The original documents are located in Box 36, folder "Office of Management and Budget - Legislation (4)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: April 2, 1976 Time:

FOR ACTION: cc (for information):

Phil Buchen
Jim Cannon
Max Friedersdorf Bill Seidman
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Monday, April 5 Time: 2 P.M.

SUBJECT:

James T. Lynn memo 4/2/76 re District of Columbia FY 1976 and Transition Quarter Budget Amendment

ACTION REQUESTED:

____ For Necessary Action
X For Your Recommendations
____ Prepare Agenda and Brief
____ Draft Reply
X For Your Comments
____ Draft Remarks

REMARKS:

We agree with OMB.

T.W.B.

Philip W. Buchen

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Connor
For the President

4/5/76

6:15

THE WHITE HOUSE
WASHINGTON

Ken feels we should
say we agree with OMB.

Mr. Schmults —
Mr. B would like
you to take a look.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

APR 2 - 1976

ACTION

MEMORANDUM FOR: THE PRESIDENT

FROM: JAMES T. LYNN

SUBJECT: District of Columbia FY 1976 and Transition Quarter Budget Amendment

The District of Columbia has submitted an amendment to its FY 1976 and transition quarter (TQ) budget for transmittal to the Congress. The original FY 1976 budget was submitted to Congress in November 1975 and has yet to be enacted. The Congress is awaiting receipt of this amendment.

Provisions

The amendment requests:

- a net increase of $21.6 million in the FY 1976 operating budget which brings the revised total to $1.047 billion. The amended budget represents an increase of $139 million over FY 1975.

- a net increase of $13.6 million in the capital budget, which brings the request for new authority to $156.2 million.

The amendment reflects decreases due to delays in starting new programs (operating and capital) and adjustments for salary annualization offset by a series of program increases, none of which presents a Federal interest issue.

To finance these changes, however, in addition to local tax increases, the District proposes increased Federal outlays of: 1) $6.5 million in the Federal payment for the TQ; 2) $15 million in interest-free cash advances; and, 3) $69.4 million (over 5-8 years) in Treasury borrowing authority for capital construction.

The District's rationale is:

- the fully authorized TQ Federal payment ($70 million) represents only 34% of local tax revenues for that period, when 40% is "considered an equitable Federal share of the District's financing requirements."

- the TQ increase is "required for the maintenance of essential city services during that period."

- additional advances ($15 million) are for 'cash flow' purposes only, until "revenues from the city's new tax program begin to flow into the D.C. Treasury."

- an extension of Treasury borrowing is required in FY 1976 to pursue necessary capital improvements while Congress restricts the city's issuance of bonds.

Discussion

- Federal payment and advances

The Federal payment represents an annual Federal contribution to the city's operating budget. Since 1937, the Federal Government has also made short-term, interest-free cash advances in anticipation of tax revenues. These funds are comingled with local funds to make-up D.C. "revenues."

The Federal payment generally has represented between 28.1% and 37.1% of annual local tax revenues in recent years. The FY 1976 payment ($254 million) represents approximately 37.0%. D.C. is requesting an increase in the Federal share for the TQ. Inasmuch as local tax revenue will increase during the TQ (estimated $42 million), and the rate of spending will not increase, an increased Federal appropriation will in essence be used to repay outstanding debts to the Federal Government. There has been no detailed analysis of real needs in the TQ by the city. It is not clear that any "essential services" will be diminished by denying the requested increase in the Federal payment. Therefore, we recommend against an increase in the TQ Federal payment. We do recommend that additional advances be allowed ($15 million in FY 1976). Given increased local revenues, and the delay in operating under an enacted 1976 budget, temporary cash support is all that is necessary.

The D.C. budget may be transmitted to Congress with any changes to the request deemed appropriate. Unlike D.C. itself, you are not required to transmit a "balanced budget," nor is Congress required to enact one—although D.C. must enact revenue measures to provide any necessary balancing, once an appropriation is enacted. If you approve our recommendations, the higher outstanding advances will provide a "cash balance."

You have previously approved Federal support (+$3 million) for public safety purposes during the Bicentennial. D.C. will receive these additional Federal funds in the TQ. Funding of this amount within the remaining TQ Federal payment authorization is the only existing means for appropriating such funds directly to the District. This requires congressional concurrence. While it is unusual for the Administration to specify uses for the Federal payment, we believe your transmittal message can distinguish this increased request as an extraordinary one. Given past legislative experience with the level of the Federal payment, Congress may not approve this request. An alternative would be to approve the full requested increase in the Federal payment ($6.5 million) calling one half of it warranted on Bicentennial grounds. This might defuse criticism of the Administration which could come from denying the requested increase. However, this alternative does not seem warranted on fiscal grounds alone.

Treasury borrowing

The Home Rule Act cut off access to Federal loans for capital projects not approved (i.e. previously funded at some stage) by January 2, 1975. While D.C. gained authority to borrow on the private market, congressional concern over D.C. budget practices has forestalled such action. D.C. does not expect to make its first issue ($50 million) until a Senate-financed audit is completed at the end of April 1976. Any bond issue is unlikely before late 1976. D.C. therefore asks that the Administration support an extension of Treasury borrowing in the amount of $69.4 million in FY 1976 and $26.9 million in FY 1977.

Alternatives

1. Transmit the capital budget in the amounts requested (which presume $69.4 million in

projects requiring new Treasury authority), and amend your FY 1976 budget to indicate that "Additional authorizing legislation is to be proposed." Net Federal outlays will not increase until FY 1978.

2. Reject the D.C. capital budget as submitted, and transmit only amended estimates of Federal outlays for those projects which do not require new Treasury authority. Inform D.C. that you will not transmit capital requests requiring new authority until the Home Rule Act has been amended.

Alternative 1 assumes support of D.C. legislation to extend Treasury borrowing. The amendment materials transmitted to Congress would distinguish between "old" and "new" amounts; Congress could choose to approve at this point only "old" projects. The Administration would not be accused of slowing down the city's necessary renovation of D.C. General Hospital and routine water and sewer projects, none of which can go forward without bond income or "new" Treasury authority.

Alternative 2 requires that we alter the proposed D.C. capital spending program. This method would dissociate the issue of additional Treasury authority from the amendment. An Administration position will ultimately be required, however, in reviewing any draft D.C. bill to extend Treasury borrowing, inasmuch as it affects Federal funds. And if additional Treasury authority is enacted by Congress you would have to transmit a D.C. capital budget supplemental request later. This approach is preferable if you think additional D.C. borrowing authority is questionable or does not seem proper.

We believe that Treasury borrowing should be available as long as access to the bond market is effectively precluded.

There seems to be no valid reasons for halting the D.C. capital program de facto. The Senate District Committee audit, favors extension of interim Treasury borrowing, pending access to the private market.

The capital program is winding down after 12 years of strong activity. An extension of authority will increase the city's total Federal debt, which is now estimated at $2.4 billion. Annual debt service, however, would remain well below the limit set in the Home Rule Act. While new borrowing would

increase net Federal outlays, this consideration is tempered in the near term by the fact that FY 1976 outlay estimates for D.C. borrowing have already dropped from earlier allowances.

We recommend Alternative 1--The extension of interim capital financing provision of the Home Rule Act through January 2, 1977, as requested by the District. If you agree, the budget amendment can go forward without waiting for clearance of the draft bill. I recommend citing the capital issue in your transmittal message.

RECOMMENDATION

1. That you reject an increased Federal payment in the TQ except for Bicentennial funding (+$3 million), and approve increased short-term advances (+$15 million).

   Agree_____ Disagree_____ See me_____

2. That you approve extension of Treasury borrowing authority and that you transmit the D.C. capital budget which assumes this extension.

   Agree_____ Disagree_____ See me_____

April 6, 1976

Ken,

Please be sure to let me
see the OMB memo on S. 1941
when it is available.

Thanks.

PWB

THE WHITE HOUSE

WASHINGTON

March 31, 1976

MEMORANDUM FOR: PHIL BUCHEN

FROM: KEN LAZARUS KL

SUBJECT: S. 1941

S. 1941, the Animal Welfare Act Amendments of 1976, passed the Senate on December 18, 1975 by voice vote. It passed the House on February 9, 1976, by a roll call vote of 335-34. The measure cleared a House-Senate Conference on March 29, 1976. I anticipate that the Conference Report will be agreed to by the House and Senate later this week or the early part of next week.

The bill amends the Federal Laboratory Animal Welfare Act of 1966 to authorize the Secretary of Agriculture to regulate the transportation of animals in commerce. The bill brings under the purview of the act common carriers, intermediate handlers, and other persons engaged in the transportation of animals and which are currently exempted from regulations insuring the humane treatment of animals shipped in interstate commerce.

The bill requires the Secretary of Agriculture to establish standards designed to assure the safe transportation of all animals against disease, injury, and death. These standards must include, but need not be limited to, minimum requirements with respect to containers, feed, water, rest, ventilation, temperature, handling, veterinary care, and other factors necessary for assuring humane treatment to animals in transportation.

S. 1941 permits the Secretary to require that prior to shipment, certain animals be examined by an accredited veterinarian to insure that they are free of infectious disease or physical abnormalities. C.O.D. shipment of animals is prohibited unless the consignor guarantees the payment of transportation costs and any costs incurred by the carrier for care of the animal.

S. 1941 would also require the Secretary of Agriculture to consult with the Secretary of Transportation, the CAB, the FAA, the ICC, and the FMC prior to issuing standards under the Act. Regulatory agencies involved with transporting animals, the ICC, the CAB, and the FMC, are further authorized in the bill to assist the Secretary of Agriculture in implementation of the Act. Any proposed standards affecting flight safety requirements may be disapproved by the Administrator of the FAA within 30 days after consultation with the Secretary of Agriculture.

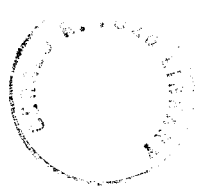
To assist the Secretary in enforcing provisions of the Act, the bill authorizes the CAB to prosecute criminal violations of the Act. Additionally, the bill authorizes the assignment of a civil penalty not to exceed $1,000 against those persons who, after notice and an opportunity for a hearing, the Secretary finds to be in violation of the provisions of the Act.

S. 1941 creates new Federal sanctions which may be imposed upon any person who knowingly sponsors, exhibits, sells, buys, or transports, etc. any animal relative to any fighting venture. This new section would supplement, not supplant, existing state and local law.

Finally, the bill authorizes an appropriation of $400,000 to enforce its animal fighting restrictions. Additional moneys will be authorized in the transportation bill to cover other aspects of the legislation.

During the course of hearings on S. 1941 the Department of Agriculture opposed enactment in favor of voluntary compliance. The CAB supported enactment. To my knowledge, industry and various interest groups interposed no objection to the bill.

Attached is a copy of the Conference Report.



94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 94-976

ANIMAL WELFARE ACT AMENDMENTS OF 1976

MARCH 29, 1976.—Ordered to be printed

Mr. FOLEY, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 1941]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1941) to amend the Act of August 24, 1966, as amended, to assure humane treatment of certain animals, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendments of the House to the text and title of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendments insert the following:

That this Act may be cited as the "Animal Welfare Act Amendments of 1976".

SEC. 2. Section 1 of the Act of August 24, 1966 (80 Stat. 350, as amended by the Animal Welfare Act of 1970, 84 Stat. 1560; 7 U.S.C. 2131-2155) is amended to read as follows:

"SEC. 1. (a) This Act may be cited as the 'Animal Welfare Act'.

"(b) The Congress finds that animals and activities which are regulated under this Act are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this Act is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order—

"(1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment;

"(2) to assure the humane treatment of animals during transportation in commerce; and

"(3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

The Congress further finds that it is essential to regulate, as provided in this Act, the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.".

SEC. 3. Section 2 of such Act is amended—

(1) by striking out subsection (c) and (d) thereof and inserting in lieu thereof the following:

"(c) The term 'commerce' means trade, traffic, transportation, or other commerce—

"(1) between a place in a State and any place outside of such State, or between points within the same State but through any place outside thereof, or within any territory, possession, or the District of Columbia;

"(2) which affects trade, traffic, transportation, or other commerce described in paragraph (1).

"(d) The term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or any other territory or possession of the United States;".

(2) by striking out the term "affecting commerce" in subsections (e) and (f) and inserting in lieu thereof "in commerce";

(3) by revising paragraph (f) thereof to read as follows:

"(f) The term 'dealer' means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of, (1) any dog or other animal whether alive or dead for research, teaching, exhibition, or use as a pet, or (2) any dog for hunting, security, or breeding purposes, except that this term does not include—

"(i) a retail pet store except such store which sells any animals to a research facility, an exhibitor, or a dealer; or

"(ii) any person who does not sell, or negotiate the purchase or sale of any wild animal, dog, or cat, and who derives no more than $500 gross income from the sale of other animals during any calendar year;",

(4) by deleting "; and" at the end of paragraph (g) and inserting in lieu thereof the following: ". With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes;", and

(5) by deleting the period at the end of paragraph (h) and inserting a semicolon in lieu thereof.

SEC. 4. Section 2 of such Act is further amended by adding thereto two new paragraphs to read:

"(i) The term 'intermediate handler' means any person including a department, agency, or instrumentality of the United States or of any State or local government (other than a dealer, research facility, exhibitor, any person excluded from the definition of a dealer, research facility, or exhibitor, an operator of an auction sale, or a carrier) who is engaged in any business in which he receives custody of animals in connection with their transportation in commerce; and

"(j) The term 'carrier' means the operator of any airline, railroad, motor carrier, shipping line, or other enterprise, which is engaged in the business of transporting any animals for hire.".

SEC. 5. Sections 4, 11, and 12 of such Act are amended by striking out "affecting commerce" and inserting in lieu thereof "in commerce".

SEC. 6. Section 6 of such Act is amended by inserting after the term "research facility", a comma and the term "every intermediate handler, every carrier,".

SEC. 7. Section 9 of such Act is amended by inserting after the term "section 12 of this Act,", the term "or an intermediate handler, or a carrier,", and by deleting the term "or an operator of an auction sale as well as of such person." at the end of section 9 and substituting therefor the following term: "operator of an auction sale, intermediate handler, or carrier, as well as of such person.".

SEC. 8. Section 10 of such Act is amended by deleting the phrase ", upon forms supplied by the Secretary" from the first sentence and by inserting between the second and third sentences thereof the following: "At the request of the Secretary, any regulatory agency of the Federal Government which requires records to be maintained by intermediate handlers and carriers with respect to the transportation, receiving, handling, and delivery of animals on forms prescribed by the agency, shall require there to be included in such forms, and intermediate handlers and carriers shall include in such forms, such information as the Secretary may require for the effective administration of this Act. Such information shall be retained for such reasonable period of time as the Secretary may prescribe. If regulatory agencies of the Federal Government do not prescribe requirements for any such forms, intermediate handlers and carriers shall make and retain for such reasonable period as the Secretary may prescribe such records with respect to the transportation, receiving, handling, and delivery of animals as the Secretary may prescribe.".

SEC. 9. Section 13 of such Act is amended by designating the provisions thereof as subsection (a) and by adding, after the second sentence therein, new sentences to read: "The Secretary shall also promulgate standards to govern the transportation in commerce, and the handling, care, and treatment in connection therewith, by intermediate handlers, air carriers, or other carriers, of animals consigned by any dealer, research facility, exhibitor, operator of an auction sale, or other person, or any department, agency, or instrumentality of the United States or of any State or local government, for transportation in commerce. The Secretary shall have authority to promulgate such rules and regulations as he determines necessary to assure humane treatment of animals in the course of their transportation in commerce including requirements such as those with respect to containers, feed, water, rest, ventilation, temperature, and handling.".

SEC. 10. Section 13 of such Act, as amended, is further amended by adding at the end thereof new subsections (b), (c), and (d) to read:

"(b) No dogs or cats, or additional kinds or classes of animals designated by regulation of the Secretary, shall be delivered by any dealer, research facility, exhibitor, operator of an auction sale, or department, agency, or instrumentality of the United States or of any State or local government, to any intermediate handler or carrier for transportation in commerce, or received by any such handler or carrier for such transportation from any such person, department, agency, or instrumentality, unless the animal is accompanied by a certificate issued by a veterinarian licensed to practice veterinary medicine, certifying

that he inspected the animal on a specified date, which shall not be more than ten days before such delivery, and, when so inspected, the animal appeared free of any infectious disease or physical abnormality which would endanger the animal or animals or other animals or endanger public health: Provided, however, That the Secretary may by regulation provide exceptions to this certification requirement, under such conditions as he may prescribe in the regulations, for animals shipped to research facilities for purposes of research, testing or experimentation requiring animals not eligible for such certification. Such certificates received by the intermediate handlers and the carriers shall be retained by them, as provided by regulations of the Secretary, in accordance with section 10 of this Act.

"(c) No dogs or cats, or additional kinds or classes of animals designated by regulation of the Secretary, shall be delivered by any person to any intermediate handler or carrier for transportation in commerce except to registered research facilities if they are less than such age as the Secretary may by regulation prescribe. The Secretary shall designate additional kinds and classes of animals and may prescribe different ages for particular kinds or classes of dogs, cats, or designated animals, for the purposes of this section, when he determines that such action is necessary or adequate to assure their humane treatment in connection with their transportation in commerce.

"(d) No intermediate handler or carrier involved in the transportation of any animal in commerce shall participate in any arrangement or engage in any practice under which the cost of such animal or the cost of the transportation of such animal is to be paid and collected upon delivery of the animal to the consignee, unless the consignor guarantees in writing the payment of transportation charges for any animal not claimed within a period of 48 hours after notice to the consignee of arrival of the animal, including, where necessary, both the return transportation charges and an amount sufficient to reimburse the carrier for all out-of-pocket expenses incurred for the care, feeding, and storage of such animals.".

SEC. 11. Section 15 of such Act is amended by inserting after the term "exhibition" in the first sentence, a comma and the term "or administration of statutes regulating the transportation in commerce or handling in connection therewith of any animals", and by adding the following at the end of the sentence: "Before promulgating any standard governing the air transportation and handling in connection therewith, of animals, the Secretary shall consult with the Secretary of Transportation who shall have the authority to disapprove any such standard if he notifies the Secretary, within 30 days after such consultation, that changes in its provisions are necessary in the interest of flight safety. The Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission, to the extent of their respective lawful authorities, shall take such action as is appropriate to implement any standard established by the Secretary with respect to a person subject to regulation by it.".

SEC. 12 Subsection (a) of section 16 of such Act is amended by inserting the term "intermediate handler, carrier," in the first sentence after the term "exhibitor," each time the latter term appears in the sentence; by inserting before the period in the second sentence, a comma and the term "or (5) such animal is held by an intermediate handler

or a carrier"; and by deleting the term "or" before the term "(4)" in the second sentence.

(b) Subsection (c) of section 16 of such Act is amended by striking the words "sections 19(b) and 20(b)" in the last sentence and inserting in lieu thereof the words "section 19(c)".

SEC. 13. Section 19 of such Act is amended to read as follows:

"(a) If the Secretary has reason to believe that any person licensed as a dealer, exhibitor, or operator of an auction sale subject to section 12 of this Act, has violated or is violating any provision of this Act, or any of the rules or regulations or standards promulgated by the Secretary hereunder, he may suspend such person's license temporarily, but not to exceed 21 days, and after notice and opportunity for hearing, may suspend for such additional period as he may specify, or revoke such license, if such violation is determined to have occurred.

"(b) Any dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale subject to section 12 of this Act, that violates any provision of this Act, or any rule, regulation, or standard promulgated by the Secretary thereunder, may be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation, and the Secretary may also make an order that such person shall cease and desist from continuing such violation. Each violation and each day during which a violation continues shall be a separate offense. No penalty shall be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing with repect to the alleged violation, and the order of the Secretary assessing a penalty and making a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States Court of Appeals. The Secretary shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person involved, the gravity of the violation, the person's good faith, and the history of previous violations. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay the penalty assessed by a final order under this section, the Secretary shall request the Attorney General to institute a civil action in a district court of the United States or other United States court for any district in which such person is found or resides or transacts business, to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. Any person who knowingly fails to obey a cease and desist order made by the Secretary under this section shall be subject to a civil penalty of $500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

"(c) Any dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale subject to section 12 of this Act, aggrieved by a final order of the Secretary issued pursuant to this section may, within 60 days after entry of such an order, seek review of such order in the appropriate United States Court of Appeals in accordance with the provisions of section 2341, 2343 through 2350 of title 28, United States Code, and such court shall have exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of the Secretary's order.

"(d) Any dealer, exhibitor, or operator of an auction sale subject to section 12 of this Act, who knowingly violates any provision of this

Act shall, on conviction thereof, be subject to imprisonment for not more than 1 year, or a fine of not more than $1,000, or both. Prosecution of such violations shall, to the maximum extent practicable, be brought initially before United States magistrates as provided in section 636 of title 28, United States Code, and sections 3401 and 3402 of title 18, United States Code, and, with the consent of the Attorney General, may be conducted, at both trial and upon appeal to district court, by attorneys of the United States Department of Agriculture.".

SEC. 14. Section 20 of such Act is hereby repealed.

SEC. 15. Section 24 of such Act is amended by inserting the following at the end of the section: "Notwithstanding the other provisions of this section, compliance by intermediate handlers, and carriers, and other persons with those provisions of this Act, as amended by the Animal Welfare Act Amendments of 1976, and those regulations promulgated thereunder, which relate to actions of intermediate handlers and carriers, shall commence 90 days after promulgation of regulations under section 13 of this Act, as amended, with respect to intermediate handlers and carriers, and such regulations shall be promulgated no later than 9 months after the enactment of the Animal Welfare Act Amendments of 1976; and compliance by dealers, exhibitors, operators of auction sales, and research facilities with other provisions of this Act, as so amended, and the regulations thereunder, shall commence upon the expiration of 90 days after enactment of the Animal Welfare Act Amendments of 1976: Provided, however, That compliance by all persons with paragraphs (b), (c), and (d) of section 13 and with section 26 of this Act, as so amended, shall commence upon the expiration of said ninety-day period. In all other respects, said amendments shall become effective upon the date of enactment.".

SEC. 16. Section 25 of such Act is amended by deleting from subsection (2) the word "and" where it last appears, deleting the period at the end of subsection (3) and inserting "; and" in lieu thereof, and by inserting after subsection (3) the following new subsection:

"(4) recommendations and conclusions concerning the aircraft environment as it relates to the carriage of live animals in air transportation.".

SEC. 17. Such Act is amended by adding at the end thereof the following new section:

"SEC. 26. (a) It shall be unlawful for any person to knowingly sponsor or exhibit an animal in any animal fighting venture to which any animal was moved in interstate or foreign commerce.

"(b) It shall be unlawful for any person to knowingly sell, buy, transport, or deliver to another person or receive from another person for purposes of transportation, in interstate or foreign commerce, any dog or other animal for purposes of having the dog or other animal participate in an animal fighting venture.

"(c) It shall be unlawful for any person to knowingly use the mail service of the United States Postal Service or any interstate instrumentality for purposes of promoting or in any other manner furthering an animal fighting venture except as performed outside the limits of the States of the United States.

"(d) Notwithstanding the provisions of subsections (a), (b), or (c) of this section, the activities prohibited by such subsections shall be unlawful with respect to fighting ventures involving live birds only if the fight is to take place in a State where it would be in violation of the laws thereof.

"(e) Any person who violates subsection (a), (b), or (c) shall be fined not more than $5,000 or imprisoned for not more than 1 year, or both, for each such violation.

"(f) The Secretary or any other person authorized by him shall make such investigations as the Secretary deems necessary to determine whether any person has violated or is violating any provision of this section, and the Secretary may obtain the assistance of the Federal Bureau of Investigation, the Department of the Treasury, or other law enforcement agencies of the United States, and State and local governmental agencies, in the conduct of such investigations, under cooperative agreements with such agencies. A warrant to search for and seize any animal which there is probable cause to believe was involved in any violation of this section may be issued by any judge of the United States or of a State court of record or by a United States magistrate within the district wherein the animal sought is located. Any United States marshal or any person authorized under this section to conduct investigations may apply for and execute any such warrant, and any animal seized under such a warrant shall be held by the United States marshal or other authorized person pending disposition thereof by the court in accordance with this paragraph (f). Necessary care including veterinary treatment shall be provided while the animals are so held in custody. Any animal involved in any violation of this section shall be liable to be proceeded against and forfeited to the United States at any time on complaint filed in any United States district court or other court of the United States for any jurisdiction in which the animal is found and upon a judgment of forfeiture shall be disposed of by sale for lawful purposes or by other humane means, as the court may direct. Costs incurred by the United States for care of animals seized and forfeited under this section shall be recoverable from the owner of the animals if he appears in such forfeiture proceeding or in a separate civil action brought in the jurisdiction in which the owner is found, resides, or transacts business.

"(g) For purposes of this section—

"(1) the term 'animal fighting venture' means any event which involves a fight between at least two animals and is conducted for purposes of sport, wagering, or entertainment except that the term 'animal fighting venture' shall not be deemed to include any activity the primary purpose of which involves the use of one or more animals in hunting another animal or animals, such as waterfowl, bird, racoon, or fox hunting;

"(2) the term 'interstate or foreign commerce' means—

"(A) any movement between any place in a State to any place in another State or between places in the same State through another State; or

"(B) any movement from a foreign country into any State;

"(3) the term 'interstate instrumentality' means telegraph, telephone, radio, or television operating in interstate or foreign commerce;

"(4) the term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

"(5) *the term 'animal' means any live bird, or any live dog or other mammal, except man; and*

"(6) *the conduct by any person of any activity prohibited by this section shall not render such person subject to the other sections of this Act as a dealer, exhibitor, or otherwise.*

"(h)(1) *The provisions of this Act shall not supersede or otherwise invalidate any such State, local, or municipal legislation or ordinance relating to animal fighting ventures except in case of a direct and irreconcilable conflict between any requirements thereunder and this Act or any rule, regulation, or standard hereunder.*

"(2) *Section 3001(a) of title 39, United States Code, is amended by adding immediately after the words 'title 18' a comma and the words 'or section 26 of the Animal Welfare Act'.".*

SEC. 18. Section 23 of such Act is amended by inserting immediately before the period at the end of the third sentence ": Provided, That there is authorized to be appropriated to the Secretary of Agriculture for enforcement by the Department of Agriculture of the provisions of section 26 of this Act an amount not to exceed $100,000 for the transition quarter ending September 30, 1976, and not to exceed $400,000 for each fiscal year thereafter".

SEC. 19. Section 14 of such Act is amended by inserting in the first sentence after the term "standards" the phrase "and other requirements".

In lieu of the amendment of the House to the title of the bill insert the following: "*An Act to amend the Act of August 24, 1966, as amended, to increase the protection afforded animals in transit and to assure humane treatment of certain animals, and for other purposes.*".

And the House agree to the same.

THOMAS S. FOLEY,
W. R. POAGE,
BOB BERGLAND,
JERRY LITTON,
JAMES WEAVER,
TOM HARKIN,
Managers on the Part of the House.

WARREN G. MAGNUSON,
WENDELL H. FORD,
LOWELL P. WEICKER, Jr.,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the Conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1941) to amend the act of August 24, 1966, as amended, to assure humane treatment of certain animals, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying Conference report. The differences between the Senate bill and the House amendment and the substitute agreed to in Conference are noted in the following outline, except for conforming, clarifying, and technical changes:

1. TITLE OF BILL

Senate bill

The title of the Senate bill declares its purpose to be "to increase the protection afforded animals in transit and to assure the humane treatment of animals, and for other purposes."

House amendment

The title of the House amendment states its purpose to be "to amend the act of August 24, 1966, as amended, to assure humane treatment of certain animals, and for other purposes."

Conference substitute

The Conference substitute adopts the title of the House amendment but incorporates the phrase "to increase the protection afforded animals in transit" from the title of the Senate bill.

2. CITATION OF AMENDMENTS

Senate bill

The Senate bill provides that this act may be cited as the Animal Welfare Amendments of 1975.

House amendment

The House amendment provides that this act may be cited as the Animal Welfare Act Amendments of 1976.

Conference substitute

The Conference substitute adopts the House provision.

3. SHORT TITLE OF ACT

Senate bill

The Senate bill provides that the act of August 24, 1966, as amended, may be cited is the "Animal Welfare Act."

House amendment

The House amendment contains no comparable provision.

Conference substitute

The Conference substitute adopts the Senate provision.

4. Congressional Declaration of Policy (Section 1 of Existing Law)

Senate bill

The Senate bill revises the congressional declaration of policy contained in section 1 of the present law and makes a congressional finding that animals and activities which are regulated under this act are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this act is necessary to prevent and eliminate burdens upon such commerce.

House amendment

The House amendment contains no comparable provision.

Conference substitute

The Conference substitute adopts the Senate provision.

5. Definition of Commerce (Subsections 2(c) and 2(d) of Existing Law)

Senate bill

The Senate bill strikes from the present law the definition of the terms "commerce" and "affecting commerce" and inserts in lieu thereof a new definition of the term "commerce" and a definition of the term "State" as used in the new definition of "commerce". These provisions would narrow the coverage of the existing law by excluding commerce between points within the same State, territory, or possession, etc., which passes through a point outside thereof and commerce within any territory, possession, or the District of Columbia, but would otherwise not limit the coverage of the statute.

House amendment

The House amendment contains no comparable provisions.

Conference substitute

The Conference substitute adopts the Senate provision with an amendment to carry forward from existing law into the new definition of the term "commerce" commerce between two points in the same State but through any place outside thereof, and commerce within any territory, possession, or the District of Columbia.

6. Definition of Dealer (Subsection 2(f) of Existing Law)

Senate bill

The Senate bill amends the definition of the term "dealer" in the present law to add to those already covered by the definition persons who offer animals for sale, and also to include all retail pet stores. (Retail pet stores are not included in the definition of "dealer" under existing law unless they sell animals to research facilities, exhibitors, or dealers.)

House amendment

The House amendment does not disturb the coverage of retail pet stores under existing law. However, in addition to persons already covered, it would add to the definition of the term "dealer" any person who negotiates the purchase or sale of animals. The House amendment would further amend the definition of the term "dealer" to include specifically any person who sells any wild animal, dog, or cat or who delivers for transportation, transports, buys, sells, or negotiates the purchase or sale of any dog for hunting, security, or breeding purposes. However, any person who grosses no more than $500 in any calendar year from the sale of animals other than wild animals, dogs, or cats would be specifically excluded from the definition of the term "dealer".

Conference substitute

The Conference substitute adopts the House provision. However, the term "dealer" includes only those persons who deal in animals for compensation or profit. The term does not include a person who, on a casual basis purchases a dog or cat for his own use or enjoyment; nor does it include a person who upon occasion in isolated transactions sells a dog or cat.

7. Definition of Animal (Subsection 2(g) of Existing Law)

Senate bill

The Senate bill adds to the definition of the term "animal" in the present law cold-blooded animals, birds, and horses used for exhibition or as pets (horses used for research are included in the definition under existing law); and clarifies that the term "dog" as used in the definition of "animal" includes dogs used for hunting, security, or breeding purposes. The Senate bill also removes from the definition of "animal" all dead animals and any non-human primate mammal not embraced within the term "monkey".

House amendment

The House amendment makes no change in the definition of the term "animal" in the present law other than to clarify the fact that the term "dog" as contained in that definition means all dogs including those used for hunting, security, or breeding purposes.

Conference substitute

The Conference substitute adopts the House provision.

8. Definition of Exhibitor (Subsection 2(h) of Existing Law)

Senate bill

The Senate bill amends the definition of the term "exhibitor" in the present law to limit its application to a person who exhibits animals in commerce to the public for compensation. The effect of this change would be to exclude from coverage under this definition persons exhibiting animals which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce.

House amendment

The House amendment contains no comparable provision.

Conference substitute

The Conference substitute adopts the House amendment.

9. New Definitions of Carrier and Intermediate Handler (Added to Section 2 of Existing Law)

Senate bill

The Senate bill adds to the definitions contained in section 2 of the present law a new term, "carrier", which would be defined as any person designated by the Secretary of Transportation who is subject to regulation by the ICC, CAB, or FMC or is engaged in the business of transporting animals for hire or providing services incidental to such transportation.

House amendment

The House amendment would add to the definitions contained in section 2 of the present law two new terms *viz:* "carrier" and "intermediate handler", neither of which would be subject to designation by the Secretary of Transportation. The term "carrier" would be defined to mean the operator of any airline, railroad, motor carrier, shipping line, or other enterprise, which is engaged in the business of transporting any animals for hire and includes all terminal facilities controlled by such carriers. The term "intermediate handler" means persons other than dealers, research facilities, exhibitors, operators of auction sales, or carriers and includes express companies, forwarders, and other persons or facilities (including terminal facilities not controlled by carriers) which handle animal shipments.

Conference substitute

The Conference substitute adopts the House provision.

10. Terminal Facilities Used by Licensees (Section 3 of Existing Law)

Senate bill

The Senate bill amends section 3 of the present law to deny a license to any dealer or exhibitor who uses terminal facilities which do not comply with the standards promulgated by the Secretary pursuant to section 13 of the Act.

House amendment

The House amendment contains no comparable provision.

Conference substitute

The Conference substitute adopts the House amendment.

11. Deletion of Term "Affecting Commerce" (Sections 4, 11 and 12 of Existing Law)

Senate bill

The Senate bill strikes out the term "affecting commerce" and inserts in lieu thereof the term "in commerce" in sections 4 (requiring a valid license for dealers and exhibitors), 11 (requiring marking and identification of animals), and 12 (licensing of certain auction sales, etc.) of the act. These changes do not limit the coverage of the statute and are intended to bring these sections into line with the revised

declaration of policy and new definition of the term "commerce" contained in the Senate bill.

House amendment

The House amendment contains no comparable provision.

Conference substitute

The Conference substitute adopts the Senate provision.

12. Registration (Section 6 of Existing Law)

Senate bill

The Senate bill amends section 6 of the present law to require registration of every carrier not licensed under section 3 of the act.

House amendment

The House amendment amends section 6 to require registration of every intermediate handler and every carrier not so licensed.

Conference substitute

The Conference substitute adopts the House provision.

13. Responsibility for Acts of Agents (Section 9 of Existing Law)

Senate bill

The Senate bill amends section 9 of the present law to make carriers responsible for the acts of their agents or employees.

House amendment

The House amendment would amend section 9 to make intermediate handlers or carriers responsible for the acts of their agents or employees.

Conference substitute

The Conference substitute adopts the House provision.

14. Recordkeeping by Carriers and Intermediate Handlers (Section 10 of Existing Law)

Both the Senate bill and the House amendment amend section 10 of the present law to delete the requirement that the Secretary of Agriculture supply the forms upon which records required under the act are kept.

Senate bill

In addition, the Senate bill would amend section 10 to empower the Secretary of Agriculture, subject to the approval of every other Federal agency which requires carriers to keep records, to require carriers to keep records with respect to the transportation, receiving, handling, and delivering of animals. The Senate bill would also require any such records to be made available at all reasonable times for inspection and copying by the Secretary. (A comparable provision already appears in section 10).

House amendment

The House amendment would require any Federal regulatory agency which requires intermediate handlers and carriers to keep records with respect to the transportation, receiving, handling, and delivery of animals on forms prescribed by the agency, to require inclusion in such forms, and intermediate handlers and carriers would be required to include, information which the Secretary requests be required for effective administration of the act. Such information shall be retained by such agencies and intermediate handlers and carriers for such reasonable period of time as the Secretary may prescribe. The Secretary would be empowered to prescribe recordkeeping requirements and reasonable periods of record retention for intermediate handlers and carriers not required by other Federal regulatory agencies to keep records with respect to the transportation, receiving, handling, and delivery of animals.

Conference substitute

The Conference substitute adopts the House provision.

15. Humane Standards for Carriers and Intermediate Handlers (Section 13 of Existing Law)

Both the Senate bill and the House amendment designate section 13 of the present law as subsection "(a)".

Senate bill

The Senate bill amends the section to extend application of the humane standards promulgated by the Secretary to any terminal facilities used by a carrier subject to the act and also to the facilities of auction sales licensed under section 12 of the act and to the facilities of persons not qualifying as dealers or exhibitors who may be licensed under section 3 of the act.

House amendment

The House amendment would amend the section by inserting two new sentences which would require the Secretary to promulgate standards to govern the transportation in commerce, and the handling, care, and treatment in connection therewith, by intermediate handlers, air carriers, or other carriers, of animals consigned by any dealer, research facility, exhibitor, operator of an auction sale, or other person, or any department, agency, or instrumentality of the United States, for transportation in commerce. (As noted below in No. 16, the Senate bill would add as subsection (b) of section 13 a comparable provision which is slightly broader in that it would apply also to animals consigned by State or local government agencies.) The Secretary would be empowered to promulgate such rules and regulations as he determines necessary to assure humane treatment of animals in the course of their transportation in commerce including requirements such as those with respect to containers, feed, water, rest, ventilation, temperature, and handling.

Conference substitute

The Conference substitute adopts the House provision with an amendment to make clear that the humane standards promulgated by the Secretary apply in the case of animals consigned by any department, agency, or instrumentality of any State or local government.

16. Humane Standards and Veterinary Certificates (New Subsection 13(b))

Senate bill

The Senate bill adds to section 13 of the act a new subsection "(b)" which empowers the Secretary to promulgate standards to govern the transportation in commerce, and the handling, care, and treatment in connection therewith, by carriers, of animals consigned by any dealer, research facility, owner of a pet, exhibitor, operator of an auction sale, department, agency, or instrumentality of the Federal Government or of any State or local government or other person. (As noted above in No. 15, the House amendment contains a comparable but slightly less comprehensive provision.) Such standards must be designed to assure the safe transportation in commerce of all animals received in healthy condition, and may include a requirement that no animal of a designated kind shall be delivered to or received by a carrier for transportation in commerce unless it is accompanied by the certificate of an accredited veterinarian attesting that he inspected the animal within the time interval he specifies and that, when so inspected, such animal appeared to be free of any infectious disease or physical abnormality which might endanger such animal or other animals during transportation in commerce. The Secretary may by regulation establish the time interval at which the certificate shall be issued and require that it be retained by the receiving carrier for a reasonable period of time.

House amendment

The House amendment would add to section 13 of the act a new subsection (b) which would provide that no dogs or cats, or additional kinds or classes of animals designated by regulation of the Secretary shall be delivered by any dealer, research facility, exhibitor, operator of an auction sale, or department, agency, or instrumentality of the United States or of any State or local government, to any intermediate handler or carrier for transportation in commerce (or be received by such intermediate handler or carrier for such transportation) unless the animal is accompanied by the certificate of a licensed veterinarian certifying that he inspected the animal on a specific date not more than 10 days before such delivery at which time the animal appeared free of any infectious disease or physical abnormality which would endanger the animal or animals or other animals or endanger public health. The House amendment differs from the provision in the Senate bill in that, in the House amendment, the veterinary certificate requirement is made mandatory, except for certain animals shipped to research facilities. The Senate bill leaves veterinary certificate requirements to the discretion of the Secretary of Agriculture. The House amendment also requires that the veterinary certificate include a statement that public health is not endangered, a provision not found in the Senate bill. The Secretary could by regulation provide conditional exceptions to the certification requirement for animals ineligible for such certificates when such animals are shipped to research facilities

for purposes of research, etc., requiring such animals. The Secretary would be empowered to prescribe the period of retention of veterinary certificates in regulations promulgated in accordance with section 10 of the act.

Conference substitute

The Conference substitute adopts the House provision.

17. Age Limitations (New Subsection 13(c))

Senate bill

The Senate bill contains no provision respecting the age at which animals may be transported.

House Amendment

The House amendment would add to section 13 of the act a new subsection (c) which would prohibit delivery of any dogs, cats, or additional kinds or classes of animals designated by regulation of the Secretary, by any person to any intermediate handler or carrier for transportation in commerce, except to registered research facilities, if they are less than 8 weeks of age, or such other age as the Secretary may by regulation prescribe. The Secretary shall designate additional kinds and classes of animals and may prescribe ages different than 8 weeks for particular kinds or classes of dogs, cats, or designated animals when he determines that such action is necessary or adequate to assure their humane treatment in connection with their transportation in commerce.

Conference substitute

The Conference substitute adopts the House provision with an amendment which requires the Secretary of Agriculture to determine the minimum age at which dogs, cats, or other animals designated by the Secretary may be delivered for transportation in commerce. The Secretary would, thus, also have discretion, subject to such standards and regulations as he might prescribe, to permit transportation of animals with their litters.

18. C.O.D. Transportation of Animals (New Subsection 13(c) or 13(d))

Senate bill

The Senate bill adds to section 13 of the act a new subsection "(c)" which prohibits any carrier from transporting any animal where the fare or other charges (including the cost of the animal) are to be collected upon delivery unless the consignor guarantees in writing the payment of transportation charges, including return transportation and the out-of-pocket expenses incurred by the carrier in handling any animal not claimed upon delivery. Return transportation shall be permitted by the carriers after 24 hours.

House amendment

The House amendment would add to section 13 of the act a new subsection "(d)" containing similar provisions. It would prohibit any intermediate handler or carrier from receiving for transportation or transporting in commerce any animal where the cost of either the

animal or its transportation is to be collected upon delivery unless the consignor guarantees in writing the payment of round-trip transportation charges and the carrier's out-of-pocket expenses for care of any animal not claimed within 48 hours after notice to the consignee of arrival of the animal.

Conference substitute

The Conference substitute adopts the House provision.

19. Federal Research Facilities to Demonstrate Compliance (Section 14 of Existing Law)

Senate bill

The Senate bill makes no change in section 14 of the act which requires Federal agencies with animal laboratory facilities to comply with the standards promulgated by the Secretary for research facilities under section 13 of the act.

House amendment

The House amendment would amend section 14 of the act to extend to such Federal agencies the requirement presently imposed by the act upon other research facilities to show the Secretary of Agriculture at least annually that professionally acceptable standards governing the care, treatment, and use of animals are being followed.

Conference substitute

The Conference substitute adopts the House provision.

20. Consultation on Humane Standards With Federal Regulatory Agencies (Section 15 of Existing Law)

Senate bill

The Senate bill adds to section 15 of the act a new subsection "(c)" which requires the Secretary of Agriculture to consult and cooperate with the Secretary of Transportation, the Administrator of the FAA, and the Chairmen of the CAB, ICC, and FMC with respect to the establishment and enforcement of humane standards for animals in the course of their transportation in commerce and in terminal facilities prior to and after such transportation. In the case of air transportation and related handling of animals, the Secretary of Agriculture is required, before promulgating any standard, to consult with the Secretary of Transportation and the Administrator of the FAA who in the interest of flight safety may disapprove any such standard within 30 days after consultation. The ICC, CAB, and FMC are required to take such action as is appropriate to implement the standards established by the Secretary. (This last provision has no counterpart in the House amendment.)

House Amendment

The House amendment would add to subsection (a) of section 15 of the act a similar requirement. It provides that the Secretary consult with other Federal departments, agencies, or instrumentalities concerned with administration of statutes regulating the transportation in commerce or handling in connection therewith of any animals.

Before promulgating any standard governing the air transportation and handling in connection therewith of animals, the Secretary of Agriculture would be required to consult with the Secretary of Transportation (but not also with the Administrator of the FAA as in the Senate bill) who could within 30 days thereafter disapprove any such standard for reasons of flight safety.

Conference substitute

The Conference substitute adopts the House provision with an amendment which provides that the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission, to the extent of their respective lawful authorities, shall take such action as is appropriate to implement any standard established by the Secretary with respect to a person subject to regulation by it.

21. Investigation of and Seizure of Animals From Carriers and Intermediate Handlers (Subsection 16(a) of Existing Law)

Senate bill

The Senate bill amends subsection (a) of section 16 of the act to empower the Secretary to investigate and inspect the records of carriers, and to confiscate or destroy in a humane manner any animal held by a carrier which is found to be suffering as a result of a failure to comply with any provision of the act or any regulation or standard issued thereunder. In addition, a new sentence would be added to paragraph (a) authorizing United States Attorneys to prosecute all criminal violations of the act reported by the Secretary and to invite civil actions to enforce orders of, and to recover all civil penalties assessed and reported by the Secretary, or which come to their notice or knowledge by other means. (This requirement is contained in 28 U.S.C. 547.)

House amendment

The House amendment would amend subsection (a) of section 16 of the act to empower the Secretary to investigate and inspect the records of intermediate handlers and carriers and also to confiscate or destroy in a humane manner any animal held by an intermediate handler or carrier which is found to be suffering as a result of a failure to comply with any provision of the act or of the regulations or standards issued thereunder.

Conference substitute

The Conference substitute adopts the House provision.

22. Grant of Immunity to Obtain Testimony (Subsection 16(c) of Existing Law)

Senate bill

The Senate bill strikes from subsection (c) of section 16 of the act the power of the Secretary of Agriculture to obtain testimony by granting immunity under title II of the Organized Crime Control Act of 1970.

House amendment

The House amendment contains no comparable provision. However, the House amendment would make a technical amendment in subsection (c) of section 16 to accommodate another amendment made by the House to section 19 of the act.

Conference substitute

The Conference substitute adopts the House provision.

23. Cease and Desist Orders—Civil Penalties (Section 19 of Existing Law)

Senate bill

The Senate bill amends section 19 of the act to include carriers among the categories of persons against whom the Secretary may issue a cease and desist order and to make carriers subject to suit by the United States for a civil penalty of $500 for each violation of a cease and desist order. The district courts of the United States would be specifically authorized to enforce cease and desist orders against dealers, exhibitors, carriers, or operators of auction sales. (A comparable provision is already contained in section 16(c) of the act.) Carriers would be able to secure judicial review of cease and desist orders in the Courts of Appeals. Carriers would be subject to criminal penalties for violation of any provision of the act. However, the criminal penalty paragraph would be amended to authorize prosecution only for "knowing" violations by any dealer, exhibitor, carrier or operator of an auction sale, and the maximum term of imprisonment would be reduced from 1 year to 6 months.

The Senate bill also adds to section 19 of the act two new subsections. Subsection "(d)" would, in addition to the civil penalty provided for violation of a cease and desist order, empower the Secretary to impose an administrative civil penalty of not more than $2,000 for each violation of the act or regulations. No specific provision is made for appeal from the assessment by the Secretary of a civil penalty. Subsection "(e)" would permit any action including actions for criminal or civil penalties under section 19 of the act to be brought before a United States magistrate in any judicial district in which such person is found.

House amendment

The House amendment would revise section 19 of the act to delete the provisions which limit the Secretary to issuing cease and desist orders against violators and require him to wait for subsequent violation of the cease and desist order before requesting the Attorney General to bring suit for a civil penalty of $500. Instead, the Secretary would be authorized, after notice and opportunity for a hearing, to assess administratively a civil penalty of not more than $1,000 for each violation against any dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale who violates any provision of the act or regulations. Orders assessing civil penalties would be appealable to the United States Courts of Appeals. In the event of failure to pay a civil penalty, the Secretary would be authorized to request the Attorney General to bring suit to collect the penalty in U.S. district court in any judicial district in which the defaulting violator is found, or resides, or transacts business. Such courts would be given jurisdiction to hear such actions.

The House amendment would not subject intermediate handlers or carriers to criminal penalties but would limit prosecution against

dealers, exhibitors, and operators of auction sales to violations committed "knowingly" and provides that prosecution of criminal violations be brought before United States magistrates to the maximum extent practicable. With the consent of the Attorney General, such prosecution could be handled both before the magistrate and, upon appeal to district court, by attorneys of the United States Department of Agriculture.

Conference substitute

The Conference substitute adopts the House provision with an amendment which empowers the Secretary, when assessing an administrative civil penalty, to issue a cease and desist order and provides for judicial assessment of a civil penalty of $500 for knowing violation of such a cease and desist order, and each day such violation continues is a separate offense.

24. Civil Penalties for Research Facilities (Section 20 of Existing Law)

Senate bill

The Senate bill makes no change in section 20 of the act, which provides for cease and desist orders and civil penalties against research facilities.

House amendment

The House amendment repeals section 20. As noted above, the House amendment deletes those provisions of the existing law which limit the Secretary to issuing cease and desist orders. Section 20 differs from section 19 of the existing law only insofar as it affords research facilities notice and opportunity for hearing prior to issuance of a cease and desist order and gives research facilities 15 days to comply with such an order. These privileges are not accorded to dealers, exhibitors, or operators of auction sales under section 19. The House amendment includes research facilities under section 19 and extends the opportunity for notice and hearing to all persons subject to the section.

Conference substitute

The Conference substitute adopts the House provision.

25. Oral Hearing Required for Rulemaking (Section 21 of Existing Law)

Senate bill

The Senate bill would amend section 21 of the act, which confers rulemaking authority on the Secretary, to require transcribed oral hearings prior to issuance by the Secretary of regulations relating to recordkeeping requirements under section 8 of the act or standards under subsections (a) and (b) of section 10. (The reference should be to sections 10 and 15 of the act which are amended by sections 8 and 10 of the Senate bill.)

House amendment

The House amendment contains no comparable provision.

Conference substitute

The Conference substitute adopts the House amendment.

26. Appropriations (Section 23 of Existing Law)

Senate bill

The Senate bill strikes from section 23 of the act the general authorization of appropriations and substitutes therefor a new section 26 at the end of the act which would authorize appropriations of not to exceed $4 million for the fiscal year ending June 30, 1976; not to exceed $1 million for the transition quarter ending September 30, 1976; and not to exceed $4 million for the fiscal years ending September 30, 1977, and September 30, 1978. New authorizations would be required for succeeding fiscal years.

House amendment

The House amendment would add to the general authorization of appropriations in section 23 of the act a proviso which would limit, to $100,000 for the transition quarter and $400,000 for each fiscal year thereafter, appropriations for enforcement of section 26 (animal fighting ventures) added to the act by the House amendment. In addition, the House amendment contains a separate section limiting to $100,000 for the transition quarter and to $600,000 for each fiscal year thereafter, appropriations to implement and administer the provisions of the Animal Welfare Act Amendments of 1976, other than section 26.

Conference substitute

The Conference substitute adopts the House provision with an amendment which deletes the $600,000 authorization ceiling on appropriations to implement those sections of these amendments which relate to humane treatment of animals in commerce, but retains the $400,000 authorization ceiling imposed by the House on appropriations to enforce the animal fighting section.

27. Effective Date (Section 24 of Existing Law)

Senate bill

The Senate bill amends section 24 of the act to require the Secretary to prescribe regulations affecting carriers not later than 9 months after enactment and to require carriers to comply with the provisions of the act and regulations 90 days thereafter.

House amendment

The House amendment amends section 24 of the act (1) to require compliance by intermediate handlers and carriers with the provisions of the act, as amended, which relate to them to commence 90 days after promulgation of regulations under section 13 of the act, as amended, which shall be not later than 9 months after enactment; (2) to require compliance by dealers, exhibitors, operators of auction sales, and research facilities with other provisions of the act, as amended, and the implementing regulations 90 days after enactment; and to require compliance by all persons with the veterinary certificate, young animal, and C.O.D. amendments to section 13 of the act 90 days after enactment. All other amendments, principally section 26 (animal fighting ventures), would become effective upon the date of enactment.

Conference substitute

The Conference substitute adopts the House provision with an amendment which makes new section 26 of the act (animal fighting ventures) effective 90 days after enactment of these amendments.

28. ANNUAL REPORT TO CONGRESS (SECTION 25 OF EXISTING LAW)

Senate bill

The Senate bill amends section 25 of the act to require the Secretary of Agriculture to include in his annual report to the Congress recommendations and conclusions concerning flight safety, including the aircraft, its environment, or equipment as they relate to the carriage of live animals in air transportation, but only those recommendations and conclusions which have been approved by the Secretary of Transportation, the Administrator of the FAA, and the Chairman of the CAB.

House amendment

The House amendment would amend section 25 of the act to require the Secretary to include in his annual report to the Congress recommendations and conclusions concerning the aircraft environment as it relates to the carriage of live animals in air transportation.

Conference substitute

The Conference substitute adopts the House provision.

29. ANIMAL FIGHTING (NEW SECTION 26)

Senate bill

The Senate bill contains no provisions relating to animal fighting ventures.

House amendment

The House amendment adds to the act a new section 26 which would subject to a fine of not more than $5,000 or imprisonment for not more than 1 year, or both, any person who knowingly (a) sponsors or exhibits an animal in any fighting venture to which any animal was moved in interstate or foreign commerce, (b) sells, buys, transports, or delivers to another person or receives from another person for purposes of transportation in interstate or foreign commerce any dog or other animal for purposes of having the dog or other animal participate in an animal fighting venture, or (c) uses the U.S. mails or any interstate instrumentality for purposes of promoting or furthering an animal fighting venture held within the United States. The Secretary of Agriculture would be authorized to make such investigations as he deems necessary and to enlist the assistance of the FBI, Treasury, or other Federal, State or local law enforcement agencies. The provisions of this new section would not supersede or otherwise invalidate any State, local, or municipal legislation or ordinance relating to animal fighting ventures except in case of a direct and irreconcilable conflict. For purposes of this new section of the act, the term "animal" would be defined to mean any live bird, or any live dog or other mammal, except man.

Conference substitute

The Conference substitute adopts the House provision with an amendment which provides that the activities prohibited by subsections (a), (b), or (c) of new section 26 of the act shall be unlawful with respect to fighting ventures involving live birds only if the fight is to take place in a State where it would be in violation of the laws thereof. The section does not apply to export of live birds to foreign countries nor to interstate shipment of live birds for breeding purposes. Game fowl publications would be unaffected except that advertising of fights involving live birds would be prohibited except in those instances where such fights are to be held in a State or territory where they are not unlawful.

THOMAS S. FOLEY,
W. R. POAGE,
BOB BERGLAND,
JERRY LITTON,
JAMES WEAVER,
TOM HARKIN,
Managers on the Part of the House.

WARREN G. MAGNUSON,
WENDELL H. FORD,
LOWELL P. WEICKER, JR.,
Managers on the Part of the Senate.

○

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: April 26, 1976 Time:

FOR ACTION: cc (for information):

Phil Buchen
Jim Cannon Bill Seidman
Max Friedersdorf Mike Duval
Jack Marsh Tim Austin
FROM THE STAFF SECRETARY

DUE: Date: TODAY - April 26 Time: 4 P.M.

SUBJECT:

James T. Lynn memo of 4/25/76 re
Extension of Temporary Unemployment
Compensation Programs

ACTION REQUESTED:

____ For Necessary Action

____ Prepare Agenda and Brief

X For Your Comments

X For Your Recommendations

____ Draft Reply

____ Draft Remarks

REMARKS:

We regret the short time given for review of this issue but OMB has requested that this package go forward to the President this afternoon --

Support OMB and Labor Recommendations.

P.W.B. 4/26/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Connor
For the President

THE WHITE HOUSE

WASHINGTON

MB

April 29, 1976

MEMORANDUM FOR: JIM LYNN

FROM: PHIL BUCHEN P.

SUBJECT: Federal Election Campaign Act Amendments of 1976

As you requested, I have enclosed background materials to be used in your preparation of the Enrolled bill memorandum on S. 3065. Please contact me if you need additional information in this regard.

THE WHITE HOUSE

WASHINGTON

April 24, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN P.

SUBJECT: Conference Bill to amend the Federal Campaign Laws

I. INTRODUCTION

This memorandum supplements the one to you of April 22, 1976, on the same subject. In that memorandum were analyzed in detail the only two groups of troublesome provisions in the bill, namely those which bear on the rule-making independence of the Commission and those which affect the campaign efforts involving corporations, unions and their respective Political Action Committees (PAC's).

This memorandum is designed to bring together all the principal advantages and disadvantages of your signing the bill when it comes to you, probably during the week of April 26, 1976, and to provide draft alternative statements for your issuance at the time (Tab A for vetoing and Tab B for signing). Which of the two types of statements are applicable depends on your decision of whether you will sign or will return the bill.

At this time it is not possible to know whether or not certain of the troublesome provisions where the exact meaning is unclear could be beneficially clarified by language changes in the present draft conference report or by floor debate at the time the conference bill is taken up for vote.

II. ADVANTAGES AND DISADVANTAGES OF SIGNING BILL

1. Advantages of signing bill

a) Finally permits reconstitution of Commission as soon as you nominate and Senate confirms six members, and as a result:

(i) Permits civil enforcement of the campaign laws under expanded enforcement provisions (For example, PFC complaints against Reagan's alleged violations will be entertained, whereas they are now in abeyance)

(ii) Issuance of Advisory Opinions and regulations can proceed for the guidance of candidates (Extensive regulations can be expected to be ready for submission to Congress by June 4, if the Bill is signed)

(iii) Certification for payment of Federal matching funds to Presidential candidates can be renewed (No payments have been certified after March 22, and PFC has an accumulated claim of close to one million dollars)

(iv) Significant new provisions of bill and clarifications can become operative, such as those requiring for the first time Union disclosure of costs for communications to support or oppose candidates

b) Immediately upon signing will permit borrowing by Presidential candidates on security of anticipated Federal matching funds even before Commission members are nominated and confirmed

c) The Bill as proposed by the Conference Committee offers some advantages which would not otherwise be obtained under your proposed bill for simply reconstituting the Commission, such advantages being principally:

(i) A much more comprehensive and flexible civil enforcement mechanism is provided to the Commission, the effect of which is to facilitate voluntary compliance through conciliation agreements and the authority to levy fines, particularly in instances of violations not serious enough to warrant criminal prosecution through the Justice Department.

(ii) For the first time, each Union will be required to report costs of communications used to support or oppose clearly identified candidates which are in excess of $2,000 (Although the provision applies to Corporations as well, the latter do not ordinarily or extensively engage in such communications.)

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2. Disadvantages of signing bill

a) Because the bill contains and adds to the Congressional one-house veto provisions over Commission rules and regulations, you will be perceived as accepting the action of the Congress in further weakening the independence of the Commission. (However, because you have already stated that you believe such provisions are unconstitutional, you can mitigate this consequence in a signing statement that proposes quick challenge in the Courts of these provisions. Also, because such provisions in a law that is meant to govern elections to Congress present the most favorable case for declaring them unconstitutional, you may get a decision that will be precedent for regarding as invalid similar veto provisions in the many other statutes which allow Congressional and even Committee vetoes of Executive regulations.)

b) Because other new provisions of the bill may be unconstitutional, such as restrictions on communications and solicitations by corporations, unions and their PAC's, signing may imply your acceptance of these restrictions, although again language in your signing statement can mitigate this implication.

c) Acceptance of the bill will mean that the new provisions therein, some of which are difficult to interpret, will add to uncertainty and the potential for litigation.

d) Because on February 27, 1976, a statement by you on amendments to the Campaign laws contained the words "...I will veto any bill that will create confusion and will invite further delay and litigation," you may be perceived as going back on this commitment if you sign the bill.

e) You will incur dissatisfaction on the part of business interests for the reasons set forth at length in part III of my memorandum to you of April 22, 1976; and to the extent that the business concerns may prove warranted and will cut down the ability or willingness of business interests to support the campaigns of Republicans, our party would be adversely affected.

f) Adoption of this bill may discourage any further and more comprehensive legislation to deal with critical problems in the electoral process, such as for delegate selection and for difficulties experienced during the 1976 election under the present law as amended by this bill.

III. RECOMMENDATIONS

On the assumption that the Conference Bill is passed by Congress in its present form and floor debates do not give rise to interpretations which change the fair meaning of the present language, signing is recommended by Rogers Morton, Philip Buchen, Max Friedersdorf,

Return of the bill without your signature is recommended by

Your tentative views may be indicated below, although with the understanding that your choice of options will be kept in confidence until you receive the bill and make your final decision.

_____ Tentatively prefer signing

_____ Tentatively prefer return of bill without my signature

_____ Other:

DRAFT VETO

Statement By the President

Almost three months ago, the United States Supreme Court ruled that certain provisions of the Federal Election Campaign Laws were unconstitutional, and, in particular, declared that the FEC could not constitutionally exercise enforcement and other executive powers unless the manner of appointing the Members of the Commission were changed. At the same time, the Court made it clear that the Congress could remedy this problem by simply reconstituting the Commission and providing for Presidential appointment of the Members of the Federal Election Commission.

Although I fully recognized that other aspects of the Court's decision, as well as the original election law itself, mandate a critical and comprehensive review of the campaign laws, I realized that there would not be sufficient time for such a review to be completed during the time allotted by the Court which would result in any meaningful reform. Moreover, I recognized the obvious danger that various opponents of campaign reform and other interests -- both political and otherwise -- would exploit the pressures of an election year to seek a number of piecemeal, ad hoc

and hastily considered changes in the election laws. In accordance with the Court's decision, I submitted remedial legislation to Congress for immediate action which would simply and immediately have reconstituted the Commission for this election, while at the same time, ensuring full scale review and reform of the election law next year with the added benefit of the experience to be gained by this election. The actions of the Congress in ignoring my repeated requests for immediate action and instead enacting a bill which would fundamentally destroy the independence of the Commission, have confirmed my worst fears.

The most important aspect of any revision of the election laws is to insure the independence of the Federal Election Commission. This bill provides for a one-house, section-by-section veto of Commission regulations -- a requirement that is unconstitutional as applied to regulations to be proposed and enforced by an independent regulatory agency. Such a permanent restriction would have a crippling influence on the freedom of action of the Commission and would only invite further litigation.

Moreover, the bill would also introduce certain new provisions into the election law which may be of doubtful constitutional validity, would inadvertently affect other federal legislation, and would at the same time change many of the rules applicable to the current election campaigns of all federal candidates. In the meantime, campaigns which were started in reliance on the funding and regulatory provisions of the existing law all are suffering from lack of funds and lack of certainty over the rules to be followed this year. The complex and extensive changes of this bill will only create additional confusion and litigation and inhibit further meaningful reform. Even those changes which I would consider desirable and an improvement over existing law would be best considered from the perspective of a non-election year with full and adequate hearings on the merits and impact of these revisions.

Accordingly, I am returning Senate bill 3065 to the Congress without my approval and again ask the Congress to pass the simple extension of the life of the Commission. Tbe American people want an

independent and effective Commission. All candidates must have certainty in the election law and all Presidential candidates need the federal matching funds which have been unduly held up by those who would exploit the Court's decision for their own self-interest. At this late stage in the 1976 elections, it is critical that the candidates be allowed to campaign under the current law with the supervision of the Commission in a fair and equitable manner absent the disruptive influence of hastily enacted changes.

TAB B

DRAFT SIGNING STATEMENT

On October 15, 1974, I signed into law the Federal Election Campaign Act Amendments of 1974 which made far-reaching changes in the laws affecting federal elections and election campaign practices. This law created a Federal Election Commission to administer and enforce a comprehensive regulatory scheme for federal campaigns.

On January 30, 1976, the United States Supreme Court ruled that certain features of the new law were unconstitutional and, in particular, declared that the FEC could not constitutionally exercise enforcement and other executive powers unless the manner of appointing the Members of the Commission was changed.

The Court originally deferred the effective date of its ruling for 30 days to "afford Congress an opportunity to reconstitute the Commission by law or to adopt other valid enforcement mechanisms." When it appeared that Congress would fail to act within the 30-day period, the Court extended the stay of its ruling until March 22. Again, the Congress failed to act on the simple measure required by the Court to reconstitute the Commission. Through the neglect of Congress, the Commission has been without its enforcement and executive powers for over one month at a critical stage of the election process for Congressional as well as Presidential candidates.

Instead of acting on the simple corrective legislation required by the Supreme Court, the Congress has proceeded to amend the existing campaign

laws in a great number of ways. The laws as amended have the effect of seriously limiting the independence of the Federal Election Commission from Congressional influence and control of the Federal Election Commission, and they change many of the rules governing the conduct of the current election campaigns after they have been under way for some months.

Over two months ago I stated that I could not approve any bill that would create confusion and would invite further delay and litigation in the present campaign. Without question, the legislation passed by the Congress does have these defects. Further confusion and delay in providing guidance for candidates and their supporters or contributors will ensue while the Commission considers the effect of the bill on its previously issued opinions and regulations. Provisions of the bill which lack clarity may lead to further litigation, and those provisions which purport to restrict communications and solicitations by corporations, unions, trade associations and their respective Political Action Committees will surely give rise to litigation over their doubtful constitutionality.

The failure of the Congress to reconstitute the Commission earlier and the resulting deprivation of essential Federal matching fund monies has so substantially impacted on seven of the candidates seeking nomination for the Presidency by their respective parties that they felt impelled to seek relief from the Supreme Court. The Court determined that it was not in a position to provide that relief.

Further delay in reconstituting the Commission would have an even more egregious and unconscionable impact on these candidates and on the conduct of their campaigns. As President, I cannot allow the outcome of

the primary elections to be influenced by the failure of candidates to have the benefits and protections of laws enacted before the campaigns on which they have relied in standing for nomination.

Accordingly, I am today approving this legislation and submitting to the Senate for its advice and consent, the nominations of the six current members of the Commission as members of the new Commission. I trust that the Senate will act with dispatch to confirm these appointees, all of whom were previously approved by the Senate, as well as the House, under the law as it previously existed.

On numerous occasions, my predecessors and I have stated that provisions such as those contained in this legislation that allow one house of Congress to veto the regulations of an Executive agency are an unconstitutional violation of the doctrine of separation of powers. In the present legislation, it is absurd for the Congress to take credit for the establishment of an independent regulatory agency to administer, enforce and regulate the Federal election campaign laws, when candidates who serve in the Congress reserve to themselves the right to reverse the decisions of the Commission in this fashion.

Accordingly, I have directed the Attorney General to take such steps at the appropriate time as may resolve the Constitutional issues which will arise if either House of Congress chooses to interfere with the independence of the Commission by exercise of the Congressional one-house veto over Commission rules or regulations.

In the just over six months remaining until the general elections, the Commission will have the difficult, but critical, task of administering

this new legislation in a manner that minimizes the confusion which is caused by its complexity. In this regard, the Commission will be aided by a newly provided comprehensive and flexible civil enforcement mechanism designed to facilitate voluntary compliance through conciliation agreements and the authority to levy civil fines.

In addition, the legislation charts new ground in further limiting the influence of big money in our electoral process, by avoiding proliferation of Political Action Committees under common control, and disclosure of previously unreported costs of partisan communications intended to affect the outcome of Federal elections.

I would have much preferred postponing consideration of needed improvements to the Federal Election Campaign laws until after the experience of the 1976 elections could be studied. Yet I do welcome certain of the changes made by the present bill which appear to go part way in making improvements. Also, I still plan to recommend to the Congress in 1977 passage of legislation that will correct problems created by the present laws and will make additional needed reforms in the election process.

FEC

THE WHITE HOUSE

WASHINGTON

April 22, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN P.

SUBJECT: Conference Bill to amend the Federal Campaign Laws

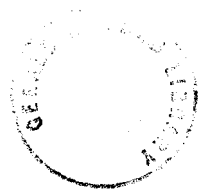
I. Background

Attached at Tab A is a memorandum from Counsel of the President Ford Committee to Jim Connor of April 7, 1976 which reports the situation after the House and Senate had each passed separate and conflicting bills to make numerous amendments to the Federal Campaign Laws.

Attached at Tab B is a memorandum to you from me of April 14, 1976 which explains the major provisions of the bill as agreed to by the House-Senate Conference Committee. A comparison with Tab A shows that the Conference resulted generally in overcoming the worst features of each of the separate bills.

Counsel for the PFC and our office have since analyzed the draft conference report at length, and we have received comments from, and consulted with, Congressman Wiggins, minority staff of the Congress who worked on the legislation, representatives of business, and others.

The general consensus is that there are only two groups of provisions in the Conference Bill which cause any substantial concern, namely those which bear on the rule-making independence of the Commission and those which affect the campaign efforts by or for Corporations and Unions and their respective Political Action Committees (PAC's). These provisions are analyzed and evaluated in detail at parts II and III of this memorandum.



The changes made in contribution limitations as discussed in paragraph 1 of Tab B are not regarded as objectionable. The changes made in the enforcement provisions are generally regarded as an improvement over existing law. The new disclosure requirements for expenditures over $2,000 per election by Unions in communicating to members in favor of, or in opposition to, clearly identifiable candidates (as described in paragraph 2 of Tab B) are looked upon as a real plus. Raising the minimum contribution which must be reported, from over $10 per contributor to over $50, and requiring anonymity for contributions of $50 or less if they are solicited for PAC's by Corporations or Unions from persons outside of the usual groups to which they appeal could conceivably open the way to undetectable evasions of the law; but this is not regarded as a very serious objection.

II. Independence of Commission

A. Rules and Regulations -- The present law mandates that the Commission promulgate rules and regulations to carry out the administrative and judicial duties of the Commission. The law also provides that either House of Congress may disapprove the regulations within thirty (30) legislative days.

The Conference bill, on the other hand, provides that all regulations proposed to date by the Commission must be resubmitted to the Congress for review and will now be subject to a one-house vote, either section by section or in toto, within 30 legislative days. The bill expands the existing veto power of the Congress by providing that a regulation "...means a provision or series of inter-related provisions stating a single separable rule of law." The Conference Report indicates that this section is intended to permit disapproval of discrete, self-contained sections or subdivisions of proposed regulations but is not intended to permit the rewriting of regulations by piecemeal changes.

B. Advisory Opinions -- The present law permits the Commission to issue Advisory Opinions (AO's) with respect to whether any specific transaction or activity would constitute a violation of the election laws. The Conference Bill states that the Commission may only

issue an opinion concerning the application to a specific factual situation of a general rule of law stated in the Act or in the regulations.

The FEC General Counsel has informally indicated that the Commission is likely to avoid ruling on potentially controversial questions until regulations have been promulgated and not vetoed by Congress. Also, existing Advisory Opinions, which must be revised or incorporated in regulations if they do not conform to the Conference Bill, have an uncertain status. While this condition will not continue in the future when comprehensive regulations are in place, it does introduce further uncertainty into the present campaign.

The basic problem of allowing a one-house veto of Commission regulations is a carryover from the existing law, and you have already stated your view that such a veto provision is unconstitutional, as the Office of Legal Counsel at the Department of Justice has advised. Yet, the Conference Bill extends the degree and selectivity of Congressional control over Commission opinions and policies and thus further weakens the Commission's independence from Congress after the Supreme Court had ruled that the FEC must be an independently constituted Commission. This is especially critical for Republicans when the Congress is dominated by the opposite party, and at a time when the Commission members have felt sharp criticism from Congress.

Under these circumstances, you may not be in good position to rely on the lack of Commission independence as a ground for vetoing the Conference Bill, especially since the original Act, which you did sign, had the objectionable feature of a one-house Congressional veto over Commission regulations and when a Court challenge of the veto provision may ultimately correct the situation.

Notwithstanding these very realistic objections, the Bill's adverse effects on the independence of the Commission is likely the most acceptable basis for explaining a veto.

III. Effect on Corporations and Unions

A. Provisions regarding Corporations and their PAC's

The Conference Bill provides that a corporation may:

1. Use corporate funds to communicate on any subject with, and solicit voluntary contributions for their PAC's on an unlimited basis from, its shareholders and its executive or administrative personnel -- salaried and having policymaking, managerial, professional, or supervisory responsibilities -- and their families (hereinafter called "management employees").

2. Use corporate funds for a non-partisan registration or get-out-the-vote campaign aimed at its shareholders or management employees;

3. Use a payroll check-off plan for purposes of collecting permitted contributions for its PAC but must then make a similar plan available to unions for their PAC's at cost;

4. Allow only one trade association PAC to solicit the corporation's shareholders or management employees; and

5. Make solicitations twice a year by mail, at residence addresses, to any employee beyond those who are shareholders or management employees, if the solicitation is designed to keep anonymous the identity of contributors of less than $50.

B. Provisions regarding Unions and their PAC's

The Conference Bill provides that a union may:

1. Use dues funds to communicate on any subject with, and solicit voluntary contributions on an unlimited basis from, its members and their families; but for the first time unions must report costs, over $2,000 per election, of communications advocating the election or defeat of a clearly identified candidate;

2. Use dues funds for non-partisan registration or get-out-the-vote drives aimed at its members and their families;

3. Use at cost a payroll check-off plan or any other method of raising voluntary contributions from its members for its PAC that is permitted by law to corporations, if it is used by the corporation

or if the corporation has agreed to such use. (When a political check-off plan or other method is used in just one unit of a corporation, no matter how many units it has, any union with members in any other unit of the corporation may demand it from the corporation at cost with respect to its members. It is believed that COPE would then also be entitled to this check-off or other method at cost. This provision changes the effect of the National Labor Relations Act in permitting the use of check-offs other than for Union dues.); and

4. Make soliciations twice a year by mail, at residence addresses, to any shareholder or employee beyond those who are members of that union and their families, if the solicitation is designed to keep anonymous the identity of contributors of less than $50.

C. Provisions regarding both Corporations and Unions and their PAC's

The Conference Bill also provides:

1. That unions, corporations and membership organizations must report the costs directly attributable to any communication expressly advocating the election or defeat of a clearly identified candidate (other than a regular communication primarily devoted to other subjects not relating to election matters) to the extent they exceed, in the aggregate, $2,000 per election; and

2. For the non-proliferation of PAC's by treating all political committees established by a single international union and any of its locals, or by a corporation and any of its affiliates or subsidiaries, as a single political committee for the purpose of applying the contribution limitation -- $5,000 to candidates, $15,000 to the political parties. (Similarly, all of the political committees established by the AFL-CIO and its state and local central bodies (COPE's), or by the Chamber of Commerce and its state and local chambers, are considered a single political committee for this purpose.)

D. Industry Objections

Industry opposition to these provisions is generally based on its effects on labor-management relations and on the relative advantages provided labor. In particular, they assert the following:

(a) Corporate PAC's will be less effective than they are under current law because of the limitations imposed on classes of employees eligible for unlimited solicitation, the reduction to one trade association per corporation, and the overall chilling effect of the Bill.

(b) Lack of clarity in the statute and colloquies in conference suggest that corporations may have to provide the names and addresses of all non-union employees to unions. (If so, this would allow unions to gain access to employees in situations where they presently cannot, and thus use such information for purposes unrelated to the election law, e.g., organizing non-union employees);

(c) The breakdown between executive and administrative personnel and other employees will further the "us-them" mentality in the corporate organization;

(d) The definition of "executive or administrative personnel" is imprecise and will be difficult for corporations to interpret and may, because of the legislative history, exclude first-line supervisors, such as foremen and "straw" bosses, even though many are management employees for most other purposes under the labor laws;

(e) Corporations are prohibited from conducting non-partisan registration and get-out-the-vote campaigns directed at their rank and file employees, which may be unconstitutional. (This could affect existing programs in some corporations, such as Sears' "Good Citizenship Program");

(f) The twice-a-year solicitation by mail for non-management employees is virtually useless because personal contact or follow-up is usually

needed, and a check-off is not permitted since, among other reasons, anonymity of contributors cannot be assured; and

(g) The Bill bars unlimited solicitations by unions and management of all non-union and non-management workers, which may be unconstitutional.

E. Evaluation of Industry Objections

The only industry arguments which appear to warrant significant concern are (1) that corporations may have to make names and addresses of non-union employees available to the unions and (2) that their PAC's will be less effective than under the present interpretation of the current law. The statutory language generally supports the view that names and addresses need not be turned over to unions because they are not a "method of soliciting voluntary contributions or facilitating the making of voluntary contributions." (The "method" being the total process of mailing to a group of employees, which the Corporation can provide a union at cost without turning over the names and addresses separately for whatever use the union might make of them that is not related to the purpose of the campaign laws.) However, in the only related Conference discussion, Chairman Hays took the opposite view with respect to shareholders lists. Thus, this question is likely to be decided by the FEC in the form of either an advisory opinion or a regulation. How independent from Congress a Commission reconstituted by this Bill will be could determine the result, although a straight party split of the Commission's six members would prevent any decision. An unfavorable FEC opinion or regulation would most certainly be appealed to the Courts.

Although the Conference Bill reduces the potential subjects for unlimited solicitation of political contributions to corporate PAC's, so as to eliminate non-management employees who are not also shareholders, the bulk of such contributions would likely come in any event from shareholders and management employees because of their greater resources and their community of interest. Union members would not likely be a fruitful source for contributions to corporate PAC's and would be more costly to solicit by any means than the returns could justify. As for non-union and

non-management employees, even if twice-a-year mail solicitations do not appear a promising method, they will not be good sources for union solicitation either. Balancing or partially off-setting the relative advantages of unions are the non-proliferation provisions which will affect unions more than they will corporations. Likewise, unions will be affected more by reporting requirements for their costs of campaigning in favor of candidates by communications with their members, because this activity is much more common to unions than it is to corporations.

THE WHITE HOUSE

WASHINGTON

April 14, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN P.

SUBJECT: Reconstitution of the Federal Election Commission (FEC)

Yesterday, the House-Senate Conference Committee agreed in principle to a bill that reconstitutes the FEC by providing for six members appointed by you and confirmed by the Senate. The Conference will next meet on April 27 to approve the final bill and report. Based on drafts and colloquies during the Conference, the following are the major provisions of the bill:

1. New contribution limitations. The bill continues the present limits of $1,000 per election on contributions by individuals to federal candidates and $25,000 total per calendar year. Under the bill, an individual may give up to $20,000 in any calendar year to the political committees established and maintained by a national political party. An individual may only give $5,000 to any other political committee. Under the present law, the only limit on contributions to political committees not related to individual candidates is $25,000 per year. The bill continues the present $5,000 limit on contributions by multi-candidate committees to candidates for federal office, but establishes, for the first time, limits on the amounts which multi-candidate committees can transfer to the political committees of the parties ($15,000) or to any other political committee ($5,000). A special exemption is provided for transfers between political committees of the national, state or local parties.

The bill also allows the Republican or Democratic Senatorial Campaign Committee or the national committee of a political party, or any combination thereof, to give up to $17,500 per election to a candidate for the Senate. Under the old law, each committee could give only $5,000 and thus a maximum total of $10,000. However, Hays resisted attempts to give this same right to the Congressional campaign committees.

2. The Packwood Amendment. The bill also includes a modified version of the Packwood Amendment which for the first time requires corporations, labor organizations, and other membership organizations issuing communications to their stockholders, employees or members to report the cost of such communications to the extent they relate to clearly identifiable candidates. The threshold for reporting is $2,000 per election, regardless of the number of candidates involved. The costs applicable to candidates only incidentally referenced in a regular newsletter are not required to be reported. However, the costs of a special election issue or a reprint of an editorial endorsing a candidate would have to be disclosed. Thus, the costs of phone banks and other special efforts used by unions to influence elections would be disclosed, even though they are not considered to be campaign contributions.

3. Independence of the FEC. The bill limits the FEC's authority to grant new advisory opinions to those relating to specific factual situations and when it is not necessary to state a general rule of law. The FEC is given 90 days from enactment to reduce its old advisory opinions to regulations which are then subject to a one-House veto. Wayne Hays' intent is to control the decisions rendered by the Commission. Although the item veto remains in the law, it has been modified to permit the disapproval of only an entire subject under regulation, and not individual words or paragraphs of regulations.

One Republican member of the Commission has indicated that these limitations on advisory opinions are not as objectionable as thought because the Commission would issue regulations in any event to implement the criminal provisions of the old law which would be transferr

from Title 18 to Title 2 of the United States Code. Additionally, the 90-day period given to the Commission will mean that the regulations based on advisory opinions will most likely be submitted in late July. With the lengthy recesses we can expect this summer for the conventions and campaigns, Hays will have relatively little opportunity to get the House to veto any of the old advisory opinions. While persons may continue to rely on the advisory opinions, they do so at the risk that if vetoed by one House, they may be required to reverse earlier actions at great expense to their committee or campaign. This will have a chilling effect on candidates and their reliance on advisory opinions, and on the Commission and its ability to effectively and independently enforce the election laws.

4. Revision of SUNPAC. The bill revises the FEC's SUNPAC decision which had permitted unlimited solicitation by corporations of all its employees for contributions to a corporate political action committee. The bill permits corporations to instead solicit on an unlimited basis only executive officers and administrative personnel who are defined in the act to be salaried employees who have either policy making, managerial, professional, or supervisory responsibilities. The final version of the bill does not prohibit solicitations of an employee by his superior, but does prohibit the use of coercion or threat of job reprisal. Corporations and labor organizations will also be able to solicit all employees and shareholders twice a year. This solicitation must be conducted in a manner that neither the corporation nor labor union will be able to determine who makes a contribution of $50 or less as a result of such solicitation. This will require corporations to use banks or trustee arrangements for this purpose. This provision was designed to prevent the corporation from being able to use a check-off for non-executive employees. Only one trade association per corporation is allowed to solicit the executive personnel of a member corporation. The act also provides that whenever a check-off is used by a corporation for its PAC, then it must also be made available to the union at cost. Unless the corporation first establishes a check-off, the union may not demand it.

Most of the concerns of corporations have thus been resolved with the exception of whether a corporation must provide the union with a list of non-union employees for the purpose of permitting the unions to solicit all employees twice a year. The corporations are afraid that the employee's listing could be used to organize non-union plants and divisions of corporations. The statute

is silent on this point, but it is anticipated that unfavorable legislative history will be included in the Conference Report. It is quite possible that the corporations would prevail if this were taken to court. Corporations remain opposed to the SUNPAC revisions, although at this stage their objections are based more on emotion than on an analysis of the bill.

Note: The foregoing are only preliminary comments, and, after we see the exact text of the amendments and the complete Conference Report, we will provide a revised analysis.

April 7, 1976

MEMORANDUM

TO: Jim Connor

FROM: Bob Visser
Tim Ryan

RE: Federal Election Campaign Act Amendments of 1976

The proposed amendments to the Federal Election Campaign Act passed by the Senate and House have now been sent to conference. At this juncture, it is our opinion that the Senate bill is far superior to the Hays bill recently passed by the House. However, even the Senate bill contains a number of major provisions which require revision and/or clarification in the legislative history. Accordingly, we would still recommend that the President consider vetoing this bill unless the following action is taken by the Conference and no additional objectionable provisions are included:

I. Independence of the Commission.

The most important aspect of any revision of Federal election campaign laws is, in our opinion, to insure the independence of the Federal Election Commission. In this regard, removal of the "one house veto" provisions from each of the bills is essential. However, the Congressional Campaign Committee staff has advised us that to expect any such accommodation by Chairman Hays is unrealistic.

The House amendments provide that the appropriate body of Congress may disapprove, in whole or in part, a proposed rule, regulation or advisory opinion reduced to regulation form, within thirty legislative days. On the other hand, the Senate bill provides for the "one house veto" for Commission regulations; there is no provision for an item veto or review of Advisory Opinions. The Senate version also changes the period for Congressional disapproval from thirty legislative days to thirty calendar days or fifteen legislative days.

Recommendation

If the Senate provision which essentially represents

the status quo comes out of Conference, it is acceptable although it would probably provoke further litigation. The House version would be totally unacceptable and would most likely be an independent basis on which to base a veto recommendation.

II. Political Action Committees.

A number of issues are presented within the general category of PAC's. We have continuously taken the position that the law must provide equal opportunity for political activity by corporation and unions. No longer will this field be preempted by COPE. Accordingly, we have concentrated on the structure of PAC's and limitations incumbent therein, and on the importance of the issue of non-proliferation.

Notwithstanding the fact that the relevant statutory provisions are ambiguous, we have been assured that both the House amendments and the Senate bill provide for the non-proliferation of all political action committees (PAC's). In particular, all qualified coporate and union PAC's will be limited to a $5,000 aggregate contribution per Federal candidate per election, even though there may exist more than one PAC within the corporate or union structure. In order to support this interpretation, the following statement submitted by Chairman Hays into the House Report will also be placed in the Conference Report:

> "All of the political committees set up by a single corporation and its subsidiaries would be treated as a single political committee for the purposes of H.R. 12406's contribution limitations;
>
> All of the political committees set up by a single international union and its local unions would be treated as a single political committee for the purposes of H.R. 12406's contribution limitations;
>
> All of the political committees set up by the AFL-CIO and all its State and local central bodies would be treated as a single political committee for the purposes of H.R. 12406's contribution limitations;
>
> All the political committees established by the Chamber of Commerce and its State and local Chambers would be treated as a single political committee for the purposes of H.R. 12406's contribution limitations."

If this clarifying language is unacceptable, a complete reevaluation of our strategy, vis-a-vis this bill, will be necessary.

The general provisions on PAC's in each of the bills would restrict solicitations by Corporate PAC's to stockholders, executive (Senate-administrative) personnel and their families. The Senate bill, however, provides that two written solicitations per year to stockholders, officers, employees and their families may be made by a corporation or union or its respective PAC. In addition, the Senate bill states that any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions which is utilized by a corporation must be made available to the unions. The Republican Conferees will attempt to limit this facilitation to a check-off provision which is supposedly what the Democrats and Unions desire. Such a limitation would also diminish the opportunity for misuse of this provision by Unions, e.g., as a tool in labor relations.

Other ancillary provisions, for example, the definition of employees with regard to the restriction regarding solicitation of subordinates and the availability of stockholder lists, must be clarified so that the opportunity for corporate solicitations is not jeopardized.

Recommendation

The Senate version with clarifying statements in the Report regarding non-proliferation of PAC's and the solicitation of subordinate employees with safeguards against coercion would most likely be acceptable to us.

III. Packwood Amendment.

The Packwood Amendment which passed in the Senate would require a corporation or union to report all expenditures over $1,000 for communications with stockholders, members or their respective families which expressly advocate the election of a Federal candidate. At present, there is no reporting requirement. Thus, the provision would be most helpful in closing a major loophole benefiting unions in the present law. Since disclosure is the most important aspect of the campaign election law, this provision would effectively close the circle so that all politically-related expenditures for Federal candidates would be reported to the Federal Election Commission.

However, we understand that such a reporting requirement would, as a practical matter, be too expensive and burdensome for unions to effectively comply and, accordingly, stands little chance of surviving in Conference.

Recommendation

Although a very important provision, the absence of this section in a final bill would not of itself support a veto recommendation. However, it is an important issue which is readibly understandable by the public.

IV. Limitations on Contributions and Expenditures.

Both the House and Senate provisions retain the $1,000 individual contribution limitation. The House version, however, provides that no person may make contributions to any political committee which exceeds $1,000 per calendar year. The Senate version, on the other hand, provides that a person may contribute $25,000 per calendar year to any political committee maintained by a political party but that they may not make contributions to any other political committee exceeding $5,000 in a calendar year. As a result of prior revisions of the House bill with regard to the contribution limitations, we believe that this aspect of the bill is negotiable and that Chairman Hay would be willing to accede to the limitations set forth in the Senate bill.

The House version maintains the current $5,000 maximum contribution by qualified political committees to a candidate and also sets forth a new limitation of $5,000 for contributions by a political committee to any other political committee in a calendar year. The existing law does not cover transfers between committees. The Senate version, on the other hand, would maintain the contribution restrictions on multi-candidate political committees at $5,000 to any one candidate per election but allow such political committees to contribute up to $25,000 per year to any other political committee maintained by a political party and contribute up to $10,000 to any other political committee in any calendar year. Finally, the Senate bill provides that the Republican or Democratic Senatorial Campaign Committees may contribute another $20,000 to candidates for the Senate.

Recommendation

We believe that the Senate bill's language with regard to contributions and expenditures by political committees is highly

preferable. Although the Senate version would place certain restrictions on transfers by a political committee to certain other political committees, we believe that the limits set forth in the Senate version are reasonable and would be acceptable.

V. Miscellaneous Provisions.

In addition to the above issues, there are numerous other minor changes and suggestions that we are directly conveying to counsel for the Congressional Campaign Committee staff who will be working with the minority members of the Conference Committee. Although certain of the minor revisions are important in terms of the particular provision involved, none are of fundamental importance to the President's decision regarding the election law amendments.

Department of Justice
Washington, D.C. 20530

APR 2 1976

MEMORANDUM FOR THE HONORABLE BARRY N. ROTH
Assistant Counsel to the President

Re: Federal Election Campaign Act Amendments of 1976

This is in response to your request for our views on HAND-NITE DC, a conference committee print of a proposed Conference Report to accompany S. 3065. The following remarks, prepared on an urgent basis, focus on enforcement problems of the Justice Department and constitutional issues of interest:

1. Section 101 provides that the Federal Election Commission shall be composed of the Secretary of the Senate and the Clerk of the House, ex officio and without the right to vote, and six members appointed by the President with the advice and consent of the Senate. Although the holding of Buckley v. Valeo, 96 S. Ct. 612 (1976)--that the President must appoint the voting members--would be met by this provision, a question still exists as to whether the two legislative officers, the Clerk of the House and the Secretary of the Senate, can remain on the Commission.

The President's bill, S. 2987, provided for their elimination from the Commission, and I testified in the Senate hearing that their presence on the Commission was unconstitutional and an unwise precedent. The connection of the two ex officio members to the legislature is, of course, even closer than that of the members whom the court held were unconstitutionally appointed, since they are not only appointed by Congress but also paid by it and removable by it. See Federal Election Campaign Act Amendments, 1976, Hearing before the Subcommittee on Privileges and Elections of the Senate Rules and Administration Committee, 94th Cong., 2d Sess., pp. 119-20, 135-36 (1976). At the time that S. 3065 was reported by the Rules Committee, three minority members took exception to the fact that the bill failed to

address the problems of legislative officers serving on an executive commission. S. Rep. No. 94-677, p. 62 (1976).

2. Section 108 (DC-7) amends the powers of the Federal Election Commission as they relate to advisory opinions. "General rules of law" may not be stated in advisory opinions but only by the Act or by rule or regulation. Advisory opinions issued prior to the proposed amendment must be set forth in regulations within 90 days of the amendment. See DC 35-36.

The net effect of this provision is to narrow the function of advisory opinions and broaden the function of regulations. Commission regulations are subject to disapproval by a single House of Congress. 2 U.S.C. §438(c). When the President's bill was drafted a decision was made (contrary to our recommendation) not to propose deletion of the device for congressional review of regulations because the proposal would be controversial. Nevertheless, the President stated in his Message to Congress that he thought that the provision was unconstitutional (Hearing, supra at 134) and I reiterated his "strenuous objection", at the Senate hearing. Id. at 133.1/ The proposed amendment would have the practical effect of contracting the independent powers of the Commission and expanding the practical significance of the congressional veto, making it more objectionable than before. The Supreme Court declined to rule on the one-House veto provision in Buckley because the Commission, as constituted, could not validly exercise rule making powers. 96 S. Ct. at 692, n. 176. However, the spirit of the Buckley

1/ For a general presentation on the subject see our testimony in Congressional Review of Administrative Rule-making, Hearings before the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee, 94th Cong., 1st Sess. 373 (1975).

decision is that Congress should not engage in executing laws as opposed to enacting them. This is entirely consistent with the position we have taken on the unconstitutionality of legislative veto of regulations.

It may also be noted that if it were entirely possible to decide individual cases properly without setting forth "general rules of law," the role of the courts in our constitutional system would be a good deal different from what it is. This exceedingly artificial requirement of Section 108--designed, of course, to keep the adjudicative function of the agency as closely as possible within congressional control--will be very difficult to observe. To the extent that the Commission's opinions do not appear to be based on general rules they may be viewed as arbitrary.

3. Among other things, section 112 of the proposed bill would move 18 U.S.C. §610 to the Federal Election Campaign Act, making it section 321. (See DC 14). It would change the existing "exceptions" to the general bar on corporate or union contributions in the following ways:

a) It would place restrictions on the types of persons which "segregated funds," supported with corporate or union assets, can lawfully solicit. Generally, corporate funds would be allowed to solicit only corporate stockholders and management or supervisory personnel, while union funds would be allowed to solicit only union members.2/ In general, management funds would be permitted to solicit unionized employees and their families only twice a year, and union funds would be permitted to solicit management personnel and stockholders only twice a year.3/ Neither union nor corporate funds are permitted to solicit persons who are not employees or shareholders of the business entity with which the segregated fund in question (be it union or corporate) is associated.

2/ Section 112 adding section 321(b)(4)(A) to the FECA: DC-15.
3/ Section 112 adding section 321(b)(4)(B) to the FECA: DC-15.

Restrictions such as these pose serious questions of deprivation of associational rights protected by the First Amendment. In United States v. C.I.O., 335 U.S. 106 (1948) the Supreme Court indicated that corporations had a First Amendment right to communicate with their employees and customers on subjects of mutual political interest. This early case suggests that the First Amendment entitles any person enjoying a "special relationship" to a corporation or union to associate with it freely for purposes of political expression; and that any law concerning corporate and union political contributions which seeks to curtail such activity in the fashion of the proposed legislation would contain the constitutional defect of "overbreadth." 335 U.S. at 121.

In United States v. Pipefitters Local #562, 434 F.2d 1116, 1123 (8th Cir. 1970) reversed on other grounds, 407 U.S. 385 (1972), the Court of Appeals for the Eighth Circuit held that the right to maintain segregated funds supported by unions or corporations was essential to preventing the present 18 U.S.C. §610 from being overbroad in a First Amendment sense. To prohibit such voluntary funds, the Court indicated, would impermissibly restrict the rights of union members to associate together for political purposes. In Buckley v. Valeo, supra, at footnote 31, 96 S. Ct. 639 the Court said that a corporate-supported fund could solicit contributions from the corporation's employees generally.

The discussion in the Buckley footnote is particularly significant, since the fact that such independent association was available seems to have been a factor in the Court's conclusion that the limits imposed on individual contributions by the present 18 U.S.C. §608(b) are constitutional. Thus, restricting the scope of solicitation of segregated funds through the proposed legislation could undermine the contribution limitations which this bill carries forward into the FECA.4/

4/ Section 112, adding section 320 to the FECA, DC-11 - 12.

At the very least, the treatment accorded the subject in both Pipefitters and Buckley casts substantial doubt upon the constitutionality of section 112 of the proposed bill.

b) Proposed section 321(b)(2)(B)5/ would prohibit the use of corporate or union funds to engage in completely nonpartisan (but politically-related) activity, unless that activity is directed at union members (in the case of union expenditures) or corporate stockholders, administrative or executive personnel (in the case of corporate expenditures).

It is not clear that a general ban on corporate or union political expenditures can be constitutionally applied to expenditures which are truly nonpartisan. In such circumstances, the Federal interest in regulating campaign expenditures is virtually nonexistent compared to the severe limitation which is placed on expression and the performance of civic duties. Indeed, the only substantial basis for the prohibition is a prophylatic one--the assumption that some purportedly "nonpartisan" activities will not be what they seem--and it is questionable whether this will suffice to justify the impairment of such important constitutional rights.

This view likewise finds support in the cases decided under 18 U.S.C. §610. In United States v. Auto Workers, 352 U.S. 567, 586 (1957), the Supreme Court defined the general prohibition of 18 U.S.C. §610 in terms of influencing the public at large to vote for one candidate in preference to his opposition in a contested election. In United States v. Pipefitters, 434 F.2d 1116, 1121, the Eighth Circuit held that "active electioneering" with union funds was a necessary element to a §610 offense. In Cort v. Ash, 496 F.2d 416, 426 (3d Cir. 1974) rev'd on other grounds, 422 U.S. 66, the Third Circuit held, in order to avoid the First

5/ As added to the FECA by section 112 of the proposed bill; DC-15.

Amendment issue, that 18 U.S.C. §610 required the expenditure to be partisan. And in United States v. Construction and General Laborers Local #264, 101 F. Supp. 869, 875, a Federal District Court in Missouri, as early as 1951, said that §610 could not constitutionally be applied to a non-partisan registration drive conducted with union funds.

The foregoing comments concerning the constitutional difficulties involved in restricting the scope of solicitations of segregated funds, and in restricting non-partisan expenditures by union and corporations, were incorporated, in substance, in a letter which the Criminal Division of the Justice Department sent to the Federal Election Commission in connection with one of the Commission's Advisory Opinions on these subjects. This letter, dated November 3, 1975, is in the public domain and was largely adopted by the Commission in the widely discussed SUN-PAC Advisory Opinion which resulted. Advisory Opinion 1975-23.

4. The penalty section which will govern violations in the future is reduced from a felony punishable by up to $50,000 and two years imprisonment, to a misdemeanor, punishable by imprisonment for up to one year and a fine of $25,000 or 300 percent of the amount contributed, whichever is greater. There is also a $250 floor which must be met before an otherwise prohibited contribution becomes subject to the criminal penalty. See section 112, adding section 329(a) to the Act (DC 18).

Considering the fact that criminal penalties may only be sought in the presence of "knowing and willful" conduct; and that the jurisdictional floor exempts even willful violations which involve small sums; we feel that the reduction of the magnitude of the offense to a misdemeanor is unwarranted.

5. The enforcement section, as amended (Section 109--DC 8-10), would weaken all of the present statutes dealing with campaign finance violations (18 U.S.C. §§608-617) by enabling the Commission to dispose of even willful violations

through nonjudicial means. We strenuously object, in principle, to the concept that the existence or non-existence of willful violation of criminal statutes should be the subject of negotiation and compromise with the Commission. Under this section, it is doubtful whether the Criminal Division could even indict without the Commission's prior approval.

6. The bill does not change the present three-year statute of limitations. Since the Justice Department must wait until the FEC refers a matter to it before it prosecutes, Section 313 (DC 8-10), this special limitation period, added in 1974 (2 U.S.C. §455), is inadequate. The general Federal Statute of Limitations is five years.

7. Section 320(b)(1), as added by Section 112 (DC 13), applies expenditure limits on campaigns on the basis of whether a candidate "qualifies" for Federal funding under Subtitle 11 of the Internal Revenue Code. Buckley v. Valeo indicates that a candidate must have agreed to accept Federal funding in order for such limits to be applied to his campaign consistent with the First Amendment.

Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

Jack Arant
Consultant to Sen.
Laxalt

The Conference version of the Federal Election Campaign Act Amendments of 1976 is an unwarranted and unnecessary restructuring of the federal election laws. It is unnecessary because the only amendment required by the Supreme Court in its Buckley v. Valeo decision was to the manner of appointment of federal election commissioners. It is unwarranted because it not only introduces substantial elements of ambiguity and uncertainty into the middle of on-going federal election campaigns, but also promotes opportunities for violations while reducing penalties for such violations. Candidates, contributors and citizens in general have a right to expect more of their elected representatives than they have produced in this bill (S. 3065).

1. Altering Established Rules and Procedures. The Conference Bill, if enacted, would impose a set of new rules in mid-campaign.

The Conference Bill would be the third major restructuring of the federal election laws in the last five years and would alter the rules and procedures by which federal campaigns are currently being conducted. The two previous revisions, the Federal Election Campaign Act of 1971 (P.L. 92-225) and the Federal Election Campaign Act Amendments of 1974 (P.L. 94-443), established the rules by which campaigns for federal office were to be, and are being, conducted in 1976. Candidates, parties, and contributors have carefully studied these rules over the last several years and, with the guidance of the newly created Federal Election Commission, have adopted the procedures for the orderly and lawful conduct of campaign activities in 1976. With the general election a little more than six months away, several Presidential primaries concluded, and most Senate and House primaries about to commence, the passage of the Conference Bill would require all persons affected by the federal election laws to go through the entire learning and compliance planning process in mid-campaign and to immediately make a number of changes.

2. No Adverse Consequences. If the Conference Bill were rejected, there would be substantial benefits in the form of continuing a set of clearly understood rules by which to conduct this year's campaign, and the only adverse consequences would be the slight delay in making matching funds available to candidates. Existing law governing contributions and expenditures would remain in place.

In Buckley v. Valeo the Supreme Court merely required a simple amendment of the campaign laws to provide for constitutional appointment of commissioners of the Federal Election Commission. Although the Supreme Court granted the Congress

almost two months of extensions to make this simple amendment, it undertook a complex and unnecessary revamping of the entire field of federal election law. The President has stated that he would immediately sign a simple extension. Enactment of legislation effecting a simple extension would take only a few days, a short period of time which would not unduly handicap anyone requesting matching campaign funds.

3. Independence of Commission. The Conference Bill is carefully designed to restrict the exercise of independence by the Federal Election Commission.

A fundamental purpose of the 1974 Amendments was the creation of an independent Federal Election Commission. Because Congress retained the right to appoint commissioners (a form of control over a nominally independent commission), the Supreme Court struck down the Commission for being in violation of the appointments power clause of the Constitution. The Conference Bill would again deprive the Commission of independence by providing a line item veto of every Commission rule and regulation and by limiting its advisory opinion power to extremely narrow circumstances.

4. Reduction of Penalties. Violations of existing law carry the potential of severe penalties including imprisonment. The Conference Bill both increases the standards of proof for conviction and also greatly eases the extent of the criminal penalties. These changes can hardly be considered election law reform, nor can other provisions of the Conference Bill which relax the requirement for the reporting of cash contributions.

5. Amendment of the Labor Relations Laws. Provisions of the Conference Bill constitute amendment of existing labor-management relations laws without the benefit of committee hearings and public testimony.

Any corporation which uses a method of soliciting contributions or facilitating the making of voluntary contributions, e.g., a check-off, is required to make that method available to any union representing any of its employees. A check-off to a union PAC is not now a subject for mandatory bargaining. Under the Conference Bill corporations cannot even bargain on this point, but rather must supply the method to unions upon request. Moreover, the Conference Bill effectively negates the NLRB's decision in Excelsior, and all subsequent decisions affirming it, by requiring any corporation which in any way facilitates the making of contribution to give up a list of the names of its employe in all of its branches, divisions, affiliates or subsidiaries, whether organized or not, to any and all unions which represent any of the corporation's employees. This same provision would permit unions to obtain corporate shareholder lists.

6. Restrictions on the Extent of Corporate Solicitations. Corporations can currently solicit all employees either in person or in writing, and more than twice, for voluntary contributions to a corporate PAC. The Conference Bill would unconstitutionally limit the extent of solicitation by a corporation to its PAC from its rank and file workers by limiting solicitation of their contributions to two written solicitations a year. Any such written solicitation must be designed so that the responses of those solicited cannot be determined (unless more than $50 is given), a requirement which runs counter to the general policy of disclosure of contributions and means that small contributors will probably be unable to get a tax credit or deduction for their contributions.

7. Non-Partisan Communications. The Conference Bill, notwithstanding the Department of Justice's position to the contrary, attempts to restrict non-partisan communications and non-partisan registration and get-out-the-vote campaigns by corporations only to their executive and administrative personnel, and prohibits such activities with respect to their rank and file employees. As long as these types of communications are strictly non-partisan, they are constitutionally permitted.

8. Restrictions on Trade Association PAC's. The Conference Bill will put many trade association PAC's out of business.

Trade associations can currently solicit contributions from the officers and employees of their member corporations. The Conference Bill would require a trade association to secure the permission of each corporation for a trade association PAC to solicit contributions from its officers (but not its employees who could never be solicited). A corporation could only give permission to one trade association PAC per calendar year to make such a solicitation. The net effect of this is to restrict corporations which belong to a number of trade associations representing a variety of their interests from giving permission to trade association PACs to solicit their employees.