The original documents are located in Box 16, folder "Federal Election Campaign Act Amendments of 1976 - Memoranda (1)" of the John Marsh Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

February 21, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: MAX L. FRIEDERSDORF MLF.

SUBJECT: Hays Bill on the Federal Election Commission

Following the meeting Friday evening with the President on the Federal Elections Commission, a number of calls were made to the Republican Congressional leaders.

It was learned that Hays will open hearings at 10:30 a.m. on Monday, February 23.

Republicans will request a Committee vote be delayed for at least a day to study the bill, but Hays may force a vote on Monday.

If successful in Committee, Hays may try to bring the bill on the Floor the latter part of the week to meet the March 1 Supreme Court deadline.

Most Republican leaders contacted are strongly opposed to the Hays proposal.

Bill Frenzel - Opposed to the bill, but believes it would be better to try and work out something acceptable to avoid a Presidential veto.

Guy Vander Jagt - In the Bahamas this weekend and unreachable. Expressed total opposition before leaving.

John Anderson - Reached in Texas on a speaking engagement. Aware of Hays bill and totally opposed. Said he was putting out a statement against Hays bill and will go to work against it in the House.

Chuck Wiggins - Strongly opposed and will contest the Hays bill on Monday.

Bill Dickinson - Opposed and plans to fight the Hays bill.

Hugh Scott - Very alarmed about the Hays/Pell bill and recommends all-out opposition.

Ted Stevens - Expressed strong concern and opposition to the Hays/Pell bill. Already mobilizing the fight against the bill.

John Rhodes - Least concerned of any leader contacted. Not happy with the Hays bill, but believes we "might live with it." Acknowledges that Vander Jagt very concerned; but believes we should wait and see what legislation emerges from Committee.

Bill Steiger - Plaintiffs in the original suit have petitioned the Court for an additional 30 days to make the changes in the law (Supreme Court may rule on this Monday morning.). Steiger, however, disagrees with the President and may criticize our position. Steiger feels Congress should make changes in the law. His bill would raise contribution levels, but he is opposed to public financing.

Bob Michel - Thinks Hays bill is "awful." Plans to do everything he can to kill it.

Barber Conable - In bed with the flu. Staff says Barber is opposed and will do all he can to fight it.

Marjorie Holt - The Republican Study Group will go to work Monday morning and work against the bill in the House Administration Committee (She is a Member of the Committee.)

Jim Quillen - Definitely opposes the Hays bill, but wants the Commission abolished. Will oppose the Hays bill in Rules Committee.

Jim McClure - Unable to reach

Carl Curtis - Unable to reach

Sam Devine - Unable to reach

Joe Waggonner - Unable to reach

Jim Buckley - Doesn't like the Hays bill. (He is a plaintiff in the Supreme Court case and has indicated no objection if the Supreme Court grants a 30 day extension; Buckley, contrary to Steiger, says the plaintiffs are not pushing the 30 day extension, but would not object.)

Bob Griffin - Unable to reach thus far.

MAR 13 1976 March

RED TAG THE WHITE HOUSE

WASHINGTON

March 12, 1976

MEMORANDUM FOR: MAX L. FRIEDERSDORF

THRU: VERN LOEN VL

FROM: CHARLES LEPPERT, JR. CLJr.

SUBJECT: Federal Election Campaign Act Amendments of 1976, H. R. 12406

Attached is a copy of H. R. 12406 as reported by the House Administration Committee on Thursday, March 11 by a roll call vote of 15 - 9. Rep. Dawson Mathis was the only Democrat present voting not to report the bill.

Following the Committee meeting on March 11, the Minority Members of the Committee met and agreed to the following:

(a) to meet Monday, March 15 at 11:00 a.m. to discuss strategy, specific amendments to be offered on the floor vs. one amendment for a straight extension, the motion to recommit with or without instructions;

(b) that Rep. Chuck Wiggins would be the floor manager of the bill, and;

(c) that Minority views must be filed by noon, Wednesday, March 17.

Thus far all the Minority Members have agreed to sign the minority views subject to a reading of them with the exception of Rep. Jim Cleveland. Cleveland wants to know the Administration's specific objections to the bill. I suggest that we supply him with the specific objections and encourage him to file separate dissenting views if possible.

It was suggested by the Minority Members that if the Administration had language it wanted put into the Minority Views that the language be submitted to Ralph Smith, the Minority Counsel prior to noon, Wednesday, March 17.

Rep. Chuck Wiggins asked that Phil Buchen call him to discuss some specific matters concerning the bill. I called Barry Roth on this and he advised that Buchen would call Wiggins.

House Administration Committee plans to go before the House Rules Committee on March 23 for the purpose of requesting a modified open rule on the bill. Chairman Wayne Hays stated that he wanted to limit the amendments offered to the bill but was willing to meet with the Minority Members of the Committee to discuss and agree on what amendments were to be permitted to be offered in the House during consideration of the bill.

The Minority Members of the Committee have invited any of our Administration people to attend the strategy meeting on Monday, March 15 at 11:00 a.m. The meeting will be in the House Administration Committee room H-330.

cc: Jack Marsh
Barry Roth

MAR 16 1976

RED TAG

THE WHITE HOUSE

WASHINGTON

March 15, 1976

MEMORANDUM FOR: MAX L. FRIEDERSDORF

THRU: VERN LOEN VL

FROM: CHARLES LEPPERT, JR. CLJr.

SUBJECT: H.R. 12406, Federal Election Campaign Act Amendments of 1976

The Minority Members of the House Administration Committee met this morning at 11:00 a.m. The meeting was chaired by Rep. Chuck Wiggins (R-Calif.).

The following decisions were made:

1. A total of six amendments will be offered to the bill, three motions to strike (see Amendments 2, 9 and 11 attached) and three substantive amendments (see Amendments 4, 5 and 10 attached and amendment 10 to include No. 8).

2. The Minority will request that the modified open rule include a motion to recommit and permit the offering of a substitute to H.R. 12406. The provisions of the substitute to be worked out; and,

3. A copy of the Minority views will be made available to us for comment.

The above are subject to change pending the meeting between Rep. Chuck Wiggins and Rep. Wayne Hays.

cc: Jack Marsh
Tom Loeffler

FRENZEL AMENDMENTS

NO 1. Amendment giving contract power authority to FEC.

STK – 2. Amendment to strike Advisory Opinion section

NO 3. Amendment to strike enforcement section except for the requiring of a sworn affidavit for complaint and criminal penalties for a falsely sworn complaint

AMEND – 4. Amendment to delete Mathias amendment re office employees (handled by # 3).

AMEND – 5. Amendment to strike "in whole or in part" and preferential rule.

NO 6. Amendment to reinstate filings with Secretaries of State.

NO 7. Amendment to restore right to give political parties up to $25,000.

SEE –10–[8.] Amendment to redefine "executive officer" from Wiggins substitute.

STK– 9. Amendment to remove termination section.

AMEND –10. Amendment requiring ~~RAR~~ disclosures of PAC expenditures. – INC. – 8.

STK – 11. Amendment to remove $5000 limit on penalties.

NO ~~AMEND~~ 12. Amendment to lower cash contributions.

AMENDMENT OFFERED BY

On Page 15, beginning line 20, strike Section 108 in its entirety

AMENDMENT OFFERED BY

Page 18 beginning line 17, strike all that follows after "Commission".

AMENDMENT OFFERED BY

ITEM VETO AND HOUSE RULES

Page 27, lines 7 through 21. Section 110 of the Committee Bill is amended by striking out subsection which appears on page 27, at lines 7 through 21.

AMENDMENT OFFERED BY

On page 29, lines 7 and 8, immediately after Section 105, strike "is further amended by striking section 316 as redesignated by section 105".

AMENDMENT OFFERED BY

LIMITATIONS ON CONTRIBUTIONS AND EXPENDITURES

Page 29, line 16, strike out the comma after "$1,000" and insert in lieu thereof a period. Strike out the rest of the sentence from line 14 up to and including line 16.

AMENDMENT OFFERED BY

On page 41, line 3, strike "and who has policymaking or supervisory responsibilities" and insert the following; "and who is not a member of a labor organization."

AMENDMENT OFFERED BY

Page 47, beginning line 16, strike Section 409 in its entirety.

Amendment by Mr. Wiggins

CONTRIBUTIONS OR EXPENDITURES BY NATIONAL BANKS, CORPORATIONS, OR LABOR ORGANIZATIONS

Page 39, line 6 strike out everything after the comma beginning with the words "but shall not" up to and including the words "except that" on line 15 and insert in lieu thereof the following:

"but shall not include --

(1) communications by a corporation to its stockholders and executive officers and their families or by a labor organization to its members and their families on any subject, except that expenditures for any such communication on behalf of a clearly identified candidate must be reported with the Commission in accordance with section 304(e) of the Act;

(2) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive officers and their families, or by a labor organization aimed at its members and their families, except that expenditures for any such campaigns must be reported with the Commission pursuant to section 304(e) of the Act;

(3) the establishment, administration, and solicitiation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization: "except

AMENDMENT OFFERED BY

TO

H.R. 12015

On Page 45, lines 18 and 19, strike the folowing language; "having a value in the aggregate of $5,000 or more during a calendar year".

AMENDMENT OFFERED BY

On Page 44, line 21, strike ", exceeds $250," and insert in lieu thereof the following, ", exceeds $100".

THE WHITE HOUSE

WASHINGTON

March 15, 1976

MEMORANDUM FOR: JACK MARSH
MAX FRIEDERSDORF

FROM: PHIL BUCHEN

SUBJECT: Federal Election Campaign Act Amendments of 1976, H. R. 12406

With regard to our meeting this morning with Congressmen Wiggins, Devine and Frenzel, the minority members of the House Administration Committee will file later this week a Minority Report with dissenting views on the Hays Bill to amend the Federal Election Campaign Act.

Additionally, the minority members, with the possible exception of Jim Cleveland, will offer the following amendments to the Hays Bill:

(1) To strike the provisions with respect to Advisory Opinions.

(2) To strike the provision for termination of the FEC after March 1977 by a one-House resolution.

(3) To strike the provision that only violations with respect to contributions or expenditures which in the aggregate exceed $5,000 may be criminally prosecuted.

(4) To amend the provision that would bar investigation by the FEC of the activities of the staff of any holder of Federal elective office.

(5) To amend the provision that allows for an item veto of Commission regulations and the preferential treatment for such resolutions. (This would effectively continue the one-House veto provision in the present law.)

(6) To amend the provision relating to union and corporate PACs to permit the solicitation by corporations of all non-union salaried employees and to require the disclosure of expenditures by unions and corporations for communications with members or salaried employees, respectively, regarding clearly identifiable candidates and non-partisan registration and get-out-the-vote campaigns.

The minority members will also seek leave to offer a substitute bill and/or a motion to recommit the Hays Bill with instructions to report out a bill that would simply reconstitute the Commission. They have not yet decided whether to include a termination provision, although we have suggested the provision that was proposed by the President.

cc: Jim Connor

THE WHITE HOUSE

WASHINGTON

March 17, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: MAX FRIEDERSDORF M.F.

SUBJECT: Federal Election Commission Bill

The Senate continued debate today on the Federal Election Commission legislation and Bob Griffin reported that we won a good victory on the Packwood Amendment by a vote of 50 to 41.

This amendment would require increased disclosure of the expenditures by business concerns and unions. It was aimed at the practice employed by unions of using unlimited communications to their membership to promote favored candidates.

Griffin reported that this is the only significant action today with another big vote expected tomorrow.

It is Senator Griffin's strategy now to offer again the President's bill as a substitute with a slight modification and force another vote tomorrow.

The modification would involve including the Secretary of the Senate and the Clerk of the House as ex officio members of the FEC.

Griffin said that Senator Mansfield and other Democrats used the excuse yesterday of voting against the President's bill because it did not include the Secretary of the Senate and the Clerk of the House who are presently on the FEC.

Griffin says he wants to force another vote tomorrow because it is the last day that the Vice President will be available before he leaves on his over seas trip.

Griffin estimates that the Senate will not conclude the bill this week and it will probably go over until next week before final passage.

bcc: Jack Marsh

APR 21 1976

THE WHITE HOUSE

WASHINGTON

April 20, 1976

MEMORANDUM FOR THE PRESIDENT

THRU: DICK CHENEY
JACK MARSH

FROM: MAX FRIEDERSDORF

SUBJECT: Republican Congressional Leadership Attitudes on the F.E.C. Bill

Pursuant to the senior staff meeting today on the F.E.C. bill, Dick Cheney requested a report on the Republican leadership and Congressional outlook on the Conference Report for S. 3065, Federal Election Campaign Act Amendments of 1976.

In our Congressional contacts we asked about recommendations for signing or vetoing the bill; assessment of efforts to sustain a veto, and any other pertinent comments on the bill.

Attached for your information is a brief comparison of the present law and the provisions of S. 3065, and the Congressional reactions received today:

Senate:

PACKWOOD

He is inclined to recommend signing the bill. A veto could produce a bill which is worse. He believes this bill has some merit. He is proud of his own amendment which survived in watered down form which would force unions to disclose spending on campaigns. He also favors the honoraria sections (as do most Senators). He also favors "trimming" the Commission. He advises taking a good long look at the bill when it emerges from conference.

A veto might be sustained although he is unsure whether he would vote to sustain. He believes the vote would be marginal.

STEVENS

He feels the bill is a "crock of worms" but says the President should not veto it. He says it will help the Republican Senatorial Campaign Committee aid candidates. He believes PACs are better off but as he told the President at the last Leadership meeting we Republicans do not benefit from PACs that much. He says there is some feeling that we are "conspiring" against the Democratic Presidential candidates because of our attitude on the bill. His advice is to get it out of the way as soon as possible or the President will be under the same fire Congress now is for delaying passage.

He advises no veto but will vote to sustain if the President does not sign it. He thinks many of our guys would run for cover if a veto is forthcoming. Sustaining a veto would be difficult in that event.

HATFIELD

He thinks the conference report is a "mixed" bag. Feels the President should probably "hold his nose and sign it". He is unsure about whether he will sign the report. He advises the President to take his time and "make them sweat it out" before he makes his decision. He feels another Leadership meeting on the subject would be helpful to the President. He believes they were able to salvage most of the things Republicans are interested in such as Sunpac and labor disclosure of funding of campaigns.

He does not feel a veto can be sustained. The Democrats will be under terrific pressure from all of their Presidential candidates. Hays, he thinks, would like nothing more than a veto which could not be overridden.

GRIFFIN

The Senator could not be reached today. I have included a statement that Senator Griffin placed in the Record last Wednesday in response to a WASHINGTON POST story which gives some of the Senator's reaction to the FEC bill. It is at Tab A.

TOWER

The Senator is returning from Europe and is not reachable at this time.

CURTIS

Unreachable before close of business.

HUGH SCOTT

Senator Scott is in Florida and not reachable until this evening. Ken Davis of his staff gave me the following as close to the Senator's views: Senator believes that the bill, "on Balance", is good. The corporations and Chamber of Commerce people do not like the bill but our own professional fund-raisers believe they can live with it. The bill is in better shape than they thought possible at the start of the conference. Scott thought he could probably sign the report when he left; however, he is still keeping his options open on that.

A veto would be very difficult to sustain if most of our Leadership decide to sign the conference report.

House:

CHARLES E. WIGGINS

Reached at 1:00 P.M. EST, April 20, at his District office in Fullerton, Calif.

Recommended that the President sign the FEC bill. He does not even think it is a "close call."

He believes that the bill is not significantly worse than the present law and that politically it would be difficult not to sign the bill as the other candidates for President would claim that President Ford is trying to keep the badly needed campaign funds dried up.

Congressman Wiggins sees only two issues which are significant and in both cases he feels that not only did we get the best we will ever get, but that the unions suffered greatly at the hands of the Conference Committee.

The two issues are:

1. The independence of the Commission -- He feels this is more rhetoric than substance. Given the makeup of the Congress, legislation could not be drafted which would make the Commission independent. It has been demonstrated under the current law that if Senator Cannon or Rep. Hays want to influence the Commission, they can.

   Wiggins does not feel that this issue is enough of a concern to warrant a veto.

2. The political action committee issues -- Wiggins concedes that the PAC section is not as good as present law, but he feels that any bill reported out would not allow for the so-called Sunpac provisions. He feels that there are two real pluses in the PAC section:

   a. Anti-proliferation of contributions --

      While corporations and labor unions can have as many PACs as there are company divisions or union locals, all committees of the same national labor organization or corporation will be treated as one committee for the purpose of the contribution limits.

      Wiggins feels this is a distinct disadvantage to the unions because there are more corporations than national unions.

b. The Packwood Amendment which requires reporting of union or corporation communications advocating the election or defeat of a candidate.

Wiggins says that he will sign the conference report. He expects a vote on Wednesday, April 28, and that there should be only about 75 votes against the measure unless the President indicates a veto and in that case, he predicts 125 votes against the measure.

JOHN RHODES

Mr. Rhodes said he just received a copy of the bill and had not had time to read it. He stated he would call tomorrow (Wednesday, April 21), with his views.

BOB MICHEL

Rep. Michel is in his District. He is making calls outside of his office and his staff has been unable to locate him; however, phone calls have been left. He will call back.

BILL FRENZEL

Bill indicated that he has visited at length with Chuck Wiggins as to whether they should recommend that this legislation be signed or vetoed. It is Bill's opinion that the Conference Committee greatly improved the House and Senate passed versions of the bill.

He stated that a number of the "self serving" items had been deleted in Conference, particularly as related to the independence of the Commission. Even though the Commission is still not independent enough in Bill's opinion, he believes that very positive steps were taken during Conference.

According to Frenzel, the civil process sections have been greatly improved over the House passed version. In addition, the Sunpac provisions are better than the House and Senate passed versions as a result of the expanded definition of "supervisory employees".

While Bill would rather have seen a simple extension as requested by the President, he believes the Conferees made a very conscious effort to come up with a better overall piece of legislation than was passed by either the House or the Senate. There were 155 votes against the House legislation, however because of the Conference action, Bill believes the President would have a difficult time sustaining a veto.

BILL DICKINSON

In China until next Monday.

JOHN ANDERSON

In Europe until next Monday.

GUY VANDERJAGT

In Europe until next Wednesday.

A

FEC CONFERENCE REPORT

Mr. GRIFFIN. Mr. President, this morning the Washington Post published a story reporting that the conferees working on legislation entitled "The Federal Election Campaign Amendments for 1976," have reached agreement.

I was interested and disappointed to find in the story this sentence:

Common Cause, the so-called citizens' lobby, strongly supporting the bill said the conference agreement "creates a strong and effective Federal Election Commission and closes key loopholes in the 1974 law."

Mr. President, it is truly amazing that an organization which claims to be a citizens' lobby could say something like that, if they are correctly quoted, because this compromise legislation does not create a strong and effective FEC, and it does not close loopholes. Instead, it opens up big loopholes and seriously undermines, weakens, and makes dependent an agency of Government that is supposed to be independent, particularly from the Congress.

For example, one hobbling provision in this compromise agreement gives a new "item veto" to each House of Congress, allowing either House to disapprove rules and regulations promulgated by the Federal Election Commission. Under the compromise legislation either House could disapprove such rules or regulations "in whole or in part." Nothing quite like this has ever come to my attention before.

Putting aside the question of constitutionality, it does not take much wisdom to observe that such a provision hardly strengthens or makes more effective the FEC.

How can Common Cause possibly term the FEC strong and independent in light of such provision?

Another emasculating provision in this conference agreement is the requirement that all Federal Election Commission's advisory opinions of general applicability must also be submitted to Congress for possible veto by either House.

Thus, the advisory opinion—which should be helpful to those running for Federal office—will largely be lost as a tool of election reform.

In addition, under the agreement, the Commission will be required to completely rewrite and reissue approximately 140 advisory opinions already rendered. The Commission will have to rewrite and reissue them in the form of rules and regulations for submission to, and possible veto by, the Congress.

At the height of an election campaign, the commission will be required now to stop and redo most of what it has already done.

This conference agreement stands in sharp contrast to the request of President Ford that the Congress simply extend the life of the Federal Election Commission in a constitutional way and keep the independence and power of the Commission intact. One must ask: Why didn't Common Cause activity support this position?

It is incredible to me that Common Cause did not loudly and strongly support the President's request, instead of lending support to this bill which guts the Federal Election Commission and greatly erodes its independence.

One can only conclude that Common Cause's leadership made some kind of deal with the leaders of organized labor, thereby abandoning responsibility to the constituents the organization claims to represent, the citizens of the United States.

I ask unanimous consent that an article from the Washington Post of April 14, 1976 be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

CONFEREES AGREE ON ELECTION BILL

(By Mary Russell)

House-Senate conferees reached agreement on a bill reconstituting the Federal Election Commission yesterday, but not in time for Congress to pass it before adjourning this afternoon for its Easter recess.

Final agreement by the conference is expected on April 26, the day Congress returns, and swift approval by House and Senate is predicted. But presidential candidates will be unable to receive the FEC's matching funds until the President signs the bill into law, reappoints the commissioners and they are confirmed by the Senate.

Presidential candidates have received no federal matching money since March 22, the deadline set by the Supreme Court for Congress to reconstitute the commission with presidential appointees instead of unconstitutional congressional appointments. The court ruled that the FEC must suspend the funding until Congress acts.

After yesterday's conference, Senate Minority Leader Hugh Scott (R-Pa.) said, "The bill is still subject to a considerable risk of veto," but Rep. Charles Wiggins (R-Calif.) said, "The prospects of a veto are considerably dimmed because of the conference action."

Wiggins said he was "pleasantly surprised" at the progress made in the conference and called the result "a significant compromise on both sides." He said the bill was "superior to the House bill and in some respects superior to the Senate bill."

Common Cause, the so-called citizens lobby strongly supporting the bill, said the conference agreement "creates a strong and effective FEC and closes key loopholes in the 1974 law," and declared:

"President Ford should immediately make clear his intention to sign this bill. There is no justifiable basis for vetoing this legislation and such an act could only result in chaos in the presidential primaries."

A Common Cause spokesman said such a statement by the President would increase the possibilities that the presidential candidates could get bank loans in the meantime, using the prospective federal money as collateral.

The White House had been making veto signals because of its concern that corporate political committees would be banned from soliciting contributions from workers as well as from management and stockholders.

It was also concerned that the House bill gave Congress too much control by forcing the commission to submit all regulations and opinions to Congress for review and item veto.

All of those issues were significantly compromised by the conference.

The House bill prohibited any solicitation by corporations of workers below the management level, but the conferees accepted a Senate version that allowed both corporations and unions, through their political committees, to solicit contributions twice a year from all workers, as well as stockholders and management. At other times a union's political committee could solicit its members and corporate political committees could solicit stockholders executive officers or administrative personnel having policy, managerial, professional or supervisory responsibilities.

The House compromised by allowing advisory opinions on a specific factual situation—but not of a general nature—to be delivered by the FEC without submitting them to Congress. The House also softened its item-veto provision.

The conference closed an important loophole by requiring labor unions and corporations to report to the FEC how much they spend in communicating with their employees or members to advocate election or defeat of a candidate if it comes to over $1,000 per candidate per election.

One of the hardest fought conference battles was over a Senate provision removing the limits on the amount of honorariums a senator or representative could receive in one year. The limit had been set at $1,000 per appearance and a total of $15,000 per year, but several senators, active on the lecture circuit, campaigned to have the limit removed. The House bill maintained the limits, since representatives are rarely that popular on the lecture circuit.

In conference, the House proposed a $2,000 per fee limit with a ceiling of $20,000. Yesterday a compromise was reached setting the limit at $2,000 per fee, $25,000 per year, but allowing deductions for booking agents' fees, travel expenses, subsistence and expenses for an aide or a wife to accompany the speaker. So the net limit will be considerably over $15,000.

In other action, the conferees permitted the Republican and Democratic Senate campaign committees to contribute $17,500 to a Senate candidate during an election year, rather than the present $5,000 per election.

FEC bill

4/22 [1976]

THE WHITE HOUSE
WASHINGTON

Rhodes [Talked to Wiggins]

1. On balance
2. for FEC
2. Cutting if not to hurt opponents.
3. Can't do much better
4. Should list minus offset by, the Plus.

St Wiggins sign Cong. supt.

THE WHITE HOUSE
WASHINGTON

To: Mr. Marsh

From Eva

As promised

THE WHITE HOUSE

WASHINGTON

April 22, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN

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.

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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.

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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.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: APR 22 1976

Date: April 22, 1976 Time: Due: 4/24 10:00

FOR ACTION:
MAX Friedersdorf
Jack Marsh
Jerry Jones
Dave Gergen
FROM THE STAFF SECRETARY

cc (for information):
Jim Lynn
Mike Duval
Foster Chanock
Tim Austin

DUE: Date: Saturday, Apr. 24 Time: 10 A.M.

SUBJECT:

Phil Buchen Memorandum
4/22/76 re ConferenceBill to amend the
Federal Campaign Laws

ACTION REQUESTED:

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

REMARKS:

The Original of this memorandum is being sent to the President today. Your comments are needed definitely by early Saturday morning or before in order that an additional memorandum is prepared for the President by the first thing Monday morning. Thank you.

Called Trudy for comments w/Jim's 4/24/76 @ 10:05 reg

No additional comments, wanted there is an opportunity to discuss issue personally with key Hill people

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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

Jim Connor
For the President

THE WHITE HOUSE

WASHINGTON

April 22, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN

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.)

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April 7, 1976

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Recommendation

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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 Hays 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 transferr

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

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

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

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

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