The original documents are located in Box 14, folder "Federal Election Campaign Act Amendments - 1976 (1)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

FOR IMMEDIATE RELEASE JANUARY 30, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

Today's decision by the Supreme Court calls for quick action by political leaders of this country, as well as by candidates for high office. to insure that our elections remain free from the undue influence of excessive spending.

As President, I will ask leaders of Congress to meet with me to discuss the need for legislation to reconstitute the Commission or to assure by other mechanisms enforcement of the Federal Election Act as modified by the Supreme Court's decision.

I have asked the Attorney General to review the opinion and to advise me on what steps, if any, should be taken to ensure that our elections remain free from any abuses.

As a candidate for the Presidency, I am calling on others who seek this office to join with me in adhering to the spending limit that had been established under the 1974 law.

I am directing The President Ford Commitee to limit its expenditures to that level.

# # #

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I am directing The President Ford Commitee to limit its expenditures to that level.

# # #

[Feb. 1976?]

MEMORANDUM FOR THE PRESIDENT

FROM

SUBJECT: Federal Election Laws

On Friday, January 30, the Supreme Court issued its opinion on the constitutionality of the Federal Election Campaign Act. The purpose of this memorandum is to obtain your decision on how to respond to issues resulting from this decision.

BACKGROUND

The 1974 Campaign Act Amendments resulted from wide-spread public concern that large contributions were the reason for many of the abuses disclosed following the 1972 elections. Even so, the Amendments have frequently been criticized as excessively complex and designed primarily to insure that incumbents stay in office. The overall logic of the Act, however, has been substantially disrupted by the Court's decision upholding the limits on individual contributions, while invalidating ceilings on expenditures by candidates not receiving Federal funds or by groups or individuals, who have no "pre-arrangement and coordination . . . with the candidate or his agent." Chief Justice Burger in a separate opinion has questioned whether the residue left by the Court leaves a workable program to be administered.

Although the Court also held that the appointment of a majority of the Commission's members by the Congress was unconstitutional, the FEC, as presently constituted, will continue to exist without additional legislation. However, its powers will be circumscribed to those which "are essentially of an investigative and informative nature," following the expiration on February 29 of the 30-day stay granted by the Court. The Court has left it to the Executive and the Congress to determine whether "to reconstitute the Commission by law or to adopt other valid enforcement mechanisms without interrupting enforcement of the provisions the Court sustains."

If no legislative action is taken many aspects of the regulatory scheme will lapse. This may prevent or delay the payment of the Federal funds that are now essential for Presidential candidates, and would make it impossible to render advisory opinions or issue regulations. Although the new law, even as amended by the Supreme Court, is a substantial change from past practice, your advisers believe it is essential that you be in a position of support for the principle of electral reform. Of most immediate concern to your advisers is that you be in a position of support for a mechanism that will be able to effectively enforce the Federal election laws and maintain public confidence.

There are two basic goals:

1) Project the President now as the leader concerned about reform:

2) Develop a sound system of electoral regulation which will ensure a viable two party system for the future.

ISSUES

There are two basic issues for your decision. The first is the immediate question presented by the Court of whether to reconstitute the FEC or to reassign the functions. The second addresses the broader policy question of whether and when to propose legislation dealing with the lack of an overall regulatory scheme for the entire Federal electoral process.

The issue of reconstitution of the Commission is of primary concern on the Hill and has resulted in considerable controversy:

1) Wayne Hays, with some support from Speaker Albert and Tip O'Neill, has already indicated that he is opposed to any continuation of the Commission and that he desires to place the disclosure, certification and perhaps even enforcement functions with GAO. Hays' strategy is to delay any House action for 30 days and thus to force support for his position.

2) Bill Frenzel in the House and Schweiker, Cranston, Beall, Mondale, Mathias, Haskell and Stafford in the Senate have

introduced bills to reconstitute the FEC with members appointed by the President and confirmed by the Senate.

3) Senators Kennedy and Hugh Scott have introduced a bill that would additionally provide for public financing of Senate races. A similar provision for House races can be expected.

While the Senate can be expected, with Presidential support, to act within 30 days in favor of reconstituting the Commission, it is doubtful that the House will act in a similar manner, if at all.

I. Organization

Congressional reaction to the FEC has been negative for several reasons:

- attempts by the Commission to minimize the advantages the Act gives to incumbents,

- personality clashes primarily between Wayne Hays and Chairman Curtis,

- Congressional recognition of the complexity of regulations proposed by the Commission.

From the standpoint of public perception, reconstitution of the Commission would likely require reappointment of the six present members. Privately, some members of Congress oppose reconstitution for this reason. Publicly, Congress is likely to argue (as did Burger)

that the Act is now so truncated that the remaining provisions do not require a commission for their implementation.

Even though the Congress may not pass legislation to reconstitute the Commission within 30 days it may be important for the Administration publicy to favor reconstitution because the existence of an independent Commission may be perceived by the public as a check on electoral excess. This is one of those unique situations where the Administration and Congressional Republicans can be joined by reform groups in opposing the Democratic leadership in the House.

Option 1. Permanently reconstitute the present Commission by providing for six, or some other number, of Presidential appointees, confirmed by the Senate.

Pros: Eliminates uncertainty about 1976 election.

Favorable public perception.

Strong support in Senate.

Cons: Risks leaving the law in its present unsatisfactory state when the impetus for reform may be lessened.

Option 2.

Reconstitute the Commission but restrict the duration of the entire Act to the 1976 elections.

Pros: Represents a compromise for later action.

While eliminating uncertainty about the 1976 election it ensures Congressional consideration

of the entire election law when the issues can be addressed which are now politically difficult, e.g., contribution limitations, one-house veto provisions, enforcement responsibility of Justice, etc. Ensures that a minimum if no action is later taken a law which has never been approved by any Congress or President will go out of existence.

Cons: If proposed initially, will subject the Administration to reform group criticism for half-hearted support of electoral reform.

Option 3 Abolish the Commission and assign to GAO its functions relating to disclosure and certification of Presidential candidates for Federal funds. Assign to the Department of Justice, the FEC's enforcement, rulemaking and advisory functions by giving Justice specific authority to bring civil suits and to issue advisory opinions.

Pros: May be the only legislation the House will pass. Administration may eventually have to accede in order to provide some certainty for the forthcoming election and should not be eliminated from later consideration.

Cons: Presents appearance problem if Justice is to investigate all matters presently investigated by the Commission.

Public may perceive loss of independence as a weakening of the enforcement process.

Any attempts to give enforcement powers to GAO raises anew similar constitutional questions concerning separation of powers and would have to be vigorously opposed.

II. Policy Changes in the Federal Election Law

The Supreme Court decision leaves us with a set of election laws that are undesirable. There are no limits on spending by individuals or groups who are independent of a candidate. The limits on individual contributions to a candidate stimulate the formation of independent groups by special interests, wealthy individuals, big business and big labor. Furthermore it encourages candidates to abjure responsibility and control for what is said and done on their behalf by independent groups. A pandora's box of mischief is opened. The fundamentals of our electoral process have been altered unintentionally and without consideration of the overall effects. These problems can only be dealt with through major changes in the Federal Election Laws.

Options

1) Keep the provisions of the law as they presently exist.

The law, although fatally flawed, has established the groundrules by which Presidential candidates have been conducting their campaigns because all Presidential candidates have accepted and are likely to continue to accept matching funds. The continuation of what is now in place is the most practical response to the call for continued regulation of electoral excesses and to the need for providing certainty in 1976 election.

Pros: Statutes already in existence and functioning.

They are perceived as a "good" by the public.

They have been found constitutional by the Supreme Court.

Cons: Does not provide relief from possible excesses now permitted in individual expenditures.

Allows an incomplete regulatory scheme to control the current elections, even though C. J. Burger has suggested that the Act is too incomplete to now enforce.

Option 2. Limit the duration of the present election laws to the 1976 campaigns

This is the companion to Option 2, above, and would provide certainty for the 1976 election without perpetuating an incomplete regulatory scheme that has not been approved by either Congress or the Executive. The following are examples of issues that would be considered in connection with later reform legislation:

1. Raising the contribution limitation to lessen the attractions of independent expenditures;
2. Continuing public financing for Presidential campaigns;
3. Initiating public financing for Congressional and Senatorial campaigns;
4. Eliminating state expenditure ceilings; while maintaining the national ceiling on candidates receiving Federal funds.

Pro: Represents a compromise for later Presidential action. Ensures consideration of the entire election law at a time when issues can be addressed without the emotionalism and political problems raised in the context of the current campaign. As a compromise to Congressional inaction, it could be coupled with a strong Presidential commitment to submit comprehensive reform legislation by the end of 1976. Allows you later to take a second public position in support of reform if Congress fails to act.

Con: If proposed initially by you, could subject the Administration to reform group criticism for half-hearted support of election reform.

Option 3. Propose changes in the election law prior to the election which would remedy the most serious deficiencies which result from the Supreme Court decision.

Because it is recognized that the law is so seriously flawed as a result of the decision, you may wish to initiate work immediately on possible remedies to alter the law. This approach would focus on the issues raised in the previous options.

Pro: Recognize that the law as it now stands is unworkable and enables you to demonstrate leadership by proposing sensible modifications.

Con: May be construed as weakening your commitment to real contraints on campaign expenditure and excesses.

May inject a further note of uncertainty in the election of 1976.

RECOMMENDATION

Your advisers recommend that you call for simple Presidential appointment of the Commission without any time limit and that you reaffirm that the present law and restraints will remain in effect. It is likely that Congressional opposition will prevent you from achieving your position and that the grounds for a compromise could be based upon Option 2 in both cases, that is, on reaffirming the Commission and the law only for the 1976 election. You could agree with this compromise but would not have to take the onus of proposing an action which might be construed as indicating less than whole-hearted support for strong electoral reform.

Bo Callaway has recommended and Morton and Buchen concur that once you have made your decision, a statement along the lines of that attached at Tab A should be released by the White House in order to focus public attention on your position.

On January 30, the United States Supreme Court held portions of the Federal Election Campaign Act to be unconstitutional.

What is left after this decision is a bill that is much different from the intent of the original legislation.

I believe that the American people want and need a strong election law--one that would correct past abuses and the adverse impact of big money and special interests.

The Supreme Court has given the Congress 30 days to act. In summoning Congressional leaders here today, I am hopeful that we can work toward three goals.

First, a place where election campaign contributions and expenditures can be fully and honestly reported and disclosed.

Second, a procedure whereby federal matching funds for candidates can be certified.

Third, strong and effective enforcement of federal election campaign laws.

My own conclusion and recommendation is that the Federal Election Commission be reconstituted as an independent agency whose members are appointed [on a bi-partisan basis] by the President with the advice and consent of the Senate.

ASSISTANT ATTORNEY GENERAL

[Feb. 1976]

Department of Justice

Washington, D.C. 20530

MEMORANDUM FOR THE HONORABLE RICHARD B. CHENEY
Assistant to the President

You asked me to prepare a memorandum which would enable you to set forth for the President the considerations in favor of including in his Federal Election legislation a provision eliminating the one-House veto of Commission regulations. The argument against such inclusion is, of course, that it injects into the proposal an element of controversy which we wish to avoid.

In favor of inclusion are two considerations, one substantive and one tactical. Substantively, it is difficult to assert that the President is putting forward a proposal which will eliminate the doubt and uncertainty surrounding the 1976 election requirements if his bill leaves intact one of the major defects which formed the basis of the earlier lawsuit, and which can prompt renewed judicial challenge. This is especially the case since the Justice Department itself would support the validity of the challenge. The one-House veto device gives Congress control over functions (rulemaking) which the Court specifically found to be executive in nature. Only one of the Justices (Justice White) asserted the validity of this feature; the majority opinion expressly reserved judgment on the point (page 134, note 176).

The tactical consideration is this: Concurrent resolutions and one-House vetoes, which first appeared in the 1930s and were relatively rare until the last decade or so, have become positively frequent in the last few years. There is currently pending legislation which would subject all agency rulemaking to Congressional review. Elimination of this form of encroachment is of enormous importance to the Presidency, and it is critical that we be in a strong litigating position in the first court case which reaches the issue. Presidential acquiescence in the provision will doubtless be viewed by the Supreme Court -- as it was viewed by Justice White in the Buckley case -- as some evidence of its constitutionality. In present circumstances, the President can obviously not veto an election bill which contains such a provision, but a strong

reservation concerning its constitutionality in his signing statement is essential. Such a reservation would appear unpersuasive and perhaps even duplicitous if the President had not proposed elimination of the feature in his own bill. Indeed, unless the President makes such a proposal there will be a justifiable Congressional outcry when, if new litigation arises, the Justice Department argues the unconstitutionality of this feature. In other words, by not taking a strong position at the present time we may realistically be preventing ourselves from pressing a point which is of major importance to the Presidency. Finally, there is something to be said for the position that the President has a duty to propose revision of those features which he believes to be unconstitutional.

The proposed elimination of the one-House veto will not necessarily impede passage of the legislation. Unlike some of the other substantive changes which might be suggested, this one will likely have so little Congressional support that it will readily be disposed of. We do not suggest that the President veto the legislation when this feature is not adopted; but at least he will then be able to make a forthright and convincing reservation in his signing statement.

I may note that in addition to eliminating the one-House veto provision, our original legislative proposal also eliminated the two ex officio, nonvoting members of the Commission (the Clerk of the House and the Secretary of the Senate). This feature of the present bill was not addressed by the Buckley opinion, and it could be maintained that membership of these individuals, both appointed and paid by the Congress, does not violate the Constitution so long as they are not given a vote. We feel the provision is probably unconstitutional and certainly an undesirable precedent to establish for an executive branch agency. I presume that the objection to elimination of the one-House veto feature does not extend to elimination of this feature as well, but I want to be sure that you have focused on the point.

While I have your ear -- and on the perhaps erroneous assumption that the issue has not yet been finally decided -- I would like to suggest one point concerning the relative political advantages of establishing a cut-off date for the

Commission as compared with a cut-off date for the entire FEC package. The former course can be regarded as displaying a lack of Presidential commitment to an independent Commission, which is perhaps the only item in the law which everyone (except some members of Congress) supports. That is to say, in reconstituting the Commission and providing a cut-off for the entire package, the President can plausibly assert that he is convinced an independent Commission is absolutely essential to fair and effective enforcement of an election campaign law; that assertion is considerably weakened if he is willing to let the Commission feature lapse even though leaving the rest of the law in effect. Brandishing the cut-off exclusively at the Commission is also more readily portrayed as intimidation of the Commission by President Ford the candidate.

Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

THE WHITE HOUSE
WASHINGTON

Date: 2/3/76

TO: PHIL BUCHEN

FROM: Max L. Friedersdorf

For Your Information _____

Please Handle _____

Please See Me _____

Comments, Please _____

Other The attached was omitted from my 2/2 Memo to Connor on FEC

NEWS

from U.S. Senator HUGH SCOTT, Pennsylvania

Washington, D.C. 20510
(202) 224-7754

FOR IMMEDIATE RELEASE 1/30/76

Senate Republican Leader Hugh Scott (R-Pa.) today announced that he and Senator Edward Kennedy (D-Mass.) will sponsor legislation to comply with today's Supreme Court ruling that the current composition and method of appointment to the Federal Election Commission is unconstitutional.

Scott said that the new bill would resemble the version originally passed by the Senate two years ago in which the power to appoint FEC Commissioners would be vested soley in the President by and with the advice and consent of the Senate.

As an original sponsor of the contested act, Scott said the Court's decision was "a major victory for the proponents of public financing." He predicted that today's action would "pave the way for the eventual inclusion of public financing of Congressional elections."

Scott also noted that the Court upheld the other major provisions of the Act, including the limits on individual contributions to campaigns. He said that the revised law would "continue to be a major stabilizing factor in the conduct of elections."

Scott and Kennedy had retained former Watergate Special Prosecutor Archibald Cox to represent them before the Supreme Court when oral arguments were held on the case last fall. The Supreme Court's ruling today upholds major sections of the bill introduced by them in 1974.

# # #

CONTACT: Patricia Agnew
(202) 224-7754
(301) 657-1978

copy to Baroody.

THE WHITE HOUSE

WASHINGTON

February 2, 1976

MEMORANDUM FOR: JIM CONNOR

FROM: MAX FRIEDERSDORF M.F.

SUBJECT: Federal Elections Commission

Chairman Hays of the House Administration Committee indicates he intends to make every effort to abolish the Federal Elections Commission and turn the responsibility over to the GAO.

Hays intends to block any legislation in the House to reconstitute the Commission under the terms of the Supreme Court decision.

Hays' strategy will be to delay consideration of any legislation beyond the 30 day limit, and then seek passage of a bill providing GAO with jurisdiction over campaign regulation and referral to the Justice Department in the case of alleged irregularities.

In the Senate, legislation was introduced to conform the Federal Elections Commission to the Supreme Court requirements.

The Senate leadership believes it can pass the bill within 30 days, but the prognosis in the House is doubtful unless Hays relents or powerful pressures build to overcome the Chairman.

Senators Hugh Scott and Ted Kennedy sponsored the legislation in the Senate, but this further complicates the problem in the House because Hays is incensed about the court ruling striking the prohibition on family spending limitations.

Hays is expected to introduce legislation abolishing the FEC later this week.

The Senate bill provides for reappointment of the same members on the Commission at the present time, as well as public financing for Senate candidates.

Scott and Kennedy will seek earliest possible hearings before the Senate Rules Committee (Cannon, Chairman; Hatfield ranking minority), and the Rules Subcommittee (Pell, Chairman; Griffin, ranking minority)

Senate leadership reaction today included the following:

MANSFIELD - The Majority leader believes the Senate can produce something within the 30 day limit granted by the Court. However, he believes the House is a problem. He favors a bill to comply with the Court's objections but wants to look at language before commiting.

HUGH SCOTT - (See attached press release) His bill is complicated by the public financing for Senate elections. (A simple bill for reconstitution only of the FEC is being introduced by Schweiker, Mondale and Cranston.)

GRIFFIN - He believes the President should favor the Scott bill since it gives him the appointments. Griffin believes the decision also fortifies the Executive in its battles with Congress. Griffin is convinced Hays will stall the matter.

In related action in the House, the Rules Committee will consider at 2 pm on Tuesday, H. R. 11552, the Voter Registration Act (post-card registration).

The bill was reported from Hays' House Administration Committee last week and is scheduled for Floor consideration later this week.

The majority will now offer Floor amendments to place the administration of the bill in the GAO rather than the FEC as provided in the reported bill.

Unfortunately, this will make the bill more palatable to Chairman Hays, who has been lukewarm on postcard registration because of its support by Common Cause.

In the House, concern is developing about public reaction if Congress allows the FEC to expire.

FEC has not been popular with Congress, because of treading on Congress' toes.

The House will be torn by fear of public reaction to abolishing the Commission, and on the other hand by a desire to protect themselves politically by supporting the Hays proposal to put the reporting procedures and "enforcement" back in the hands of the House clerk and GAO.

Hays, for the moment, is the only "man with a plan" in the House, and Members may support him as the line of least resistance.

Although the House decision on FEC is uncertain, it can be assumed public financing of House campaigns is unlikely to fly, and the House will never let the Senate go it alone.

Reaction from key House leaders today follows:

The Speaker	-	In a press conference today the Speaker said: "I don't think we'll go for anything to let the President do it when the whole trouble started with the President, or I mean with the White House." The Speaker prefaced these remarks by saying that he had not read the Supreme Court decision nor talked to Chairman Hays and was speaking off the cuff. He will support whatever course of action Chairman Hays decides upon. When the original law was passed the Speaker supported public financing for Presidential elections, but not for Congressional races. He has not changed his mind and feels that public financing of Congressional races could not pass the House in an election year.
John Rhodes	-	(In route back from Arizona, but had discussed matter with Dennis Taylor) Rhodes was surprised at the Supreme Court decision. He had anticipated that the limits on individual contributions would be taken off but retained for candidates. He will watch very closely any action Chairman Hays takes. He, like most House Republicans, does not like the position in which we are left by the Supreme Court decision. At the same time he and his colleagues are upset about the manner in which the FEC has functioned, particularly when the FEC talks of holding office accounts and staff time against a candidate's spending ceiling. Any legislative proposal to revive the FEC, in Rhodes view, must be very specific as to the commission's jurisdiction and limit its activities.

(Rhodes - cont'd.) He could be expected to oppose public financing of Congressional campaigns. Undecided as to whether there should be a Republican initiative to respond to the Supreme Court decision.

Bob Michel - (In Committee) Has told staff that before any bill is passed, he would oppose the reappointment of Curtis. He is even thinking of co-sponsoring a Hays bill to kill off the commission entirely.

(On unrelated matters, Michel is extremely agitated about the food stamp pilot program which he feels undercuts his legislative initiative. He cannot understand why Presidential appointees cannot control mid-level bureaucrats or sell out to their staffs. Wants Secretary Mathews to stop the HEW-financed study of human sexual response to marijuana. He plans to hit the President with these and possibly other complaints at the Leadership meeting tonight.)

Tip O'Neill - (Gary Hymel) - He and other House Democrats will not go for legislation allowing the President to appoint the Board of the FEC. Is afraid the President may announce he intends to reappoint the entire commission. Fears public reaction if Congress goes along with Hays plan to abolish commission and possibly transfer its functions to the GAO. House will not buy public financing for Congressional races, especially Senate races alone. Is mainly concerned about coming up with some mechanism to continue the enforcement functions of the commission, such as GAO.

cc: Marsh
Morton
Cheney
Buchen

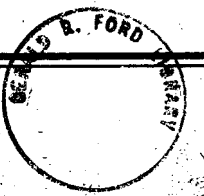
Some items in this folder were not digitized because it contains copyrighted materials. Please contact the Gerald R. Ford Presidential Library for access to these materials.

The Washington Star

JOE L. ALLBRITTON, *Publisher*

JAMES G. BELLOWS, *Editor* SIDNEY EPSTEIN, *Managing Editor* EDWIN M. YODER JR., *Associate Editor*

WEDNESDAY, FEBRUARY 4, 1976



Fix the campaign law

The ball on campaign financing is in Congress's court and if the legislators put as much concentration and effort into it as they did when televised football games were at stake, we may get through the presidential election without

Without an agency to administer and enforce the law, the presidential campaign could degenerate into a shambles. There must be someone to interpret the law, someone to en-

ACTION

Repub leadership
6:0 0

THE WHITE HOUSE

WASHINGTON

February 4, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN
ROGERS C. B. MORTON
JAMES E. CONNOR

SUBJECT: Federal Election Laws

On Friday, January 30, the Supreme Court issued its opinion on the constitutionality of the Federal Election Campaign Act. The purpose of this memorandum is to obtain your decision on how to respond to issues resulting from this decision.

BACKGROUND

The 1974 Campaign Act Amendments resulted from wide-spread public concern that large contributions were the reason for many of the abuses disclosed following the 1972 elections. Even so, the Amendments have frequently been criticized as excessively complex and designed primarily to insure that incumbents stay in office. The overall logic of the Act, however, has been substantially disrupted by the Court's decision upholding the limits on individual contributions, while invalidating ceilings on expenditures by candidates not receiving Federal funds or by groups or individuals who have no "prearrangement and coordination...with the candidate or his agent." Chief Justice Burger in a separate opinion has questioned whether the residue left by the Court leaves a workable program to be administered.

Although the Court also held that the appointment of a majority of the Commission's members by the Congress was unconstitutional, the FEC, as presently constituted, will continue to exist without additional legislation. However, its powers will be circumscribed to those which "are essentially of an investigative and informative nature,"

following the expiration on February 29 of the 30-day stay granted by the Court. The Court has left it to the Executive and the Congress to determine whether "to reconstitute the Commission by law or to adopt other valid enforcement mechanisms without interrupting enforcement of the provisions the Court sustains."

If no legislative action is taken, many aspects of the regulatory scheme will lapse. This would almost certainly prevent or delay the payment of the Federal funds that are now essential for Presidential candidates, and would make it impossible to render advisory opinions or issue regulations. Although the new law, even as amended by the Supreme Court, is a substantial change from past practice, your advisers believe it is essential that you be in a position of support for the principle of electoral reform. Of most immediate concern to your advisers is that you be in a position of support for a mechanism that will be able to effectively enforce the Federal election laws and maintain public confidence.

There are two basic goals:

1) Provide Presidential leadership for continued electoral reform;

2) Develop a sound system of electoral regulation which will ensure a viable two party system for the future.

ISSUES

There are two basic issues for your decision. The first is the immediate question presented by the Court of whether to reconstitute the FEC or to reassign the functions. The second addresses the broader policy question of whether and when to propose legislation dealing with the voids and defects in the Act governing the entire Federal electoral process.

The issue of reconstitution of the Commission is of primary concern on the Hill and has resulted in considerable controversy:

1) Wayne Hays, with some support from Speaker Albert and Tip O'Neill, has already indicated that he is opposed to any continuation of the Commission and that he desires to place the

disclosure, certification and perhaps even enforcement functions with GAO. Hays' strategy is to delay any House action for 30 days, and thus to force support for his position.

2) Bill Frenzel in the House and Schweiker, Cranston, Beall, Mondale, Mathias, Haskell and Stafford in the Senate, have introduced bills to reconstitute the FEC with members appointed by the President and confirmed by the Senate.

3) Senators Kennedy and Hugh Scott have introduced a bill that would additionally provide for public financing of Senate races. A similar provision for House races can be expected.

While the Senate can be expected, with Presidential support, to act within 30 days in favor of reconstituting the Commission, it is doubtful that the House will act in a similar manner, if at all.

I. Organization

Congressional reaction to the FEC has been negative for several reasons:

--Congressional recognition of the complexity of regulations proposed by the Commission,

--attempts by the Commission to minimize the advantages the Act gives to incumbents,

--personality clashes primarily between Wayne Hays and Chairman Curtis.

From the standpoint of public confidence, and to avoid interruption in the process, reconstitution of the Commission would likely require reappointment of the six present members. Privately, some members of Congress oppose reconstitution because they object to the re-appointment of the present members. Publicly, Congress is likely to argue (as did Burger) that the Act is now so truncated that the remaining provisions do not require a commission for their implementation.

Even though the Congress may not pass legislation to reconstitute the Commission within 30 days, it may be important for the Administration publicly to favor reconstitution because the existence of an independent Commission is perceived by the public as a check on electoral excess. Your support of reconstitution would result in the Administration and most Congressional Republicans being joined by reform groups in opposing the Democratic leadership in the House.

Option 1. Permanently reconstitute the present Commission by providing for six Presidential appointees, confirmed by the Senate.

Pros:

..Eliminates uncertainty about 1976 election.
..Favorable public perception.
..Strong support in the Senate.
..Simple reconstitution easiest course to explain and defend.

Cons:

..Leaves the law in its present unsatisfactory state.
..Likely defeat in the House.

Option 2. Reconstitute the Commission, but restrict the duration of the entire Act to the 1976 elections.

Pros:

..Keeps you in leadership position on election reform issue.
..Eliminates uncertainty about the 1976 election.
..Ensures Congressional consideration of the entire election law when the issues can be addressed which are now politically difficult, e.g., contribution limitations, one-house veto provisions, enforcement responsibility of Justice, etc.
..Ensures that at a minimum if no action is later taken, a law which has never been approved by any Congress or President will go out of existence.

Con:

..If proposed initially, will subject the Administration to reform group criticism for half-hearted support of electoral reform.

Note: This is a good fall-back position for dealing with the Congress. They may be willing to compromise at this position.

Option 3. Abolish the Commission and assign to GAO its functions relating to disclosure and certification of Presidential candidates for Federal funds. Assign to the Department of Justice the FEC's enforcement, rulemaking and advisory functions by giving Justice specific authority to bring civil suits and to issue advisory opinions.

Pros:

..May be the only legislation the House will pass.
..Provides some certainty for upcoming election.

Cons:

..Loss of independent agency to enforce law.
..Presents appearance problem if Justice is to investigate all matters presently investigated by the Commission.
..Public may perceive you as weakening on election reform and the enforcement process.
..Any attempts to give enforcement powers to GAO raise anew similar constitutional questions concerning separation of powers and would have to be vigorously opposed.

Note: Administration may eventually have to accede in order to provide some certainty for the forthcoming election and should not be eliminated from later consideration.

II. Policy Changes in the Federal Election Law

The Supreme Court decision leaves us with a set of election laws that are undesirable. There are no limits on spending by individuals or groups who are independent of a candidate. The limits on individual contributions to a candidate stimulate the formation of independent groups by special interests, wealthy individuals, big business and big labor. Furthermore, it encourages candidates to abjure responsibility and control for what is said and done on their behalf by independent groups. A Pandora's box of mischief is opened. The fundamentals of our electoral process have been altered unintentionally and without consideration of the overall effects. These problems can only be dealt with through major changes in the Federal Election Laws.

Option 1. Keep indefinitely the provisions of the law as they presently exist.

The law, although fatally flawed, has established the groundrules by which Presidential candidates have been conducting their campaigns because all Presidential candidates have accepted and are likely to continue to accept matching funds. The continuation of what is now in place is the most practical response to the call for continued regulation of electoral excesses and to the need for providing certainty in the 1976 election. You would not propose change under this option, although further legislation certainly should be proposed later.

Pros:

..Statutes already in existence and functioning.
..They are perceived as a "good" by the public.
..They have been found constitutional by the Supreme Court.
..Simplest possible proposal.

Cons:

..Does not provide relief from possible excesses now permitted in individual expenditures.
..Allows an incomplete regulatory scheme to control the current elections.
..Does not provide for an automatic review of a flawed law.

Option 2. Limit the duration of the present election laws to the 1976 campaigns.

This is the companion to Option 2, above, and would provide certainty for the 1976 election without perpetuating an incomplete regulatory scheme that has not been approved by either Congress or the Executive. This approach can either be pursued from the start if you choose Option 2, above, or can be held as the basis for a compromise position. The following are examples of issues that would be considered in connection with later reform legislation:

1. Raising the contribution limitation to lessen the attractions of independent expenditures;

2. Continuing public financing for Presidential campaigns;

3. Initiating public financing for Congressional and Senatorial campaigns;

4. Eliminating state expenditure ceilings, while maintaining the national ceiling on candidates receiving Federal funds.

Pros:

..Ensures consideration of the entire election law at a time when issues can be addressed without the emotionalism and political problems raised in the context of the current campaign. As a compromise to Congressional inaction, it could be coupled with a strong Presidential commitment to submit comprehensive reform legislation in 1977.
..Allows you later to take a second public position in support of reform if Congress fails to act.

Cons:

..If proposed initially by you, could subject the Administration to criticism for half-hearted support of election reform.

Option 3. Propose immediate changes in the election law prior to the election in 1976 which would remedy the most serious deficiencies which result from the Supreme Court decision.

Because it is recognized that the law is so seriously flawed as a result of the Court decision, you may wish to initiate work immediately on possible remedies to alter the law. This approach would focus on the issues raised in the previous options.

Pro:

..Recognize that the law as it now stands is unworkable and enables you to demonstrate leadership by proposing sensible modifications.

Cons:

..May be construed as weakening your commitment to real constraints on camapign expenditures and excesses.
..Will inject a further note of uncertainty in the election of 1976.
..Reform proposals would not likely pass and could appear self-serving.

RECOMMENDATION

All of your advisers agree that in substantive terms Option 2, i.e. setting a definite time limit on both the Commission and the law, is the most desirable outcome because it forces reconsideration of an unworkable law. They are, however, divided as to the most effective way of achieving that outcome.

One tactical approach is to set forth your position firmly in support of unlimited continuation of the Commission (and therefore the present law--Option 1). This approach, it is argued, would enable you to reap maximum public benefits from appearing to support election reform unreservedly. Moreover, it would clearly demarcate your position from those in Congress who oppose continuation of an

effective Commission. It also gives you a base from which to compromise with Congress in the direction of Option 2.

Recommended by: Buchen, Morton, Callaway, Friedersdorf

A second tactical approach is to announce immediately you are proposing reconstitution of the Commission, while at the same time recommending that the existing Act expire after the 1976 election, thus forcing the Executive and Congress to readdress the entire issue of election reform after the election--Option 2. Those who support this approach think that since this is our desired approach anyway, we should publicly announce it at the outset in order to indicate that we are fully aware of the fundamental problems in the law as it now exists. Moreover, such an approach avoids staking out a position which we do not realistically expect to attain.

Recommended by:

Thursday 2/5/76

5:30 p.m.

Bipartisan Meeting
Federal Election Laws

Cabinet Room

PUBLIC FINANCING AND THE FEDERAL ELECTION LAW

Q: A candidate of the anti-abortion movement is on the verge of qualifying for Federal Election matching funds. Some believe that this is simply an effort to use federal monies to lobby on a particular social issue. Do you think this is a perversion of the new candidate financing law and do you think this should be permitted?

A: Putting aside the basic question of the use of public monies for political campaigns, I believe this is her right under the present law.

But this is just one of the questions that Congress should address after the election. The Supreme Court's decision has resulted in an election law far different from that enacted by the Congress. Therefore, I have proposed to the Congressional leadership that the Congress move immediately to reconstitute in a Constitutional manner the present Election Commission. This will assure the American public that there is effective and independent enforcement of the Federal election laws in the present campaign.

To insure that a comprehensive regulatory scheme is provided to achieve the fundamental goal of the law that our elections be conducted in a fair and clean manner, and to break the impasse that appears to exist now in the Congress, I have suggested that Congress limit the applicability of the present election laws, and perhaps the Commission, to the 1976 elections. My Administration will submit to Congress next year a comprehensive election reform bill after we have had an opportunity to review the present law in the light of the experience gained from this election campaign.

PWB/BR 2/6/76

Thursday 2/5/76

Meeting
2/5/76
5:30 p.m.

1:00 Mr. Friedersdorf's office called to invite you to a Bipartisan meeting at 5:30 this afternoon (Thursday 2/5) in the Cabinet Room -- to discuss Federal election laws.

White House staff to attend:

Max Friedersdorf
Dick Cheney
Jack Marsh
Ron Nessen
Jim Connor
Rogers Morton

THE WHITE HOUSE

WASHINGTON

February 5, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: MAX L. FRIEDERSDORF

SUBJECT: Wayne Hays/FEC

Wayne Hays has regretted the President's invitation to attend the Bipartisan Leadership meeting tonight.

Hays held a press conference this afternoon and, in essence, said:

It is impossible for the Congress to act effectively within 30 days to meet the Court's objection to the law. Therefore, Hays will support legislation giving GAO authority to certify eligibility for Presidential federal funds and checks.

Hays expressed his belief that the key to federal election campaign legislation lies with full public disclosure of campaign contributions and expenditures, and pledged, as Chairman of the House Administration Committee to act expeditiously and responsibly.

Phil Burton and Bill Steiger are meeting this afternoon with Common Cause and other outside groups, to discuss abolishing the FEC, creating a new office at Justice, GAO would receive reports and handle the auditing. The Comptroller General would certify Presidential candidates.

FEC

THE WHITE HOUSE

WASHINGTON

February 12, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: PHILIP BUCHEN P.

SUBJECT: Amendments to the Federal Election Act

Attached at Tab A for your consideration is a draft bill prepared by the Department of Justice to amend the Federal election laws as a result of the Supreme Court's opinion in Buckley v. Valeo. An explanation by Justice of its provisions is attached at Tab B. As drafted, the bill would basically accomplish the following:

1. Reconstitute the Federal Election Commission by providing for six Presidential appointees to be confirmed by the Senate;

2. Eliminate the one-house veto provisions of the law that permits either house of Congress to disapprove regulations by the Commission within 30 legislative days of submission by the FEC to Congress; and

3. Make the provisions pertaining to most of the laws with which the Commission is concerned, including campaign financing, inapplicable to elections after 1976, while still retaining the key prohibitions of the present law, including those limiting contributions by corporations, labor unions, government contractors, foreign nationals, and cash contributions.

In order to finalize the bill to be submitted to Congress, your decision is required on the following options:

OPTION A: Limit the applicability of certain provisions of the present law to elections occurring before January 1, 1977, and related runoff elections, without abolishing the Commission on a date certain so that it may continue its investigations and civil enforcement proceedings for so long as it takes to resolve them, just as the present draft bill provides in Section 6.

PRO

°Provides an independent enforcement mechanism for the 1976 elections that will last as long as it takes to complete all investigations and civil enforcement proceedings.

°Limits to the 1976 elections the applicability of provisions of the law dealing with the Commission, the present public financing scheme, and limitations on contributions and, therefore, clears the way for completely new legislation in 1977. Leaves an experienced Commission intact which could continue as the body charged with administering such revised election law as may be passed in 1977.

CON

°Would continue a Commission in existence with progressively fewer responsibilities for so long as it may take to complete all of its investigations and civil enforcement procedings, which could take as long as three years or more if the Commission is not sooner terminated or replaced by a new statute.

°Creation of a new Commission by future legislation with different members may

seem inappropriate if the present Commission remains in office.

°Permits Congress to do nothing and escape the consequences of election reforms that are embodied in the present law, and so may be perceived by supporters of the law as a defeat for all their reform efforts.

OPTION B: Abolish the Commission on a date certain in 1977, and transfer to the Department of Justice its records and the authority to continue investigations and civil enforcement proceedings begun by the Commission prior to its termination and to conduct additional investigations and bring additional enforcement actions, but provide that the parts of the present law as specified in Section 6 of the draft bill shall not apply to any election that occurs after December 31, 1976, except related runoff elections.

PRO

°Avoids maintaining the Commission and staff in place after their principal responsibilities are over and much of their work has been completed.

CON

°Permits Congress to do nothing and escape election returns that are embodied in the present law, and so may be perceived by supporters of the law as a defeat for all their reform efforts.

OPTION C: Abolish the Commission on a date certain in 1977, and transfer to the Department of Justice its records and the authority to continue investigations and civil enforcement proceedings begun by the Commission prior to its termination and to conduct additional investigations and bring additional enforcement

actions, but saying nothing about making any provisions of the current law apply only to elections that occur after December 31, 1976, except related runoff elections.

PRO

°Provides an enforcement mechanism for future elections as well as for those in 1976 even if the law is not changed.

°If the present provisions of the law would continue into future elections under enforcement by the Department of Justice, while the Presidency is still held by a Republican, the Congress may be more inclined to move quickly in reforming the law and creating a new independent enforcement mechanism than if the present law automatically expires and could not apply to future elections.

CON

°Could be perceived as indicating your opposition to an independent enforcement mechanism against a background of failure of Justice to enforce previous election laws vigorously.

°Could result in leaving undesirable provisions of present laws in force under an enforcement mechanism controlled by one political party to the disadvantage of the other.

OPTION D: Strike Section 4 of the draft bill which eliminates the one-house veto provision of the present law.

PRO

°Simplifies your initiative and avoids a provision which will be vigorously opposed in the Congress and has no chance of passage.

CON

°Failure to advocate elimination of the one-house veto provision may imply your acceptance of this unconstitutional provision in the present law, although this effect may be overcome if in submitting the bill with this section omitted, you do register your opposition to the one-house veto provision and indicate that in future reform legislation to be proposed by you it will be eliminated.

RECOMMENDATIONS

I recommend that you approve OPTION A because it continues independent enforcement of the election laws, and coupled with public support for continuing election reform, it effectively insures consideration by Congress next year of reform proposals, including your own.

I also recommend OPTION D, noting the one-house veto problem in your message, rather than in the bill, because the issue is not understood by the public, it has no chance of success on the Hill, and to raise it in the bill is inconsistent with your request that Congress limit itself to the more urgent question of reconstituting the Commission.

DECISIONS

OPTION A — Maintain the Commission indefinitely but limit the applicability of the laws pertaining to the Commission and public financing to the 1976 elections.

APPROVE _____ DISAPPROVE _____

OPTION B — Abolish the Commission in 1977 and transfer to Justice the Commission's authority to enforce the election laws, limited to the 1976 election.

APPROVE _____ DISAPPROVE _____

OPTION C — Abolish the Commission in 1977 and transfer its enforcement authority to Justice without limiting the applicability of the current election laws.

APPROVE _____ DISAPPROVE _____

OPTION D — Do nothing to repeal the one-house veto provision but state your objection in your message to the Congress.

APPROVE _____ DISAPPROVE _____

A BILL

To establish the offices of members of the Federal Election Commission as officers appointed by the President, by and with the advice and consent of the Senate, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the Federal Election Campaign Act Amendments of 1976.

SEC. 2(a). The text of paragraph 1 of section 310(a) of the Federal Election Campaign Act of 1971 (hereinafter "the Act") (2 U.S.C. 437c(a)) is amended to read as follows:

"There is established a Commission to be known as the Federal Election Commission. The Commission is composed of 6 members, appointed by the President, by and with the advice and consent of the Senate. No more than three of the members shall be affiliated with the same political party."

(b)(1) Subparagraph (A) and subparagraph (D) of section 310(a)(2) of the Act (2 U.S.C. 437c(a)(2)(A), 437c(a)(2)(D)) each are amended by striking out "of the members appointed under paragraph (1)(A)".

(2) Subparagraph (B) and subparagraph (E) of section 310(a)(2) of the Act (2 U.S.C. 437c(a)(2)(B), 437c(a)(2)(E)) each are amended by striking out "of the members appointed under paragraph (1)(B)".

(3) Subparagraph (C) and subparagraph (F) of section 310 (a)(2) of the Act (2 U.S.C. 437c(a)(2)(C), 437(a)(2)(F)) each are amended by striking out "of the members appointed under paragraph (1)(C)".

SEC. 3(a). The terms of the persons serving as members of the Federal Election Commission upon the enactment of this Act shall terminate upon the appointment and confirmation of members of the Commission pursuant to this Act.

(b) The persons first appointed under the amendments made by the first section of this Act shall be considered to be the first appointed under section 310(a)(2) of the Act (2 U.S.C. 437c(a)(2)), as amended herein, for purposes of determining the length of terms of those persons and their successors.

(c) The provision of section 310(a)(3) of the Act (2 U.S.C. 437c(a)(3)), forbidding appointment to the Federal Election Commission of any person currently elected or appointed as an officer or employee in the executive, legislative, or judicial branch of the Government of the United States, shall not

apply to any person appointed under the amendments made by the first section of this Act solely because such person is a member of the Commission on the date of enactment of this Act.

(d) Section 310(a)(4) of the Act (2 U.S.C. 437c(a)(4)) is amended by striking out "(other than the Secretary of the Senate and the Clerk of the House of Representatives)".

(e) Section 310(a)(5) of the Act (2 U.S.C. 437c(a)(5)) is amended by striking out "(other than the Secretary of the Senate and the Clerk of the House of Representatives)".

SEC. 4. Section 316 of the Act (2 U.S.C. 438) is amended by striking out subsection (c), 2 U.S.C. 438(c), and redesignating subsection (d), as subsection (c).

SEC. 5. All actions heretofore taken by the Commission shall remain in effect until modified, superseded or repealed according to law.

SEC. 6. The provisions of Chapter 14 of Title 2, the United States Code of section 608 of Title 18, and of Chapters 95 and 96 of Title 26 shall not apply to any election, as defined in Section 301 of the Act (2 U.S.C. 431(a)), that occurs after December 31, 1976, except run-offs relating to elections occurring before such date.

ASSISTANT ATTORNEY GENERAL

Department of Justice

Washington, D.C. 20530

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

Re: Federal Election Legislation

Attached is a draft bill to deal with the problems raised by Buckley v. Valeo. Three points bear notice:

1. Section 2, in addition to making all Commission members Presidential appointees, eliminates the Secretary of the Senate and the Clerk of the House as non-voting ex officio members. The Supreme Court's opinion does not deal directly with the problem of these non-voting members. We believe, however, that the spirit of the opinion, and perhaps even the letter of the Constitution, requires this elimination. Their subjection to the legislative branch is even greater than that of the present voting Commission members, since they are not only appointed by Congress but paid by it. Of course, the absence of voting power is significant, but perhaps not determinative for constitutional purposes. The power to be present and participate in discussions is the power to influence. Normally, a judge, Commissioner, juror or director, who is disqualified for conflict of interest, is expected to recuse himself not merely from voting but from deliberations as well.

There may well be matters affecting Commission policy where it would not be appropriate to have a direct representative of the House or Senate present. In Weiner v. United States, 357 U.S. 349, 355-56 (1958), the Supreme Court stressed that an independent agency should decide matters on the merits "entirely free from the control or coercive influence, direct or indirect * * * of either the Executive or the Congress." In Buckley the Court used similar words in describing the Commission's functions as "exercised free from day-to-day supervision of either Congress or the Executive Branch." (p. 134). As long as two officers of the legislative branch sit on the Commission there is thus a danger that the constitutional requirements will not be met.

2. Section 4 eliminates the one-House veto of Commission regulations. Thus far all regulations which the Commission has attempted to issue have been disapproved. This is strong evidence of how the device can and will be used to give the Congress control over those very functions which the Court found to be executive in nature. It is thus contrary to the spirit of the Supreme Court ruling on separation of powers, although the Court expressly declined to rule on this point (p. 134, note 176).

We realize that both of these first two points erode to some extent the principle of noncontroversiality which is one of the objectives of the Administration's approach to this matter. However, an equally important objective is the assuring of a campaign law which will be invulnerable to further constitutional attack. Both the nonvoting member and the one-House veto features -- particularly the latter, since it was specifically addressed in the Court's opinion -- provide a clear basis for renewed litigation by the groups which brought the initial suit, with the attendant uncertainty that such litigation would produce.

3. Section 6 would make most of the laws with which the Commission is concerned inapplicable to elections after 1976. The cut-off does not, however, apply to all the provisions over which the Commission has jurisdiction and which were added or amended by the 1974 law. Sections 610, 611, 613, 614, 615, 616 and 617, which deal with contributions by banks, corporations, labor unions, government contractors and foreign nationals, anonymous contributions, cash contributions and similar matters are left unaffected. Attempts to cut back on these anticorruption provisions might be viewed as regressive. With the possible exception of Section 610 (which you should consider), they are generally unexceptionable restrictions and would not properly be considered part of the same "package" as that which produced the FEC provisions.

Chapter 95 of Title 26, the Presidential Election Campaign Fund Act, and Chapter 96 of Title 26, the Presidential Primary Matching Payment Account Act are covered by Section 6. However, 26 U.S.C. 6096

which provides for the $1 tax check-off is not affected, so that a potential source of funds would be available if Congress wishes to reinstitute campaign financing.

Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

Fed'l Elec Act

THE WHITE HOUSE

WASHINGTON

February 13, 1976

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: PHILIP BUCHEN

FROM: JAMES E. CONNOR JEC

SUBJECT: Amendments to the Federal Election Act

The President reviewed your memorandum of February 12 and approved the following decisions:

Option A - Maintain the Commission indefinitely but limit the applicability of the laws pertaining to the Commission and public financing to the 1976 elections.

Option D - Do nothing to repeal the one-house veto provision but state your objection in your message to the Congress.

Please follow-up with appropriate action.

cc: Dick Cheney

10:10 a.m. Friday, February 13, 1976

Barry called to say the President chose Options A & D of the Federal Election Admin. memo.

Jim B. Lynn