**The original documents are located in Box 15, folder "Federal Election Campaign Act Amendments - 1976 (5)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.**

THE WHITE HOUSE

WASHINGTON

April 23, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN

SUBJECT: Suit to Order Payment of Federal Matching Funds

As you know, seven Presidential candidates -- Carter, Church, Harris, Jackson, Reagan, Udall and Wallace -- yesterday lodged pleadings with the Supreme Court arguing that the cessation of matching fund payments has severely impaired their First Amendment interests and those of the voters and taxpayers. Although the procedural situation is confused, the candidates have moved the Supreme Court for (1) leave to intervene in Buckley v. Valeo, (2) expedited consideration of their request, and (3) recall and modification of the Court's earlier judgment so as to permit the FEC to make certifications necessary for the Secretary of the Treasury to pay matching funds regardless of Congressional action on the pending FEC bill. A motion to intervene was simultaneously filed in the U.S. Court of Appeals for the District of Columbia. In addition, the DNC has lodged a memorandum with the Supreme Court as amicus in support of the candidates.

This morning, the Appeals Court issued an order deferring to the Supreme Court on the relief requested, but advising the Supreme Court that it would grant the motion to intervene if allowed to do so. The Supreme Court is in conference today and has sent for the Appeals Court's Order. While the Supreme Court could still deny leave to intervene, the Justice Department notes that the Court might feel more constrained to reach the merits of the candidates' motion for relief. Nevertheless, Justice believes that the Supreme Court will deny relief on the merits.

I will keep you advised of any further developments.

PFC
Buchen desk
file

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April 24, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN

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.)

(iii) Although multiple PAC's of a single corporation related to its respective divisions or subsidiaries will be limited in their aggregate contributions per candidate as if these PAC's were a single giver (limited to $5,000 per candidate in each election) this so-called non-proliferation provision applies as well to the PAC's of a single international union and all of its locals or to a national COPE and all of its state affiliates; and this aggregation principle would have an immediately greater impact on Union PAC's which at present probably outnumber active and sizeable PAC's of businesses.

(iv) Contributions to the Republican National Committee building fund would no longer be restricted, so that by raising enough money from large contributors to purchase or construct an office building, the Committee will save rental costs and will free the money saved to use for campaign activities (Although this applies as well to the DNC, it is likely to be of greater advantage to the RNC).

(v) The Senatorial Campaign Committee and the National Committee of either party could together give a maximum of $17,500 to each of its Senatorial candidates for each election, rather than the present $10,000 combined limit.

d) Most of the public, the media, and other candidates will probably regard the signing as a positive step in support of election reform and as a readiness on your part to refrain from increasing the financial squeeze on your Republican opponent's campaign and on the Democratic candidates' campaigns when the latter are fearful of the advantage this present plight gives to Humphrey. (Already, White House silence on whether you would sign the bill has been challenged as being self-serving.)

e) In terms of your own campaign, with crucial primary contests coming up in Texas, Alabama, Georgia, and California where Reagan has innate strength that can probably only be equalized or overcome by full campaign efforts on your behalf, the need of the PFC for matching funds to meet its budgets for these states can best be satisfied in time by your signing the bill.

f) Will avoid the uncertainty and delays which will be created pending a veto-override or, if that does not occur, before enactment of a new bill that you do sign; and avoids the risks of a veto override with the political disadvantages to you which could result from an override or, if that does not happen, the submission of a new bill to you that poses other disadvantages.

2. Disadvantages of signing bill

a) Because the bill continues 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

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_____ Other:

TAB A

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.

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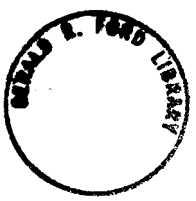

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FEC

THE WHITE HOUSE

WASHINGTON

April 26, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN

SUBJECT: Suit to Order Payment of Federal Matching Funds

As you are aware, last Friday the Supreme Court denied motions by seven Presidential candidates to intervene in Buckley v. Valeo for the purpose of receiving their matching fund payments without having to wait for Congress to pass new legislation. This morning the candidates filed motions for payment of matching funds in the U.S. Court of Appeals for the District of Columbia, which now has jurisdiction of Buckley v. Valeo on remand from the Supreme Court's decision of January 30. The Court has requested that all parties wishing to respond to these motions do so by 5 P.M. on Tuesday. No oral argument has been scheduled. It is expected that Senator Buckley will file in opposition to such payments. The Department of Justice will not respond at all. Justice continues to believe that the candidates are not entitled to any such relief.

I will keep you informed of further developments.

FEC

THE WHITE HOUSE

WASHINGTON

April 26, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN

SUBJECT: Suit to Order Payment of Federal Matching Funds

As you are aware, last Friday the Supreme Court denied motions by seven Presidential candidates to intervene in Buckley v. Valeo for the purpose of receiving their matching fund payments without having to wait for Congress to pass new legislation. This morning the candidates filed motions for payment of matching funds in the U.S. Court of Appeals for the District of Columbia, which now has jurisdiction of Buckley v. Valeo on remand from the Supreme Court's decision of January 30. The Court has requested that all parties wishing to respond to these motions do so by 5 P.M. on Tuesday. No oral argument has been scheduled. It is expected that Senator Buckley will file in opposition to such payments. The Department of Justice will not respond at all. Justice continues to believe that the candidates are not entitled to any such relief.

I will keep you informed of further developments.

# FEDERAL ELECTION LAW AMENDMENTS

Question:

Mr. President, will you sign the compromise worked out by the Conference Committee?

Answer:

As you know, we cannot be certain as to the specific final language of the bill which will have to be submitted to both the House and Senate before it would come to me, because the Conference Committee has not yet adopted its report. The Conference Report proposes numerous changes in the current law. These changes were the result of intense political and partisan debate within the Congress and will have a substantial effect on the work of the Commission and on political campaign practices by all candidates.

The integrity of our system of nominating and electing candidates for federal offices is a keystone to this Nation's strength. We must consider any changes in that system very seriously because in the final analysis, the election campaign laws must be scrupulously fair or they will not be accepted by the American people.

I continue to feel that the simple reconstitution of the Federal Election Commission as mandated by the Supreme Court is the wisest course for the Nation at this point midway through a federal election year.

Obviously, I will consider any bill that Congress ultimately does send me, but I would caution the members of Congress against reducing the independence of the Commission and creating further uncertainty and confusion in the Nation's election laws right in the midst of the 1976 campaigns.



P. W. Buchen 4/27/76

PWB 4/27/76

DRAFT PRESIDENTIAL STATEMENT ON
FEDERAL ELECTION LAW AMENDMENTS

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 in 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. The Court first allowed 30 days and then 20 more days to "afford Congress an opportunity to reconstitute the Commission by law."

Right after the Court ruling, I urged Congress to enact quickly this required change as an interim solution so the Commission could continue to operate through the 1976 election. This is the simple and fair thing to do.

Instead, Congress has already consumed almost three months in its attempts to amend the existing law in numerous ways.

In the meantime, campaigns which were started in reliance on the funding and regulatory provisions of the existing law suffer from lack of funds and lack of certainty over the rules to be followed. The complex changes called for in the draft conference bill substantially lessen the independence of the Commission and can only introduce further uncertainty in the law, and thus additional confusion for the candidates in the present campaigns.

Accordingly, I again ask the Congress to pass immediately the simple corrections mandated by the Supreme Court. The American people want an independent and effective Commission. All candidates must have certainty in the election law and all Presidential candidates need the funds which are being held up by the Congressional inaction. 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 ill-considered and confusing changes.

1X/ return to
Eva.
Mike M.
Mike just brought
these in — I told
him we had already
rewritten them and
showed him copies

THE WHITE HOUSE

WASHINGTON

4/27/76

TO: Phil Buchen
Dick Cheney
Jack Marsh

FROM: MIKE DUVAL

For your information_____

Comments:

Attached is a revised Buchen/ Duval draft FEC statement for release today.

Also attached is a Q&A.

Duval/Buchen
Revised (MD) 4/27

FEC 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 in election campaign practices. This law created the 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. The Court allowed a total of 50 days to "afford Congress an opportunity to reconstitute the Commission by law".

On February 16th, I submitted legislation to reconstitute the Commission and urged Congress to enact quickly this required change so it could continue to operate through the 1976 election. This is the simple and fair thing to do.

Instead, Congress has already spent over 70 days and two vacations in its attempts to amend the existing law in many unnecessary areas.

Because of this delay, campaigns which were planned in accordance with the funding and regulatory provisions of the election law now lack funds and lack ground rules. The complex changes in the draft conference bill can only introduce added uncertainty in the law, and thus create confusion for the candidates in the present campaigns and jeopardize the conduct of this year's Presidential election.

Accordingly, I again urge the Congress to immediately pass the simple corrections mandated by the Supreme Court and proposed by me. The American people want and deserve an independent and effective Election Commission. There must be a fair and clear law on the books to guide the campaigns. All Presidential candidates need the funds which are blocked by the Congressional inaction.

A Congressional conference committee is still working on the details of the Federal Election Commission legislation. This legislation is likely to have a major impact on how Presidential elections are conducted in this country. This is not a subject that any President can treat lightly, and I will not commit myself to sign or veto the bill until I see the specific language.

There is no question that the Congressional conferees can adopt a bill which I can quickly sign into law. They should avoid objectionable and highly controversial provisions by moving towards simple reconstitution suggested by the

Supreme Court and proposed by me in February.

I urge the Congress to act quickly. The people of this country will not stand by while incumbent politicians fiddle around with the electoral process.

Q: Mr. President, will you sign the compromise worked out by the Conference Committee?

A: As you know, we cannot be certain as to the specific final language of the bill which will have to be submitted to both the House and Senate before it would come to me, because the Conference Committee has not yet adopted its report. I am advised by my Counsel that the Conference Report proposes over 100 changes in the current law. These changes were the result of intense political and partisan debate within the Congress and will have a substantial effect on the work of the Commission and on political campaign practices by all candidates.

The integrity of our system of nominating and electing candidates for Federal offices is a keystone to this Nation's strength. We must consider any changes in that system very seriously because in the final analysis, the election campaign laws must be scrupulously fair or they will not be accepted by the American people.

I continue to feel that the simple reconstitution of the Federal Election Commission as mandated by the Supreme Court is the wisest course for the Nation at this point midway through a Federal election year.

Obviously, I will consider any bill that Congress ultimately does send me, but I would caution the members of Congress against playing politics with the Nation's election campaign laws.

THE WHITE HOUSE
WASHINGTON

Drafts

PWB 4/28/76

DRAFT PRESIDENTIAL STATEMENT
ON FEDERAL ELECTION LAW AMENDMENTS

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 in 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. The Court first allowed 30 days and then 30 more days to "afford Congress an opportunity to reconstitute the Commission by law."

Right after the Court ruling, ~~At the same time~~, I urged Congress to enact quickly this required change as an interim solution so the Commission could continue to operate through the 1976 election. This is the simple and fair thing to do.

Instead, Congress has already consumed almost three months in its attempts to amend the existing law in numerous ways.

In the meantime, campaigns which were started in reliance on the funding and regulatory provisions of the existing law suffer from lack of funds and lack of certainty over the rules to be followed. The complex changes called for in the draft conference bill can only introduce further uncertainty in the law, and thus additional confusion for the candidates in the present campaigns.

substantially lessen the independence of the Commission and

Accordingly, I again ask the Congress to pass the simple corrections mandated by the Supreme Court ~~immediately upon their return next week.~~ The American people want an independent and effective Commission. All candidates must have certainty in the election law and all Presidential candidates need the funds which are being held up by the Congressional inaction. ~~It is appropriate that the candidates get~~ the full benefit of the new law so that they can continue to campaign and the people can ~~render informed~~ judgments at the polls and in their party caucuses.

immediately



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 ~~last minute~~ ill-considered and confusing changes.

PWB 4/28/76

FEDERAL ELECTION LAW AMENDMENTS

Q: Mr. President, will you sign the compromise worked out by the Conference Committee?

A: As you know, we cannot be certain as to the specific final language of the bill which will have to be submitted to both the House and Senate before it would come to me, because the Conference Committee has not yet adopted its report. ~~I am advised by my Counsel that~~ the Conference Report proposes numerous ~~over 100~~ changes in the current law. These changes were the result of intense political and partisan debate within the Congress and will have a substantial effect on the work of the Commission and on political campaign practices by all candidates.

The integrity of our system of nominating and electing candidates for Federal offices is a keystone to this Nation's strength. We must consider any changes in that system very seriously because in the final analysis, the election campaign laws must be scrupulously fair or they will not be accepted by the American people.

I continue to feel that the simple reconstitution of the Federal Election Commission as mandated by the Supreme Court is the wisest course for the Nation at this point midway through a Federal election year.

Obviously, I will consider any bill that Congress ultimately does send me, but I would caution the members of Congress against ~~playing politics with the Nation's election campaign laws.~~ reducing the independence of the Commission and creating further uncertainty and confusion in the Nation's election laws ~~campaign laws~~ right in the midst of the 1976 campaigns.

THE WHITE HOUSE

WASHINGTON

April 28, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN

SUBJECT: Conference Bill to Amend the Federal Campaign Laws

The Conferees met this afternoon and agreed to the Conference Report on the bill to amend the Federal Election Campaign Act. Wayne Hays indicated that the bill will not go to the House Floor until Monday, May 3, in order to allow the Conferees an opportunity to read the final version of the Report.

The most significant change appears to be clarifying language in the Report to indicate that corporations are not required to provide lists of non-union employees and shareholders, directly to the unions, but that they would have to provide them to independent mailers who would mail the solicitations for both the corporation and the union. We will receive the final version of the Report tomorrow and I will provide you with a more detailed analysis of any other significant changes in the Bill.

Senator Cannon told reporters present at the Conference that the Senate would now probably vote on the bill on Tuesday. However, Senator Weicker has indicated that he will seek to block consideration of the Report until the Leadership agrees to vote before July 4 on the intelligence oversight, Watergate Reform and Tax Privacy bills pending in the Senate.

cc: Jack Marsh
Max Friedersdorf
Mike DuVal

RECONSTITUTION OF THE
FEDERAL ELECTION COMMISSION

Question:

Mr. President: The House and Senate Conferees have agreed on a new bill to reconstitute the Federal Election Commission and make other amendments in the federal election campaign laws. Will you sign the bill reported by the conference committee if it is passed?



Answer:

The bill approved Wednesday by the Conference Committee is quite lengthy and I have not yet completed my review of it. However, I do have reservations with respect to various provisions, particularly those limiting the independence of the Federal Election Commission. The American people want and should have a truly independent and effective Commission, with full authority to enforce the election laws. I will not consider this matter lightly or hastily. When the Congress finally passes a bill, I will be prepared to act on it promptly.



Buchen 4/29/76

THE WHITE HOUSE

WASHINGTON

April 29, 1976

MEMORANDUM FOR: JIM LYNN

FROM: PHIL BUCHEN

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

(See OMB)

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.

President Ford Committee

1828 L STREET, N.W., SUITE 250, WASHINGTON, D.C. 20036 (202) 457-6400

April 30, 1976

MEMORANDUM

TO: Richard B. Cheney
Assistant to the President

FROM: Robert P. Visser
Timothy Ryan

RE: Amendments to Federal Election Campaign Act

The amendments to the Federal Election Campaign Act have now been voted out of the Conference Committee and will most likely go to the House on May 3 and to the Senate on May 4, 1976. The following are the only substantive changes in the Conference Report:

1. The advisory opinion section now provides that while the advisory opinion rules govern all opinions of an advisory nature, the provisions do not preclude the distribution by the Commission of other information consistent with the Act. According to the Congressional Campaign staff attorneys, the colloquy regarding this provision establishes that the Commission will be permitted to issue opinions relating to the Act, similar to opinions of counsel which were previously issued by the General Counsel's office. This is an important change since this apparently provides the FEC some mechanism for giving informational opinions to candidates and their campaign committees, as well as others who do not have standing to request advisory opinions, and, therefore, increases its independence from Congress.

2. Three revisions in the administration of Political Action Committees (PAC's):

a. clearly sets forth the "executive or administrative personnel" who may be solicited at any time by the political actic committee. The Conference substitute now defines executive or administrative personnel as employees who are paid on a salary,

rather than an hourly basis, and who have policy-making, managerial, professional or supervisory responsibilities. The Report goes on to state that this term is intended to include individuals who run the corporation's businesses, such as officers, other executives, and plant, division, and section managers, as well as individuals following the recognized professionals, such as lawyers and engineers, who have not chosen to separate themselves from management by choosing a bargaining representative. However, the Report then, for the first time, states that it is not intended to include the professionals who are members of a labor organization, or foremen who have direct supervision over hourly employees, or other lower level supervisors, such as straw bosses. In other words, first-line supervisors have been eliminated from the definition of executive or administrative personnel, although the Act specifically includes individuals who have supervisory functions;

b. provides that if a corporation does not desire to relinquish or disclose to a labor organization the names and addresses of individuals to be solicited, an independent mailing service shall be retained to make the mailing for both the corporation and the labor organization. This provision substantially eliminates the problems which the industry people have raised regarding the use of names and addresses of employees or shareholders for other than political solicitation reasons--organizing non-union employees; and

c. provides that corporations may take part in non-partisan registration and get-out-the-vote activities that are not restricted to stockholders and executive or administrative personnel, if such activities are jointly sponsored by the corporation and an organization that does not endorse candidates. In other words, the specific objection of the Sears "good government" program is now eliminated so that it may take part in non-partisan registration and get-out-the-vote activities with its employees.

In closing, it must be emphasized that the changes made in the Conference Report, which appear to eliminate some of our problems with the PAC provisions, are changes in the legislative history (i.e., the Conference Report). Additional modifications to this history could be made by Congressmen or Senators during the floor discussions next week. For this reason, it is important that any decision in this matter be held in abeyance until the Bill is voted on in the House and Senate.

April 30, 1976

To: Bill Seidman

From: Phil Buchen

THE WHITE HOUSE

WASHINGTON

April 28, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN P.

SUBJECT: Conference Bill to Amend the Federal Campaign Laws

The Conferees met this afternoon and agreed to the Conference Report on the bill to amend the Federal Election Campaign Act. Wayne Hays indicated that the bill will not go to the House Floor until Monday, May 3, in order to allow the Conferees an opportunity to read the final version of the Report.

The most significant change appears to be clarifying language in the Report to indicate that corporations are not required to provide lists of non-union employees and shareholders, directly to the unions, but that they would have to provide them to independent mailers who would mail the solicitations for both the corporation and the union. We will receive the final version of the Report tomorrow and I will provide you with a more detailed analysis of any other significant changes in the Bill.

Senator Cannon told reporters present at the Conference that the Senate would now probably vote on the bill on Tuesday. However, Senator Weicker has indicated that he will seek to block consideration of the Report until the Leadership agrees to vote before July 4 on the intelligence oversight, Watergate Reform and Tax Privacy bills pending in the Senate.

cc: Jack Marsh
Max Friedersdorf
Mike DuVal

THE WHITE HOUSE

WASHINGTON

April 24, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN

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.)

(iii) Although multiple PAC's of a single corporation related to its respective divisions or subsidiaries will be limited in their aggregate contributions per candidate as if these PAC's were a single giver (limited to $5,000 per candidate in each election) this so-called non-proliferation provision applies as well to the PAC's of a single international union and all of its locals or to a national COPE and all of its state affiliates; and this aggregation principle would have an immediately greater impact on Union PAC's which at present probably outnumber active and sizeable PAC's of businesses.

(iv) Contributions to the Republican National Committee building fund would no longer be restricted, so that by raising enough money from large contributors to purchase or construct an office building, the Committee will save rental costs and will free the money saved to use for campaign activities (Although this applies as well to the DNC, it is likely to be of greater advantage to the RNC).

(v) The Senatorial Campaign Committee and the National Committee of either party could together give a maximum of $17,500 to each of its Senatorial candidates for each election, rather than the present $10,000 combined limit.

d) Most of the public, the media, and other candidates will probably regard the signing as a positive step in support of election reform and as a readiness on your part to refrain from increasing the financial squeeze on your Republican opponent's campaign and on the Democratic candidates' campaigns when the latter are fearful of the advantage this present plight gives to Humphrey. (Already, White House silence on whether you would sign the bill has been challenged as being self-serving.)

e) In terms of your own campaign, with crucial primary contests coming up in Texas, Alabama, Georgia, and California where Reagan has innate strength that can probably only be equalized or overcome by full campaign efforts on your behalf, the need of the PFC for matching funds to meet its budgets for these states can best be satisfied in time by your signing the bill.

f) Will avoid the uncertainty and delays which will be created pending a veto-override or, if that does not occur, before enactment of a new bill that you do sign; and avoids the risks of a veto override with the political disadvantages to you which could result from an override or, if that does not happen, the submission of a new bill to you that poses other disadvantages.

2. Disadvantages of signing bill

a) Because the bill continues 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.

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.

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.

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 transferred

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.