Lyndon LaRouche v. FEC*, 613 F.2d 834 (D.C. Cir. 1979).

25. 11 CFR 9033.4(b).
26. *LaRouche v. FEC* (Civil Action No. 92-1100, March 3, 1992.) is pending.
27. For a more complete discussion of the staffing and budgetary demands associated with this and other aspects of the public funding program, see Chapter 4.
28. See Advisory Opinions 1985-40 and 1986-6.
29. Anthony Corrado, *Creative Campaigning: PACs and the Presidential Selection Process* (Boulder: Westview Press, 1992), p. 10.
30. Commission regulations define testing the waters expenditures as "[p]ayments made solely for the purpose of determining whether an individual should become a candidate. If the individual subsequently becomes a candidate, the payments made are subject to the reporting requirements of the Act." 11 CFR 100.8(b)(1).
31. See, for example, Anthony Corrado, *Creative Campaigning: PACs and the Presidential Selection Process*, p. 75.
32. See *FEC v. Florida for Kennedy Committee*, 492 F. Supp. 587 (S.D. Fl. 1979), rev'd, 681 F.2d 1281 (11th Cir. 1982).
33. 11 CFR 110.14(h)(2).
34. See Matter Under Review (MUR) 1704.
35. 11 CFR 106.2.
36. The statute exempts a percentage of a campaign's fundraising expenses from the definition of "expenditure." 2 U.S.C. Sec.431(9) (B)(vi). Amounts excluded as exempt fundraising costs at the state level, when added to amounts excluded at the national level, may not exceed 20 percent of the national spending limit.
37. A candidate may re-establish eligibility by resuming active campaigning in more than one state.
38. 26 U.S.C. Sec.9033(c) and 11 CFR 9033.5.
39. 26 U.S.C. Sec.9033(c)(2).
40. 11 CFR 9034.4(b)(3).
41. As part of these changes, the Commission separated the audit and enforcement processes.

Chapter 2

General Election Funding

How General Election Funding Works

The Presidential nominee of each major party may become eligible for a public grant of \$20 million (plus a cost-of-living adjustment (COLA)) for the general election campaign. In 1992, each major party nominee received \$55.24 million. To be eligible, candidates must agree to limit their spending to the amount of the grant and must pledge not to accept private contributions for the campaign.¹ Private contributions may, however, be accepted for a special account maintained exclusively to pay for legal and accounting expenses related to complying with campaign finance law. These legal and accounting expenses are not subject to the expenditure limit.² In addition, candidates may spend up to \$50,000 of their own money on the campaign.³ Such spending does not count against the expenditure limit.

Minor party candidates and new party candidates may qualify for partial general election funding, based on their party's electoral performance. Minor party candidates (nominees of parties whose Presidential candidates received between 5 and 25 percent of the vote in the preceding election) may receive public funds based on the ratio of their party's vote in the preceding Presidential election to the average of the two major party candidates in that election. New party candidates (nominees of parties that are neither major parties nor minor parties) may receive public funds after the election if they receive 5 percent or more of the vote. The amount is based on the ratio of the new party candidate's vote to the average vote of the two major party candidates in that election.⁴

Although minor and new party candidates may supplement public funds with private contributions and may exempt some fundraising costs from their expenditure limit, they are otherwise subject to the same spending limit and other requirements that apply to major party candidates.

Once the Commission certifies a candidate's eligibility, the Treasury Department makes the necessary payments.⁵

After the campaign, the Commission audits each candidate's committee to ensure that the funds were not misused and that the committee maintained proper records and filed accurate reports.⁶ A repayment may be required if the Commission determines that a committee:

- Received public funds in excess of the amount to which it was entitled;
- Incurred nonqualified campaign expenses by spending in excess of the limit, by using public funds for expenses not related to the campaign or by insufficiently documenting the expenditure of public funds; or
- Received net income on the investment or other use of public funds.⁷

A committee may dispute the Commission's initial repayment determination by submitting legal and factual materials to support its view. The committee may also request an oral presentation before the Commission.⁸

The Commission will take into account the committee's arguments when making its final repayment determination. The committee, however, must repay the amount specified in the final determination within the payment deadline unless it obtains a stay from the Commission pending an appeal of the agency's decision.⁹

Statistical Wrap-up

The charts that appear in this section provide statistical information related to the Presidential general election process.

CHART 2-1
General Election Grant

Millions of Dollars

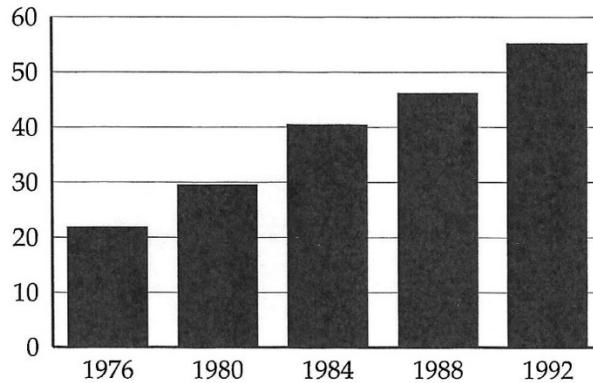


Chart 2-1 lists the general election grants provided to each of the two major party nominees to conduct their general election campaigns. While the purchasing power of \$55.2 million in 1992 was about equal to \$21.8 million in 1976, the amount of tax dollars required to meet these payments has grown substantially. The amount checked off on tax returns (which is used to fund the program), however, has remained \$1 per taxpayer.

CHART 2-2
Independent Expenditures
In Presidential Campaigns

Millions of Dollars

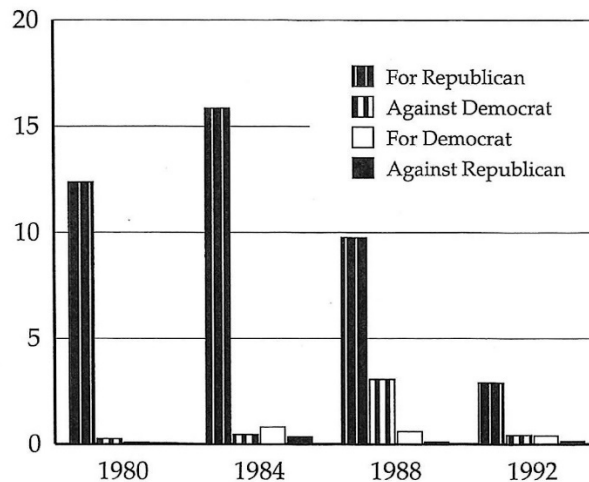


Chart 2-2 depicts the distribution of independent expenditures in Presidential campaigns since 1980. During this period, these expenditures have shown a strongly partisan character. The total amount spent has declined steadily since 1984.

CHART 2-3
Partisan Communications in
Presidential Campaigns

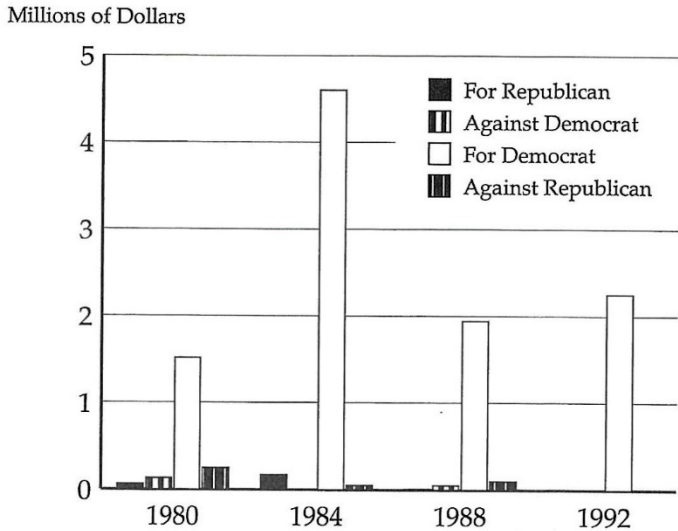


Chart 2-3 tracks reported partisan communications related to the Presidential campaign. (Partisan communications are reportable only if the communication is primarily devoted to "the election or defeat of a clearly identified candidate" and the "costs exceed \$2,000 for any election." 2 U.S.C. §431(9)(B)(iii).) Like independent expenditures, this activity has typically shown a strong partisan difference (in this case supporting Democratic candidates). Reported partisan communications have also been smaller in the campaigns since 1984.

CHART 2-4
Party Coordinated Expenditures

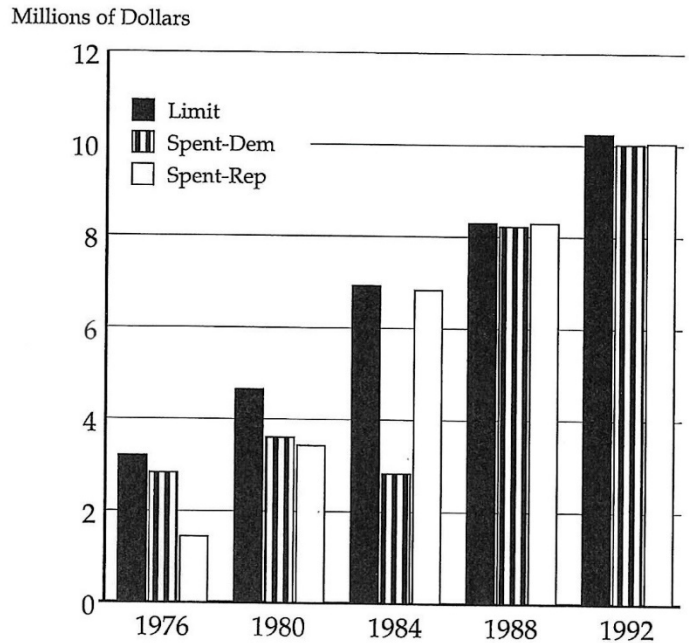


Chart 2-4 shows the amount actually spent by each party in support of its Presidential nominee, compared with the limit for that spending. These "coordinated expenditures" are made in cooperation with the campaigns, but the activities are paid for directly by the national party committees. Both parties have allocated increasing resources to this activity over the years, to the point where in the last two cycles both essentially spent as much as the law allows.

CHART 2-5
1991-1992 Receipts of National Party Organizations

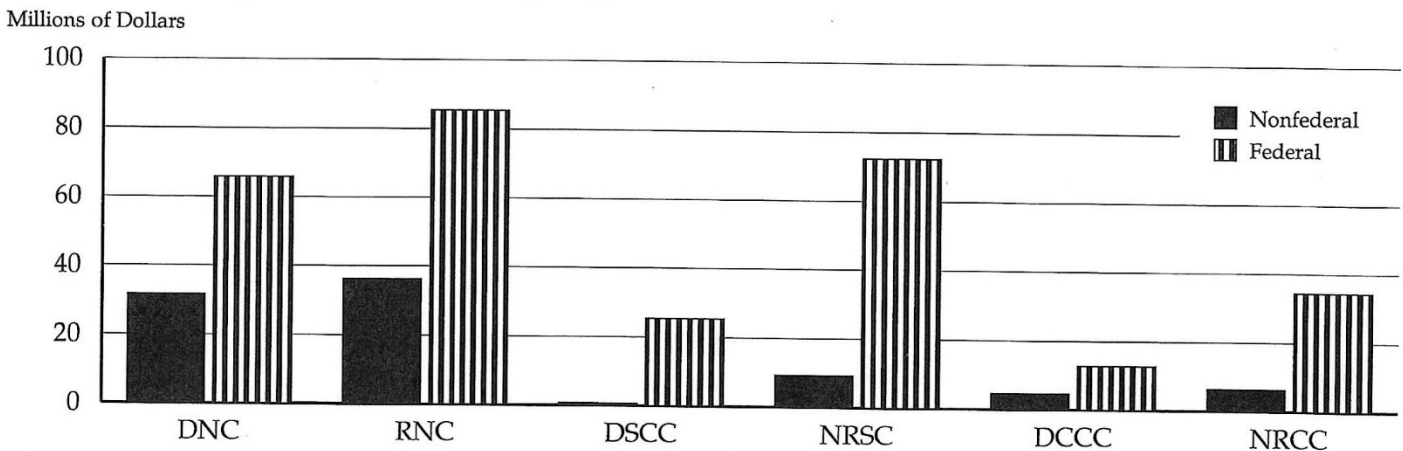


Chart 2-5 compares federal and nonfederal fundraising by the two major parties during 1991-92. Nonfederal funds account for less than half of the total fundraising of any national party committee. There is greater parity between the parties in nonfederal fundraising: The Democratic party's nonfederal fundraising was closer to the Republican total than was their federal fundraising. In sum, the Democrats raised \$104 million in federal funds and \$37 million in soft money, and the Republicans raised \$192 million in federal funds and \$52 million in soft money.

CHART 2-6
National Party Committees:
Transfers to State Party Committees

Millions of Dollars

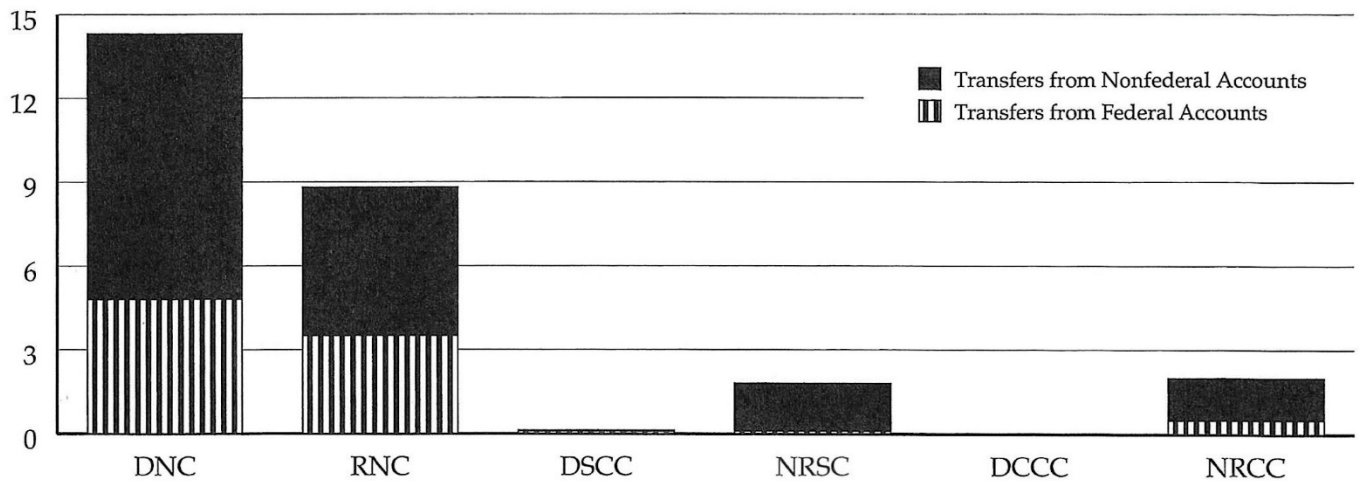


Chart 2-6 examines the financial relationship between national and state party committees. The Democratic National Committee appears to have chosen mainly to transfer funds to state party organizations, while the Republican National Committee has chosen primarily to conduct activities that benefit state and local parties and candidates. In the case of the Congressional and Senatorial campaign committees, however, the pattern is reversed. (Note, however, that the Democratic Senatorial Campaign Committee in 1991-92 used nonfederal funds exclusively for building expenses.)

CHART 2-7
General Election
Compliance Account Receipts

Millions of Dollars

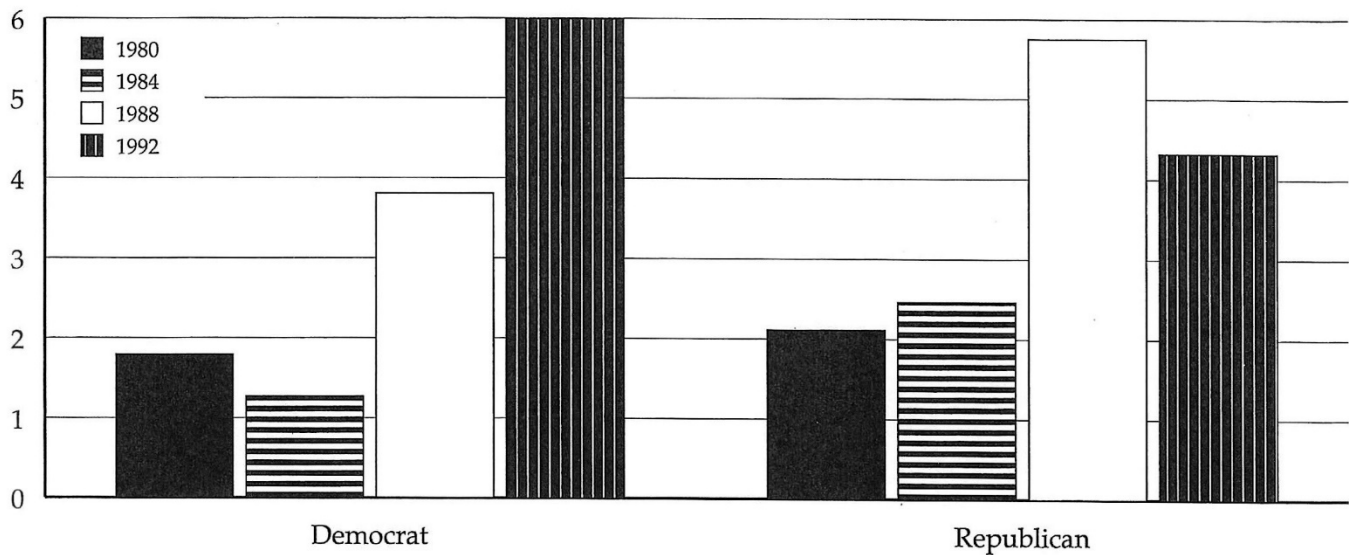


Chart 2-7 tracks compliance fund receipts for the Democratic and Republican nominees over the last four election cycles. In each instance, the victorious candidate received more compliance fund donations than his opponent. Overall, the 1988 and 1992 nominees raised more than twice as much compliance money as their 1980 and 1984 counterparts.

Issues

General election funding is relatively simple to administer, especially compared to the primary matching fund program. The Commission has, however, encountered several challenges related to the general election process. While some of these challenges deal with specific aspects of the program itself, such as determining candidate eligibility, others are somewhat peripheral. The role of private money (including soft money) in the general election, for example, has been one of the most difficult issues the Commission has addressed. This section discusses some of these peripheral issues, as well as those related to specific aspects of the general election funding program.

Eligibility

As explained in the "How General Election Funding Works" section above, candidates become eligible for general election funding based on their party affiliation (major, minor or new) and on their pledge to abide by the limitations and prohibitions of the statutes and regulations. Despite the relative simplicity of these criteria, the Commission has had to wrestle with questions concerning candidate eligibility in the general election.

Many of these questions have involved new party candidates. As noted above, these candidates may qualify for post-general election reimbursement if they receive at least five percent of the vote in the general election.¹⁰ Frequently, however, these candidates may be listed on some ballots as "independents" or as nominees of a state-level organization. The Commission has been asked to determine whether such candidates would be eligible for funding as "new party" nominees.

Under the statute, "eligible candidates" are, by definition, the nominees "of a political party for President and Vice President."¹¹ Thus, on its face, the statute would appear to preclude public funding for independent candidates. On the other hand, Title 26 does not define the term "political party." Consequently, the Commission has relied on the definition found at 2 U.S.C. Sec.431(16): a political party is "an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization."

Applying this definition in Advisory Opinion (AO) 1980-3, the Commission determined that the Citizens Party would qualify as a political party once it received verification from any state that a candidate would appear on the ballot as a nominee of the party. Subsequently, in AO 1980-56, the Commission concluded that Barry Commoner, the Citizens Party's Presidential nominee, could qualify for post-election funding as a new party candidate even if he was not listed as the party's nominee on some states' ballots. The Commission noted that Mr. Commoner was registered with the FEC as a candidate of the Citizens Party, and that the statute required only that the candidate (not the party) receive five percent of the vote to qualify for public funds. Similarly, in AO 1980-96, the Commission confirmed that the various organizations sponsoring John Anderson's candidacy would qualify as political parties for purposes of the public funding rules. Therefore, Mr. Anderson, as the nominee of these parties, could qualify for post-general election funding if he received more than five percent of the vote.¹²

Although the Anderson opinion did not address the issue, some Commissioners felt that he should have been declared eligible for funding as an independent candidate. Commissioners John Warren McGarry and Frank P. Reiche filed separate statements supporting such a finding. Mr. Reiche argued that the Anderson campaign was "dedicated to the election of an independent candidate" and should not have been required to "cloak [itself] with the appearance of political party formality" to qualify for public funding. Both Commissioners cited legislative history and the U.S. Circuit Court's opinion in *Buckley v. Valeo* to support their case. The Circuit Court stated that independent candidates should be subject to the same eligibility requirements as other candidates:

If these provisions would in fact operate to prevent independents from obtaining public funding, no matter what their showing, or if they would require that independents go to the trouble of creating

election party machinery in order to obtain public funding, then they would raise serious constitutional questions...But the statute does not command that interpretation.¹³

In 1981, the Commission formally asked Congress to consider clarifying whether an independent candidate could qualify for general election funding.¹⁴

Apart from these independent and third party eligibility issues, some questions have arisen regarding the eligibility of particular major party candidates. In 1980, for example, the Carter-Mondale committee challenged the Commission's certification of funds for the Reagan-Bush campaign. The Carter campaign argued that Mr. Reagan was ineligible for general election funding because his campaign had illegally authorized several groups to make "independent expenditures" supporting his candidacy. The Reagan campaign, which denied the allegations, had met the eligibility criteria. Therefore, under FEC regulations, the Commission could only suspend the campaign's certification if it found "patent irregularities suggesting the possibility of fraud."¹⁵ Having found no such evidence, the Commission certified the Reagan campaign's eligibility. The circuit court upheld the Commission's decision.¹⁶

Similarly, in 1988, the Commission was asked to withhold general election funds from the Dukakis-Bentsen campaign. The petitioners asserted that, because Senator Bentsen was also running for reelection to the Senate, his use of private contributions in that campaign would impermissibly supplement the Dukakis-Bentsen campaign's general election grant. The Commission denied the petitioners' request, citing regulations that specifically permit dual candidacy.¹⁷ The Commission also noted that there was no evidence of fraud. The U.S. Court of Appeals subsequently affirmed the Commission's decision to certify funds to the Dukakis-Bensten campaign.¹⁸

The certification of funds for the 1992 Clinton-Gore campaign was also questioned. The Republican National Committee (RNC) argued that a Clinton television program, which included an 800 telephone number that viewers could call to make contributions, was impermissibly financed by the Democratic National Committee (DNC). The Clinton campaign denied wrongdoing, stating that the campaign did not accept any of the 800-line contributions and that the DNC had legally paid for the program as a coordinated party expenditure. Applying the relevant regulatory provision,¹⁹ the Commission found no evidence of fraud, and subsequently certified the Clinton-Gore ticket eligible for general election funding.

Supplemental Spending

Major party nominees who accept a public grant for the general election campaign may not supplement that grant with private funds. Instead, they must limit their campaign spending to the amount of the entitlement.²⁰ That does not mean, however, that private funds have been totally excluded from the general election campaign process. In fact, the statute specifically permits some types of private spending, which may supplement the general election grants.

Political parties, for example, may spend money to support a Presidential candidate. National party committees may make "coordinated expenditures" to support their nominee. These expenditures may be made in consultation with the candidate's campaign.²¹ The funds used must have been raised under the limits and prohibitions of federal law.

Another statutory provision permits corporations and labor unions (both of which are prohibited from making contributions or expenditures in connection with federal elections) to encourage their executives, administrative personnel and/or members to support particular candidates.²² These so-called "partisan communications" may be financed with corporate or labor treasury funds.

The statute also permits unlimited "independent expenditures" to support or oppose particular candidates. In order to qualify as an "independent expenditure," the funds must be spent "without cooperation or consultation with. . .or at the request or suggestion of any candidate. . .or agent of such candidate."²³ The funds expended must not be from prohibited sources, such as corporations or labor unions.²⁴

Some observers have criticized this supplemental spending. Although it is legal, these critics contend that it compromises the statute's expenditure limits. The Commission, itself, held a similar view regarding independent expenditures that political committees made to support publicly funded Presidential candidates. It believed that 26 U.S.C. Sec.9012(f) limited these expenditures to \$1,000. The Commission defended this limit against a number of legal challenges, arguing that without it, independent groups could effectively render the expenditure limits meaningless by spending large amounts to support publicly funded candidates. In 1985, however, the Supreme Court declared the limit unconstitutional.²⁵

Despite the criticism leveled against supplemental private spending, it is clear that Congress intended to offer some limited means by which citizens could become involved in Presidential campaigns. As a result, independent expenditures, partisan communications, coordinated party expenditures and other types of private spending²⁶ are specifically sanctioned by the statute, and are subject to its reporting requirements and other restrictions.

Soft Money

Money raised and spent outside the limitations and prohibitions of the federal election law is commonly called "soft money." It often consists of large donations from individuals, corporations and labor unions. These funds, which are usually given to state and national party committees, cannot legally be raised or spent to influence federal elections, but are acceptable under some state election laws. While these funds are used primarily for grass-roots activity, some critics have argued that soft money is being raised and spent in ways that may affect federal candidates, including those running for President.²⁷ To fully understand the perceived soft money problem, one must examine how the money is raised and how it is spent.

Critics say that most of the soft money spending that benefits federal candidates occurs when a committee simultaneously supports both federal and nonfederal candidates. Party committees, for example, may purchase generic get-out-the-vote advertisements that benefit both their federal and nonfederal candidates. To pay for these ads, committees must use federal funds for the portion that benefits federal candidates, but may use soft money for the rest (i.e., the portion that benefits nonfederal candidates).²⁸ Some critics have argued that the committees often underestimate the federal share of the expenses. If this occurs, soft money covers not only the costs attributable to nonfederal candidates, but also those related to federal (in some cases Presidential) candidates.

In an effort to address this problem, the Commission promulgated new regulations in 1991 that, in part, specify the minimum percentage of federal funds required to be spent for any activity that benefits both federal and nonfederal candidates.²⁹ During Presidential election years, for example, national party committees must pay at least 65 percent of the costs related to generic party ads with federal funds.³⁰

Even if soft money is spent according to these regulatory restrictions, some critics believe it will continue to impermissibly influence federal elections, particularly Presidential elections. They contend that soft money spending helps committees conserve federal funds ("hard dollars") that can later be spent to support federal candidates.

Many critics are also concerned about the way soft money is raised. They believe that the active role Presidential candidates and their associates play in raising soft money, at the very least, creates an appearance

of undue influence on the candidates involved. In 1988, for example, the chief fundraisers for the Dukakis and Bush campaigns, Robert Farmer and Robert Mosbacher, each raised more than \$20 million in soft money.³¹ Critics say that this activity affords soft money donors the very type of access and potential influence that the public funding program was designed to eliminate. (See Chapter 4.)

- In light of these concerns, the Commission has asked Congress to consider whether legislation is needed to deal not only with the way soft money is spent, but also with the way it is raised. In the package of legislative recommendations sent to the President and Congress in 1993, the Commission offered a broad range of specific suggestions, including:
 - Expanding disclosure of soft money receipts;
 - Prohibiting the use of a federal candidate's name or appearance to raise soft money;
 - Confining soft money fundraising and spending to nonfederal election years; and
 - Requiring that all party activity which is not exclusively on behalf of nonfederal candidates be paid for with federally permissible funds.³²

1. 26 U.S.C. Sec.9003.

2. 11 CFR 9003.3.

3. 26 U.S.C. Sec.9004(d).

4. 26 U.S.C. Sec.9003 and 9004.

5. 26 U.S.C. Sec.9006(b).

6. The audit and repayment procedures used for general election campaigns are much the same as those described in Chapter 1. (See 11 CFR 9007.1.) Issues related to FEC audits are discussed in the "Audits and Enforcement" section on page 15.

7. 26 U.S.C. Sec.9007(b).

8. 11 CFR 9007.2(c)(2) and (3).

9. 11 CFR 9007.2(c)(4), (d) and (i).

10. 26 U.S.C. Sec.9004.

11. 26 U.S.C. Sec.9002(4).

12. Mr. Anderson received 6.61 percent of the vote in the 1980 general election, and became the first new party candidate to receive post-general election funding. To date (4/93), he is the only non-major party candidate to receive general election funding.

13. *Buckley v. Valeo*, 519 F.2d 821, 887 (D.C. Cir. 1975)(citations omitted). The Supreme Court, in its subsequent decision, did not explicitly rule on this issue.

14. Federal Election Commission, Annual Report 1980, p. 6.

15. 11 CFR 9039.3(a)(3).

16. *In re Carter-Mondale Reelection Committee, Inc.*, 642 F.2d 538 (D.C. Cir. 1980).

17. 11 CFR 110.8(d).

18. *Boulter v. FEC*, No. 88-1541 (D.C. Cir. Aug. 3, 1988)(unpublished order).
19. 11 CFR 9039.3(a)(3).
20. 26 U.S.C. Sec.9003(b).
21. Each national party committee may spend an amount equal to 2 cents multiplied by the national voting age population and adjusted for the cost of living. 2 U.S.C. Sec.441a(d). In 1992, the parties could spend up to \$10,331,703.
22. 2 U.S.C. Sec.441b(b)(2)(A).
23. 2 U.S.C. Sec.431(17).
24. In *FEC v. Massachusetts Citizens for Life* , 479 U.S. 238 (1986), the Supreme Court created a narrow exception to this rule.
25. *FEC v. NCPAC*, 470 U.S. 480 (1985).
26. State and local parties, for example, may spend unlimited amounts for certain activities that may benefit their Presidential nominee, but do not count against the nominee's spending limit. These activities are "exempt" from the definitions of contribution and expenditure. 2 U.S.C. Sec.431(8)(B)(v),(x) and (xii), and (9)(B)(iv),(viii) and (ix).
27. See, for example, Frank J. Sorauf, *Inside Campaign Finance: Myths and Realities* (New Haven: Yale University Press, 1992), p. 148.
28. During the late 1970's and early 1980's, the Commission issued several advisory opinions (AOs) describing methods that committees could use to allocate expenses between federal and nonfederal candidates. See, for example, AOs 1978-10, 1978-28, 1978-46, 1978-50 and 1982-5.
29. 11 CFR 106.5 and 106.6.
30. In addition, the new rules require expanded reporting and specify that any funds raised by mentioning a federal candidate will be presumed to be federal funds.
31. Herbert E. Alexander and Monica Bauer, *Financing the 1988 Election* (Boulder: Westview Press, 1991), p. 77.
32. See Appendix 2.

Chapter 3

Convention Funding

How Convention Funding Works

Each major party is entitled to a public grant of \$4 million (plus cost-of-living adjustment) to finance its Presidential nominating convention.¹ In 1992, each major party received \$11.048 million. A qualified minor party (a party whose Presidential candidate received between 5 and 25 percent of the vote in the preceding election) may become eligible for partial convention funding based on its Presidential candidate's share of the popular vote in the preceding election.²

An eligible major or minor party committee may receive its entitlement from the U.S. Treasury any time after July 1 of the year preceding the convention. The Commission then certifies additional funds, once the applicable cost-of-living figures become available, usually by March of the election year. The Treasury Department then makes corresponding payments to each committee.³

A convention committee may not spend more than the amount to which the major party is entitled. Certain supplemental services, however, may be provided by the host state and city governments and by local groups such as retail businesses and labor unions. The host city may, for example, provide additional public transportation to and from the convention site. Or a retail business may sell or rent chairs, podiums, tables or other equipment to the convention committee at discount rates.⁴

After the convention, the Commission audits each committee to ensure that public funds were spent in compliance with the law.⁵

A repayment may be required if the Commission determines that a committee:

- Received public funds in excess of the amount to which it was entitled;
- Incurred impermissible expenses by spending in violation of federal or applicable state and local laws, by exceeding the spending limit, by using public funds for expenses not related to the convention or by insufficiently documenting the expenditure of public funds; or
- Had surplus funds remaining after the convention.⁶

A committee may dispute the Commission's initial repayment determination by submitting legal and factual materials to support its view.⁷

The Commission will take into account the committee's arguments when making its final repayment determination. The committee, however, must repay the amount specified in the final determination within the payment deadline unless it obtains a stay from the Commission pending an appeal of the agency's decision.⁸

Statistical Wrap-up

CHART 3-1
National Party Convention Spending *

Millions of Dollars

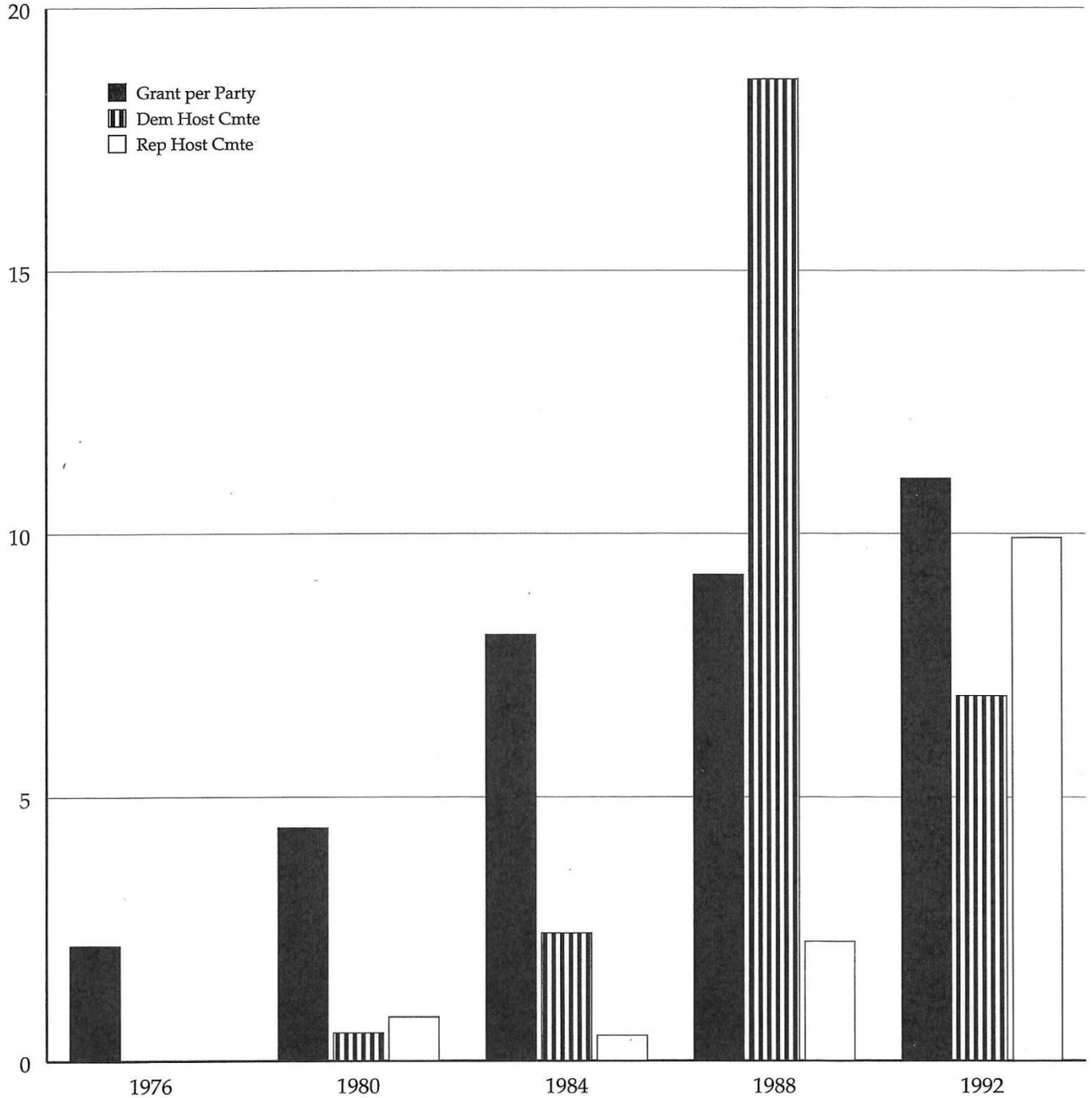


Chart 3-1 lists the grant provided for each major party convention, along with the amounts spent by local "host" committees in the cities in which conventions were held. The additional spending by host committees has grown rapidly in recent cycles.

* This chart does not include expenditures by host cities, either from tax revenues or from privately raised funds.

Issues

Expenditure Limits

As noted in the "How Convention Funding Works" section, publicly funded convention committees must limit their spending to the amount of the major party entitlement.

Through a series of advisory opinions (AOs) and regulatory amendments, however, the Commission has gradually expanded the amount of supplemental spending that is permissible in connection with publicly funded conventions.⁹ Under current regulations:

- Government agencies and municipal corporations may use tax revenues or privately raised funds to provide facilities and services for the convention;
- Retail businesses may offer discounts to the national party for goods or services related to the convention; and
- Local businesses can offer free samples and promotional materials to convention attendees.¹⁰

In addition, local officials and business figures may establish "host committees" to promote the city and its commerce during the convention. These host committees may receive monetary or in-kind donations from local businesses, municipal corporations, government agencies, labor organizations and individuals to further their promotional efforts.¹¹ The committees must register and file reports with the FEC, disclosing all of their receipts and disbursements. They are also audited by the Commission.¹²

Local retail businesses, municipal corporations and government agencies may also donate funds to the host committees to help defray convention expenses. The amount of these donations must be proportionate to the commercial return reasonably expected by the business, corporation or agency as a result of the convention.¹³

Critics contend that this supplemental spending undermines the concept of public funding of conventions: "Besides questioning the rationale for the use of public funds, the infusion of large amounts of private dollars makes the accompanying expenditure limits meaningless."¹⁴ Many critics argue that the public grant should be the sole source of convention funding. These critics have been particularly concerned about donations from sources that cannot legally contribute to influence federal elections. They point out, for example, that corporations and labor organizations may make tax-deductible donations to municipal corporations. As noted above, these corporations may provide facilities and services for the convention, including not only traditional city services such as police and fire protection, medical facilities and special bus service for delegates, but also such benefits as rental of the convention halls and upgrades of their facilities. Municipal corporations are not, however, required to file reports with the FEC.¹⁵

The Commission and other observers believe that the expenditure limits would be "unrealistically low" without these kinds of supplemental spending.¹⁶ For instance, published estimates put the total cost of the 1992 Democratic convention in New York at \$30 million and of the Republican convention in Houston at \$22 million. Federal funding for the 1992 conventions was \$11 million each. According to the Commission, the statute's spending limits relate only to expenses paid by the parties themselves, not to "the value of facilities and services provided by the convention city and the host committee in that city."¹⁷ To account for this, the Commission promulgated the regulations described above. While these regulations do permit some corporate and labor donations, safeguards exist "to insure that such donations are commercially, rather than politically motivated."¹⁸

In Advisory Opinion (AO) 1988-25, the Commission expanded its regulatory exemptions somewhat more by permitting General Motors (GM) to loan vehicles at no cost to both major party conventions. The Commission concluded that:

This GM vehicle loan program represents activity in the ordinary course of business for GM in view of its established two year program of loaning, without charge, fleets of GM vehicles to various conventions, conferences, sporting events and other special events for GM's promotional purposes.

The Commission based its conclusion on additional factors as well, such as:

The assumption that the value provided is proportionate to the value provided in similar situations; the obvious commercial benefit that underlies the program; the assumption that such commercial benefit is not outweighed by the value provided; and most important, the unique promotional versus political opportunities that a national nominating convention presents.¹⁹

The Commission also noted "the apparent non-partisan nature of GM's proposal."

Critics have argued that the GM opinion further undermines the integrity of the public funding program.²⁰

1. Congress established the convention grant at \$2 million, but increased it to \$3 million in 1979, and to \$4 million in 1984.
2. A new party (a party that is neither a major nor a minor party) is not eligible for convention funding. 26 U.S.C. Sec.9008.
3. 26 U.S.C. Sec.9008.
4. 11 CFR 9008.7.
5. The audit and repayment procedures used for convention committees are much the same as those described in Chapter 1. Issues related to FEC audits are discussed in the "Audits and Enforcement" section on page 15.
6. 26 U.S.C. Sec.9008(h).
7. 11 CFR 9008.11.
8. 11 CFR 9008.11.
9. See, for example, AOs 1975-1, 1975-47, 1982-27, 1983-23 and 1983-29. The Commission revised its convention regulations in 1977 and 1979, and made technical amendments in 1983. Further revisions were considered in 1990, but were suspended in 1991.
10. 11 CFR 9008.7(b) and (c).
11. 11 CFR 9008.7(d)(1) and (2).
12. 11 CFR 9008.9 and 9008.12.
13. 11 CFR 9008.7(d)(3).

14. Herbert E. Alexander and Monica Bauer, *Financing the 1988 Election*, p. 31.
15. Herbert E. Alexander and Brian A. Haggerty, *Financing the 1984 Election* (Lexington: Lexington Books, D.C. Heath and Company, 1987), p. 294.
16. Explanation and Justification for Regulations on the Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions. 44 FR 63036 (November 1, 1979).
17. *Ibid.*
18. *Ibid.*
19. These principles have been applied in subsequent audits of the convention committees.
20. See, for example, Herbert E. Alexander and Monica Bauer, *Financing the 1988 Election*, p. 31.

Chapter 4

Evaluation of the Public Funding Program

The preceding chapters have described some of the administrative challenges associated with the public funding program, the steps the Commission has taken to address those challenges, and its recommendations for legislative action. This chapter offers a more analytical evaluation of whether the program has achieved its goals. It should be noted that the Commission sees itself as neither an advocate nor a critic of the public funding program. However, as the independent executive agency charged with administering and enforcing the program, it has become the repository for a considerable amount of information on the topic. Drawing upon that body of knowledge, it offers here a sampling of the opinions espoused by outside observers on both sides of the issues raised by the Presidential public funding program, including relevant statistical data. The discussion is not intended to be and is not exhaustive.

Problems and Solutions

Born of the Watergate era, the public funding program was designed to correct problems perceived in the Presidential electoral process. Those problems were believed to include:

- The disproportionate influence (or the appearance of influence) of wealthy contributors;
- The demands of fundraising that prevented some candidates from adequately presenting their views to the public; and
- The increasing cost of Presidential campaigns that effectively disqualified candidates who did not have access to large sums of money.¹

To address these problems, Congress devised a program that combined public funding with limitations on contributions and expenditures. The following paragraphs describe how this Presidential funding system was intended to solve the alleged problems mentioned above.

Reduce the Influence of Wealthy Contributors

Congress sought "to reduce the deleterious influence" of wealthy donors by restricting the amount and source of private funds that enter the Presidential process and to substitute, in part, public funds for the lost private contributions.²

Private donations are permitted during the primary election period, but individuals may contribute only \$1,000 per candidate. Of that, just \$250 is matched with public funds.³ Consequently, primary candidates have an incentive to raise smaller contributions from a larger pool of contributors. Furthermore, the government matches only those contributions that come from individuals--not those from PACs or parties--thereby subordinating the possible influence of committees.

Restrictions are even greater when it comes to the nominating conventions and general election. Major party convention committees and general election nominees may not raise any private funds at all.⁴ Instead, they receive full public grants.

These grants--like the primary matching payments--come from the \$1 checkoff that appears on federal income tax forms. The checkoff is another element of the public funding program that is designed to promote small individual donations as an alternative to large contributions from wealthy contributors.

Increase Communication with the Electorate

Many reformers believed that campaigns had become too costly, forcing some candidates "to devote too much time to endless fund raising at the expense of providing competitive debate of the issues for the electorate."⁵ By providing general election grants to major party nominees, Congress sought not only "to free candidates from the rigors of fundraising," but also "to facilitate communication by candidates with the electorate" at large.⁶

Level the Playing Field

The public funding program was also intended "to reduce financial barriers" so that candidates without access to large sums of money could, nonetheless, run viable campaigns.⁷

Congress sought to achieve this goal through a combination of public funding and expenditure limits. By providing public funds--either a base, as in the primary, or a full grant, as in the general--Congress wanted to ensure that qualified candidates had enough money to wage competitive campaigns. The spending limits, in turn, were intended to level the playing field, so that no candidate could win election solely on the basis of his or her financial standing.

Under the public funding program, committees must agree to limit their spending as a condition for accepting public funds.⁸ During the primary election period, candidates are subject to both state-by-state and national spending limits.⁹ Major party convention committees and general election nominees cannot spend more than the amount of their public grants. In addition, publicly funded candidates cannot spend more than \$50,000 of their personal funds on the campaign.¹⁰

Constitutional Challenge

Within a month of the enactment of the public funding law, its constitutionality was called into question. In the landmark Supreme Court case, *Buckley v. Valeo*,¹¹ the plaintiffs argued that the program's limitations on contributions and expenditures violated First Amendment protection of free expression, since no significant political expression could be made without spending money. The Court concurred in part with the appellants' claim, finding that the restrictions on political contributions and expenditures "necessarily reduce[d] the quantity of expression by restricting the number of issues discussed, the depth of the exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money." The Court determined, however, that such restrictions on political speech could be justified by an overriding governmental interest.

The Court upheld the contribution limits because they "serve[d] the basic governmental interest in safeguarding the integrity of the electoral process without directly impinging upon the rights of individual citizens and candidates to engage in political debate and discussion."

By contrast, the Court struck down all limits on expenditures, except those that applied to publicly funded committees. While ruling that "[t]he First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive or unwise," the Court nevertheless upheld the limitations on spending by publicly funded Presidential candidates since their acceptance of public funds was voluntary. Spending limits were acceptable, the Court said, only under these circumstances.

The Court also rejected the appellants' claims that:

- Congress violated the First Amendment by not allowing taxpayers to earmark their \$1 checkoff to any candidate or party of their choice (see Chapter 5);
- The First Amendment prohibits Congress from financing particular political campaigns;
- The program's eligibility requirements violate the Fifth Amendment's due process clause; and
- The program discriminates against minor and new party candidates, in violation of the Fifth Amendment.

Has Public Funding Solved the Problems?

While many observers agree that, in the past, big money had compromised the integrity of the Presidential process, they do not all agree that the current public funding program is a desirable or effective alternative. Proponents of public funding say that it has been effective, but acknowledge that, in its present form, it does not offer a complete solution to all of the problems. Opponents, on the other hand, assert that public funding has been largely ineffective and should be scrapped. This section attempts to evaluate whether the Presidential public funding program has met its goals, presenting some of the key arguments made by its supporters and critics.

Both sides of the debate acknowledge that public money is not--nor was it intended to be--the sole source of funding for Presidential campaigns, even during the general election period. The statutes and regulations specifically sanction certain types of private contributions and expenditures during both the primary and general election periods.¹² Funds not subject to the federal election law ("soft money") may also play a role in Presidential elections.¹³

People disagree, however, over the significance of all of these supplemental sources of private funding. Critics contend that private money undermines the public funding program--buying access to the Presidential candidates and making a mockery of the program's spending limits. The program's supporters, on the other hand, say the significance of these private funds diminishes considerably when seen in the broader context of the total funding of Presidential campaigns. Still others, who generally support the concept of public funding, share the critics' concerns about the growing impact of private money on Presidential elections.

Chart 4-1 lists the funding sources for the 1988 and 1992 major party nominees, including primary contributions, public funds and some of the supplemental sources on which candidates may rely. The evaluation that follows focuses primarily on whether or not the supplemental funding sources undermine the public funding program. Additional statistical information is provided throughout this section to further illustrate the role supplemental sources may play in financing Presidential elections.

CHART 4-1
Funding Sources for Major Party Nominees
(in millions of dollars)

	1988		1992	
	Bush	Dukakis	Bush	Clinton
Primary Elections				
Contributions from Individuals				
Less Than \$500	\$ 4.9	\$ 7.2	\$ 5.3	\$14.0
\$500-\$749	\$ 2.7	\$ 4.2	\$ 2.6	\$ 3.8
\$750-\$1,000	\$15.0	\$ 8.2	\$19.8	\$ 7.6
Contributions from PACs	\$ 0.7	-	-	-
Matching Funds	\$ 8.4	\$ 9.0	\$10.1	\$12.5
General Election				
Grant	\$46.1	\$46.1	\$55.2	\$55.2
Compliance Fund	\$ 6.0	\$ 3.7	\$ 4.3	\$ 6.0
Coordinated Party Expenditures	\$ 8.3	\$ 8.3	\$10.2	\$10.2
Independent Expenditures*	\$12.8	\$ 0.7	\$ 3.4	\$ 0.5
Partisan Communications†	\$ 0.1	\$ 2.0	-	\$ 2.4

Other Funding Sources

(in millions of dollars)

	1988		1992	
	Bush	Dukakis	Bush	Clinton
Leadership PACs‡	\$11.2	-	-	-
National Party Soft Money§	\$22.7	\$25.0	\$36.2	\$31.6

*Includes both the expenditures made in support of a candidate and those made against his opponent.

†Partisan communications are reportable only if the communication is primarily devoted to "the election or defeat of a clearly identified candidate" and the "costs exceed \$2,000 for any election." 2 U.S.C §431(9)(B)(iii).

‡Some have argued that this otherwise lawful spending by leadership PACs indirectly influences Presidential elections. (See Chapter 1.)

§The 1988 figures are estimates. This chart does not include the soft money spent by state party committees. (It should be noted that soft money cannot legally be spent to influence federal elections.)

Reduce Influence of Wealthy Contributors

Proponents of public funding believe that the program has reduced the influence of wealthy contributors on Presidential candidates.¹⁴ As noted above, individuals cannot contribute directly to major party convention committees or to general election nominees, and may contribute a maximum of only \$1,000 per candidate during the primaries. Of that, just \$250 is matchable. As a result, supporters say, candidates are seeking smaller contributions from a larger, more diverse pool of contributors.¹⁵ In 1972, prior to the advent of public funding, the Nixon and McGovern campaigns raised a combined total of nearly \$27 million in donations of at least \$50,000 from fewer than 200 people.¹⁶ Under public funding, this is not possible.¹⁷

Critics of the public funding program contend, however, that wealthy contributors still have considerable influence over Presidential candidates, despite the law's limits and prohibitions on contributions. While the statute does restrict direct contributions to candidates, it does not limit independent spending, which can supplement a candidate's campaign treasury. Wealthy individuals and groups, for example, can make unlimited independent expenditures to support or oppose Presidential candidates. (See Chapter 2.) In upholding this provision, the Supreme Court stated:

[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment...¹⁸

In 1992, nearly \$4 million worth of independent expenditures were made in connection with the Presidential election. These expenditures accounted for slightly more than 1 percent of the total funds spent to support the major party nominees during the entire election cycle. (See Chart 4-1.)¹⁹

Supporters of public funding point out that independent expenditures may not be made in cooperation or consultation with any candidate or candidate's campaign. As noted by the Supreme Court in *Buckley*:

The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate.²⁰

Soft money, some argue, is another potential supplement for candidates. As noted in Chapter 2, soft money often consists of large donations from individuals, corporations and labor unions. These funds, which are usually given to state and national party committees, cannot legally be raised or spent to influence federal elections, but are acceptable under some state election laws. While these funds are used primarily for grass-roots activity, critics contend that soft money is frequently spent in ways that indirectly benefit Presidential candidates. For example, party committees may use soft money to pay the nonfederal share of the costs associated with get-out-the-vote drives that benefit both federal (including Presidential) and nonfederal candidates.²¹ The major national party committees spent a combined \$67.8 million worth of soft money during the 1992 Presidential campaign.

According to FEC statistics, however, if all of the soft money spent by the national party committees in 1992 had been spent to support Bush and Clinton, it would have represented 23 percent of the total funding available to the two candidates during the entire election cycle or 32 percent of the funding available in the general election period. (See Chart 4-1.) The fact that the percentages are not larger has led some to discount the importance of soft money spending. Moreover, they note that every two years, tens of thousands of state and local offices appear on state ballots while only 480 federal offices are up for election. Since, they assert, soft money is to be used to assist the nonfederal candidates and federally permissible funds are to be used to pay for federal candidate support, the Presidential race is, at most, only indirectly and partially affected by soft money spending.

Many observers, however, are concerned that large soft money donations may yield undue influence on Presidential candidates. Some have argued that "soft money opens the door for precisely the sort of influence-peddling and quid pro quo that Congress had in mind when it prohibited corporate, union, and excessive individual contributions to federal candidates."22 This perception is heightened when Presidential candidates and their associates help to raise soft money for their party's use. Some observers say that this type of active participation by the candidates, combined with the large sums of money involved, challenges the notion that, under the public funding system, the wealthy no longer exercise significant influence over Presidential candidates.23 In 1992, 43 percent of the soft money raised by the major national party committees came from donations of \$50,000 or more. Many of the largest donations came from corporations and unions--entities that are specifically forbidden, by law, to contribute to any federal candidate.

According to some critics, another way private individuals buy access to Presidential candidates (or create that perception) is by contributing to the nominee's legal and accounting fund.24 Campaigns use this separate fund, which is subject to FEC regulations, to defray the costs related to complying with the federal election law. They may also accept loans from the compliance fund to defray qualified campaign expenses incurred before the candidate receives his or her general election grant.25 Critics contend that such loans result in private funding of the general election campaign for as long as the loans remain unpaid.26 It should be noted, however, that the Commission has required that these loans be repaid within 15 days of the campaign's receipt of the grant. Critics maintain that, regardless of how the funds are used, the contributor may exercise influence over the Presidential nominee. (See Charts 2-7 and 4-1).

Finally, critics of the current system allege that wealthy donors continue to finance Presidential nominating conventions, despite the restrictions imposed by the public funding program. In some cases, they say, corporations and labor unions donate funds, goods and/or services to help finance the conventions. Host cities raise large sums from private sources as well. (See Chapter 3.)

Increase Communication with the Electorate

As noted above, Congress hoped to help candidates get their message to the voters by providing public funds. With a reduction in the demands of fundraising, candidates could devote more time to communicating with the public at large.

Proponents say that the general election grants have reduced the amount of fundraising done by major party nominees, since they cannot raise private funds for their campaigns.

Some critics contend, however, that the program has actually increased the fundraising burden for primary candidates because they must try to raise funds in matchable \$250 increments and may not accept more than \$1,000 from an individual contributor. As a result, fundraising requires more time and more resources. They further point out that, although fundraising for the candidate's own campaign treasury has been eliminated in the general election phase, Presidential nominees now devote their time to raising soft money for the national and state party committees (see above).27

Apart from whether or not the current system reduces the fundraising burden, evaluating the program's success in "facilitating communication with the electorate" is difficult, particularly since the objective is at least partially qualitative: Is the electorate better informed as a result of public funding? Proponents say, "Yes." The public funding program imposes discipline on candidates, forcing them to spend their limited resources in ways that best convey their message to the public. Further, they argue, primary election candidates must reach out to all Americans (not just the wealthy), and in the general election, major party nominees are free to devote all of their time to communications. Opponents, however, counter that

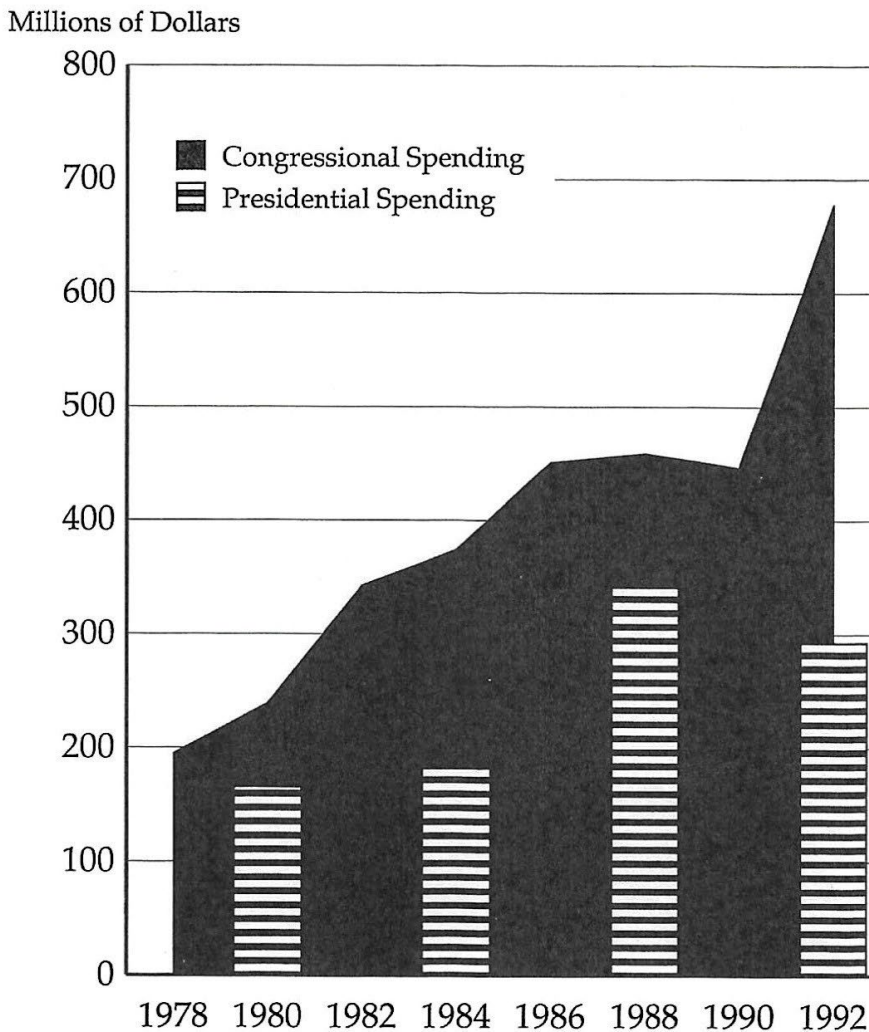
expenditure limits force campaigns to reduce the amount of information they give to the public, resulting in a less informed electorate. The limits also "encourage candidates to favor mass media advertising, which may be more cost effective than grass-roots campaigning but may not be as informative."²⁸

Level the Playing Field

Through a combination of public funding and expenditure limits, described above, Congress hoped to control campaign costs and thereby "reduce [the] financial barriers" that had prevented some candidates from running for President.²⁹

Most observers acknowledge that the expenditure limits have kept spending under control, at least in relative terms. For example, Congressional spending, which is not subject to limits, increased 248 percent from 1978 to 1992, while Presidential spending increased 174 percent from 1976 to 1992.

CHART 4-2
Comparison of Presidential and
Congressional Spending



Critics point out, however, that while the overall limits may have held Presidential spending down, a number of primary candidates have exceeded the state-by-state expenditure limits in Iowa and New Hampshire. (See Chapter 1.)

As with the contribution limits, critics have argued that supplemental spending has compromised the expenditure ceilings. Along with independent expenditures and soft money spending, described above, candidates have relied on pre-candidacy leadership PACs, partisan communications by corporations and labor unions and coordinated party expenditures to supplement their limited resources. (See Chapters 1 and 2.)³⁰ The importance of each of these sources has varied from one election cycle to the next. For example, corporations and labor unions spent nearly \$5 million on partisan communications in 1984, but less than \$2.5 million in 1992.³¹

Some observers have argued that the root of the excessive and supplemental spending, described above, lies in the expenditure limits themselves. They note that, while the limits are indexed to inflation, many of the costs associated with campaigning (particularly media costs) have increased more rapidly than the overall rate of inflation. As a result, they say, candidates have exceeded the state-by-state limits and have looked to alternate sources to supplement their spending.³²

Despite the conflicting views on expenditure limits, observers on both sides of the public funding debate agree that the combination of expenditure limits and public funding has opened the Presidential process to more candidates.³³ They do not agree, however, on whether that objective is desirable. Pointing to Jimmy Carter's successful candidacy in 1976, proponents say that public funding helped a relative unknown reach the White House.³⁴ Opponents, however, focus on the number of so-called "fringe candidates" who have received public funds to finance their campaigns. These critics contend that tax money should not be spent on "a political welfare program for fringe and extremist candidates with limited appeal."³⁵

Supporters of public funding, however, caution against refusing to fund qualified candidates on the basis of their political views. (See Chapter 1.) They point out that identifying "fringe" or "mainstream" candidates is a subjective process which defies simple objective criteria.³⁶

Nevertheless, it is clear that the framers of the public funding statute intended to avoid "funding hopeless candidacies with large sums of public money."³⁷ Consequently, they established what was considered in 1974 to be a rigorous test for primary election candidates. In order to qualify for matching funds, they had to demonstrate broad based support by raising a minimum of \$5,000 in increments of not more than \$250 from each individual contributor, in each of 20 states.

The problem, many point out, is that, while inflation has more than doubled (increasing 176 percent), the eligibility threshold has remained unchanged. They contend that it is possible to open the election process to qualified candidates yet avoid the proliferation of so-called "fringe candidates" by raising the threshold.

Cost to Administer Public Funding

Any evaluation of the benefits of the Presidential public funding program must take into account the cost to the taxpayer. The FEC estimates that the 1988 Presidential election cycle, which was the most expensive cycle to date, cost the Commission about \$5 million to administer. Combining that figure with the total 1988 payments from the Presidential Election Campaign Fund brings the approximate cost of the program for that cycle to \$182 million.³⁸

There is no hard data on the cost of administering the public funding program, in part because the program utilizes FEC resources throughout the agency, at various times and to varying degrees. Nevertheless, as a case study, we have examined the costs for the 1988 Presidential cycle, using two different methods. While each method is imperfect, together they provide some insight into the cost of administering the public funding program. It should be noted, however, that administering the public funding program is only one of the Commission's primary functions. (The agency is also responsible for the public disclosure of all campaign finance data and for the civil enforcement of the disclosure requirements and the contribution and expenditure limits affecting all federal elections. In FY 1993, the Commission's full budget was \$21 million and the Commission had an FTE of 276 to carry out all of its functions.)

The first glimpse at the costs of administering the 1988 public funding program is found in an internal memo of February 1991. In that memo, Commission staff estimated that the cost of administering the 1988 Presidential funding program was \$5,643,357 over roughly 5 years (October 1985 through January 1991) or \$1,058,791 per year.³⁹ This span of time encompassed the regulatory and certification work done in the two years before the election year and the advisory opinion, continued certification, audit and enforcement activity of the succeeding three years. The estimate was reached by, first, determining the actual cost of staff time (FTE) spent on the 1988 Presidential program (over 5.33 years), based on monthly time reports. Next, it was determined that this staff time represented 8.12 percent of the Commission's total staff resources (FTE). That percentage was then applied to nonpersonnel costs--over the same 5.33-year period.

Another way of evaluating the cost of administering the 1988 election program is to examine the audit staff resources consumed between January 1987 and January 31, 1993. The following chart lists the FTE for the various Audit Division functions that pertained specifically to the 1988 Presidential program, spread over those six years.

CHART 4-3
Audit Division FTE for 1988 Cycle

Preparation	.9
Certification	15.4
Primary Matching Fund Audits	47.7
General Election Audits	4.4
Convention Audits	1.6
Follow-Up Activity	3.6
<hr/>	
Total	73.8

We have examined the 1988 cycle because it was the most recent, completed cycle. It should be noted, however, that the 1988 cycle was the most costly in the Commission's 17-year experience. That year, the Commission certified funds to a total of 17 candidates (15 in the primaries and 2 in the general election)--more Presidential candidates than had run in any election since 1980. In addition, the 1988 audits encountered far more complex issues than had been seen before, and the Audit Division was understaffed. The changes in audit procedures for the 1992 elections are expected to reduce audit costs. (See Chapter 1.)

Summary

While most observers acknowledge that the Presidential public funding program has achieved at least some of its stated goals, they also recognize that the program is imperfect. Some cite these imperfections as a reason to end the program. Others, focusing on the program's successes, want to correct the imperfections. This chapter has highlighted both points of view. It has touched on the arguments offered by both those who seek improvements in the program and those who seek its end. It is Congress who will decide the fate of the public funding program.

As the next chapter illustrates, unless Congress soon takes action on the funding mechanism (the tax checkoff), the program will all but collapse in 1996.

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1. See S. Rep. No. 93-689, pp. 1-10 (1974).
 2. *Buckley v. Valeo*, 424 U.S. 1, at 91.
 3. 26 U.S.C. Sec.9033(b)(3), (4) and 9034(a).
 4. 26 U.S.C. Sec.9003(b) and 9008(d)(1). Cities hosting conventions, however, may provide certain services to convention committees. (See Chapter 3.)
 5. See S. Rep No. 93-689, p. 6.
 6. *Buckley* at 91.
 7. *Buckley* at 107.
 8. Following the *Buckley* decision (424 U.S. 1, (1976)), public funds came to be seen as a legal prerequisite for imposing spending limits. The *Buckley* court had ruled that spending limits were constitutional only if candidates voluntarily agreed to them in order to qualify for public funds. (Robert E. Mutch, *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law*, p. 135.)
 9. 2 U.S.C. Sec.441a(b).
 10. 26 U.S.C. Sec.9004(d) and 9035(a).
 11. 424 U.S. 1 (1976).
 12. See the various sources of spending listed in Chart 4-1.
 13. Soft money is not subject to the limits and prohibitions of federal law. Until the 1992 election cycle, soft money was disclosed at the state level only.
 14. Frank J. Sorauf, *Inside Campaign Finance: Myths and Realities*, p. 159.
 15. Proponents are also quick to point out that contributions from political action committees (PACs) to Presidential candidates have declined under the public funding system. (See Chart 4-1.)

16. Herbert E. Alexander and Brian A. Haggerty, *Financing the 1984 Election*, p. 148.
17. See, however, the discussion of "soft money" below.
18. *Buckley* at 43.
19. Nearly 95 percent of these expenditures were made by political action committees (PACs).
20. *Buckley* at 42.
21. During a Presidential election year, national party committees must pay at least 65 percent of these costs with federal funds. 11 CFR 106.5(b)(2).
22. Common Cause testimony (before the Federal Election Commission) regarding petition for rulemaking on "soft money," February 4, 1985, pp. 38-39.
23. See, for example, Herbert E. Alexander and Monica Bauer, *Financing the 1988 Election*, p. 74.
24. 11 CFR 9003.3(a). See 2 U.S.C. Sec.431(9)(B)(vii), which excludes from the definition of expenditure the costs of services rendered solely to ensure the candidate's compliance with the law, as long as those services are paid for by the regular employer or the candidate's committee. See Advisory Opinion 1979-22.
25. 11 CFR 9003.3(a)(2). See also AO 1992-38.
26. Center for Responsive Politics, "Compliance Funds: The Use of Private Money in Presidential Campaigns," June 1992, p. 7.
27. Herbert E. Alexander and Monica Bauer, *Financing the 1988 Election*, p. 38.
28. Herbert E. Alexander and Monica Bauer, *Financing the 1988 Election*, p. 47.
29. *Buckley* at 107.
30. Chart 4-1 lists the total spending from each source in connection with the 1988 and 1992 Presidential nominees' campaigns.
31. For more complete statistics, see Chapters 1 and 2.
32. See, for example, Anthony Corrado, *Creative Campaigning: PACs and the Presidential Selection Process*, p. 5.
33. The growth of primaries as the means of delegate selection and changes to delegate selection rules may also have encouraged candidates to run.
34. Herbert E. Alexander, *Financing the 1976 Election* (Los Angeles: Congressional Quarterly Press, 1979), p. 5.
35. Stephen Green, "Public Funds Misdirected to Low-appeal Candidates," *Houston Post*, Mar. 27, 1992.

36. Readers attempting to formulate their own definition of "fringe candidate" may wish to consult Appendix 3. It lists all of the candidates who have received public funding, their party affiliation and the amounts they received.

37. *Buckley* at 96.

38. This figure does not include administrative costs incurred by the Department of Treasury.

39. Excluded from these figures were: audit and enforcement costs incurred in 1991 and 1992; review and compliance costs incurred by the Reports Analysis Division; costs incurred by the Press Office, the Public Disclosure Division and the Information Division; and costs incurred by Commissioners' offices.

Chapter 5

Funding the Program: The \$1 Tax Checkoff

The public funding of Presidential elections is not financed by a standard Congressional appropriation. Instead, the program is funded by the one dollar checkoff that appears on federal income tax forms.

Do you want \$1 of your federal tax to go to the Presidential Election Campaign Fund?

Yes

No

Constitutionality

This unusual financing scheme quickly raised constitutional questions. In the landmark Supreme Court case, *Buckley v. Valeo*, the plaintiffs argued that Congress violated the First Amendment by not allowing taxpayers to earmark their \$1 checkoff to any candidate or party of their choice. In the Court's opinion, however, the checkoff constituted an appropriation by Congress, and as such it did not require outright taxpayer approval. Furthermore, "every appropriation made by Congress uses public money in a manner to which some taxpayers object."¹

By the time its constitutionality had been confirmed, the checkoff had already amassed sufficient funds to finance the 1976 Presidential election. It has funded every Presidential election since. In fact, the Presidential Election Campaign Fund's annual balance has never fallen below the initial \$2.4 million raised in 1973. (See Chart 5-2.)

Shortfall

Since 1988, however, the Commission has predicted a shortfall in the Presidential Election Campaign Fund. Initially, Commission staff believed that a shortfall would not occur until 1996. Then, in early 1990, the Commission warned that the Fund balance might not even be sufficient to cover all 1992 primary matching fund payments. By the end of 1991, however, the situation had changed. The 1992 Presidential campaign started later than usual, and the candidates requested less public money than had been expected. In addition, the rate of inflation (which governs the size of the pay outs) was well below expectations; and tax checkoff receipts declined much less than had been anticipated.² Consequently, the FEC announced that a shortfall in 1992 was unlikely, but that the Fund would run a deficit of between \$75 and \$100 million by 1996 unless Congress took action.

A funding shortfall--at some point--is inevitable due to a "fatal flaw" in the public funding program: Payments from the Fund are indexed to inflation, but the \$1 tax checkoff is not. If the checkoff had been indexed to inflation and the same number of taxpayers checked yes, there would have been no risk of a shortfall in 1992 nor would there be a projected shortfall for the 1996 election.

Absent such adjustment, however, as the consumer price index increases, more and more taxpayers must designate dollars in order to keep pace with the increasing payments to qualified committees. Internal Revenue Service (IRS) statistics, however, indicate that citizen participation has declined. After peaking at 28 percent in 1980, the percentage of tax forms on which the taxpayer(s) checked yes had fallen below 18 percent in 1992.³ (See Chart 5-1 below).

CHART 5-1

Percentage of Returns with \$1 or \$2 Designations*

1976 Returns	27.5	1984 Returns	23.0
1977 Returns	28.6	1985 Returns	23.0
1978 Returns	25.4	1986 Returns	21.7
1979 Returns	27.4	1987 Returns	21.0
1980 Returns	28.7	1988 Returns	20.1
1981 Returns	27.0	1989 Returns	19.8
1982 Returns	24.2	1990 Returns	19.5
1983 Returns	23.7	1991 Returns	17.7

* Figures for 1973-1976 cannot be verified.

Explanations for the decline are varied. Some have argued that the public does not want tax money spent to finance elections: "The vast majority of Americans, who are fed up with taxes and irresponsible government spending, are in no mood to pay for anyone's political campaign and do not support the Presidential Election Campaign Fund."⁴ Others blame increased public awareness of soft money and its alleged role in the Presidential process. Many have also noted that a number of state-sponsored public funding programs, financed by a tax checkoff, have seen similar declines in participation. The Minnesota Ethical Practices Board, for example, reported that participation in that state's checkoff program fell to an all-time low of 14 percent in 1991. This, critics say, confirms that taxpayers oppose using public funds to finance elections.

Supporters of public funding disagree. They say that the decline in participation may be due less to dissatisfaction with the program than to a growing lack of understanding of the program's purpose. This problem, they say, is "bound to increase as time distances most Americans from the founding debate over the program."⁵ Supporters also maintain that a negative vote on the tax checkoff may reflect a widespread dissatisfaction with government in general, rather than with public funding.

Statistical Wrap-up

The charts that appear in this section provide statistical information related to the tax checkoff and the projected shortfall for 1996.

Chart 5-2 Presidential Fund – Income Tax Checkoff Status



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

FEBRUARY 1993

PRESIDENTIAL FUND — INCOME TAX CHECKOFF STATUS

CALENDAR YEAR	1992	1991	1990	1989	1988	1987	1986	1985	1984	1983
JANUARY	185,784	\$55,917	\$191,076	\$51,752	\$189,239	\$180,021	\$93,644	\$22,489	\$169,832	\$319,570
FEBRUARY	5,350,532	3,859,981	3,851,840	3,350,332	3,577,465	2,193,576	2,433,902	758,295	3,769,428	4,077,295
MARCH	6,543,872	8,967,739	9,103,550	7,231,448	7,217,318	9,554,967	7,928,518	7,535,879	8,732,837	8,847,655
APRIL	5,731,339	6,419,427	6,395,132	6,300,921	6,998,769	7,148,608	9,944,248	8,590,753	5,482,270	7,527,099
MAY	5,808,728	5,854,209	5,519,508	7,536,090	7,295,836	6,615,806	6,718,371	8,235,644	8,465,697	5,778,132
JUNE	3,635,585	4,845,602	4,707,103	3,903,518	3,216,574	4,071,899	4,092,492	2,986,813	2,757,257	2,987,695
JULY	1,119,885	958,772	1,228,985	1,402,031	2,219,724	2,033,012	2,453,593	3,455,350	3,171,247	3,000,431
AUGUST	254,933	506,805	434,132	1,347,288	1,096,980	830,094	947,562	1,910,141	1,113,469	2,071,316
SEPTEMBER	502,316	364,392	545,024	669,189	686,710	100,870	690,992	587,237	669,569	583,082
OCTOBER	201,739	144,866	162,037	172,340	155,329	550,265	100,254	310,643	208,484	172,454
NOVEMBER	194,241	294,056	258,973	250,685	279,726	267,288	260,196	229,308	205,530	182,126
DECEMBER	63,781	50,570	65,619	70,052	80,317	105,541	90,065	90,209	291,141	84,213
TOTAL CHECK-OFF										
YEAR-TO-DATE	\$29,592,735	\$32,322,336	\$32,462,979	\$32,285,646	\$33,013,987	\$33,651,947	\$35,753,837	\$34,712,761	\$35,036,761	\$35,631,068
TOTAL REPAYMENTS										
YEAR-TO-DATE	\$566,078.68	\$595,419.14	\$39,148.13	\$22,024.32	\$103,499.76	\$357,307.09	\$61,640.71	\$61,839.97	\$505,807.15	\$21,899.13
TOTAL DISBURSEMENTS										
YEAR-TO-DATE	\$153,191,152.59	\$21,200,000.00	\$2,426.42	\$1,843,016.67	\$158,560,804.63	\$17,784,000.00	\$5,596.22	\$1,617,841.66	\$120,149,768.18	\$11,786,485.65
FUND BALANCE	* \$4,061,060.87	\$127,144,468.62	\$115,426,713.48	\$82,927,012.77	\$52,462,359.12	\$177,905,676.99	\$161,680,422.90	\$125,870,541.41	\$92,713,782.10	\$177,320,982.13

NOTES:

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

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

1976 RETURNS—27.5 %	1980 RETURNS—28.7 %	1984 RETURNS—23.0 %	1988 RETURNS—20.1 %
1977 RETURNS—28.6 %	1981 RETURNS—27.0 %	1985 RETURNS—23.0 %	1989 RETURNS—19.8 %
1978 RETURNS—25.4 %	1982 RETURNS—24.2 %	1986 RETURNS—21.7 %	1990 RETURNS—19.5 %
1979 RETURNS—27.4 %	1983 RETURNS—23.7 %	1987 RETURNS—21.0 %	1991 RETURNS—17.7 %

* IRS "adjustment" of \$51,068.84 has also been debited. No explanation is available at this time.

CALENDAR YEAR	1982	1981	1980	1979	1978	1977	1976	1975	1974	1973
JANUARY	\$457,372	\$684,510	\$326,184	\$482,973	\$689,488	\$746,685	\$876,771			
FEBRUARY	3,790,858	4,141,426	7,247,271	4,583,893	5,986,292	7,811,426	7,487,457			
MARCH	11,013,954	11,254,856	8,625,855	9,637,824	9,006,764	10,472,777	8,828,310			
APRIL	6,338,933	7,424,035	7,186,840	6,713,117	9,765,133	7,054,795	7,090,211			
MAY	7,427,745	7,665,407	6,563,699	6,581,790	5,941,997	6,029,693	6,073,861			
JUNE	4,145,029	4,592,000	3,933,738	4,233,077	4,851,826	3,618,171	2,725,832			
JULY	4,193,252	3,773,686	4,061,737	3,035,907	2,224,813	350,497	323,616			
AUGUST	1,049,706	871,842	409,085	264,192	409,288	225,626	128,536			
SEPTEMBER	272,412	300,194	235,375	166,705	136,750		88,078			
OCTOBER	143,312	140,723	109,983	123,841	127,755	222,142	47,965			
NOVEMBER	129,927	134,997	104,440	83,457	69,867	40,564	36,413			
DECEMBER	61,382	65,376	34,210	34,571	36,716	33,632	24,895			
TOTAL CHECK-OFF										
YEAR-TO-DATE	\$39,023,882	\$41,049,052	\$38,838,417	\$35,941,347	\$39,246,689	\$36,606,008	\$33,731,945	\$31,656,525	\$27,591,546	\$2,427,000
TOTAL REPAYMENTS										
YEAR-TO-DATE	\$58,399.69	\$202,287.60	\$1,094,097.68	\$23,473.82	\$163,725.41	\$1,037,029.10	-0-	-0-	-0-	-0-
TOTAL DISBURSEMENTS										
YEAR-TO-DATE	\$1,070.22	\$630,255.73	\$101,427,115.89	\$1,050,000.00	\$6,000.00	\$521,124.42	\$69,467,521.18	\$2,590,502.21	-0-	-0-
FUND BALANCE	\$153,454,500.65	\$114,373,289.18	\$73,752,205.31	\$135,246,806.52	\$100,331,985.70	\$60,927,571.29	\$23,805,658.61	\$59,551,244.79	\$27,591,546.00	\$2,427,000.00

CHART 5-3 Revenue and Payments from the Presidential Election Campaign Fund

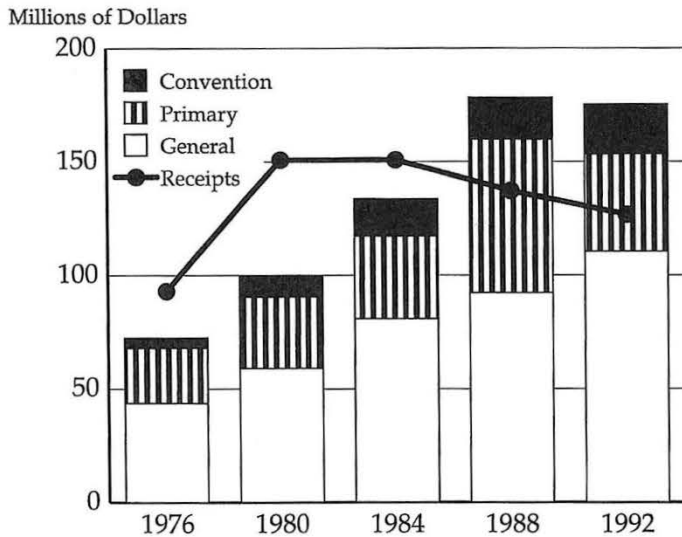


Chart 5-3 demonstrates that while inflation has increased general election and convention grants over time, primary matching payments have varied from one cycle to the next. On the supply side, the tax checkoff generated a surplus in 1976, 1980, and 1984, but the full amount of that surplus had been consumed by the end of 1992.

CHART 5-4 Presidential Election Campaign Fund 1992 Balance By Month—Total and Available For Primary Matching

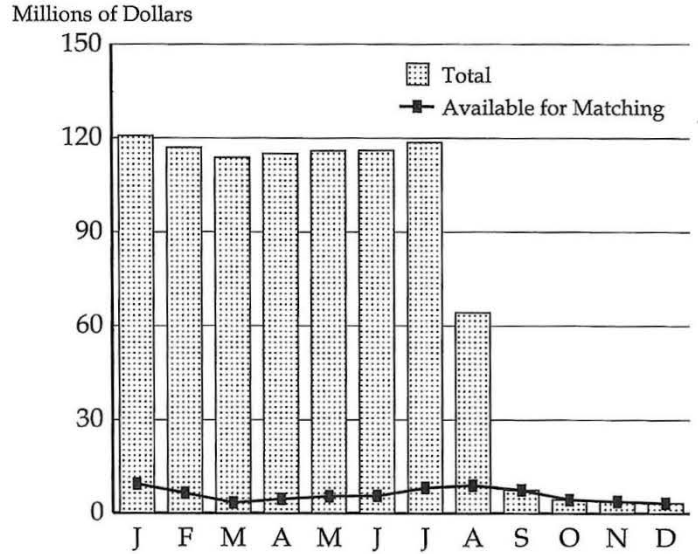


Chart 5-4 tracks the monthly balance of the Fund during 1992. It came within about \$3 million of insolvency in March because of the Treasury rule requiring general election funds to be set aside. The year-end balance stood at roughly \$4 million.

CHART 5-5 Projections for 1996 Payments and Funds Available

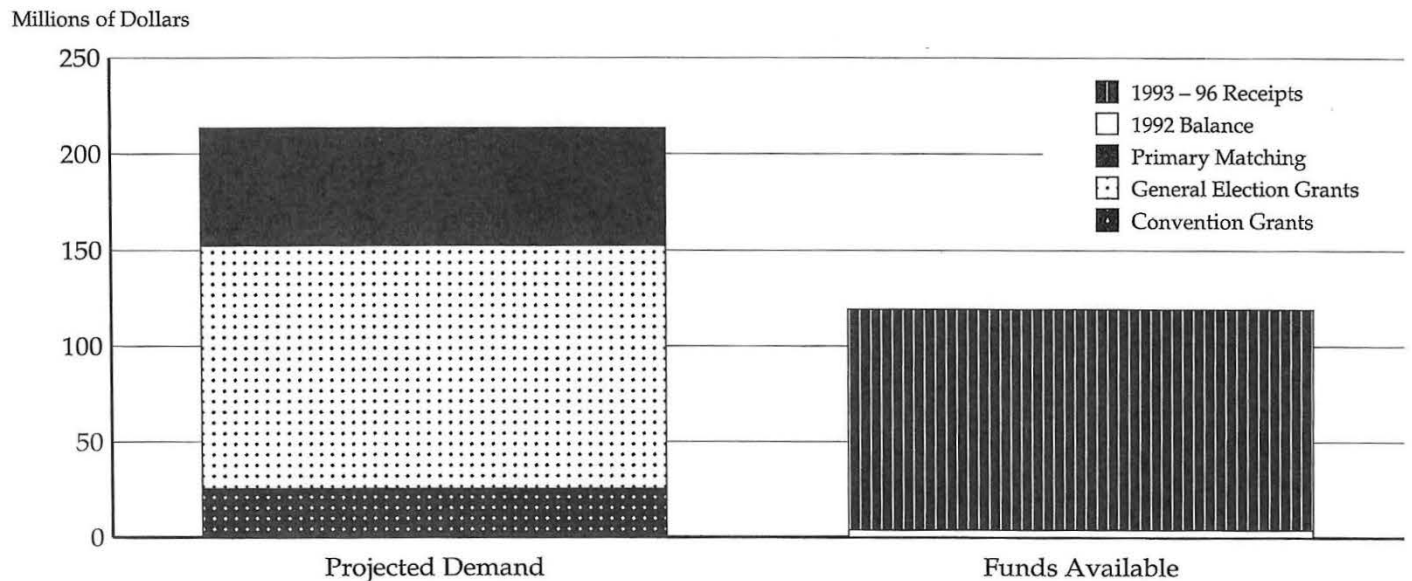


Chart 5-5 illustrates the Commission's projections for the 1996 cycle. Based on these estimates, only the party nominating conventions would be fully funded. General election nominees would each receive about \$15 million less than the law permits and primary candidates would not receive any matching funds at all.

Public Education Program

In 1989, the FEC conducted focus groups around the country to assess public understanding of the checkoff program. The results of these meetings confirmed that citizens may not know why the public funding program was implemented or how it works. The study also revealed, however, that taxpayers would like to know more. Noting that the creation of an informed populace might not alter existing patterns of participation in the checkoff, the focus group report nevertheless recommended that the FEC conduct a public education program to address three key points:

- The purpose of the Presidential public funding program;
- How much money is collected and spent on the program; and
- How the public funds are allocated and spent.

On March 5, 1991, the Commission launched the first phase of a nationwide public information program to implement these recommendations. The multimedia education program featured television and radio public service announcements in English and Spanish, a flyer, a brochure and an op-ed piece and media appearances by the Commission chairman. The media announcements, which aired during the height of the tax-filing season, urged taxpayers to make "an informed choice" when deciding whether to designate one dollar of their taxes for the Presidential public funding program. Although the program lasted just three months, its messages, combined with television, radio and print news coverage, reached a potential audience of more than 92 million.

On January 3, 1992, the Commission launched the second phase of the education program, expanding both its scope and duration. This phase, which continued throughout 1992, featured:

- Implementation of a new toll-free number to invite taxpayers to request a free brochure explaining the checkoff;
- New radio and television public service spots in both English and Spanish;
- Similar materials for print publications, for public service placement in newspapers and magazines;
- Distribution of hundreds of information packets throughout the country to reporters and editors who cover Presidential campaigns or tax issues; and
- Distribution of information to tax preparers and software companies that produce software on income tax filing.

This phase of the program reached a potential audience of 203 million.⁶

In a related outreach effort, the Commission chairman was a featured guest on several nationwide radio and television broadcasts, including C-SPAN, CNN and "The Larry King Show" on the Mutual Radio Network.

Legislative Action

Even with an education program, the Commission believes that a shortfall in 1996 is inevitable unless legislative action is taken. As a result, the Commission has, since 1989, sent numerous letters both to Congress and the President warning of the impending deficit. It has also adopted legislative recommendations⁷ urging Congress to enact legislation that would ensure the financial viability of the public funding program and has testified before various Congressional committees regarding the projected shortfall.

While Congress has introduced a number of bills to address this problem, none of them has been subject to a floor vote.

Regulatory Action

If the Fund is insufficient to cover all entitlements, current law requires the U.S. Department of Treasury to allocate remaining funds, giving first priority to the conventions, second priority to the general election and third priority to the primaries.⁸

On May 10, 1991, the Treasury Department published new regulations describing the method it would use to disburse funds. Under the revised rules, which apply regardless of whether a shortfall actually occurs, the projected amount needed for the conventions and the general election is to be set aside by January 1 of the Presidential election year. The remaining amount in the Fund--and additional monthly deposits of checkoff dollars--are then to be used for matching payments to primary candidates.

If the amount of matching funds certified by the Commission in one month exceeds the total dollars in the Primary Account as of the last day of the previous month--the amount paid to each candidate will be reduced.⁹ The difference between the amount certified and the amount actually paid to the candidate will be carried over to the next month and added to any amounts certified to the candidate during that month.¹⁰

The Treasury rules also provide that matching fund payments be made once a month rather than twice a month, as was done in the past.¹¹

On July 18, 1991, the Commission adopted conforming regulations to govern submissions and certifications.¹² Candidates are to make matching fund submissions only once a month, instead of twice a month, and the Commission will certify matching fund payments on a fixed day each month, instead of within 5 days of receiving a matching fund submission. In addition:

- The option for submitting letter requests for matching funds (at former 11 CFR 9036.2(b)(2)) has been eliminated. Under the old rules, candidates could submit a letter request with minimal backup documentation every other submission date. However, under the once-monthly schedule, fully documented submissions are necessary in order to verify the exact amount of matching funds represented in a request.
- The once-monthly schedule also necessitates the elimination of the holdback procedures (at former 11 CFR 9036.2(c)(1)(i)). Under those procedures, the Commission certified funds within 5 business days of the candidate's submission, holding back a percentage of the funds until the agency verified the exact amount to be certified for the submission; any additional payments were then certified within 20 to 25 days.
- The regulations incorporate a Commission decision to reject matching fund submissions and resubmissions if the projected amount of nonmatchable contributions exceeds 15 percent of the amount requested. This rejection policy does not apply to submissions made before the candidate's date of ineligibility (11 CFR 9036.2(c) and (d) and 9036.4(a)(2)).
- The rules at 11 CFR 9034.5(f) require a candidate to submit an updated Statement of Net Outstanding Campaign Obligations (NOCO statement) if the candidate has not been paid the full amount certified because of a shortfall in public funds. This rule would apply after the candidate's date of ineligibility, when his or her remaining entitlement to matching funds depends on the amount of the campaign's debt. In a shortfall situation, there could be a long delay between a certification and the full payment of the amount certified, during which time a campaign's debt status could significantly change. An updated NOCO statement submitted shortly before the next payment date will enable the Commission to revise the amount certified, if necessary, before the candidate is paid.¹³

Conclusion

The tax checkoff, like the public funding program it finances, has its supporters and detractors. One fact, however, is clear to both sides: without legislative action to correct the structural flaw in the checkoff, the existing Presidential public funding program will be severely curtailed in 1996.

1. *Buckley v. Valeo*, 424 U.S. 1, 92 (1976).
2. The FEC had originally projected a \$2 million decrease, based on an anticipated decline in checkoff receipts in the year preceding the Presidential year (a pattern that had occurred in every other election cycle under the public funding program). In fact, they declined by approximately \$140,000--from \$32,462,979 in 1990 to \$32,322,336 in 1991.
3. Recent IRS studies, sampling 10,000 tax forms per year, indicate that the checkoff was left blank on about 15 percent of tax returns. (See IRS Taxpayer Usage Study.)
4. Senator Mitch McConnell, "Checkoff Time Approaching," *Washington Times*, Feb. 2, 1992.
5. Frank J. Sorauf, *Inside Campaign Finance: Myths and Realities*, p. 144.
6. The text of the public service announcements used in both phases of the education program is included in Appendix 5.
7. Specific recommendations have included indexing the dollar checkoff to inflation and appropriating funds directly. See Appendix 2.
8. The Commission has encouraged Congress to examine these priorities in light of the projected 1996 shortfall. See Appendix 2.
9. The candidate would receive a payment equal to the amount certified to the candidate during that month multiplied by the following fraction:
$$\frac{\text{amount in primary account on last day of month} / \text{total certified that month, for all candidates}}{\text{his/her total unpaid certifications} / \text{all unpaid certifications}}$$
In effect, this means that a candidate would receive an amount equal to:
$$\frac{\text{amount in primary account on last day of month} / \text{total certified that month, for all candidates}}{\text{his/her total unpaid certifications} / \text{all unpaid certifications}}$$
multiplied by the amount of funds available.
10. The Commission had proposed a "partial set-aside" alternative to Treasury's approach. The Commission's plan (submitted to Treasury as oral and written testimony) would have factored into the equation anticipated receipts to pay for the general election, thus affording more funds for the early primary campaigns.
11. Previous rules permitted two submissions and two resubmissions each month, with corresponding payments made twice a month.
12. These regulations took effect November 6, 1991.
13. For additional information regarding the Commission's administration of the matching fund program, see Chapter 1.

Appendix 1

Public Funding Chronology

1975

January

- 1 - The 1974 amendments to the Federal Election Campaign Act become effective.
- 2 - Bill of complaint filed by Senator James Buckley et al in U.S. District Court for the District of Columbia requesting that the Act be declared unconstitutional and its administration and enforcement be enjoined.
- 24 - U.S. District Court Judge Howard F. Corcoran certifies the case, *Buckley v. Valeo*, to the Circuit Court.

July

- 15 - Commission issues AO 1975-1: Corporations may not contribute to national party convention except under limited circumstances.

August

- 11 - Commission publishes interim guidelines on recordkeeping requirements for certification of primary matching funds.
- 15 - Court of Appeals renders its decision on *Buckley v. Valeo*. With one exception (2 U.S.C. Sec.437a), the Court upheld the substantive provisions of the Act with respect to contributions, expenditures and disclosure. The Court also sustained the constitutionality of the Commission.

September

- 3 - Commission publishes interim guidelines on disbursement procedures for public financing.
- 9 - Commission publishes interim guidelines on primary matching funds.
- 16 - Commission issues AO 1975-11: Dual candidacy regulations applied to Senatorial/Presidential candidate.
- 19 - The plaintiffs-appellants in *Buckley* file their brief before the Supreme Court in which they request that the Court reverse the decision of the Court of Appeals.

October

- 9 - Commission issues interim guidelines on primary matching funds.
- 24 - Commission issues AO 1975-47: Enumerates purposes for which national convention host committees may make expenditures and sets forth application of convention spending limitations to such expenditures.

November

- 4 - Public hearings begin on public funding regulations.
- 28 - Commission issues AO 1975-12: Application of Act to delegate selection process.

December

3 - Public hearings held on regulations governing public financing of conventions.

16 - Commission votes to notify plaintiffs in *Buckley* of its intent to certify to the Secretary of the Treasury the eligibility of certain Presidential candidates to receive primary matching funds on December 23, 1975.

17 - Chief Justice of Supreme Court receives application to enjoin appellees in *Buckley* from making the certifications for the payment of matching funds.

18 - Commission approves regulations governing Presidential primary matching funds.

22 - Supreme Court declares that, there being no majority to grant the application for an injunction, the application is denied. (See 12/17 above.)

23 - Birch Bayh, Lloyd Bentsen, Jimmy Carter, Gerald Ford, Fred Harris, Henry Jackson, Ronald Reagan, Terry Sanford, Sargent Shriver, Morris Udall and George Wallace establish eligibility to receive primary matching funds.

- Commission makes first certification to Secretary of Treasury that candidates for President and the Democratic and Republican national committees are eligible to receive public financing.

1976

January

1 - FEC meets statutory deadline for initial certification of candidates eligible for primary matching funds, and certification of national parties for convention financing. Eleven candidates certified prior to deadline.

8 - Commission approves regulations governing public financing of Presidential nominating conventions.

12 - Commission issues AO 1975-33: Presidential campaign's allocation of fundraising costs to states.

29 - Milton Shapp establishes eligibility to receive primary matching funds. (See 5/12/77.)

30 - Supreme Court renders its decision in *Buckley v. Valeo*, affirming in part and reversing in part the decision of the Court of Appeals. The public funding provisions are found to be constitutional, but the Commission's authority to certify funds is negated. (424 U.S. 1 (1976).)

February

25 - Ellen McCormack establishes eligibility to receive primary matching funds.

26 - Frank Church establishes eligibility to receive primary matching funds.

March

22 - Last FEC certification of matching funds pending Congressional action reconstituting the Commission in accordance with the Supreme Court decision in *Buckley*.

24 - Senate passes legislation re-establishing the Commission.

May

11 - Federal Election Campaign Act Amendments of 1976 (P.L. No. 94-283) signed by President Ford.

21 - First certification of Presidential matching funds following reconstitution of Commission.

June

8 - Public hearing held on regulations governing convention financing and Presidential primary matching funds.

17 - Edmund G. Brown, Jr., last of 1976 Presidential candidates, establishes eligibility to receive primary matching funds.

25 - General election funding regulations published in *Federal Register*. (41 FR 26397.)

July

20 - Commission certifies \$21.82 million in public funds for the general election campaign of Democratic Presidential nominee Jimmy Carter and his running mate Walter Mondale.

August

24 - Commission certifies \$21.82 million in public funds for the general election campaign of Republican Presidential nominee Gerald Ford and his running mate Robert Dole.

27 - Commission issues Re: AOR 1976-54: Expenses incurred after termination of Presidential candidacy may not be paid with matching funds.

September

21 - Commission issues first in FEC Disclosure Series: *Presidential Pre-Nomination Receipts and Expenditures, 1976 Campaign*.

October

14 - FEC releases final audit report on Sanford for President Committee, the first statutory audit completed of Presidential committees receiving public matching funds.

18 - Amendments to matching fund regulations published in *Federal Register*. (41 FR 45952.)

22 - Commission makes available for public inspection computer printout summarizing contributions to the Ford and Carter primary campaigns.

1977

February

3 - FEC adopts amendment to proposed matching fund regulation Sec.134.2(c)(2).

March

7 - S.926 introduced in Senate, providing for public financing of Senatorial elections.

18 - Democratic and Republican National Committees return to the U.S. Treasury over one-half million dollars in surplus public funds.

20 - President Carter presents election reform package to Congress. Included in the package is a bill to provide public financing of Congressional elections.

April

7 - Commission approves procedures for conducting audits.

May

6 - FEC testifies before the Senate Rules and Administration Committee on public financing of Congressional elections.

12 - FEC finds that Governor Milton Shapp failed to qualify for matching funds he had received. Commission orders full repayment.

June

5 - Report on 1976 Presidential Campaign Receipts and Expenditures published.

July

12 - FEC testifies before the House Administration Committee on Congressional public financing.

18 - Commission releases final audit report on Church for President Committee.

August

3 - The Senate approves S.926, the "Federal Election Campaign Act Amendments of 1977."

24 - Commission releases final audit report on Pro-Life Action Committee - McCormack.

29 - Commission releases final audit report on Bentsen in '76 Committee.

September

12 - FEC holds hearings on sponsorship and financing of public debates between candidates.

28 - Commission releases final audit report on Brown for President Committee.

December

20 - Commission releases final audit reports on Citizens Committee for the Democratic National Convention and the 1976 Democratic National Convention Committee.

1978

January

25 - Commission releases final audit report on Jackson for President Committee.

March

20 - Commission releases final audit report on Shapp for President Committee.

24 - Commission releases final audit report on President Ford Committee (General).

30 - Commission releases final audit report on President Ford Committee (Primary).

April

3 - Commission holds repayment hearings in which 1976 Presidential candidate George C. Wallace appeals Commission determination that he repay certain federal matching funds to the U.S. Treasury.

7 - FEC issues *Federal Register* notice requesting comments on six areas of proposed regulations concerning public financing.

13 - Commission releases final audit report on Citizens for Reagan Committee.

May

31 - FEC publishes *Federal Register* notice requesting comment on the Commission's regulations governing the public financing of Presidential elections. (43 FR 23587.)

June

8 - FEC approves its *Rules of Procedure of the Federal Election Commission*.

16 - Commission releases final audit report on Committee for Birch Bayh in '76.

20 - FEC holds public hearing on suggested revisions to Commission procedures and regulations governing the public financing of Presidential elections.

July

10 - Commission releases final audit report on Arrangements Committee of Republican National Committee for 1976 Republican National Convention and Missouri Republican Host Committee, Inc.

1979

February

16 - Commission submits to Congress proposed revisions to regulations governing the Presidential Primary Matching Payments Account.

March

15 - Commission testifies before the House Administration Committee on H.R. 1, a proposed bill providing public financing for general election campaigns for the House of Representatives.

April

2 - Commission releases final audit report on Committee for Jimmy Carter (Primary).

26 - Commission modifies procedures for reviewing audit reports.

May

3 - Commission approves new data entry procedures for the 1980 Presidential elections.

- Commission prescribes *Guideline for Presentation in Good Order*, a format for submitting matching fund requests.

7 - Commission formally prescribes new regulations governing the administration of the Presidential Primary Matching Payments Account. (44 FR 26733.)

17 - Commission adopts new procedures for the release of the remaining audits of 1976 Presidential candidates in the primary and general elections.

June

4 - Commission releases final audit report on 1976 Democratic Presidential Campaign Committee.

7 - Commission authorizes review of FEC audit procedures and practices by Arthur Andersen and Company in conjunction with Accountants for the Public Interest (API).

14 - Commission engages accounting firm of Ernst & Whinney to refine aggregation sampling techniques for verifying matching fund requests.

18 - Commission releases final audit report on Udall '76 Committee.

21 - Commission releases final audit reports on Harris for President Committee and Shriver for President Committee.

28 - Commission adopts procedures for certification of public funds for national party committee nominating conventions.

- Commission certifies to the U.S. Treasury an initial payment of \$750,000 for the Republican National Committee's 1980 national nominating convention.

July

13 - Commission testifies before the Senate Rules Committee on revisions to the Federal Election Campaign Act of 1971, as amended.

19 - Commission issues AO 1979-34: Public funding payments for new party candidate.

August

16 - Commission certifies to the U.S. Treasury an initial payment of \$300,000 for the Democratic National Committee's 1980 national nominating convention.

23 - U.S. Court of Appeals for the District of Columbia upholds the Commission's action in denying primary matching fund payments to Lyndon LaRouche, a candidate of the U.S. Labor Party, during the 1976 Presidential primary campaign. (613 F.2d 834 (D.C. Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980).)

September

1 - Commission announces availability of the *Financial Control and Compliance Manual for Presidential Candidates Receiving Public Financing*.

4 - Commission releases final audit report on Wallace Campaign, Inc.

6 - Commission approves procedures for public disclosure of information pertaining to contributions submitted by Presidential candidates who seek public matching funds for the 1980 elections.

October

18 - Commission approves PPS (Probability Proportional to Size) statistical sampling technique for processing, verifying and certifying matching fund requests.

23 - Commission begins hearings on the federal funding of candidate debates.

25 - Commission approves new Presidential audit procedures.

26 - Commission submits to Congress proposed revisions to the convention financing regulations.

November

1 - Howard Baker establishes eligibility to receive primary matching funds.

- FEC publishes *Campaign Guide for Presidential Candidates and Their Committees*.

5 - Commission transmits to Congress regulations regarding eligibility of candidates who exceed expenditure limits prior to seeking matching funds. (44 FR 63756.)

20 - Jimmy Carter establishes eligibility to receive primary matching funds.

27 - Commission holds hearings in which the Udall '76 Committee appeals the Commission's determination that the Committee make a partial repayment of public funds to the U.S. Treasury.

December

18 - Lyndon LaRouche establishes eligibility to receive primary matching funds.

20 - Congress adopts amendments to the Federal Election Campaign Act of 1971 (H.R. 5010).

28 - Commission prescribes regulations governing Presidential nominating conventions. (44 FR 77136.)

1980

January

3 - Edward Kennedy and George Bush establish eligibility to receive primary matching funds.

8 - 1979 Amendments to the Federal Election Campaign Act of 1971 (as amended in 1974 and 1976) become law (P. L. No.96-187).

11 - Commission issues AO 1979-73: Allocation of advance staff salary and per diem in Presidential campaign.

15 - Ronald Reagan and Robert Dole establish eligibility to receive primary matching funds.

21 - Philip Crane establishes eligibility to receive primary matching funds.

22 - Edmund G. Brown, Jr. establishes eligibility to receive primary matching funds.

25 - Commission releases *Interim Report Number 1*, the first in the continuing series, *FEC Reports on Financial Activity, Presidential Pre-Nomination Campaigns*.

February

5 - John Anderson establishes eligibility to receive primary matching funds.

13 - Commission certifies remainder of the Democratic National Committee's full entitlement of \$4,416,000 to finance the Democratic National Convention.

19 - U.S. Supreme Court denies a petition for certiorari in three cases brought by Lyndon LaRouche and Leroy Jones against the Commission. (444 U.S. 1074 (1980).)

22 - Commission releases *FEC Reports on Financial Activity, Interim Report Number 2* on Presidential campaigns.

24 - Commission certifies remainder of the Republican National Committee's full entitlement of \$4,416,000 to finance the Republican National Convention.

28 - Commission transmits to Congress proposed regulations to implement the 1979 Amendments to the Federal Election Campaign Act.

March

5 - Commission terminates the primary matching fund eligibility of Howard Baker.

21 - Commission releases *FEC Reports on Financial Activity, Interim Report Number 3* on Presidential campaigns.

27 - Commission terminates the primary matching fund eligibility of Robert Dole.

April

1 - Commission prescribes new regulations implementing the 1979 Amendments to the Federal Election Campaign Act. (45 FR 21211.)

- Commission prescribes new regulations governing the funding and sponsorship of candidate debates. (45 FR 23642.)

3 - Commission terminates the primary matching fund eligibility of Edmund G. Brown, Jr. and Philip Crane (1980).

10 - Commission transmits to Congress revised regulations governing the suspension of primary matching fund payments to Presidential candidates. (45 FR 25378.)

14 - U.S. Supreme Court unanimously affirms two lower court decisions upholding the constitutionality of the Presidential Election Campaign Fund Act challenged by the Republican National Committee in *RNC v. FEC*. (445 U.S. 955 (1980).)

17 - Commission terminates the primary matching fund eligibility of Lyndon LaRouche.

20 - Commission issues AO 1980-21: Donation of baseball tickets to host committee for distribution to convention delegates.

25 - Commission releases *FEC Reports on Financial Activity, Interim Report Number 4* on Presidential campaigns.

May

14 - Commission transmits to Congress proposed regulations governing contributions to and expenditures by delegates to national nominating conventions. (45 FR 34865.)

21 - Commission testifies before the House Administration Committee's Task Force on Audits and Reports Review.

23 - Commission releases *FEC Reports on Financial Activity, Interim Report Number 5* on Presidential campaigns.

28 - Commission denies a request to re-establish matching fund eligibility for Lyndon LaRouche.

June

13 - Commission transmits to Congress proposed revised regulations governing the public financing of Presidential general election campaigns. (45 FR 43371.)

17 - Commission issues AO 1980-56: Eligibility of minor party candidate; and AO 1980-53: Donation of tote bags to convention delegates.

20 - Commission releases *FEC Reports on Financial Activity, Interim Report Number 6* on Presidential campaigns.

July

3 - Commission prescribes revised regulations governing the suspension of primary matching fund payments to Presidential primary candidates. (45 FR 45257.)

22 - U.S. District Court of Appeals for the District of Columbia affirms the Commission's determination that Lyndon LaRouche failed to re-establish matching fund eligibility. (*Gelman v. FEC*, 631 F.2d 939 (D.C. Cir.), *cert. denied*, 449 U.S. 876 (1980).)

24 - Commission certifies \$29.44 million in public funds for the general election campaign of Republican Presidential nominee Ronald Reagan and his running mate, George Bush.

29 - Commission releases *FEC Reports on Financial Activity, Interim Report Number 7* on Presidential campaigns.

August

7 - Commission prescribes new regulations on contributions to and expenditures by delegates to national nominating conventions. (45 FR 52356.)

21 - Commission certifies \$29.44 million in public funds for the general election campaign of the Democratic Presidential nominee Jimmy Carter and his running mate, Walter Mondale.

September

4 - Commission issues AO 1980-96: New party candidate's eligibility for post-election funding.

5 - Commission prescribes revised regulations governing the public funding of Presidential general election campaigns. (45 FR 58820.)

9 - U.S. District Court for the District of Columbia dismisses the suit that John Anderson had filed against the Commission because eligibility question had been resolved in AO 1980-96, see above. (Civil Action No. 80-1911.)

12 - U.S. Court of Appeals for District of Columbia, in *In re Carter-Mondale Reelection Committee, Inc.*, refuses to order injunction against Commission's certification of general election funds to Reagan-Bush. (642 F.2d 538 (D.C. Cir. 1980).)

30 - U.S. District Court for the District of Columbia finds 26 U.S.C. Sec.9012(f)'s limit on independent expenditures unconstitutional. (*Common Cause v. Schmitt*, 512 F. Supp. 489 (D.D.C. 1980). See 1/19/82.)

October

27 - U.S. District Court for the District of Columbia rules that FEC must notify Citizens for LaRouche Committee of investigations involving contributors to 1980 LaRouche campaign. (*Gelman v. FEC*, Civil Action No. 80-2471.)

November

3 - Commission adopts new procedures for certifying public funds to new party Presidential candidates.

6 - Commission issues AO 1980-108: Bank loans made to new party Presidential candidate.

13 - Commission certifies \$4,164,906 in Federal funds to the general election campaign of new party Presidential candidate John Anderson and his running mate, Patrick Lucey.

14 - Commission releases final audit report on Crane for President Committee.

- Commission issues AO 1980-120: Host committee's use of promotion funds to pay convention expenses.

December

16 - Commission releases final audit reports on Brown for President Committee and Dole for President Committee (1980).

18 - Commission releases final audit reports on Anderson for President Committee and the Baker Committee (1980).

1981

January

8 - Commission certifies an additional \$77,398 in federal funds for the general election campaign of new party Presidential nominee John Anderson and his running mate, Patrick Lucey. (See 11/13/80.)

21 - Commission releases final post-primary audit report on Carter-Mondale Presidential Committee (1980).

29 - Commission adopts procedures for certifying final matching fund payments to Presidential primary candidates.

February

1 - Commission announces availability of card index that consolidates information on Commission advisory opinions, completed compliance cases and completed audits.

2 - Commission releases final audit report on Reagan for President (1980).

4 - Commission releases final audit report on George Bush for President (1980).

March

1 - Commission makes available microfilm cartridge containing audit reports issued between 1975 and 1980.

2 - D.C. Court of Appeals dismisses *Committee for Jimmy Carter v. FEC* since the parties reached settlement concerning 1976 primary matching funds. (Civil Action No. 79-2425.)

April

10 - District Court for the District of Maine dismisses *John Anderson v. FEC*, which involved constitutional questions regarding national party committees. (Civil Action No. 80-0272P.)

15 - Commission releases final audit report on Citizens for LaRouche (1980).

May

19 - D.C. Court of Appeals rules, in *FEC v. Machinists* and *FEC v. Citizens for Democratic Alternatives*, that "draft committees" are not subject to the election law's contribution limits but must comply with reporting requirements. (655 F.2d 397 (D.C. Cir.) and 655 F.2d 380 (D.C. Cir. 1981).)

August

28 - Commission recommends legislative amendment that would clarify FEC jurisdiction over "draft committee" activities.

October

2 - Commission issues AO 1981-32: Testing the waters for potential Presidential candidacy.

13 - Supreme Court denies Commission petition for a writ of *certiorari* in two suits brought by the Commission against "draft committees." (454 U.S. 897 (1981).)

November

15 - Commission releases 1979-1980 *FEC Report on Financial Activity for Presidential Pre-Nomination Campaigns*.

23 - Commission testifies before the Senate Committee on Rules and Administration on proposals to amend the Federal Election Campaign Act.

December

10 - D.C. Court of Appeals denies injunction sought by the Reagan-Bush Committee to stop the Commission's release of an audit report. (*Reagan-Bush Committee v. FEC*, 525 F. Supp. 1330 (D.D.C. 1981).)

21 - D.C. District Court resolves Kennedy for President Committee's claims against the FEC regarding audit procedures. (Civil Action No. 81-2552.)

1982

January

19 - Supreme Court, in a 4-4 vote, leaves standing a district court ruling in *Common Cause v. Schmitt*, a case concerning limits on independent expenditures made on behalf of publicly funded Presidential candidates in the general election. (455 U.S. 129 (1982).)

March

11 - District Court for the Southern District of New York grants preliminary injunction to plaintiffs in *Dolbeare v. FEC*, in which plaintiffs challenged FEC investigations of the 1980 Presidential primary campaign of Lyndon LaRouche. (No. 81 Civ. 4468-CLB (S.D.N.Y. Mar. 9, 1982)(unpublished opinion).)

15 - Commission issues AO 1982-3: Testing the waters for potential Presidential candidacy.

May

3 - Commission issues AO 1982-27: Financing convention facilities with private donations.

6 - Court of Appeals for the Second Circuit upholds earlier ruling in *FEC v. Hall-Tyner Campaign Committee* that the law's recordkeeping and reporting requirements, as applied to the Committee, would abridge First Amendment constitutional rights of Committee supporters. (The Committee was the principal campaign committee for the 1976 Presidential nominees of the Communist Party, U.S.A.) (Civil Action No. 81-6229.)

- Commission issues AO 1982-19: Testing the waters for potential Presidential candidacy.

August

2 - Court of Appeals for the Eleventh Circuit overrules district court decision in *FEC v. Florida for Kennedy Committee* and holds that FEC lacks subject matter jurisdiction over "draft committees." (681 F.2d 1281 (11th Cir. 1982).)

December

7 - Commission holds hearings on possible revisions to the Presidential primary matching fund regulations.

1983

January

24 - Commission transmits to Congress revised primary matching fund regulations. (48 FR 5224.)

February

8 - Commission issues AO 1982-62: 1980 new party candidate's eligibility for funding prior to 1984 general election.

10 - Commission decides to postpone official action on contributions submitted for primary matching funds until corresponding revised regulations are prescribed.

16 - Commission makes available revised Presidential reporting form (FEC Form 3P).

March

8 - Commission approves revised edition of *Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Funds*.

April

4 - Commission prescribes revised primary matching fund regulations. (48 FR 14347.)

14 - Walter Mondale and Alan Cranston establish eligibility to receive primary matching funds.

May

3 - Commission issues AO 1983-9: Eligibility of Presidential candidate who loaned more than \$50,000 to exploratory campaign. (Superseded by 1985 revisions to testing the waters regulations.)

19 - Reubin Askew establishes eligibility to receive primary matching funds.

June

23 - Commission certifies \$5,871,000 in public funds to both the Republican and Democratic parties for their 1984 national Presidential nominating conventions.

24 - U.S. Court of Appeals for the District of Columbia, in *Carter/Mondale Presidential Committee v. FEC*, rules it has no jurisdiction over Committee's petition for review of Commission determination concerning repayment of 1980 public funds since petition was filed late. (711 F.2d 279 (D.C. Cir. 1983).)

July

1 - Commission transmits to Congress revised regulations on public funding of Presidential general elections. (48 FR 31822.)

21 - Commission prescribes technical conforming amendments to regulations on public funding of Presidential nominating conventions. (48 FR 33244.)

August

18 - Gary Hart establishes eligibility to receive primary matching funds.

19 - Commission publishes new brochure, *Public Funding of Presidential Elections*.

September

29 - Commission certifies additional \$44,485 in primary matching funds to John Anderson's 1980 Presidential campaign.

October

6 - John Glenn establishes eligibility to receive primary matching funds.

- Commission issues AO 1983-23: Corporate sponsorship of hospitality suite.

13 - Ernest Hollings establishes eligibility to receive primary matching funds.

19 - U.S. District Court for the District of Columbia, in *Fund for a Conservative Majority v. FEC*, dismisses with prejudice plaintiff's petition that court enjoin Commission from filing suits to enforce or construe 26 U.S.C. Sec.9012(f), which limits independent spending by political committees on behalf of publicly funded Presidential nominees. (Civil Action No. 80-1609.)

21 - Commission issues AO 1983-29: Use of private funds to finance party convention.

27 - Commission prescribes revised regulations on public funding of Presidential general elections. (48 FR 49653.)

December

12 - U.S. District Court for the Eastern District of Pennsylvania, in *FEC v. National Conservative Political Action Committee and Fund for a Conservative Majority*, rules that Commission may not enforce 26 U.S.C. Sec.9012(f), which limits independent spending by political committees on behalf of publicly funded Presidential nominees. (Civil Action No. 82-2823.)

1984

January

26 - Commission initially determines Democratic candidate Lyndon LaRouche ineligible for 1984 primary matching funds, based on violations involving his 1980 campaign. (See 4/12 below.)

- Commission issues AO 1983-45: Matchability of cash contributions subsequently converted to partnership checks.

February

2 - Commission issues AO 1983-47: Matching funds for Citizens Party candidate.

8 - Commission publishes *Federal Register* notice denying National Taxpayers Legal Funds' petition to narrow definition of political party in public funding regulations. (49 FR 4846.)

9 - Jesse Jackson establishes eligibility to receive primary matching funds.

23 - George McGovern establishes eligibility to receive primary matching funds.

29 - Commission certifies additional \$189,000 to both Republican and Democratic parties for their Presidential nominating conventions, bringing each party's total federal entitlement to \$6.060 million. (See 7/11 below.) March

1 - Reubin Askew, Alan Cranston and Ernest Hollings become ineligible for primary matching funds.

15 - George McGovern becomes ineligible for primary matching funds.

16 - John Glenn becomes ineligible for primary matching funds.

23 - President Ronald Reagan establishes eligibility to receive primary matching funds.

April

12 - Lyndon LaRouche establishes eligibility to receive primary matching funds.

18 - Commission releases statistics based on *FEC Reports on Financial Activity, 1983-84, Interim Report No. 1: Presidential Pre-Nomination Campaigns*, covering activity through December 1983.

May

3 - Commission releases statistics based on *FEC Reports on Financial Activity, 1983-84, Interim Report No. 2: Presidential Pre-Nomination Campaigns*, covering activity through January 1984.

- Commission issues AO 1984-11: Matching funds for multi-party Presidential candidate.

15 - In *Kennedy for President v. FEC* and *Reagan for President v. FEC*, U.S. Court of Appeals for the District of Columbia Circuit reverses FEC determinations concerning repayment of 1980 primary matching funds and orders FEC to revise repayment formula. (See 7/12 and 8/22 below.) (734 F.2d 1558 (D.C. Cir. 1984); and 734 F.2d 1569 (D.C. Cir. 1984).)

25 - Commission issues AO 1984-25: Matching funds for multi-party Presidential candidate.

June

19 - Commission releases statistics based on *FEC Reports on Financial Activity, 1983-84, Interim Report No. 3: Presidential Pre-Nomination Campaigns*, covering activity through February 1984.

July

7 - Lyndon LaRouche becomes ineligible for matching funds.

11 - President Reagan signs P.L. 98-355, which increases public funding grant for major parties' Presidential nominating conventions from \$3 million to \$4 million, as adjusted by cost-of-living increase. (See 7/12 and 7/31 below.)

12 - Commission certifies additional \$2.020 million in public funds to both the Democratic and Republican parties' nominating conventions, bringing each party's grant to \$8.080 million.

- Commission revises determinations concerning repayments of public funds by 1980 primary campaigns of Edward Kennedy and Ronald Reagan.

18 - Gary Hart, Jesse Jackson and Walter Mondale become ineligible for primary matching funds.

20 - Commission releases statistics based on *FEC Reports on Financial Activity, 1983-84, Interim Report No. 4: Presidential Pre-Nomination Campaigns*, covering activity through March 1984.

26 - Commission certifies \$40.4 million in public funds for the general election campaign of Democratic Presidential nominee Walter Mondale and his running mate Geraldine Ferraro.

- Citizens Party candidate Sonia Johnson becomes first third party candidate eligible for primary matching funds.

31 - Commission prescribes technical amendments to public funding regulations, increasing amount of public funding grant for nominating convention committees of major parties to \$4 million, plus COLA. (49 FR 30461.)

August

22 - Ronald Reagan becomes ineligible for primary matching funds.

- Commission publishes *Federal Register* notice on final proposed rules governing repayment of public funds. (49 FR 33225.)

23 - Sonia Johnson becomes ineligible for primary matching funds.

27 - Commission certifies \$40.4 million in public funds for the general election campaign of Republican Presidential nominee Ronald Reagan and his running mate George Bush.

September

5 - Commission releases statistics based on *FEC Reports on Financial Activity, 1983-84, Interim Report No. 5: Presidential Pre-Nomination Campaigns*, covering activity through April 1984.

November

28 - Supreme Court hears oral argument in *FEC v. NCPAC* and *Democratic Party of U.S. v. NCPAC*, consolidated cases concerning enforcement of 26 U.S.C. Sec.9012(f).

29 - Commission releases statistics based on *FEC Reports on Financial Activity, 1983-84, Interim Report No. 6: Presidential Pre-Nomination Campaigns*, covering activity through June 1984.

1985

January

4 - Commission publishes *Federal Register* notice on Common Cause's rulemaking petition on "soft money." (See 12/18 below.) (50 FR 477.)

February

11 - Commission releases audit report on 1984 Presidential primary campaign of George McGovern.

26 - In *Fund for a Conservative Majority v. FEC*, U.S. District Court upholds FEC's withholding of documents on internal audit procedures. (Civil Action No. 84-1342 (D.D.C. Feb. 26, 1985) (unpublished opinion).)

March

13 - Commission resubmits regulations on repayments by publicly funded candidates to Congress. (50 FR 9421.)

18 - U.S. Supreme Court, in *FEC v. NCPAC*, rules 26 U.S.C. Sec.9012(f) unconstitutional. (470 U.S. 480 (1985).)

April

24 - Commission hears McGovern campaign's oral presentation disputing FEC determination on the repayment of 1984 matching funds. (See 6/13 below.)

June

13 - Commission rejects McGovern campaign's argument (see 4/24) and makes final repayment determination.

20 - Commission releases audit report on Dallas host committee of the 1984 Republican Presidential nominating convention.

25 - Commission releases audit report on 1984 Presidential primary campaign of Sonia Johnson.

26 - Commission prescribes revised rules governing the repayment of public funds. (50 FR 26354.)

July

19 - Commission releases audit report on 1984 Presidential primary campaign of Jesse Jackson.

August

19 - Commission releases audit report on 1984 Presidential primary campaign of John Glenn.

22 - Commission releases audit report on 1984 Presidential primary campaign of Alan Cranston.

September

5 - Commission releases audit reports on convention and host committees for the San Francisco 1984 Democratic Presidential nominating convention.

October

18 - In *Gramm v. FEC*, U.S. District Court of the Northern District of Texas upholds FEC audit and subpoena powers. (Civil Action No. CA3-85-1164-7.)

29 - Commission releases audit report on 1984 Presidential primary campaign of Lyndon LaRouche.

November

1 - In *Carter/Mondale Presidential Committee v. FEC*, U.S. appeals court upholds FEC decision not to reconsider repayment decision. (Nos. 84-1391 and 8-1499.)

December

18 - Commission publishes *Federal Register* notice of inquiry on "soft money" and announces hearing date for January 29-30, 1986. (50 FR 51535.)

1986

January

24 - Commission issues AO 1985-40: Testing the waters for potential Presidential candidacy.

29 - Commission begins public hearing on Common Cause's rulemaking petition concerning "soft money."

March

14 - Commission issues AO 1986-6: Leadership PAC formed by potential Presidential candidate.

April

17 - Commission votes to deny Common Cause's petition for rulemaking on "soft money" and, on April 29, publishes reasons for decision in *Federal Register* notice. (51 FR 15915.)

28 - Commission releases audit report on 1984 Republican Presidential nominating convention committee.

June

4 - Commission releases statistics on 1984 Presidential primary campaigns based on final *Report on Financial Activity*.

25 - In *Common Cause v. FEC*, district court orders agency to provide statement of reasons explaining decision to dismiss complaint. (See 10/23 below.) (Civil Action No. 85-0968.)

26 - Commission releases audit report on 1984 Presidential primary campaign of Gary Hart.

July

10 - Commission releases audit report on 1984 Presidential primary campaign of President Ronald Reagan.

August

5 - Commission publishes *Federal Register* notice of proposed rulemaking on regulations governing bank loans and Presidential public funding. (See 12/3 below.) (51 FR 28154.)

October

23 - Commission decides to issue statement of reasons whenever a majority of Commissioners vote against the General Counsel's recommendation in a complaint.

28 - Commission releases final audit report on 1984 Presidential primary campaign of Walter Mondale.

December

3 - Commission hold public hearing on proposed public funding regulations.

16 - Commission approves revisions to *Guideline for Presentation in Good Order*, a publication for Presidential primary campaigns receiving matching funds.

1987

March

3 - Commission issues AO 19873: Refund for terminated Presidential campaign remitted by media firm to U.S. Treasury.

4 - Commission seeks comments on proposed revisions to regulations on contributions and expenditures made in connection with Presidential delegate selection process. (52 FR 6580.)

April

22 - Commission holds hearings on regulations on contributions and expenditures made in connection with Presidential delegate selection process.

23 - Commission approves revised edition of its *Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing*.

24 - Representative Richard Gephardt becomes first Presidential candidate to establish eligibility for 1988 matching funds.

May

4 - Commission issues AO 19878: Distribution of book containing information about Presidential candidates to convention delegates.

6 - Bruce Babbitt establishes eligibility to receive primary matching funds.

21 - Jack Kemp establishes eligibility to receive primary matching funds.

26 - Commission sends revised public financing regulations to Congress.

June

4 - Commission makes initial determination that Gary Hart is not eligible for matching funds.

6 - George Bush establishes eligibility to receive primary matching funds.

15 - Robert Dole establishes eligibility to receive primary matching funds.

23 - U.S. Court of Appeals affirms final repayment determination for John Glenn's 1984 Presidential campaign. (*John Glenn Presidential Committee, Inc. v. FEC*, 822 F.2d 1097 (D.C. Cir. 1987).)

July

6 - Commission asks Secretary of Treasury to pay \$8,892,000 to each major party to finance 1988 Presidential nominating conventions.

14 - Commission urges elimination of state spending limits for Presidential campaigns in testimony before the Subcommittee on Elections of the Committee on House Administration.

- Albert Gore, Jr. establishes eligibility to receive primary matching funds.

August

3 - In *Common Cause v. FEC*, U.S. district court rules on need for Commission regulations on allocation of expenditures between the federal and nonfederal accounts of state party committees ("soft money"). (692 F. Supp. 1391 (D.D.C. 1987).)

18 - Commission promulgates revised public financing regulations. (52 FR 30904.)

24 - Pete du Pont establishes eligibility to receive primary matching funds.

September

9 - Michael Dukakis establishes eligibility to receive primary matching funds.

17 - Commission sends Congress revised regulations on contributions and expenditures made in connection with the Presidential delegate selection process.

22 - Joseph Biden establishes eligibility to receive primary matching funds.

24 - Commission makes final determination that Gary Hart failed to establish eligibility for matching funds.

October

23 - Commission releases report on contributions and expenditures of 1988 Presidential candidates.

28 - Paul Simon establishes eligibility to receive primary matching funds.

29 - M.G. "Pat" Robertson establishes eligibility to receive primary matching funds.

November

20 - Revised regulations promulgated on contributions and expenditures made in connection with Presidential delegate selection process. (52 FR 44594.)

December

16 - Alexander Haig establishes eligibility to receive primary matching funds.

28 - Gary Hart establishes eligibility to receive primary matching funds.

1988

January

5 - Jesse Jackson establishes eligibility to receive primary matching funds.

28 - Lenora B. Fulani establishes eligibility to receive primary matching funds.

February

11 - FEC determines that checks to "The Kemp Forum" are not matchable.

- Commission releases financial figures on eighteen Presidential primary candidates.

23 - Commission publishes notice of inquiry on allocation of spending between federal and nonfederal accounts ("soft money"). (53 FR 5277.)

March

1 - Commission releases figures on 1988 Presidential spending limits.

- Commission issues AO 19886: Fundraising expenses for Presidential campaign.

2 - Commission certifies an additional \$328,000 to each major party for their Presidential nominating conventions.

- Commission offers first warning on potential shortfall in Presidential Election Campaign Fund.

10 - In *Xerox v. Americans with Hart* and *Kroll v. Americans with Hart*, U.S. district court vacates creditor's claims against 1984 Hart campaign. (Civil Action Nos. 880086 and 880211, respectively.)

24 - Lyndon H. LaRouche establishes eligibility to receive primary matching funds.

28 - Commission issues AO 19885: Use of matching funds to retire debt from previous Presidential campaign.

May

12 - Commission adopts new procedures to speed up enforcement.

June

29 - Commission issues AO 198825: Loaning free cars for party conventions.

July

26 - FEC certifies \$46.1 million in public funds for the general election campaign of Democratic Presidential nominee Michael Dukakis and his running mate Lloyd Bentsen.

- FEC dismisses petition to deny public funds for the general election to the Democratic Presidential ticket.

August

3 - In *Boulter and National Senatorial Committee v. FEC*, U.S. Court of Appeals affirms FEC's decision to certify general election public funds to the Democratic Presidential ticket. (No.881541 (D.C. Cir. Aug. 3, 1988)(unpublished order).)

22 - FEC certifies \$46.1 million in public funds for the general election campaign of Republican Presidential nominee Vice President George Bush and his running mate Dan Quayle.

25 - In *Common Cause v. FEC*, U.S. district court rejects imposition of time table on Commission's revision of allocation ("soft money") regulations but asks the FEC to submit progress reports periodically. (692 F. Supp. 1397 (D.D.C. 1988).)

September

22 - FEC approves notice of proposed rulemaking on allocation of spending between federal and nonfederal accounts ("soft money"). (53 FR 38012.)

December

16 - FEC holds hearing on allocation ("soft money") regulations.

1989

February

10 - FEC sends questionnaires on allocation methods to state party chairmen.

March

9 - FEC releases final audit report on Pete du Pont's 1988 Presidential primary campaign. (See 6/28 and 12/14 below.)

April

3 - Commission alerts Members of Congress to projected 1996 shortfall in Presidential Election Campaign Fund and consequences to public funding system.

May

25 - FEC releases final audit report on Bruce Babbitt's 1988 Presidential primary campaign.

June

22 - FEC releases final audit report on Alexander Haig's 1988 Presidential primary campaign.

28 - FEC hears presentation by Pete du Pont for President Committee contesting agency's initial repayment determination. (See 12/14 below.)

July

13 - FEC releases final audit report on Albert Gore, Jr.'s 1988 Presidential primary campaign.

August

25 - FEC releases final report on financial activity of 1988 Presidential primary campaigns.

October

5 - FEC rejects objections to matching fund procedures by M.G. "Pat" Robertson's 1988 Presidential primary campaign.

25 - FEC releases final audit report on 1988 Republican national convention committee.

November

1 - Commission again notifies Congress of projected deficit in Presidential Election Campaign Fund.

2 - FEC releases final audit report on Lenora Fulani's 1988 Presidential primary campaign.

21 - FEC releases final audit report on 1988 Democratic convention committee.

December

14 - FEC makes final determination that Pete du Pont for President committee repay \$25,775 in matching funds.

31 - Commission's A-123 letter (vulnerability self-assessment) to President cites projected 1996 shortfall as major weakness.

1990

January

25 - FEC releases final audit report on 1988 Hart campaign.

26 - Commission projects 1996 funding shortfall of \$120-140 million.

February

12 - FEC notifies Congress, the President and the Secretary of the Treasury that the Presidential Election Campaign Fund will likely be insufficient to finance the 1992 campaigns.

20 - FEC releases final audit report on Quayle for Vice President - 1988.

March

1 - FEC releases final audit report on Bentsen for Vice President'88.

29 - Commission approves legislative recommendations, including some regarding projected shortfall.

April

4 - FEC publishes notice of proposed rulemaking on computerized magnetic media for Presidential audits. (55 FR 12499.)

May

23 - FEC releases final audit report on LaRouche Democratic Campaign.

June

18 - FEC sends revised allocation regulations to Congress. (55 FR 26058.)

22 - FEC sends revised rules on computer formats for Presidential audits to Congress. (55 FR 26392.)

29 - Commission issues AO 199011: Presidential campaign's donation of assets to charity.

July

11 - FEC asks Treasury to write rules to address shortfall in Presidential Election Campaign Fund.

August

1 - Senate Report 101-411 on FY '91 appropriation recommends that FEC conduct survey to determine if public does not understand purposes of Presidential Election Campaign Fund before commencing public awareness campaign.

22 - FEC publishes notice of proposed rulemaking on Presidential conventions. (55 FR 34267.)

September

4 - FEC releases final audit report on Republicans' Louisiana Host Committee 1988, Inc.

28 - FEC releases final audit report on Democrats' Atlanta '88 Committee, Inc.

October

3 - Effective date for magnetic media rules. (55 FR 40377.)

- FEC announces allocation ("soft money") rules effective January 1, 1991. (55 FR 40377.)

- LaRouche committee makes oral presentation contesting FEC audit report.

November

1 - FEC publishes *Record* supplement on allocation.

29 - Commission projects '92 shortfall of \$4-34 million. Management Plan for '91 authorizes \$92,000 for checkoff education program.

December

13 - Treasury publishes notice of proposed rulemaking on rules to address shortfall in Presidential Election Campaign Fund.

1991

January

1 - Effective date: allocation ("soft money") rules.

4 - FEC receives focus group report on public awareness of dollar tax checkoff.

22 - Commission submits written comments on proposed Treasury rules on payments to Presidential campaigns.

February

11 - Commission testifies at IRS hearing on proposed Treasury rules on Presidential public funding.

March

1 - FEC publishes *The \$1 Tax Checkoff* brochure.

5 - FEC holds press conference to launch public education program on dollar tax checkoff.

6 - Commission testifies before Senate Committee on Rules and Administration on shortfall in Presidential Election Campaign Fund.

28 - Commission suspends rulemaking on Presidential nominating conventions. (56 FR 14319.)

April

30 - FEC releases final audit report on Dole for President Committee (1988).

May

1 - Commission testifies on shortfall in Presidential Election Campaign Fund before House Subcommittee on Elections.

10 - Treasury adopts final rules on public funding payments.

June

18 - FEC releases final audit report on Gephardt for President Committee (1988).

28 - Commission certifies 1992 Democratic National Convention Committee eligible to receive \$10.6 million for its Presidential nominating convention.

July

3 - Commission certifies Committee on Arrangements for the 1992 Republican National Convention eligible to receive \$10.6 million for its Presidential nominating convention.

18 - FEC approves final rule on matching fund submissions and certifications. (56 FR 34130.)

- FEC approves final rules on public funding of Presidential candidates. (56 FR 35898.)

31 - FEC releases final audit report on Jack Kemp for President; Kemp/Dannemeyer Committee and Victory '88.

August

6 - FEC releases first report on national party committees' nonfederal and building fund account activity.

15 - Commission approves 1992 *Guideline for Presentation in Good Order*.

September

9 - FEC releases final audit report on the Gephardt Committee (1988).

October

30 - FEC releases final audit report on Paul Simon for President (1988).

- FEC releases statistics on 1992 Presidential campaigns.

31 - Lenora B. Fulani establishes eligibility to receive primary matching funds.

November

6 - FEC releases final audit report on Bush-Quayle '88; George Bush for President, Inc./Compliance Committee.

- Gephardt Committee (1988) responds to audit report.

-

- Effective date: rules on matching fund submission and certification procedures; public financing of Presidential primary and general election candidates. (56 FR 56570.)

13 - FEC announces submission and certification dates for 1992 Presidential candidates. (56 FR 57644.)

20 - Paul E. Tsongas establishes eligibility to receive primary matching funds.

27 - George Bush, Bill Clinton, Tom Harkin, Bob Kerrey and Douglas Wilder establish eligibility to receive primary matching funds.

December

2 - Edmund G. Brown, Jr. establishes eligibility to receive primary matching funds.

3 - FEC releases final audit report on Dukakis/Bentsen for President Committee, Inc.; Dukakis/Bentsen General Election Legal and Compliance Fund (1988).

17 - FEC releases final audit report on Dukakis for President Committee, Inc. (1988).

19 - Commission denies Lyndon LaRouche's eligibility to receive primary matching funds.

1992

January

3 - In a press conference, Commission makes announcement about shortfall in Presidential Election Campaign Fund.

- FEC introduces checkoff education ads and special checkoff 800-number.

27 - Patrick J. Buchanan establishes eligibility to receive matching funds.

- FEC publishes *Legal History of the Presidential Election Campaign Fund Act*.

31 - FEC approves 1992 edition of the *Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing*.

February

5 - FEC announces changes to "Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding."

6 - FEC makes final repayment determination on Dole for President Committee, Inc. (1988 primary committee).

12 - FEC announces 1992 Presidential spending limits.

24 - FEC releases final audit report on George Bush for President, Inc. (1988 primary committee).

26 - Commission testifies on FEC's FY 1993 budget request before the House Subcommittee on Elections of the Committee on House Administration.

27 - FEC makes final determination denying matching funds to Lyndon LaRouche, for his 1992 Presidential campaign.

March

1 - FEC publishes 1992 coordinated party expenditure limits.

3 - Lyndon LaRouche and his campaign committee ask the U.S. Court of Appeals for the D.C. Circuit to review the Commission's decision to deny the campaign matching funds. (*LaRouche v. FEC* (No. 921100).)

26 - FEC approves final audit report on Americans for Robertson, Inc. (1988 primary committee).

April

1 - FEC announces new procedures for expediting audits of 1992 Presidential elections.

2 - FEC's new regulations on bank loans and lines of credit become effective.

3 - In a press conference, Commission predicts 1996 shortfall in Presidential Election Campaign Fund unless Congress amends law.

- Chairman Aikens discusses tax checkoff on Larry King's radio program.

9 - FEC approves final audit report on Jesse Jackson for President '88 Committee.

May

14 - Larry Agran establishes eligibility to receive primary matching funds.

21 - FEC approves final repayment determination for Gephardt for President Committee, Inc. (1988 primary committee).

June

11 - FEC issues final repayment determination for Bush-Quayle '88 Committee.

18 - Revised allocation regulations become effective.

25 - FEC denies petition to withhold public funding from Clinton campaign.

July

17 - Commission certifies \$55.24 million in public funds for the general election campaign of Democratic Presidential nominee Bill Clinton and his running mate Albert Gore, Jr.

29 - FEC publishes notice of proposed rulemaking on draft regulations governing communications by corporations and labor organizations (*MCFL* rulemaking).

31 - FEC issues final repayment determination for Jack Kemp for President Committee, Inc. (1988 primary committee).

August

1 - Commission sends two letters to Presidential campaigns concerning (1) the need to obtain contributor information, (2) payment of excessive and prohibited contributions to the U.S. Treasury and (3) the use of statistical sampling in FEC audits.

5 - FEC releases summaries of political party activity, including disclosure of nonfederal accounts of national party committees.

21 - Commission certifies \$55.24 million in public funds for the general election campaign of Republican Presidential nominee George Bush and his running mate Dan Quayle.

September

17 - FEC makes final determination that the LaRouche Democratic Campaign repay \$151,260 in federal funds for 1988 campaign.

21 - FEC finds that the Natural Law Party of the U.S. qualifies as a national party committee.

October

1 - FEC publishes 1992 *Presidential Primary Results*.

14 - FEC begins public hearing on *MCFL* rulemaking.

15 - John Hagelin of the Natural Law Party establishes eligibility to receive primary matching funds.

22 - FEC denies extension of time for repayment by Gephardt 1988 Committee.

- Lyndon LaRouche and LaRouche Democratic Campaign '88 petition U.S. Court of Appeals for the D.C. Circuit to review the Commission's final repayment determination.

28 - In open hearing, Jesse Jackson's 1988 Presidential campaign urges FEC to reduce repayment due U.S. Treasury.

November

17 - Commission issues AO 1992-38: Clinton/Gore Campaign Committee may accept temporary \$1 million loan from its compliance fund, subject to certain conditions.

December

1 - FEC publishes revised *Record* supplement on allocation rules.

2 - In open hearing, M.G. "Pat" Robertson's 1988 Presidential campaign urged the FEC to reduce its repayments to the U.S. Treasury.

14 - At press briefing, Chairman Joan D. Aikens and FEC staff present statistics on 1992 Presidential race.

Appendix 2

1993 Legislative Recommendations Related to Public Funding

Title 26 Recommendations

Presidential Election Campaign Fund (revised 1993)

26 U.S.C. Sec.6096

Recommendation. Without Congressional action, there will be a shortfall in the Presidential Election Campaign Fund in 1996. There will be no money available for primary candidates and less than a full entitlement for the general election candidates. If Congress wishes to preserve the Presidential public funding system, a legislative remedy is essential.

In addition, Congress may want to examine the priorities for distributing public funds among the party nominating conventions, the general election nominees and the primary election candidates.

Explanation. Although the Fund did not experience a shortfall during the 1992 Presidential year,¹ the Commission has informed Congress that a serious public funding shortage is assured in 1996. One of the reasons for this is a structural flaw in the checkoff program. The payout to candidates and parties (for their conventions) is indexed to inflation, but the dollar checkoff is not. Spending limits are increased each election cycle to reflect the change in the cost-of-living index. In 1974, the statutory spending limit for the general election was established at \$20 million. In 1992, each major party nominee received \$55.2 million, representing over two and one half times the amount received by the nominees in 1976 (\$21.8 million). Thus, as the consumer price index increases, the Fund needs more and more checkoff dollars to make the appropriate payments to qualified candidates and parties. If the checkoff amount had been increased at the same rate as the payments, there would be no shortfall in 1996.

Another reason for the shortfall is the shrinking participation of taxpayers in the checkoff program. After peaking at 28 percent in 1980, the percentage of tax forms on which the taxpayer checked yes has fallen to approximately 18 percent.

Without a legislative remedy, the FEC predicts that the shortfall in 1996 will be a serious problem. The law requires that priority be given first to party nominating conventions, then to general election nominees and last to primary election candidates. There will not be enough money in the Fund to cover all phases. We estimate that \$124 million will have accumulated in the fund through 1996. This amount will only fully fund the two major party conventions, at about \$12 million each. The two general election nominees, who will be entitled to more than \$60 million each, will not be fully funded. There will be no money for the primary candidates. Consequently, the shortfall will force candidates to become more dependent on large contributions from individuals and groups and, ultimately, defeat the purpose of the public funding process.

Primary Election Audits (1993)

26 U.S.C. Sec.9032, 9033, 9035, 9038, 9039(a)(1)

Recommendation. Congress may want to eliminate the requirement under the Presidential Primary Matching Payment Account Act that matching funds be used only for "qualified campaign expenses" and substitute instead specific criteria to be used in Commission audits of publicly funded primary candidates.

Explanation. To carry out the current requirement contained in 26 U.S.C. Sec.9038(a), the Commission has had to determine, through audits, whether campaigns were using public funds to make qualified campaign

expenses or unqualified campaign expenses. That determination has required considerable government resources. Additionally, the effort has resulted in prolonged audits, whose results have often not been published until four years after the election was over. One way of reducing the time and expense of these complex audits would be to eliminate the requirement that the Commission determine which disbursements were "qualified campaign expenses" and which were not. The test for whether or not a candidate used his or her public funds for legitimate campaign purposes would be based, instead, on the public's judgment. In order to make that judgment, full disclosure of campaign finance operations would be required. All disbursements, including their purpose, would be disclosed in full. With that information, the public would express its judgment, through the ballot box, on whether the candidate had spent the funds wisely and fairly.

The Commission would continue, however, to audit campaigns to ensure that they complied with the Federal Election Campaign Act and the Presidential Primary Matching Payment Account Act, including provisions on expenditure limits² and the limits and prohibitions on contributions. Additionally, the audits would be conducted to ensure that campaigns did not use funds for any illegal purpose, that campaigns did not convert excess campaign funds to personal use, that matching funds were used only for expenses incurred during the candidate's period of eligibility, and that all contributions were properly matched. Any surplus funds would have to be repaid to the U.S. Treasury, as now required under the law. Similarly, campaigns would be required to make repayments if the Commission determined that they had not complied with the campaign laws or had used funds for illegal purposes.

Supplemental Funding for Publicly Funded Candidates (1993)

26 U.S.C. Sec.9003 and 9004

Recommendation. Congress may wish to consider whether publicly funded candidates should receive additional public funds when a nonpublicly funded candidate exceeds the spending limit.

Explanation. Major party Presidential candidates who participate in the general election public funding process receive a grant for campaigning. In order to receive the grant, the candidate must agree to limit expenditures to that amount. Candidates who do not request public funds may spend an unlimited amount on their campaign. Congress may want to consider whether the statute should ensure that those candidates who are bound by limits are not disadvantaged.

Compliance Fund (1993)

2 U.S.C. Sec.441a(b)(1)(B); 26 U.S.C. Sec.9002(11), 9003(b) and (c), 9004(c)

Recommendation. Congress may wish to clarify what funds Presidential Election Campaign Fund recipients may utilize to meet the accounting and compliance requirements imposed upon them by the Federal Election Campaign Act. If private funds are not to be used, Congress may wish to either raise the spending limits to accommodate such costs or establish a separate fund of the Treasury to be used for this purpose.

Explanation. Through regulation, the Commission has provided for the establishment by Presidential committees of a General Election Legal and Accounting Compliance Fund (GELAC fund) consisting of private contributions otherwise within the limits acceptable for any other federal election. The GELAC funds, which supplement funds provided out of the U.S. Treasury, may be used to pay for costs related to compliance with the campaign laws. Determining which costs may be paid is sometimes difficult and complex. Contributions to the GELAC fund are an exception to the general rule that publicly funded Presidential general election campaigns may not solicit or accept private contributions. Congress should clarify whether GELAC funds are appropriate and, if not, specify whether additional federal grants are to be used. If GELAC funds are appropriate, Congress should provide guidelines indicating which compliance costs are payable from such funds.

Applicability of Title VI to Recipients of Payments from the Presidential Election Campaign Fund (1993)
26 U.S.C. Sec.9006(b), 9008(b)(3) and 9037

Recommendation. Congress should clarify that committees receiving public financing payments from the Presidential Election Campaign Fund are exempt from the requirements of Title VI of the Civil Rights Act of 1964, as amended.

Explanation. This proposed amendment was prompted by the decision of the U.S. District Court for the District of Columbia in *Freedom Republicans, Inc., and Lugenia Gordon v. Federal Election Commission*, No. 92-153 (CRR) (D.D.C. April 7, 1992), appeal pending, No. 92-5214 (D.C. Cir.). The Freedom Republicans' complaint asked the district court to declare that the Commission has jurisdiction to regulate the national parties' delegate selection process under Title VI. It also requested the court to order the Commission to adopt such regulations, direct the Republican Party to spend no more of the funds already received for its 1992 national nominating convention, and seek refunds of moneys already disbursed if the Republican Party did not amend its delegate selection and apportionment process to comply with Title VI. The court found that the Commission "does have an obligation to promulgate rules and regulations to insure the enforcement of Title VI. The language of Title VI is necessarily broad, and applies on its face to the FEC as well as to both major political parties and other recipients of federal funds." Slip op. at 6. The court gave the Freedom Republicans the opportunity to reassert their other claims after the Commission promulgates rules. Slip op. at 10.

The Commission appealed this ruling on a number of procedural and substantive grounds, including that Title VI does not apply to the political parties' apportionment and selection of delegates to their conventions. However, the court of appeals might overrule the district court decision on one of the non-substantive grounds leaving the door open for other lawsuits involving the national nominating conventions or other recipients of federal funds certified by the Commission.

In the Commission's opinion, First Amendment concerns and the legislative history of the public funding campaign statutes strongly indicate that Congress did not intend Title VI to permit the Commission to dictate to the political parties how to select candidates or to regulate the campaigns of candidates for federal office. Nevertheless, the potential exists for persons immediately prior to an election to invoke Title VI in the federal courts in a manner that might interfere with the parties' nominating process and the candidates' campaigns. The recommended clarification would help forestall such a possibility.

For these reasons, Congress should consider adding the following language to the end of each public financing provision cited above: "The acceptance of such payments will not cause the recipient to be conducting a 'program or activity receiving federal financial assistance' as that term is used in Title VI of the Civil Rights Act of 1964, as amended."

Deposit of Repayments

26 U.S.C. Sec.9007(d)

Recommendation. Congress should revise the law to state that: All payments received by the Secretary of the Treasury under subsection (b) shall be deposited by him or her in the Presidential Election Campaign Fund established by section 9006(a).

Explanation. This change would allow the Fund to recapture moneys repaid by convention-related committees of national major and minor parties, as well as by general election grant recipients. Currently the Fund recaptures only repayments made by primary matching fund recipients.

Enforcement of Nonwillful Violations

26 U.S.C. Sec.9012 and 9042

Recommendation. Congress should consider amending the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act to clarify that the Commission has authority for civil enforcement of nonwillful violations (as well as willful violations) of the public funding provisions.

Explanation. Section 9012 of the Presidential Election Campaign Fund Act and section 9042 of the Presidential Primary Matching Payment Account Act provide only for "criminal penalties" for knowing and willful violations of the spending and contribution provisions and the failure of publicly funded candidates to furnish all records requested by the Commission. The lack of a specific reference to nonwillful violations of these provisions has raised questions regarding the Commission's ability to enforce these provisions through the civil enforcement process.

In some limited areas, the Commission has invoked other statutes and other provisions in Title 26 to carry out its civil enforcement of the public funding provisions. It has relied, for example, on 2 U.S.C. Sec.441a(b) to enforce the Presidential spending limits. Similarly, the Commission has used the candidate agreement and certification processes provided in 26 U.S.C. Sec.9003 and 9033 to enforce the spending limits, the ban on private contributions, and the requirement to furnish records. Congress may wish to consider revising the public financing statutes to provide explicit authority for civil enforcement of these provisions.

Eligibility Requirements for Public Financing (revised 1993)

26 U.S.C. Sec.9002, 9003, 9032 and 9033

Recommendation. Congress should amend the eligibility requirements for publicly funded Presidential candidates to make clear that candidates who have been convicted of a willful violation of the laws related to the public funding process or who are not eligible to serve as President will not be eligible for public funding.

Explanation. Neither of the Presidential public financing statutes expressly restricts eligibility for funding because of a candidate's prior violations of law, no matter how severe. And yet public confidence in the integrity of the public financing system would risk serious erosion if the U.S. Government were to provide public funds to candidates who had been convicted of felonies related to the public funding process. Congress should therefore amend the eligibility requirements to ensure that such candidates do not receive public financing for their Presidential campaigns. The amendments should make clear that a candidate would be ineligible for public funds if he or she had been convicted of fraud with respect to raising funds for a campaign that was publicly financed, or if he or she had failed to make repayments in connection with a past publicly funded campaign or had willfully disregarded the statute or regulations. In addition, Congress should make it clear that eligibility to serve in the office sought is a prerequisite for eligibility for public funding.

Eligibility Threshold for Public Financing

26 U.S.C. Sec.9003 and 9033

Recommendation. Congress should raise the eligibility threshold for publicly funded Presidential candidates.

Explanation. The Federal Election Commission has administered the public funding provisions in four Presidential elections, and is in the midst of doing so for the fifth time. The statute provides for a cost-of-living adjustment (COLA) of the overall primary spending limitation. There is, however, no corresponding adjustment to the threshold requirement. It remains exactly the same as it was in 1974. An adjustment to the threshold requirement would ensure that funds continue to be given only to candidates who demonstrate broad national support. To reach this higher threshold, Congress could increase the number of states in which the candidate had to raise the qualifying amount of matchable contributions; and/or increase the total amount of qualifying matchable contributions that had to be raised in each of the states.

Contributions to Presidential Nominees Who Receive Public Funds in the General Election (revised 1993)

26 U.S.C. Sec.9003

Recommendation. Congress may wish to clarify that the public financing statutes prohibit the making and acceptance of contributions (either direct or in-kind) to Presidential candidates who receive full public funding in the general election.

Explanation. The Presidential Election Campaign Fund Act prohibits a publicly financed general election candidate from accepting private contributions to defray qualified campaign expenses. 26 U.S.C. Sec.9003(b)(2). The Act does not, however, contain a parallel prohibition against the *making* of these contributions. Congress should consider adding a section to 2 U.S.C. Sec.441a to clarify that individuals and committees are prohibited from making these contributions.

Relevant Title 2 Recommendations

Candidate Leadership PACs (1993)

2 U.S.C. Sec.441a(a)

Recommendation. Congress should consider whether leadership PACs should be deemed affiliated with the candidate's principal campaign committee.

Explanation. A number of candidates for federal office and incumbent federal officeholders have established leadership PACs in addition to their principal campaign committees. Under current law, the leadership PACs generally are not considered authorized committees. Therefore, they may accept funds from individuals of up to the \$5,000 limit permitted for unauthorized committees in a calendar year and may make contributions of up to \$5,000 per election to other federal candidates once they achieve multicandidate status. In contrast, authorized committees may not accept more than \$1,000 per election from individuals and may not make contributions in excess of \$1,000 to other candidates.

The existence of leadership PACs can present difficult issues for the Commission, such as when contributions are jointly solicited with the candidate's principal campaign committee or when the resources of the leadership PAC are used to permit the candidate to gain exposure by traveling to appearances on behalf of other candidates. At times the operations of the two committees can be difficult to distinguish.

If Congress concludes that there is an appearance that the limits of the Act are being evaded through the use of leadership PACs, it may wish to consider whether such committees are affiliated with the candidate's principal campaign committee. As such, contributions received by the committees would be aggregated under a single contribution limit and would be subject to the limitations on contributions to authorized committees. The same treatment would be accorded to contributions made by them to other candidates.

Fundraising Limitation for Publicly Financed Presidential Primary Campaigns

2 U.S.C. Sec.431(9)(B)(vi) and 441a

Recommendation. The Commission recommends that the separate fundraising limitation provided to publicly financed Presidential primary campaigns be combined with the overall limit. Thus, instead of a candidate's having a \$10 million (plus COLA³) limit for campaign expenditures and a \$2 million (plus COLA) limit for fundraising (20 percent of overall limit), each candidate would have one \$12 million (plus COLA) limit for all campaign expenditures.

Explanation. Campaigns that have sufficient funds to spend up to the overall limit usually allocate some of their expenditures to the fundraising category. These campaigns come close to spending the maximum permitted under both their overall limit and their special fundraising limit. Hence, by combining the two limits, Congress would not substantially alter spending amounts or patterns. For those campaigns which do

not spend up to the overall expenditure limit, the separate fundraising limit is meaningless. Many smaller campaigns do not even bother to use it, except in one or two states where the expenditure limit is low, e.g., Iowa and New Hampshire. Assuming that the state limitations were eliminated or appropriately adjusted, this recommendation would have little impact on the election process.

The advantages of the recommendation, however, are substantial. They include a reduction in accounting burdens and a simplification in reporting requirements for campaigns, and a reduction in the Commission's auditing task. For example, the Commission would no longer have to ensure compliance with the 28-day rule, i.e., the rule prohibiting committees from allocating expenditures as exempt fundraising expenditures within 28 days of the primary held within the state where the expenditure was made.

Contributions and Expenditures to Influence Federal and Nonfederal Elections (revised 1993)

2 U.S.C. Sec.441 and 434

Recommendation. Congress may wish to consider whether new legislation is needed to regulate the use of "soft money" in federal elections.

Explanation. The law requires that all funds spent to influence federal elections come from sources that are permissible under the limitations and prohibitions of the Act. Problems arise with the application of this provision to committees that engage in activities that support both federal and nonfederal candidates. The Commission attempted to deal with this problem by promulgating regulations that required such committees to allocate disbursements between federal and nonfederal election activity. The focus of these regulations was on how the funds were spent. The public, however, has been equally concerned about the source of money that directly or indirectly influences federal politics. Much discussion has centered on the perception that soft money is being used to gain access to federal candidates. ("Soft money" is generally understood to mean funds that do not comply with the federal prohibitions and limits on contributions.) Even if soft money is technically used to pay for the nonfederal portion of shared activities (federal and nonfederal), the public may perceive that the contributors of soft money have undue influence on federal candidates and federally elected officials. In light of this public concern, Congress should consider amending the law in this area as it affects the raising of soft money. Such changes could include any or all of the following: (1) more disclosure of nonfederal account receipts (as well as "building fund" proceeds exempted under 2 U.S.C. Sec.431(8)(B)(viii)); (2) limits on nonfederal account donations coupled with tighter affiliation rules regarding party committees; (3) prohibiting nonfederal accounts for certain types of committees; (4) prohibiting the use of a federal candidate's name or appearance to raise soft money; and (5) confining soft money fundraising to nonfederal election years.

In addition, further restrictions on the spending of soft money should be considered such as: (1) requiring all party committees to disclose all nonfederal activity that is not exclusively related to nonfederal candidate support and expressly preempting duplicative state reporting requirements; (2) requiring that all party activity which is not exclusively on behalf of nonfederal candidates be paid for with federally permissible funds; and (3) limiting the use of soft money to nonfederal election year activity.

State Filing for Presidential Candidate Committees

2 U.S.C. Sec.439

Recommendation. Congress should consider clarifying the state filing provisions for Presidential candidate committees to specify which particular parts of the reports filed by such committees with the FEC should also be filed with states in which the committees make expenditures. Consideration should be given to both the benefits and the costs of state disclosure.

Explanation. Both states and committees have inquired about the specific requirements for Presidential candidate committees when filing reports with the states. The statute requires that a copy of the FEC reports

shall be filed with all states in which a Presidential candidate committee makes expenditures. The question has arisen as to whether the full report should be filed with the state, or only those portions that disclose financial transactions in the state where the report is filed.

The Commission has considered two alternative solutions. The first alternative is to have Presidential candidate committees file, with each state in which they have made expenditures, a copy of the entire report filed with the FEC. This alternative enables local citizens to examine complete reports filed by candidates campaigning in a state. It also avoids reporting dilemmas for candidates whose expenditures in one state might influence a primary election in another.

The second alternative is to require that reports filed with the states contain all summary pages and only those receipts and disbursements schedules that show transactions pertaining to the state in which a report is filed. This alternative would reduce filing and storage burdens on Presidential candidate committees and states. It would also make state filing requirements for Presidential candidate committees similar to those for unauthorized political committees. Under this approach, any person still interested in obtaining copies of a full report could do so by contacting the Public Disclosure Division of the FEC.

State Expenditure Limits for Publicly Financed Presidential Primary Campaigns (revised 1993)

2 U.S.C. Sec.441a

Recommendation. The Commission recommends that the state-by-state limitations on expenditures for publicly financed Presidential primary candidates be eliminated.

Explanation. The Commission has now administered the public funding program in five Presidential elections. Based on our experience, we believe that the limitations could be removed with no material impact on the process.

Our experience has shown that, in past years, the limitations have had little impact on campaign spending in a given state, with the exception of Iowa and New Hampshire. In most other states, campaigns have been unable or have not wished to expend an amount equal to the limitation. In effect, then, the administration of the entire program has resulted in limiting disbursements in these two primaries alone.

If the limitations were removed, the level of disbursements in these states would obviously increase. With an increasing number of primaries vying for a campaign's limited resources, however, it would not be possible to spend very large amounts in these early primaries and still have adequate funds available for the later primaries. Thus, the overall national limit would serve as a constraint on state spending, even in the early primaries. At the same time, candidates would have broader discretion in the running of their campaigns.

Our experience has also shown that the limitations have been only partially successful in limiting expenditures in the early primary states. The use of the fundraising limitation, the compliance cost exemption, the volunteer service provisions, the unreimbursed personal travel expense provisions, the use of a personal residence in volunteer activity exemption, and a complex series of allocation schemes have developed into an art which, when skillfully practiced, can partially circumvent the state limitations.

In addition, experience has shown that one of the Congressional concerns motivating the adoption of state expenditure limits is no longer an issue. Congress adopted the state limits, in part, as a way of discouraging candidates from relying heavily on the outcome of big state primaries. The concern was that candidates might wish to spend heavily in such states as a way of securing their party's nomination. In fact, however, under the public funding system, this has not proven to be an issue. Rather than spending heavily in large states, candidates have spent large amounts in the early primaries, for example, in Iowa and New Hampshire.

Finally, the allocation of expenditures to the states has proven a significant accounting burden for campaigns and an equally difficult audit and enforcement task for the Commission.

For all these reasons, the Commission decided to revise its state allocation regulations for the 1992 Presidential election. Many of the requirements, such as those requiring distinctions between fundraising and other types of expenditures, were eliminated. Since the Commission has not yet completed its administration of this Presidential cycle, the full impact of these changes is not yet clear. However, the rules could not undo the basic requirement to demonstrate the amount of expenditures relating to a particular state. Given our experience to date, we believe that this change to the Act would still be of substantial benefit to all parties concerned.

Draft Committees

2 U.S.C. Sec.431(8)(A)(i) and (9)(A)(i), 441a(a)(1) and 441b(b)

Recommendation. Congress should consider the following amendments to the Act in order to prevent a proliferation of "draft" committees and to reaffirm Congressional intent that draft committees are "political committees" subject to the Act's provisions.

1. Bring Funds Raised and Spent for Undeclared but Clearly Identified Candidates Within the Act's Purview. Section 431(8)(A)(i) should be amended to include in the definition of "contribution" funds contributed by persons "for the purpose of influencing a clearly identified individual to seek nomination for election or election to Federal office." Section 431(9)(A)(i) should be similarly amended to include within the definition of "expenditure" funds expended by persons on behalf of such "a clearly identified individual."

2. Restrict Corporate and Labor Organization Support for Undeclared but Clearly Identified Candidates. Section 441b(b) should be revised to expressly state that corporations, labor organizations and national banks are prohibited from making contributions or expenditures "for the purpose of influencing a clearly identified individual to seek nomination for election or election....." to federal office.

3. Limit Contributions to Draft Committees. The law should include explicit language stating that no person shall make contributions to any committee (including a draft committee) established to influence the nomination or election of a clearly identified individual for any federal office which, in the aggregate, exceed that person's contribution limit, per candidate, per election.

Explanation. These proposed amendments were prompted by the decisions of the U.S. Court of Appeals for the District of Columbia Circuit in *FEC v. Machinists Non-Partisan Political League* and *FEC v. Citizens for Democratic Alternatives* in 1980 and the U.S. Court of Appeals for the Eleventh Circuit in *FEC v. Florida for Kennedy Committee*. The District of Columbia Circuit held that the Act, as amended in 1979, regulated only the reporting requirements of draft committees. The Commission sought review of this decision by the Supreme Court, but the Court declined to hear the case. Similarly, the Eleventh Circuit found that "committees organized to 'draft' a person for federal office" are not "political committees" within the Commission's investigative authority. The Commission believes that the appeals court rulings create a serious imbalance in the election law and the political process because a nonauthorized group organized to support someone who has not yet become a candidate may operate completely outside the strictures of the Federal Election Campaign Act. However, any group organized to support someone who has in fact become a candidate is subject to the Act's registration and reporting requirements and contribution limitations. Therefore, the potential exists for funneling large aggregations of money, both corporate and private, into the federal electoral process through unlimited contributions made to nonauthorized draft committees that support a person who has not yet become a candidate. These recommendations seek to avert that possibility.

1. The Commission's projection that a shortfall would occur in 1992 did not materialize because the assumptions on which that projection was based changed. First, matching fund requests were considerably

smaller than had been expected, based on the experience of previous years. Second, total checkoff receipts deposited into the Fund in 1991 declined much less than had been anticipated. The FEC had expected a decline of \$2 million. In fact, the checkoff dollars to the Fund declined by approximately \$140,000. Third, the inflation rate was lower than had been expected, which decreased the expected demand on the Fund.

2. This proposal assumes that Congress would also repeal the state-by-state expenditure limits, leaving only a national expenditure limit for the Commission to enforce.

3. Spending limits are increased by the cost-of-living adjustment (COLA), which the Department of Labor calculates annually.

Appendix 3

Recipients of Public Funding

1992 Presidential Election

CANDIDATE/COMMITTEE	ORIGINAL AMOUNT CERTIFIED	DATE AUDIT RELEASED	REPAYMENT TO DATE	NET PUBLIC MONEY TO DATE
PRIMARY				
Larry Agran (D)	\$269,691.68	-	\$ 0.00	\$269,691.68
Edmund G. Brown, Jr. (D)	4,239,404.83	-	97,673.96	4,141,730.87
Pat Buchanan (R)	5,199,987.25	-	0.00	5,199,987.25
George Bush (R)	10,658,520.94	-	0.00	10,658,520.94
Bill Clinton (D)	12,536,135.47	-	0.00	12,536,135.47
Lenora B. Fulani (NA)	2,013,323.42	-	0.00	2,013,323.42
John Hagelin (NLP)	353,159.89	-	0.00	353,159.89
Tom Harkin (D)	2,103,361.85	-	0.00	2,103,361.85
Bob Kerrey (D)	2,195,529.81	-	0.00	2,195,529.81
Paul Tsongas (D)	2,995,449.27	-	0.00	2,995,449.27
Doug Wilder (D)	289,026.67	-	0.00	289,026.67
TOTAL PRIMARY	\$42,853,591.08	-	\$97,673.96	\$42,755,917.12

CANDIDATE/COMMITTEE	ORIGINAL AMOUNT CERTIFIED	DATE AUDIT RELEASED	REPAYMENT TO DATE	NET PUBLIC MONEY TO DATE
CONVENTION				
Democratic	\$11,048,000.00	-	\$0.00	\$11,048,000.00
Republican	11,048,000.00	-	0.00	11,048,000.00
TOTAL CONVENTION	\$22,096,000.00	-	\$0.00	\$22,096,000.00

CANDIDATE/COMMITTEE	ORIGINAL AMOUNT CERTIFIED	DATE AUDIT RELEASED	REPAYMENT TO DATE	NET PUBLIC MONEY TO DATE
GENERAL				
George Bush (R)	\$55,240,000.00	-	\$0.00	\$55,240,000.00
Bill Clinton (D)	55,240,000.00	-	0.00	55,240,000.00
TOTAL GENERAL	\$110,480,000.00	-	\$0.00	\$110,480,000.00

CANDIDATE/COMMITTEE	ORIGINAL AMOUNT CERTIFIED	DATE AUDIT RELEASED	REPAYMENT TO DATE	NET PUBLIC MONEY TO DATE
GRAND TOTAL	\$175,429,591.08	-	\$97,673.96	\$175,331,917.12
TOTAL COST TO FUND	-	-	-	\$175,331,917.12*

*Repayments from convention and general election committees do not return to the Fund.

1988 Presidential Election

CANDIDATE/COMMITTEE	ORIGINAL AMOUNT CERTIFIED	DATE AUDIT RELEASED	REPAYMENT TO DATE	NET PUBLIC MONEY TO DATE
PRIMARY				
Bruce Babbitt (D)	\$1,078,939.44	05/25/89	\$1,004.80	\$1,077,934.64
George Bush (R)	8,393,098.56	01/30/92	113,079.70	8,280,018.86
Robert Dole (R)	7,618,115.99	04/11/91	235,821.53	7,382,294.46
Michael Dukakis (D)	9,040,028.33	10/10/91	485,000.00	8,555,028.33
Pete du Pont (R)	2,550,954.18	03/09/89	25,775.49	2,525,178.69
Lenora B. Fulani (NA)	938,798.45	11/02/89	16,692.11	922,106.34
Richard Gephardt (D)	3,396,276.37	05/23/91	121,572.28	3,274,704.09
Albert Gore, Jr. (D)	3,853,401.56	07/13/89	4,327.41	3,849,074.15
Alexander Haig (R)	538,539.20	06/22/89	8,834.14	529,705.06
Gary Hart (D)	1,124,708.09	01/25/90	38,215.79	1,086,492.30
Jesse Jackson (D)	8,021,707.31	04/22/92	75,000.00	7,946,707.31
Jack Kemp (R)	5,984,773.65	07/25/91	103,555.03	5,881,218.62
Lyndon LaRouche (D)	825,576.99	05/17/90	4,795.32	820,781.67
Pat Robertson (R)	10,410,984.83	03/26/92	0.00	10,410,984.83
Paul Simon (D)	3,774,344.77	08/29/91	0.00	3,774,344.77
TOTAL PRIMARY	\$67,550,247.72		\$1,233,673.60	\$66,316,574.12

CANDIDATE/COMMITTEE	ORIGINAL AMOUNT CERTIFIED	DATE AUDIT RELEASED	REPAYMENT TO DATE	NET PUBLIC MONEY TO DATE
CONVENTION				
Democratic	\$9,220,000.00	11/21/89	\$57,294.06	\$9,162,705.94
Republican	9,220,000.00	10/25/89	32,506.57	9,187,493.43
TOTAL CONVENTION	\$18,440,000.00	-	\$89,800.63	\$18,350,199.37

CANDIDATE/COMMITTEE	ORIGINAL AMOUNT CERTIFIED	DATE AUDIT RELEASED	REPAYMENT TO DATE	NET PUBLIC MONEY TO DATE
GENERAL				
George Bush (R)	\$46,100,000.00	10/03/91	\$134,834.71	\$45,965,165.29
Michael Dukakis (D)	46,100,000.00	10/31/91	334,683.20	45,765,316.80
TOTAL GENERAL	\$92,200,000.00	-	\$469,517.91	\$91,730,482.09

CANDIDATE/COMMITTEE	ORIGINAL AMOUNT CERTIFIED	DATE AUDIT RELEASED	REPAYMENT TO DATE	NET PUBLIC MONEY TO DATE
GRAND TOTAL	\$178,190,247.72		\$1,792,992.14	\$176,397,255.58
TOTAL COST TO FUND	-	-	-	\$176,956,574.12*

*Repayments from convention and general election committees do not return to the Fund.

1984 Presidential Election

CANDIDATE/COMMITTEE	ORIGINAL AMOUNT CERTIFIED	DATE AUDIT RELEASED	REPAYMENT TO DATE	NET PUBLIC MONEY TO DATE
PRIMARY				
Reubin Askew (D)	\$976,179.04	08/02/84	\$5,073.55	\$971,105.49
Alan Cranston (D)	2,113,736.44	08/22/85	26,539.56	2,087,196.88
John Glenn (D)	3,325,382.66	08/19/85	76,146.29	3,249,236.37
Gary Hart (D)	5,333,785.31	06/26/86	1,295.52	5,332,489.79
Ernest Hollings (D)	821,599.85	09/10/84	15,605.59	805,994.26
Jesse Jackson (D)	3,053,185.40	07/19/85	4,538.50	3,048,646.90
Sonia Johnson (C)	193,734.83	06/25/85	0.00	193,734.83
Lyndon LaRouche (D)	494,145.59	10/29/85	0.00	494,145.59
George McGovern (D)	612,734.78	02/11/85	67,726.51	545,008.27
Walter Mondale (D)	9,494,920.93	10/28/86	290,140.55	9,204,780.38
Ronald Reagan (R)	10,100,000.00	07/10/86	403,086.49	9,696,913.51
TOTAL PRIMARY	\$36,519,404.83	-	\$890,152.56	\$35,629,252.27

CANDIDATE/COMMITTEE	ORIGINAL AMOUNT CERTIFIED	DATE AUDIT RELEASED	REPAYMENT TO DATE	NET PUBLIC MONEY TO DATE
CONVENTION				
Democratic	\$8,080,000.00	09/05/85	\$20,654.60	\$8,059,345.40
Republican	8,080,000.00	04/28/86	306,454.29	7,773,545.71
TOTAL CONVENTION	\$16,160,000.00	-	\$327,108.89	\$15,832,891.11

CANDIDATE/COMMITTEE	ORIGINAL AMOUNT CERTIFIED	DATE AUDIT RELEASED	REPAYMENT TO DATE	NET PUBLIC MONEY TO DATE
GENERAL				
Walter Mondale (D)	\$40,400,000.00	02/05/87	\$181,945.30	\$40,218,054.70
Ronald Reagan (R)	40,400,000.00	05/11/87	277,244.82	40,122,755.18
TOTAL GENERAL	\$80,800,000.00	-	\$459,190.12	\$80,340,809.88

CANDIDATE/COMMITTEE	ORIGINAL AMOUNT CERTIFIED	DATE AUDIT RELEASED	REPAYMENT TO DATE	NET PUBLIC MONEY TO DATE
GRAND TOTAL	\$133,479,404.83		\$1,676,451.57	\$131,802,953.26
TOTAL COST TO FUND	-	-	-	\$132,589,252.27*

*Repayments from convention and general election committees do not return to the Fund.

1980 Presidential Election

CANDIDATE/COMMITTEE	ORIGINAL AMOUNT CERTIFIED	DATE AUDIT RELEASED	REPAYMENT TO DATE	NET PUBLIC MONEY TO DATE
PRIMARY				
John B. Anderson (R)	\$2,733,077.02	12/18/80	\$412,267.54	\$2,320,809.48
Howard H. Baker, Jr. (R)	2,635,042.60	12/18/80	104,074.58	2,530,968.02
Edmund G. Brown, Jr. (D)	892,249.14	12/16/80	18,980.02	873,269.12
George Bush (R)	5,716,246.56	02/04/81	39,691.01	5,676,555.55
Jimmy Carter (D)	5,117,854.45	01/21/81	111,431.13	5,006,423.32
Phillp M. Crane (R)	1,899,631.74	11/14/80	468.00	1,899,163.74
Robert J. Dole (R)	446,226.09	12/16/81	3,369.44	442,856.65
Edward M. Kennedy (D)	4,134,815.72	09/28/81	18,534.17	4,116,281.55
Lyndon H. LaRouche (D)	526,253.19	04/15/81	55,751.45	470,501.74
Ronald Reagan (R)	7,330,262.78	02/02/81	1,052,647.87	6,277,614.91
TOTAL PRIMARY	\$31,431,659.29		\$1,817,215.21	\$29,614,444.08

CANDIDATE/COMMITTEE	ORIGINAL AMOUNT CERTIFIED	DATE AUDIT RELEASED	REPAYMENT TO DATE	NET PUBLIC MONEY TO DATE
CONVENTION				
Democratic	\$4,416,000.00	04/29/81	\$732,473.24	\$3,683,526.76
Republican	4,416,000.00	04/09/81	21,395.44	4,394,604.56
TOTAL CONVENTION	\$8,832,000.00	-	\$753,868.68	\$8,078,131.32

CANDIDATE/COMMITTEE	ORIGINAL AMOUNT CERTIFIED	DATE AUDIT RELEASED	REPAYMENT TO DATE	NET PUBLIC MONEY TO DATE
GENERAL				
John B. Anderson (I)	\$4,242,304.00	10/19/81	\$48,786.01	\$4,193,517.99
Jimmy Carter (D)	29,440,000.00	08/18/81	87,232.02	29,352,767.98
Ronald Reagan (R)	29,440,000.00	12/11/81	279,278.95	29,160,721.05
TOTAL GENERAL	\$63,122,304.00	-	\$415,296.98	\$62,707,007.02

CANDIDATE/COMMITTEE	ORIGINAL AMOUNT CERTIFIED	DATE AUDIT RELEASED	REPAYMENT TO DATE	NET PUBLIC MONEY TO DATE
GRAND TOTAL	\$103,385,963.29		\$2,986,380.87	\$100,399,582.42
TOTAL COST TO FUND	-	-	-	\$101,568,748.08*

*Repayments from convention and general election committees do not return to the Fund.

1976 Presidential Election

CANDIDATE/COMMITTEE	ORIGINAL AMOUNT CERTIFIED	DATE AUDIT RELEASED	REPAYMENT TO DATE	NET PUBLIC MONEY TO DATE
PRIMARY				
Birch Bayh (D)	\$545,710.39	06/16/78	\$ 0.00	\$545,710.39
Lloyd Bentsen (D)	511,022.61	08/29/77	0.00	511,022.61
Edmund G. Brown, Jr. (D)	600,203.54	09/28/77	306.00	599,897.54
Jimmy Carter (D)	3,886,465.62	04/02/79	132,387.60	3,754,078.02
Frank Church (D)	640,668.54	07/18/77	0.00	640,668.54
Gerald Ford (R)	4,657,007.82	03/30/78	148,140.41	4,508,867.41
Fred Harris (D)	639,012.53	05/17/79	7,798.32	631,214.21
Henry Jackson (D)	1,980,554.95	01/25/78	17,603.78	1,962,951.17
Ellen McCormack (D)	247,220.37	08/24/77	0.00	247,220.37
Ronald Reagan (R)	5,088,910.66	04/13/78	611,141.89	4,477,768.77
Terry Sanford (D)	246,388.32	10/14/76	48.04	246,340.28
Milton Shapp (D)	299,066.21	03/20/78	299,066.21	0.00
Sargent Shriver (D)	295,711.74	05/17/79	1,553.00	294,158.74
Morris Udall (D)	2,020,257.95	06/18/79	43,113.28	1,977,144.67
George Wallace (D)	3,291,308.81	04/03/78	45,380.98	3,245,927.83
TOTAL PRIMARY	\$24,949,510.06	-	\$1,306,539.51	\$23,642,970.55

CANDIDATE/COMMITTEE	ORIGINAL AMOUNT CERTIFIED	DATE AUDIT RELEASED	REPAYMENT TO DATE	NET PUBLIC MONEY TO DATE
CONVENTION				
Democratic	\$2,185,829.73	12/20/77	\$170,093.16	\$2,015,736.67
Republican	1,963,800.00	07/10/78	382,205.36	1,581,594.64
TOTAL CONVENTION	\$4,149,629.73	-	\$552,298.42	\$3,597,331.31

CANDIDATE/COMMITTEE	ORIGINAL AMOUNT CERTIFIED	DATE AUDIT RELEASED	REPAYMENT TO DATE	NET PUBLIC MONEY TO DATE
GENERAL				
Jimmy Carter (D)	\$21,820,000.00	06/04/79	\$57,762.21	\$21,762,237.79
Gerald Ford (R)	21,820,000.00	03/24/78	44,655.00	21,775,345.00
TOTAL GENERAL	\$43,640,000.00	-	\$102,417.21	\$43,537,582.79

CANDIDATE/COMMITTEE	ORIGINAL AMOUNT CERTIFIED	DATE AUDIT RELEASED	REPAYMENT TO DATE	NET PUBLIC MONEY TO DATE
GRAND TOTAL	\$72,739,139.79		\$1,961,255.14	\$70,777,884.65
TOTAL COST TO FUND	-	-	-	\$71,432,600.28*

*Repayments from convention and general election committees do not return to the Fund.

Appendix 4

The Federal Election Campaign Laws: A Short History

Before the 1971 Federal Elections Laws

The first Federal campaign finance legislation was an 1867 law that prohibited Federal officers from requesting contributions from Navy Yard workers. Over the next hundred years, Congress enacted a series of laws which sought broader regulation of Federal campaign financing. These legislative initiatives, taken together, sought to:

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

This effort to bring about more comprehensive campaign finance reform began in 1907 when Congress passed the Tillman Act, which prohibited corporations and national banks from contributing money to Federal campaigns. The first Federal campaign disclosure legislation was a 1910 law affecting House elections only. In 1911, the law was amended to cover Senate elections as well, and to set spending limits for all Congressional candidates.

The Federal Corrupt Practices Act of 1925, which affected general election activity only, strengthened disclosure requirements and increased expenditure limits. The Hatch Act of 1939 and its 1940 amendments asserted the right of Congress to regulate primary elections and included provisions limiting contributions and expenditures in Congressional elections. The Taft-Hartley Act of 1947 barred both labor unions and corporations from making expenditures and contributions in Federal elections.

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

The evasion of disclosure provisions became evident when Congress passed the more stringent disclosure provisions of the 1971 Federal Election Campaign Act (FECA). In 1968, still under the old law, House and Senate candidates reported spending \$8.5 million, while in 1972, after the passage of the FECA, spending reported by Congressional candidates jumped to \$88.9 million.¹

The 1971 Election Laws

The Federal Election Campaign Act of 1971 (P.L. 92-225), together with the 1971 Revenue Act (P.L. 92-178), initiated fundamental changes in Federal campaign finance laws. The FECA, effective April 7, 1972, not only required full reporting of campaign contributions and expenditures, but also limited spending on media advertisements.² (These limits were later repealed.)

The FECA also provided the basic legislative framework for separate segregated funds,³ popularly referred to as PACs (political action committees), established by corporations and unions. Although the Tillman Act and the Taft-Hartley Act of 1947 banned direct contributions by corporations and labor unions to influence Federal elections, the FECA provided an exception whereby corporations and unions could use treasury

funds to establish, operate and solicit voluntary contributions for the organization's separate segregated fund (i.e., PAC). These voluntary donations could then be used to contribute to Federal races.

Under the Revenue Act—the first of a series of laws implementing Federal financing of Presidential elections—citizens could check a box on their tax forms authorizing the Federal government to use one of their tax dollars to finance Presidential campaigns in the general election.⁴ Congress implemented the program in 1973 and, by 1976, enough tax money had accumulated to fund the 1976 election—the first publicly funded Federal election in U.S. history.

The Federal Election Campaign Act of 1971 did not provide for a single, independent body to monitor and enforce the law. Instead, the Clerk of the House, the Secretary of the Senate and the Comptroller General of the United States General Accounting Office (GAO) monitored compliance with the FECA, and the Justice Department was responsible for prosecuting violations of the law referred by the overseeing officials. Following the 1972 elections, although Congressional officials referred about 7,000 cases to the Justice Department, and the Comptroller General referred about 100 cases to Justice,⁵ few were litigated.

1974 Amendments

Not until 1974, following the documentation of campaign abuses in the 1972 Presidential elections, did a consensus emerge to create an independent body to ensure compliance with the campaign finance laws. Comprehensive amendments to the FECA (P.L. No. 93-443) established the Federal Election Commission, an independent agency to assume the administrative functions previously divided between Congressional officers and GAO. The Commission was given jurisdiction in civil enforcement matters, authority to write regulations and responsibility for monitoring compliance with the FECA. Additionally, the amendments transferred from GAO to the Commission the function of serving as a national clearinghouse for information on the administration of elections.

Under the 1974 amendments, the President, the Speaker of the House and the President pro tempore of the Senate each appointed two of the six voting Commissioners. The Secretary of the Senate and the Clerk of the House were designated nonvoting, exofficio Commissioners. The first Commissioners were sworn in on April 14, 1975.

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

Complementing these provisions, Congress also enacted strict limits on both contributions and expenditures. These limits applied to all candidates for Federal office and to political committees influencing Federal elections.⁶

Another amendment relaxed a 1939 prohibition on contributions from Federal government contractors. The FECA, as amended, now permitted corporations and unions with Federal contracts to establish and operate PACs.

Buckley v. Valeo

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

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

The Court also sustained other provisions of the public funding law and upheld disclosure and recordkeeping requirements. However, the Court found that the method of appointing FEC Commissioners violated the constitutional principle of separation of powers, since Congress, not the President, appointed four of the Commissioners, who exercised executive powers. As a result, beginning on March 22, 1976, the Commission could no longer exercise its executive powers.⁷ The agency resumed full activity in May, when, under the 1976 amendments to the FECA, the Commission was reconstituted and the President appointed six Commission members, who were confirmed by the Senate.

1976 Amendments

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

The 1976 amendments contained other changes, including provisions that limited the scope of PAC fundraising by corporations and labor organizations. Preceding this curtailment of PAC solicitations, the FEC had issued an advisory opinion, AO 197523 (the SunPAC opinion), confirming that the 1971 law permitted a corporation to use treasury money to establish, operate and solicit contributions to a PAC. The opinion also permitted corporations and their PACs to solicit the corporation's employees as well as its stockholders. The 1976 amendments, however, put significant restrictions on PAC solicitations, specifying who could be solicited and how solicitations would be conducted. In addition, a single contribution limit was adopted for all PACs established by the same union or corporation.

1979 Amendments

Building upon the experience of the 1976 and 1978 elections, Congress made further changes in the law. The 1979 amendments to the FECA (P.L. 96-187), enacted on January 8, 1980, included provisions that simplified reporting requirements, encouraged party activity at State and local levels and increased the public funding grants for Presidential nominating conventions. Minor amendments were adopted in 1977, 1982, 1983 and 1984.

Summary

In one decade, Congress has fundamentally altered the regulation of Federal campaign finances. Through the passage of the Revenue Act, the FECA and its amendments, Congress has provided public financing for Presidential elections, limited contributions in Federal elections, required substantial disclosure of campaign financial activity and created an independent agency to administer and enforce these provisions.

1. Congressional Quarterly Weekly Report, Vol. xxvii, No. 49, December 5, 1969, p. 2435; Clerk of the House, "The Annual Statistical Report of Contributions and Expenditures Made During the 1972 Election Campaigns for the U.S. House of Representatives" (1974), p. 161; Secretary of the Senate, "The Annual Statistical Report of Receipts and Expenditures Made in connection with Elections for the U.S. Senate in 1972" [undated], p. 33.
2. "Contribution" and "expenditure" are special terms defined in 2 U.S.C. and 11 CFR.
3. "Separate segregated fund" is a special term defined in 2 U.S.C. and 11 CFR.
4. In 1966, Congress enacted a law to provide for public funding of Presidential elections, but suspended the law a year later. It would have included a taxpayers' checkoff provision similar to that later embodied in the 1971 law.
5. Comptroller General of the United States, "Report of the Office of Federal Elections of the General Accounting Office in Administering the Federal Election Campaign Act of 1971" (February 1975), pp. 23 and 24.
6. "Political committee" is a special term defined in 2 U.S.C. and 11 CFR.
7. The Supreme Court stayed its judgment concerning Commission powers for 30 days; the stay was extended once.

Appendix 5

Text of Public Service Announcements on Tax Checkoff

Television Public Service Announcement February 5 - April 15, 1991

Script :30

Tax Preparer: Folks, your taxes are done except I need you to answer the first question.

Wife: Which question?

Tax Preparer: Here, (see tight of form) you need to decide if you would like a dollar of your tax to be used to publicly finance Presidential campaigns (preparer hands brochure on public financing to woman). The tax checkoff reduces Presidential candidates' reliance on large contributions from individuals and groups.

Husband: Will we pay more?

Preparer: No it doesn't change your tax or reduce your refund. It allows you to decide if you'd like a dollar of your tax to be spent on Presidential campaigns.

Narrator: Check the box yes or no. It's in your hands.

(FEC seal, address and an animated check mark in a box.)

Television Public Service Announcement January 1 April 30, 1992

Script :30

A message for taxpayers before they file their federal income tax returns.

The first question on your tax form asks you to make a choice-do you want a dollar of your tax to be used for the public funding of Presidential campaigns?

Presidential candidates who accept public funding must limit their campaign spending.

And, the candidates who run in November cannot accept contributions from individuals or political groups.

Make an informed choice about the Presidential election campaign checkoff.

(FEC seal and toll free number)

Radio Public Service Announcements January 1 - April 30, 1992

Pre-recorded:30

Woman: Honey, we have to make a choice.

Man: A choice?

Woman: Yes, a choice. We have to answer the first question on the federal income tax return. It asks if we want to check off a dollar of our tax for the public funding of Presidential campaigns.

Man: What do you know about the checkoff?

Woman: Well, I know that candidates who accept public funds must limit their campaign spending. And, candidates who run in November cannot accept contributions from individuals or political groups.

Narrator: Make an informed choice about the dollar tax checkoff. This message brought to you by the Federal Election Commission.

Written :10

The first question on your federal income tax form asks if you want to dedicate \$1 of your taxes to the public funding of Presidential campaigns. For more information, call 1-800-486-8496 and make an informed choice.

Written :15

The Federal Election Commission says that millions of taxpayers don't understand the first question on the federal income tax form--do you want to dedicate a dollar of your tax to the public funding of Presidential campaigns? For a free brochure about the one dollar tax checkoff, call 1-800-486-8496 and make an informed choice.

Written :30

The first question on your federal income tax form asks you to make a choice--do you want a dollar of your tax to be used for the public funding of Presidential campaigns? Check "yes" or "no" but don't leave the question blank. Presidential candidates who accept public funding must limit their campaign spending. And the candidates who run in November cannot accept contributions from individuals or political groups. For a free brochure about the one dollar tax checkoff, call the Federal Election Commission at 1-800-486-8496 and make an informed choice.

Radio Public Service Announcement February 5 - April 15, 1991

Script: 30

Don't you wish you could tell the government exactly how to spend at least one of your tax dollars?

Well. . .you can!

On your federal income tax form, there's a question about financing Presidential elections. Do you want one of your tax dollars to pay for Presidential campaigns? It won't change your tax or reduce your refund. The tax checkoff decreases candidates' reliance on large contributions from individuals and groups.

Check the box yes or no. Why let someone else decide?