The original documents are located in Box 14, folder "Federal Election Campaign Act Amendments - 1976 (3)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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

Meeting

Friday 3/19 -- 10:30 a.m.

Common Cause
John Gardner
David Cohen
Fred Wertheimer

Monday 3/15/76

Meeting
3/19/76
10:30 a.m.

5:20 We have scheduled a meeting at 10:30 a.m. on Friday 3/19 for the following people from Common Cause: 833-1200

John Gardner	Chairman of the Board
David Cohen	President
Fred Wertheimer	

To discuss campaign finance reform matters.

Do you want Barry to sit in?

THE WHITE HOUSE

WASHINGTON

February 16, 1976

Dear Mr. Gardner:

On behalf of the President, thank you for your telegram urging his support for prompt reconstitution of the Federal Election Commission. We appreciate your concern in this regard.

The President has today proposed legislation to the Congress to immediately reconstitute the Federal Election Commission with all of its powers intact. He has also called on the Congress to work with him to achieve this goal by February 29.

As you are aware, the Supreme Court's decision has sharply altered the comprehensive regulatory scheme provided for in the Federal Election Campaign Act Amendments of 1974. Accordingly, the President has proposed that the election laws relating to the Commission and the public financing provisions be limited to elections through 1976. This will ensure that Congress does undertake a full-scale review of the election laws. Once the current elections have been completed and we have had the opportunity to review any problems presented in the present law, the President will submit to Congress a new, comprehensive election reform bill to apply to future elections.

With the support of the Administration, members of Congress and groups such as Common Cause, prompt reconstitution of the Commission is possible, and the integrity of our electoral process will have been protected.

I am enclosing for your information a copy of the President's message to the Congress and the legislation he has proposed to reestablish the Commission.

Sincerely yours,

Roy Morton

Rogers C. B. Morton
Counsellor to the President

Mr. John Gardner
Common Cause
2030 M Street, N. W.
Washington, D. C.

bcc: Phil Buchen

Western Union

Telegram

LLE032 WAF113(1314)(2-021857E035)PD 02/04/76 1314
ICS IPMMTZZ CSP
2028331200 TDMT WASHINGTON DC 85 02-04 0114P EST

1976 FEB -4 PM 1:

PMS PRESIDENT GERALD FORD, THE PRESIDENT FORD COMMITTEE, DLR
1828 L ST NORTHWEST SUITE 250
WASHINGTON DC
URGE YOU TO PUBLICLY ANNOUNCE YOUR SUPPORT FOR RECONSTITUTING THE FEDERAL ELECTION COMMISSION WITH ITS FULL POWERS INTACT. AS A PARTICIPANT IN THE PUBLIC FINANCING SYSTEM, YOU KNOW THAT INDEPENDENT ENFORCEMENT IS THE KEY TO MAKING THE NEW SYSTEM WORK. THE PUBLIC WILL NOT TOLERATE ANY INGENIOUS ARRANGEMENT WHICH PROVIDES THE CONTINUANCE OF PRESIDENTIAL SUBSIDY FUNDS WITHOUT ANY INDEPENDENT COMMISSION. THE NATIONS LONG FIGHT TO CLEAN UP ELECTIONS SHOULD NOT BE LOST AND THE PEOPLE'S CONFIDENCE ERODED ONCE MORE BY SHILLY-SHALYING IN CONGRESS
JOHN GARDNER CHAIRMAN DAVID COHEN PRESIDENT COMMON CAUSE

SF-1201 (R5-69)

OFFICE OF THE VICE PRESIDENT

WASHINGTON

March 18, 1976

MEMORANDUM FOR PHIL BUCHEN

FROM: Peter J. Wallison

For your meeting tomorrow with John Gardner, I attach a recent news release from Common Cause. It doesn't appear to relate specifically to the matter you will be discussing.

Attachment

N E W S

from

COMMON CAUSE
2030 M Street, N.W.
Washington, D.C. 20036

202/833-1200

For Information: Franci Eisenberg
Ellen Tchorni

MARCH 1976

EDITORIAL MEMORANDUM

TAX CHECK-OFF CONTRIBUTIONS TO CAMPAIGN FUND CONTINUE TO INCREASE; PROVIDE BROAD SUPPORT FOR FINANCING ELECTIONS

Contributions through the tax check-off mechanism have increased year after year since the Presidential Election Campaign Fund was established in 1972. The latest figures show that 26.5% of taxpayers filing early returns this year have used the check-off provision and that when all 1975 returns are filed, taxpayers will have contributed more than $100 million to the fund in the first four years.

The rapid increase in the use of the tax check-off indicates broad and growing support for public financing of Federal elections -- made aware of the opportunity, millions of Americans are willing to contribute their own tax dollars for a better and cleaner electoral process. And the dividends of the matching-fund system are already apparent: Presidential candidates are turning to the grass-roots for their financial support.

This editorial memorandum deals with the most recent figures on check-off contributions, the recent Supreme Court decision and the benefits of the public financing mechanism. Common Cause hopes that editors will remind taxpayers, while many are preparing to file their returns, of the opportunity to contribute to the new system of financing Presidential elections. You may use this material in any way you wish. Feel free to call our office if you have questions.

TAX CHECK-OFF CONTRIBUTIONS TO CAMPAIGN FUND CONTINUE TO INCREASE; PROVIDE BROAD SUPPORT FOR FINANCING ELECTIONS

The principle of public financing of campaigns has received three strong endorsements in this Presidential election year: from the public in increased check-off contributions; from the Supreme Court, which declared the principle constitutional; and from its own operation in the Presidential race.

The Tax Check-Off System

The Federal Election Campaign Act of 1974 provides Federal funds to match contributions up to $250 to Presidential candidates who qualify for the funds during the 1976 primaries. The law also provides total Federal funding for the general election campaigns of the Republican and Democratic Presidential nominees and proportional funding for minority party and independent candidates based on performance. The money is being provided through the dollar check-off, which permits the individual taxpayer to designate $1 of his or her tax payment as a contribution to the Presidential Election Campaign Fund.

A 1973 Common Cause lawsuit against the Internal Revenue Service led to "yes" and "no" boxes on the first page of the 1040 income tax forms, where taxpayers indicate whether they want $1 of their payment (or $2 on a joint return) designated for the campaign fund. Also as a result of the lawsuit, the IRS has publicized the check-off system in printed and broadcast ads.

The number of taxpayers contributing to the fund and its actual dollar size have risen spectacularly since the system went

into operation in 1973 for the 1972 tax year. First-year contributions totalled only $2.4 million, but jumped the following year (1974, from the 1973 returns) to $27.6 million once the designation was placed on the front page of the tax form. A spokesman for the IRS reports that contriubtions for 1974 returns as of December 31, 1975, reached $31.9 million.

In their 1974 returns, 8,194,000 citizens designated $1 of their taxes to defray the costs of the 1976 Presidential campaign, contributing $8,194,000 to the fund; 11,873,000 married couples designated the $2 check-off, contributing a total of $23,743,000. (Some $2 designations were reduced to $1 because taxpayers did not meet the requirements for filing joint returns.) In all, the IRS received 20,067,000 checked-off returns, or 24.2% of all returns filed.

The tax check-off has meant that for the first time tens of millions of Americans have become the key to the financing of our Presidential elections instead of a relatively small number of big givers.

The IRS spokesman said early figures on 1975 tax returns filed through February 18, 1976, indicate another increase in contributions. So far, 1,334,000 individuals have used the $1 check-off, for a total contribution of $1,334,000; 1,397,000 married couples have indicated a $2 check-off, for a total contribution of $2,774,000. In all, the IRS has received 2,721,000 checked-off returns -- 26.5% of all returns received, compared with 23.9% at this time last year. If this rate continues, $34.3 million will be added to the fund in 1976.

To date, the Federal Election Commission has distributed over $9 million to 14 Presidential candidates -- $9 million that comes

from the taxpayer's support for public financing, not from wealthy donors and special interests. By November, Americans will have contributed more than $100 million to the campaign fund.

Ten states have enacted their own public financing programs to fund state elections: Iowa, Maine, Maryland, Michigan, Minnesota, Montana, New Jersey, North Carolina, Rhode Island and Utah. A recent opinion poll in California showed impressive support for a public financing law pending in that state's legislature. The poll, taken in January 1976 by the Field Research Corporation, asked those sampled whether they would "favor an election law limiting what a candidate may spend, and matching small private campaign contributions with public funds." Of the sample polled, 66.8% favored such a law; only 18.5% opposed it.

As Common Cause Vice President Fred Wertheimer has said, "We want our representatives freed from their dependence on wealthy contributors and special interests."

The Supreme Court Decision and Public Financing

The Supreme Court decision in the suit brought by Senator James Buckley (Cons/R-N.Y.) and Independent Presidential candidate Eugene McCarthy, handed down on January 30th, upheld the principle of public financing for political campaigns and most of the other major provisions of the Federal Election Campaign Act. In their opinion, the Justices found that Congress had the power to distribute public funds for Presidential elections and party conventions, and that the system established under the 1974 law did not discriminate against minor parties.

The Court called the public financing provision "a Congressional effort, not to abridge, restrict or censor speech" in violation of the First Amendment, "but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people." The opinion held that the matching-fund eligibility provisions were "not an unreasonable way to measure the popular support for a candidate...The thrust of the legislation is to reduce financial barriers and to enhance the importance of smaller contributions."

Encouragement of moderate-size contributions also came from the Court decision upholding a $1000 ceiling on contributions to a candidate from an individual. The Justices also ruled that Congress had the power to set spending limits for Presidential candidates who accepted public finds. So the system of public financing is actually serving a dual purpose: it is reducing the influence of large contributors and encouraging more vigorous competition among candidates.

Improvements in the Presidential Race

In an affidavit filed in support of the Federal Election Campaign Act in the Court of Appeals, Senator Charles McC. Mathias (R-Md.) outlined three major benefits of public campaign financing. "It equalizes access to the political arena...among members of the general public; it permits voters and candidates to control the incredible growth in campaign expenditures; and it enables us to remove a large part of the corrosive influence of big money from our political campaigns and our governing process," he said.

Obviously, campaigns exert their greatest effort where the greatest results can be achieved. In fundraising, this means making the smallest number of solicitations that can produce the greatest

amount of money. Mathias affirmed that his own campaigns before 1974 were designed to appeal to citizens of relative wealth and "diminished the role that many Americans can play in the political process." But now the Presidential matching-fund and contribution limits require candidates to appeal to and directly involve a larger number of citizens in their campaigns. As the Supreme Court observed, the matching mechanism provides an incentive for candidates to help increase participation in the electoral process.

Most importantly, the public financing provisions have relieved Presidential candidates of the need to rely on wealthy contributors and special interest groups for campaign financing. This year, no candidate will raise $20 million from just 153 individuals, as President Nixon did in 1972. More than 30 million taxpayer contributors in 1974 alone used the check-off system on their tax returns to substitute their one dollar for the old system of big money in politics.

The old system of campaign financing exerted tremendous pressures upon candidates to be responsive to the desires of special interest groups, no matter how abhorrent they felt the process to be. In the words of Senator Humphrey, a veteran of four national campaigns:

> "Campaign financing is a curse. It's the most disgusting, debilitating, demeaning, disenchanting experience of a politician's life. It's stinky, it's lousy. I just can't tell you how much I hate it...You even have to go through all kind of fakery. You ask 'em and you just have to feel like a louse. When you are desperate, these are the things you just have to do."

When special interest money is needed to keep advertising on the air the weekend before the election, special interests and large contributors are in the driver's seat and, in Senator Russell Long's

words, "the distinction between a campaign contribution and a bribe is almost a hairline's difference."

Congressional Public Financing

When Congress enacted public financing for Presidential races in 1974, it rejected a similar system for Congressional races. Although the Senate approved Congressional public financing by a wide margin it was defeated in the House of Representatives by a 228 to 187 vote and dropped in conference. The House was clearly exercising a double standard at that time, and the reason is simple and clear. One of the major advantages of public financing is that it increases the opportunity for challengers to be heard and to run competitive races against incumbents. This led a number of House members in 1974 to vote for Presidential public financing and then switch their position to vote against Congressional public financing.

In the 94th Congress the support for Congressional public financing has increased substantially, in good part because of the election of 90 new House members in 1974. Representative Phillip Burton (D-Calif.) and John Anderson (R-Ill.) have 225 co-sponsors for their Congressional public financing bill, and more than 240 members of the House are now on record for that election reform as a result of a Common Cause survey taken during the 1974 elections.

Strong bipartisan leadership continues in the Senate under Senators Kennedy (D-Mass.), Scott (R-Pa.), Clark (D-Iowa), Mondale (D-Minn.), Schweiker (R-Pa.), Cranston (D-Calif.) and Mathias (R-Md.).

In the 1974 law Congress took the Presidency off the auction block. The efforts to reform campaign financing in Federal elections

will never be finished, however, until Congress is also taken off the auction block.

Common Cause believes public campaign financing is as important in the Legislative branch as it is in the Executive. As Chairman John W. Gardner said in testimony before the House Subcommittee on Elections, "...the root evils of campaign financing can never be eliminated until candidates are assured of adequate funds to run a creditable and competitive campaign without having to rely on big-money contributors. This can never be accomplished until a comprehensive system of public financing is established."

Public financing of all Federal election campaigns and contribution limits can go a long way toward restoring confidence in the governing process and in elected leadership. A major step has been taken toward assuring American citizens that public officials have less of the private and more of the public interest at heart and more Americans are being brought into the electoral process. The growth of the Presidential Election Campaign Fund is one small sign that voters are not apathetic: they want to improve government and are willing to contribute toward that goal.

# # #

N E W S

from

COMMON CAUSE
2030 M Street, N.W.
Washington, D.C. 20036
202/833-1200

For Information: Franci Eisenberg
Ellen Tchorni

FOR IMMEDIATE RELEASE:
FRIDAY, JANUARY 30, 1976

COMMON CAUSE VICTORIOUS AS SUPREME COURT UPHOLDS CONSTITUTIONALITY OF FEDERAL ELECTION CAMPAIGN ACT

The following statement was issued by John Gardner, Chairman of Common Cause, following the decision of the Supreme Court that upheld the constitutionality of the Federal Election Campaign Act:

"It's a victory for all those who have worked so hard to clean up politics in this country. The American system is alive and well.

What this says is that we're never going back to the old corrupt way of campaign financing that was destroying our American political system. The fat cats won't be able to buy elections or politicians any more.

Common Cause began this fight in 1970 - two years before Watergate - and the fight isn't over. We still have to get public financing for Congressional elections. We've got to take Congress off the auction block. Congress has an immediate obligation to pass legislation to correct deficiencies of the Federal Elections Commission."

# # #

N E W S

from

COMMON CAUSE
2030 M Street, N.W.
Washington, D.C. 20036

202/833-1200

For Information: Franci Eisenberg
Ellen Tchorni

FOR RELEASE: 2:00
FRIDAY, JANUARY 30, 1976

STATEMENT BY DAVID COHEN, PRESIDENT, COMMON CAUSE,

REGARDING FUTURE ACTIONS

ON FEDERAL ELECTION CAMPAIGN ACT

Common Cause members know we have work to do and we welcome it. We are committed to making an all-out effort to clean up Congressional elections and make them competitive.

We have already received solid expressions of support from Senators who are prepared to establish a constitutional independent elections commission and extend the voluntary $1 tax check-off to House and Senate races.

A House majority supports extending public financing to Congressional races. The only question is will this legislation, with an independent enforcement commission, be voted on promptly by the House. It's a basic test of Speaker Albert's and Majority Leader O'Neill's support for a campaign finance system that is fair and has integrity or one that's dominated and run by Wayne Hays.

# # #

common cause
2030 M STREET, N.W., WASHINGTON, D. C. 20036
John W. Gardner, Chairman (202) 833-1200

February 3, 1976

TO: Common Cause State Offices

FROM: David Cohen

RE: The Supreme Court Decision & Next Steps

You should already have received a copy of the statement John Gardner and I made to the press last Friday, hailing the Supreme Court decision as"a victory for all those who have worked so hard to clean up politics in this country." But if you have been reading the newspaper or watching network TV, you will have observed considerable confusion about what the actual impact of the decision will be. Let me fill you in on our thinking.

At a briefing of all staff and volunteers in the Washington office on Thursday, January 29, Fred Wertheimer and I set out guidelines for judging the impact of whatever decision the court might give the next day. Our position was as follows:

- Contribution limits. Absolutely essential to continuation of a mixed system of public financing coupled with small private contributions.
- Public financing. Equally essential to the system we believe has the best potential for cleaning up election campaigns.
- Disclosure of contributors. The foundation of all subsequent campaign reform. Without disclosure, there is no possibility of monitoring or enforcement.
- Federal Election Commission. An independent election commission with enforcement is crucial. (The constitutional problems the court might find with the commission as presently constituted can be corrected legislatively with a simple change to Presidential appointments)
- Expenditure limits. In the abstract, no essential to a public financing system. (The Court clearly stated that expenditure limits are constitutional only in a system of public financing).
- Limits on independent expenditures. A person or a group taking out an ad was viewed as clear cut free speech. Independent expenditures have to be clearly and genuinely independent.

As you know, the essentials of the public financing system were upheld in their entirety by the court without qualification: disclosure, contribution limits and public financing. The court objected to members of the FEC being appointed by Congress. Expenditure limits were struck down except if they are part of a public financing system, as were the limits on independent expenditures.

In the wake of the decision, CC plans the following action:

Federal Election Commission. The court ruled that any commission that is to have enforcement powers may be appointed only by the President and gave Congress 30 days to take corrective action before the present commission would be prevented from exercising such powers. CC is urging Congress to immediately establish a new independent election commission, with members appointed by the President. This is an immediate priority. We will be alerting all activists and the phone chain with a message on the FEC within the next week. (Copies to you as soon as ready).

Congressional Public Financing. Since the court upheld public financing, it is now time to press Congress to extend the dollar check-off system to finance House and Senate campaigns as well as Presidential.

Loopholes. Once the court's decision has been thoroughly studied, corrective legislation will be proposed to close those loopholes in the law that can be closed under the court's ruling.

In all these efforts, CC will be a leading force in a coalition that will involve our former allies on this issue.

We are sending you a summary of the court's decision.

Within a week we will also be sending you a new draft of model public finance legislation, consistent with the Court's ruling.

common cause
2030 M STREET, N.W., WASHINGTON, D. C. 20036
John W. Gardner, Chairman (202) 833-1200

The Supreme Court Decision

in Buckley v. Valeo *

The Supreme Court decision in Buckley v. Valeo was, in John Gardner's words, "a victory for all those who have worked so hard to clean up politics in this country."

The essentials of the public financing system were upheld by the Court in their entirety, without qualification: disclosure, contribution limits and public financing.

Candidate expenditure limits were struck down, except if they are part of a public financing system. Limits on independent expenditures were also struck down.

The Court also ruled that any commission that is to have enforcement powers may be appointed only by the President and gave Congress 30 days to take corrective action before the present commission would be prevented from exercising such powers. Common Cause will urge Congress to immediately establish a new independent election commission with members appointed by the President.

Since the Court upheld public financing, Common Cause will press for extension of the dollar check-off system to finance House and Senate election campaigns.

Common Cause will also work for corrective legislation to close those loopholes in the law that can be closed under the Court's ruling.

A summary of the Court's decision is attached.

*January 30, 1976

February 3, 1976

SUMMARY OF SUPREME COURT DECISION

IN BUCKLEY v. VALEO

I. Contribution Limits

The Court began by noting that these statutory limits operate in an area of fundamental liberties. It went on to uphold the $1,000 limit on individual and group contributions to candidates and candidate committees. The Court held that the need to eliminate both the actuality and the appearance of corruption is ample justification for these limits on political giving. The Court further noted that there was no reason to believe that these limits would operate to discriminate against challengers or minor parties.

The Court also upheld the $5,000 limit on giving by those political committees which had been registered with the Federal Election Commission (FEC) for six months, which received contributions from more than 50 persons, and which gave contributions to more than five candidates.

As adjuncts to the valid contribution limits, the Court upheld the $500 limit on incidental expenses of volunteers and the $25,000 aggregate limit for individuals.

II. Expenditure Limits

All of the Act's expenditure limits were struck down as impermissible limits on political speech.

One limit struck was the limit on independent expenditures. The Court stated that spending money independently of a candidate "does not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions." p. 40 However, the Court construed a direct contribution to include "all expenditures placed in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate." p. 72 Thus, an individual or group may expend unlimited sums of money totally independently of a candidate. But if there is any coordination with the official campaign, then the expenditure will be treated as a contribution by the donor to the candidate and as an expenditure by the candidate; the $1,000 contribution limit would apply.

The Court also struck any limit on what a candidate may spend from his personal funds on behalf of his own candidacy. The Court did, however, disagree with the Court of Appeals regarding the limits on spending by a candidate's immediate family. The Supreme Court held that family members are bound by the $1,000 contribution limit.

III. Disclosure

The Act's disclosure requirements were upheld. The Court refused to grant a blanket exemption to minor party committees, but noted that such an exemption would be proper upon

a showing of "reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment or reprisals from either government officials or private parties." p. 69 No such showing was made in this case.

The Court construed the section of the Act which mandates disclosure of contributions to apply to donations made directly to a candidate or to his committee (or earmarked for such use), and to expenditures made in cooperation with a candidate or his committee. Expenditures, for purposes of disclosure, are to be reported by any political committee which receives contributions or makes disbursements of more than $1,000. The Court read into this statutory definition the requirement that either the Committee be under the control of a candidate or that "the major purpose" of the committee be the nomination or election of a candidate. p. 73

The Court also upheld disclosure of independent expenditures, despite the fact that it struck down limits on them. But, in order to insure that this provision is not "impermissibly broad," the Court held that it may apply only where individuals and groups (excluding candidate and political committees) make contributions earmarked for political purposes or requested by a candidate payable to someone other than the candidate, AND when the expenditure <u>expressly</u> advocates the election or defeat of a clearly identified candidate. p. 74 The requirement of express advocacy is strict: words such as "vote for," "elect," "defeat" must be used. p. 74, n. 108

Finally, the Court agreed with the Court of Appeals in noting that, while the Act requires that records be kept of contributions of over $10, it permits disclosure only of contributions over $100.

IV. Public Financing

The Court upheld the public financing of primaries, nominating conventions, and general elections for President, noting that this scheme serves to enlarge public discussion of important issues.

The Court held that the public financing provisions were severable from the Act's expenditure limits, and also held that receipt of Treasury funds can be made conditional on a candidate's abiding by the Act's expenditure limits, although those limits may otherwise be unconstitutional.

V. Federal Election Commission

The Court struck down the FEC as presently constituted. Four of its six members are Congressional appointees, thereby rendering the Commission an essentially legislative body. As such, its investigative and informational functions remain intact, but it cannot engage in rulemaking, issue advisory opinions, bring civil suits, or conduct administrative adjudications.

The Court stayed its order with regard to the FEC for thirty days, a clear invitation to the Congress to reconstitute the Commission in accordance with Separation of Powers principles, i.e., with all of its members appointed by the President

and confirmed by the Senate. The Court accorded de facto validity to all past acts of the FEC. It also noted that it was unnecessary at this time to address the challenge to the Congressional veto power over the FEC's rulemaking. p. 134, n. 76

N E W S

from

COMMON CAUSE
2030 M Street, N.W.
Washington, D.C. 20036

202/833-1200

For Information: Franci Eisenberg
Ellen Tchorni

FEBRUARY 1976

EDITORIAL MEMORANDUM

TOUGH ENFORCEMENT OF CAMPAIGN LAWS JEOPARDIZED

If that bully boy of Congress, Rep. Wayne Hays (D-Ohio), has his way, Congress will make sure that no enforcement agency takes incumbents to task for flouting campaign finance laws.

The independent Federal Election Commission was prepared to carry out that watchdog function but the Supreme Court ruled January 30, 1976 that enforcement is an executive responsibility that cannot constitutionally be carried out by the Commission's Congressionally appointed members.

Hays, the House overseer of campaign laws, won't accept the logical and simple response to the Court ruling, which is to reconstitute the Commission with a membership appointed by the President. Reps. Abner Mikva (D-Ill.) and Bill Frenzel (R-Minn.) are leading a bipartisan drive in the House to do just that. President Ford has announced his support for this approach.

This editorial memorandum describes the need for an independent Federal Election Commission and Wayne Hays' persistent opposition to such independence. You are free to use this information in any way you wish. Do not hesitate to call our office if you have questions.

# # #

TOUGH ENFORCEMENT OF CAMPAIGN LAWS JEOPARDIZED

"Wayne Hays and some others in Congress want to take the policemen they created, enclose them in concrete and drop them in the river. It will be a major scandal if members of Congress do away with the enforcement authority they set up to keep them honest." This response came from Common Cause Chairman John Gardner February 3, 1976, in reaction to Rep. Hays' clear desire to kill of the independent Federal Election Commission.

Hays, the House overseer of campaign laws, has always opposed the independent Federal Election Commission. The Supreme Court's January 30, 1976 decision on the 1974 Campaign Finance Act, which set up the Commission, has given him the opening.

Situation in Congress

The Supreme Court's decision "cut the Commission down to the role of file clerks or office boys," Alabama Sen. James Allen, a Commission supporter, has noted. The Court said administrative functions such as rule-making, advisory opinions and determinations of eligibility for federal funds, to say nothing of the power to go to court for enforcement, were powers that only officers appointed by the Executive Branch could constitutionally carry out.

This could be easily rectified if Congress passed legislation providing that the members of the Federal Election Commission should be appointed by the President and confirmed by the Senate. The Supreme Court made clear that if that was done, the Commission could exercise all the powers it was originally given by the 1974 law.

The Court gave a 30-day reprieve to the Commission, in effect suggesting that Congress act within that time.

Hays, however, says "it is unreasonable to expect that I or the Congress" could act on the Commission within 30 days, though John Gardner has pointed out that Congress took only three days last year to raise its salaries.

Some Democrats including Hays and the Chairman of the Democratic National Committee, Robert Strauss, have proposed that Congress take the "emergency" out of the situation by authorizing the General Accounting Office, at least temporarily, to disburse federal funds to the Presidential candidates after the Election Commission's authority expires February 29. They would then allow the Commission's enforcement powers to expire on February 29 under the Court order.

Common Cause Vice President Fred Wertheimer has denounced that suggestion as an inadequate "quick fix." It would lift off Congress' back the pressure to revive an Election Commission with powers to enforce the campaign laws, Wertheimer said.

A number of Senators, led by Dick Clark (D-Iowa) and Richard Schweiker (R-Pa.), have called for speedy action to reconstitute the Election Commission with its present members appointed by the President.

A drive to get around Hays' roadblock has been launched in the House by Reps. Abner Mikva (D-Ill.), a leader among Democratic freshmen, and Bill Frenzel (R-Minn.), a longtime advocate of a strong independent Election Commission. They are attracting a determined group of Representatives who will fight to retain

strong, independent Commission.

The Election Commission's fate is likely to be decided in the House. A majority of the Senate has voted three times for a strong, Presidentially appointed Commission. The Mikva-Frenzel leadership assures that a tough fight will be made in the House to reconstitute the Commission with strong enforcement powers.

Enforcement Always an Issue

No part of the battle for the 1974 Campaign Finance law was more bitterly fought than the issue of enforcement. The Supreme Court decision awakened those battle trumpets again.

The drive for effective enforcement of campaign finance laws began in January 1971 when Common Cause filed suit against the major political parties, charging that for 30 years neither Congress nor any U.S. Attorney General had been willing to enforce the contribution and spending limits of the Corrupt Practices Act. The parties countered by challenging Common Cause's right to bring suit. Denying their motions, Federal Judge Barrington Parker said in his opinion that if the facts alleged by Common Cause concerning flouting of the law and lack of enforcement were correct, "this is a flagrant and irreparable erosion of the right to an effective vote and ... clearly warrants judicial relief."

Hays vs. the Senate

During the four years that saw enactment of the 1971 and 1974 campaign finance laws, an overwhelming majority of the Senate supported an independent enforcement body while Congressman Hays

strenuously resisted it. Hays, chairman of the House Administration Committee which handles campaign legislation and of the campaign fund-dispensing Democratic National Congressional Committee, claimed that administration and enforcement of the campaign laws was a function of Congress.

In the 1971 law he arranged for all disclosure reports to go to the Clerk of the House and the Secretary of the Senate, both of whom are functionaries appointed by the majority party, currently the Democrats. Under this arrangement, the pattern of non-enforcement basically continued. Even when the two officers notified the Justice Department of failures to file or late filings, the Justice Department took no action.

As a consequence, when the Senate took up the subject again in 1973, it created a Presidentially appointed Federal Election Commission with extensive responsibilities, including investigation powers and the right to seek civil injunctions against violations.

Congressman Hays fought that provision tooth and nail. He initially won his Committee's approval of a Commission that would be composed of four members of Congress, the two Congressional functionaries and the independent Comptroller of the U.S. "The fox guarding the chicken coop," his critics cried.

Under the leadership of Reps. Dante Fascell (D-Fla.) and Bill Frenzel (R-Minn.) a campaign for a Commission composed of independent commissioners was launched in the House and was able to force Hays to compromise. The Hays compromise was the Commission membership held unconstitutional by the Supreme Court: of the eight

members, four were to be appointed by Congress, two by the President, and two, with no voting powers, were the Clerk of the House and the Secretary of the Senate.

In agreeing to drop his demand that members of Congress sit on the Commission, Hays told the House he would stand fast for Congressional appointees: "When we go to conference (with the Senate), this will be the board or there 'ain't' going to be any bill," he said. The fact that President Nixon's impeachment had just been recommended by the Judiciary Committee made the Senate's provision for Presidential appointees seem untimely. The Senate reluctantly gave in to Hays on that point, though it did win his agreement that the FEC commissioners should be full-time rather than part-time officials.

Hays' Harassment

Even though four former colleagues in the House were named to the Federal Election Commission Hays has given them a browbeating and denunciation at every opportunity. He has accused them of overregulating, has suggested that Congress or his committee write the regulations instead of the FEC, and at the first opportunity got the House to reject the first Election Commission regulation to come before it. That proposed regulation had said that campaign finance reports should be filed with the commission, which then would make copies available to the House and Senate officials. Hays objected to relegating Congress to second place.

Funds for the commission should have been authorized by Congress by June 30, 1975. Instead the authorization bill has been held in limbo by Hays, who has neglected to go to conference with the Senate to reach an agreement on what funds the FEC should get. Last June the Senate voted $15 million for the commission over an 18-month period (July 1, 1975 to December 31, 1976) and the House approved $7.788 million for the same period. While the impasse lasts the FEC has been operating on inadequate interim funding.

When the commission last fall proposed to bring spending from "slush funds" under the expenditure ceilings of the 1974 Act, Hays told a Washington Star reporter, "When they come back next year for appropriations, I think my committee will be convinced that instead of several million dollars they ought to give 'em several hundred."

The outlook for the Federal Election Commission will be clearer when Congress returns from its recess February 16.

Comptroller General Elmer Staats has come out against proposals that the General Accounting Office, which he heads, take over the job of certifying Presidential candidates' eligibility for federal campaign funds. Staats said that would "be disruptive to the program" and instead recommended that Congress "pass simple legislation" authorizing appointment of the Federal Election Commissioners by constitutional means.

Meanwhile, the Presidential candidates have been asked by Common Cause to speak out for retaining a reconstituted Election Commission with all of its present designated powers.

# # #

JOHN W. GARDNER

February 6, 1976

Dear Member,

On January 30 the Supreme Court ruled on the constitutionality of the Federal Election Campaign Act. We won resounding victories on three of the most fundamental reforms in campaign financing: disclosure, contribution limits and public financing.

The Court declared the limits on expenditures unconstitutional; and that was unfortunate for us -- but by no means disastrous.

The remaining point is absolutely crucial, and we must act upon it immediately. The Court held that it is unconstitutional for Congress to appoint members of the Federal Election Commission -- but it gave Congress thirty days in which to write new legislation for the Commission. Thus it practically invited Congress to bring this important enforcement mechanism within the limits of constitutionality.

Now those in Congress who do not want anyone overseeing their campaign activities are attempting to take this opportunity to do away with an independent enforcement body. Led by Rep. Wayne Hays, they are trying to fuzz the issue, to transfer some of the Commission's powers to other authorities and to take away other critical responsibilities of the Commission altogether.

Much of what we have helped accomplish to clean up our elections will be undone if these Representatives have their way. We must do everything in our power to keep this from happening.

I ask you to do something very simple, but vitally important.

Send a wire or letter to your Representative today. Ask him or her to vote to reconstitute a Presidentially-appointed Federal Election Commission with its full powers intact. Let your Representative know that you know enforcement is the key to making the new law work.

I know that in the most recent issue of FrontLine we called on you to take other important action this month -- on lobby disclosure legislation and on the "budget question" for Presidential candidates. I hope you will follow through on these other "alerts" as well.

But take this action first. Sit down and write your Representative a letter or pick up the phone and send a wire right now.

We are counting on you to put the pressure on, and this is the time for it.

Sincerely,

John Gardner

common cause
2030 M STREET, N.W., WASHINGTON, D.C. 20036
202/833-1200

citizen action alert

BECAUSE OF THE NECESSITY OF IMMEDIATE ACTION ON THE FEDERAL ELECTION COMMISSION, PLEASE DO NOT BEGIN THE TELEPHONE ALERT ON THE BUDGET QUESTION FOR PRESIDENTIAL CANDIDATES DESCRIBED IN YOUR LATEST EDITION OF FRONTLINE UNTIL FURTHER NOTICE FROM THE NATIONAL OFFICE. THE BATTLE ON THE FEDERAL ELECTION MUST TAKE PLACE WITHIN THE NEXT 30 DAYS.

February 6, 1976

ACTION ALERT

Steering Committee Coordinators
Steering Committee Coordinators should send a letter or a mailgram immediately to your Representative with the message below. SCCs should also send a Letter to the Editor in behalf of Common Cause in your Congressional District to all of the newspapers in your district based on John Gardner's letter and the background information attached.

Media Coordinators
Media Coordinators should send a copy of the Steering Committee Coordinator's letter to your Representative to all media in the district with a cover press release detailing Common Cause's concern that Congress act promptly in order to have a reconstituted Federal Election Commission before the 30 day expiration date.

Telephone Coordinators
Activate all telephone networks immediately. This is a national telephone alert on all Members of the House of Representatives. We want all our Common Cause members to send a letter or a mailgram to their Representative immediately with the message below.

*** MESSAGE ***

Urge your Representative to support the Mikva-Frenzel bill to reconstitute the Federal Election Commission. This is vital to assuring effective enforcement of the campaign finance laws for Congressional elections and to demonstrating that Congress recognizes the importance of independent enforcement of campaign laws. Urge your Representative to oppose any amendments to weaken the Commission's enforcement and investigatory powers, or to transfer its authority to other agencies.

Fact Sheet: Legislative Action on FEC

I. The Effect of the Supreme Court Decision on the Federal Election Commission

In its January 30 decision the Supreme Court found unconstitutional the method contained in the 1974 campaign law for appointing the six members of the Federal Election Commission. Under the 1974 Act, two of the members were named by the party leaders in the Senate, two by the party leaders in the House, and two by the President. The Court stated that all the members of such a regulatory commission must be appointed by the President. The Court held that all previous actions of the Commission were valid, but gave it only 30 days to continue exercising all its powers, after which the Commission would be able to exercise only those powers which a Congressional committee could exercise (i.e. it could no longer issue regulations or disburse public funds to Presidential candidates).

II. Needed Congressional Action

The Supreme Court opinion made it clear that there would be no constitutional problem with a Federal Election Commission whose members were all appointed by the President and confirmed by the Senate. Bills to reconstitute the Commission -- providing for Presidential appointment of members and leaving all the Commission's powers intact -- have been introduced in both Houses. The principal sponsors of the bill which Common Cause backs in the House of Representatives are Rep. Abner Mikva (D-Ill.) and Rep. Bill Frenzel (R-Minn.). Despite the threats of House Administration Committee Chairman Wayne Hays to abolish the Commission, Common Cause is working actively for prompt Congressional action on these bills in order to have a reconstituted Commission enacted before the 30 days expire. Such prompt action will:

- -- assure continuity in enforcement
- -- prevent any interruption in disbursal of matching public funds to Presidential candidates
- -- demonstrate that Congress recognizes the importance of independent enforcement of campaign laws.

Assigning responsibilities to the Government Accounting Office for the Presidential subsidies, which some have proposed, would set the stage for gutting the FEC.

III. Background

Prior to 1974, principal responsibility for overseeing campaign laws and uncovering violations was vested in the Clerk of the House (an employee of the House) as to House members, and the Secretary of the Senate (a Senate employee) for Senate members. Not surprisingly, enforcement under that system was almost non-existent.

In both 1973 and 1974, the Senate passed campaign reform bills which included provisions creating an independent election commission all of whose members were to be appointed by the President. (Such a commission, would as noted earlier, have been found constitutional by the Supreme Court.)

When the House considered the issue in 1974, however, Wayne Hays first tried to create a Commission including four sitting members of Congress. Common Cause vigorously opposed this outrageous system in which members of Congress would be asked to police their colleagues -- a system geared to prevent effective enforcement. When that effort failed Hays and his Committee insisted that two members of the Commission be named by the House leadership (one from each party) and two by the Senate leadership (one from each party) in addition to two Presidential appointments. It was this scheme -- which despite Common Cause opposition passed the House and was agreed to in a House-Senate conference -- that was knocked out by the Supreme Court.

The current position of Wayne Hays and those who oppose reconstitution of the FEC with full powers is simply the latest phase of a longstanding effort to avoid any independent oversight and enforcemnt of the campaign finances of House and Senate members.

The Washington Star

JOE L. ALLBRITTON, *Publisher*

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

WEDNESDAY, FEBRUARY 4, 1976

Fix the campaign law

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

Some see last week's ruling by the Supreme Court as the beginning of the end for the 1974

Without an agency to administer and enforce the law, the presidential campaign could degenerate into a shambles. There must be someone to interpret the law, someone to enforce it, someone to authorize the treasury to disburse government campaign subsidies.

The Supreme Court gave Congress 30 days to

The Washington Post
AN INDEPENDENT NEWSPAPER
WEDNESDAY, FEBRUARY 4, 1976

David S. Broder

Undoing Hays' Mischief

Of the many ways in which it is possible to commend the Supreme Court decision on the Federal Election Campaign Act of 1974, perhaps the simplest is to say that the high court systematically undid the

taxpayer-financed staff assistance, travel, mailing and publicity services each term. But Hays tried to limit expenditures by congressional candidates to a fraction of that sum, finally agreeing to an allowable

government the power to determine that spending to promote one's political views is wasteful, excessive or unwise. In the free society ordained by our Constitution, it is not the government but the people...

TESTIMONY OF

FRED WERTHEIMER
VICE PRESIDENT OF OPERATIONS

COMMON CAUSE

IN SUPPORT OF RECONSTITUTING THE
FEDERAL ELECTION COMMISSION

before the

SUBCOMMITTEE ON PRIVILEGES AND ELECTIONS

of the

COMMITTEE ON RULES AND ADMINISTRATION

UNITED STATES SENATE

February 18, 1976

Mr. Chairman, I want to thank you and the other members of this Committee for the opportunity to testify today. Common Cause believes that Congress must act promptly to reconstitute the Federal Election Commission. We believe that any temporary half-measures are unnecessary and unacceptable to the goal of effective administration and enforcement of campaign finance laws. We strongly oppose any efforts to put a short term limit on the life of the Commission, which has only been in operation since April, 1975.

We also strongly oppose the President's recommendation to Congress on Monday that all of the federal campaign finance laws in this country be terminated following the 1976 elections, to ensure their full scale review. We do not believe this represents a constructive proposal designed to assure meaningful review of campaign finance laws in the next Congress. Rather we believe it sets the stage for killing vital legislation which in many respects has not yet even had the opportunity to be tested in one national election. Termination is totally unnecessary. Congress always has the right to modify and review this legislation.

The Supreme Court's opinion in Buckley v. Valeo made it clear that there is no constitutional problem with a Federal Election Commission whose members are appointed by the President and confirmed by the Senate in accord with the Appointments clause of the Constitution. The Supreme Court practically invited Congress

to enact a statute to recreate the FEC in this manner. In granting a 30-day stay of its judgment with regard to the FEC, the Supreme Court explained: "This limited stay will afford Congress an opportunity to reconstitute the Commission by law or to adopt other valid enforcement mechanisms without interrupting enforcement of the provisions the Court sustains" (slip opinion at 136).

As suggested by the Court, the constitutional deficiencies of the Federal Election Commission are easily rectified. Common Cause urges Congress to enact a bill to provide for appointment of the six members of the FEC by the President subject to Senate confirmation. The President has said that he supports such a legislative approach.

This concept is not new. In both 1973 and 1974, the Senate passed campaign reform bills that established independent election commissions with all of their members appointed by the President.

The Supreme Court has made it clear that there is no need to return to the old, corrupt system of campaign financing that was dominated by abuses of big money and excessive secrecy. The Court upheld the essentials of campaign finance reform -- disclosure, contribution limits, and public financing -- and established a foundation on which to build a constitutional Federal Election Commission. But the FEC is essential. This country's previous experience with campaign financing legislation demonstrates that without enforcement these laws become meaningless shells.

Much of what has been done to clean up our election process will ultimately be undone if the Federal Election Commission is not recreated. Failure to recreate the FEC will be an invitation

to return to the corruption of the Watergate days and before.

An overwhelming number of members of Congress voted for the Federal Election Commission in 1974. If Congress fails to recreate the FEC, the public will have to read its failure to act in only one way -- that Congress is not serious about ridding our electoral system of corruption. The crisis of confidence in government sparked by Vietnam and Watergate has continued to grow in the post-Watergate years. Our system of representative government should not be asked to bear the burden of another demonstration of unwillingness or inability to act on the nation's problems. Millions of citizens have demonstrated their commitment to a new way of financing elections in America by providing $1 each for the Presidential Election Campaign Fund. It would be inexcusable to fail to establish a mechanism adequate to oversee the first Presidential election paid for by their tax dollars.

Prompt recreation of the Federal Election Commission will serve three important national interests:

-- It will demonstrate that Congress recognizes that public confidence and meaningful enforcement depend on independent enforcement of campaign finance laws.

-- It will prevent any interruption in disbursal of public matching funds to Presidential candidates.

-- It will ensure a continuity in the enforcement of the law and guard against arbitrary and selective enforcement.

The Need for Independent Enforcement

Common Cause has repeatedly stated that an independent federal election commission is absolutely essential to any

effective system of campaign financing legislation. The long history of almost total non-enforcement of campaign financing laws in this country is well known and well documented. This abysmal record of non-enforcement was a major underlying cause of the Watergate and other campaign financing scandals that have shaken this nation in recent years. It is hardly surprising to find candidates and their agents ignoring or circumventing the law when history would give them every assurance that their violations would go unpunished. It is hardly surprising to find that citizens have become gravely disillusioned by such a process.

The highlights of the record of non-enforcement are as powerful today as they were in 1974 when Congress first created the Federal Election Commission. The first campaign financing legislation enacted in this country was the Tillman Act of 1907, which prohibited national banks and corporations from making any expenditure in connection with any election to public office (34 Stat. 814). In 1911, the Tillman Act was amended to require Senators and Representatives and political committees to file reports of receipts and expenditures before and after elections (37 Stat. 25). The first prosecution was not brought until nine years after passage of the original Act.

The Federal Corrupt Practices Act of 1925 required candidates for federal office and political committees to file contribution and expenditure reports with the Secretary of the Senate and the Clerk of the House (43 Stat. 1070). A person who failed to comply was subject to criminal sanctions. In its 47 years of existence, almost no prosecutions were brought under the 1925 Act.

Responsible officials shirked their duties. In 1954, Attorney General Herbert Brownell issued an order addressed to U.S. Attorneys that took the position that the Department of Justice would not act in the absence of a request from the Clerk of the House or the Secretary of the Senate. During this period, the Clerk took the position that his duty was to receive the reports but not to make referrals to the Department of Justice.

In Buckley v. Valeo, the United States District Court found, "The Secretary of the Senate, the Clerk of the House and the Department of Justice have largely failed to enforce prior campaign financing practices legislation." Buckley v. Valeo, Jt. Appendix (Vol. II - Part A), Dist. Court Finding 139.

No one seriously questions the fact that the history of campaign finance laws in this country is a history of non-enforcement. It is equally clear that absent effective oversight and enforcement, campaign finance laws will not work.

The Federal Election Commission was created to fill a 70-year vacuum. Its reconstitution with strong enforcement powers is essential to making our new campaign financing laws a reality and not an illusion. Any retreat from independent enforcement can only serve to further erode public confidence.

The Need for Disbursal of Public Funds to Presidential Candidates

In upholding the public financing provisions of the Federal Election Campaign Act of 1971 as amended in 1974, the Supreme Court found:

> Congress was legislating for the "general welfare" -- to reduce the deleterious influence of large contributions on our political process, to facilitate communication

> by candidates with the electorate, and to free candidates from the rigors of fundraising (slip opinion, at 85).

The Federal Election Commission has established and implemented a system of certification of Presidential candidates and disbursement of public matching funds. These candidates have based their campaigns on the availability of public financing. Their ability to communicate with the voters and the other values noted by the Court is at stake.

It is essential that the system of disbursement that is now in place not be replaced or interrupted. By the same token, the need for action on the certification powers cannot be allowed to serve as a convenient excuse for gutting the Federal Election Commission. Common Cause strongly opposes any effort -- whether temporary or permanent -- to replace the existing certification mechanism. The "take-the-money-and-run" proposal to give the General Accounting Office "temporary" responsibility is unworkable and unacceptable. It would also set the stage for a refusal to deal with the issue of reconstituting the Commission with enforcement powers. The Comptroller General has opposed this short-sighted scheme in a letter to the Democratic and Republican leadership in both Houses. The Comptroller General has pointed out:

> ...we have no budget to undertake this assignment. Moreover, we are not familiar with the procedures of the Commission as to how it has carried out its auditing and investigations preparatory to certification. As you can well appreciate, I would not want to certify payments without firsthand knowledge on my part to assure eligibility of candidates for the funds requested...transfer of the responsibility to this Office would be disruptive to the program to say the least and would place upon this Office a responsibility that it is inadequately prepared to take. (emphasis added)

There is no conceivable justification for Congress to make a sudden shift of this $100 million program from an agency that is prepared to handle it to one that is not.

The Need to Ensure a Continuity of Enforcement

Holding the 1976 federal elections without the Federal Election Commission is like playing baseball without an umpire or football without a referee. It is an invitation for chaos. The interests of all participants in the upcoming federal elections are best served by uniform, rather than ad hoc administration. The Supreme Court granted its 30-day stay of its judgment with regard to the FEC because of the obvious public interest in not interrupting the continuity of enforcement.

The Commission to date furthermore has been forced to operate on inadequate interim funding. Its initial authorization expired in June 1975 and has never been renewed. Despite the fact that both the House and Senate passed 18-month authorization bills in June, 1975, no conference has ever been held during the last eight months to work out the differences between the two bills and enact the Commission's authorization into law.

The Commission has recently stated that based on its operating experience it would need approximately $9 million for the 18-month period ending on December 31, 1976. This is a small price to pay for honest national elections.

We urge that in reconstituting the Commission, Congress also provide an adequate authorization to assure that the Commission has the funds needed to carry out its responsibilities.

* * * * *

It is time for Congress to do what the Senate has already done on several occasions -- to pass a bill creating a properly constituted Federal Election Commission. Nothing less will solve the problem. Attempts to delay or switch authority temporarily will invite chaos, confusion, and corruption. We do not believe that the public will accept this. Nor will they fail to understand how easily it could have been avoided.

N E W S

from

COMMON CAUSE
2030 M Street, N.W.
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For Information: Franci Eisenberg
Ellen Tchorni

MARCH 1976

EDITORIAL MEMORANDUM

TAX CHECK-OFF CONTRIBUTIONS TO CAMPAIGN FUND CONTINUE TO INCREASE; PROVIDE BROAD SUPPORT FOR FINANCING ELECTIONS

Contributions through the tax check-off mechanism have increased year after year since the Presidential Election Campaign Fund was established in 1972. The latest figures show that 26.5% of taxpayers filing early returns this year have used the check-off provision and that when all 1975 returns are filed, taxpayers will have contributed more than $100 million to the fund in the first four years.

The rapid increase in the use of the tax check-off indicates broad and growing support for public financing of Federal elections -- made aware of the opportunity, millions of Americans are willing to contribute their own tax dollars for a better and cleaner electoral process. And the dividends of the matching-fund system are already apparent: Presidential candidates are turning to the grass-roots for their financial support.

This editorial memorandum deals with the most recent figures on check-off contributions, the recent Supreme Court decision and the benefits of the public financing mechanism. Common Cause hopes that editors will remind taxpayers, while many are preparing to file their returns, of the opportunity to contribute to the new system of financing Presidential elections. You may use this material in any way you wish. Feel free to call our office if you have questions.

# # #

TAX CHECK-OFF CONTRIBUTIONS TO CAMPAIGN FUND CONTINUE TO INCREASE; PROVIDE BROAD SUPPORT FOR FINANCING ELECTIONS

The principle of public financing of campaigns has received three strong endorsements in this Presidential election year: from the public in increased check-off contributions; from the Supreme Court, which declared the principle constitutional; and from its own operation in the Presidential race.

The Tax Check-Off System

The Federal Election Campaign Act of 1974 provides Federal funds to match contributions up to $250 to Presidential candidates who qualify for the funds during the 1976 primaries. The law also provides total Federal funding for the general election campaigns of the Republican and Democratic Presidential nominees and proportional funding for minority party and independent candidates based on performance. The money is being provided through the dollar check-off, which permits the individual taxpayer to designate $1 of his or her tax payment as a contribution to the Presidential Election Campaign Fund.

A 1973 Common Cause lawsuit against the Internal Revenue Service led to "yes" and "no" boxes on the first page of the 1040 income tax forms, where taxpayers indicate whether they want $1 of their payment (or $2 on a joint return) designated for the campaign fund. Also as a result of the lawsuit, the IRS has publicized the check-off system in printed and broadcast ads.

The number of taxpayers contributing to the fund and its actual dollar size have risen spectacularly since the system went

into operation in 1973 for the 1972 tax year. First-year contributions totalled only $2.4 million, but jumped the following year (1974, from the 1973 returns) to $27.6 million once the designation was placed on the front page of the tax form. A spokesman for the IRS reports that contriubtions for 1974 returns as of December 31, 1975, reached $31.9 million.

In their 1974 returns, 8,194,000 citizens designated $1 of their taxes to defray the costs of the 1976 Presidential campaign, contributing $8,194,000 to the fund; 11,873,000 married couples designated the $2 check-off, contributing a total of $23,743,000. (Some $2 designations were reduced to $1 because taxpayers did not meet the requirements for filing joint returns.) In all, the IRS received 20,067,000 checked-off returns, or 24.2% of all returns filed.

The tax check-off has meant that for the first time tens of millions of Americans have become the key to the financing of our Presidential elections instead of a relatively small number of big givers.

The IRS spokesman said early figures on 1975 tax returns filed through February 18, 1976, indicate another increase in contributions. So far, 1,334,000 individuals have used the $1 check-off, for a total contribution of $1,334,000; 1,397,000 married couples have indicated a $2 check-off, for a total contribution of $2,774,000. In all, the IRS has received 2,721,000 checked-off returns -- 26.5% of all returns received, compared with 23.9% at this time last year. If this rate continues, $34.3 million will be added to the fund in 1976.

To date, the Federal Election Commission has distributed over $9 million to 14 Presidential candidates -- $9 million that comes

from the taxpayer's support for public financing, not from wealthy donors and special interests. By November, Americans will have contributed more than $100 million to the campaign fund.

Ten states have enacted their own public financing programs to fund state elections: Iowa, Maine, Maryland, Michigan, Minnesota, Montana, New Jersey, North Carolina, Rhode Island and Utah. A recent opinion poll in California showed impressive support for a public financing law pending in that state's legislature. The poll, taken in January 1976 by the Field Research Corporation, asked those sampled whether they would "favor an election law limiting what a candidate may spend, and matching small private campaign contributions with public funds." Of the sample polled, 66.8% favored such a law; only 18.5% opposed it.

As Common Cause Vice President Fred Wertheimer has said, "We want our representatives freed from their dependence on wealthy contributors and special interests."

The Supreme Court Decision and Public Financing

The Supreme Court decision in the suit brought by Senator James Buckley (Cons/R-N.Y.) and Independent Presidential candidate Eugene McCarthy, handed down on January 30th, upheld the principle of public financing for political campaigns and most of the other major provisions of the Federal Election Campaign Act. In their opinion, the Justices found that Congress had the power to distribute public funds for Presidential elections and party conventions, and that the system established under the 1974 law did not discriminate against minor parties.

The Court called the public financing provision "a Congressional effort, not to abridge, restrict or censor speech" in violation of the First Amendment, "but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people." The opinion held that the matching-fund eligibility provisions were "not an unreasonable way to measure the popular support for a candidate...The thrust of the legislation is to reduce financial barriers and to enhance the importance of smaller contributions."

Encouragement of moderate-size contributions also came from the Court decision upholding a $1000 ceiling on contributions to a candidate from an individual. The Justices also ruled that Congress had the power to set spending limits for Presidential candidates who accepted public finds. So the system of public financing is actually serving a dual purpose: it is reducing the influence of large contributors and encouraging more vigorous competition among candidates.

Improvements in the Presidential Race

In an affidavit filed in support of the Federal Election Campaign Act in the Court of Appeals, Senator Charles McC. Mathias (R-Md.) outlined three major benefits of public campaign financing. "It equalizes access to the political arena...among members of the general public; it permits voters and candidates to control the incredible growth in campaign expenditures; and it enables us to remove a large part of the corrosive influence of big money from our political campaigns and our governing process," he said.

Obviously, campaigns exert their greatest effort where the greatest results can be achieved. In fundraising, this means making the smallest number of solicitations that can produce the greatest

amount of money. Mathias affirmed that his own campaigns before 1974 were designed to appeal to citizens of relative wealth and "diminished the role that many Americans can play in the political process." But now the Presidential matching-fund and contribution limits require candidates to appeal to and directly involve a larger number of citizens in their campaigns. As the Supreme Court observed, the matching mechanism provides an incentive for candidates to help increase participation in the electoral process.

Most importantly, the public financing provisions have relieved Presidential candidates of the need to rely on wealthy contributors and special interest groups for campaign financing. This year, no candidate will raise $20 million from just 153 individuals, as President Nixon did in 1972. More than 30 million taxpayer contributors in 1974 alone used the check-off system on their tax returns to substitute their one dollar for the old system of big money in politics.

The old system of campaign financing exerted tremendous pressures upon candidates to be responsive to the desires of special interest groups, no matter how abhorrent they felt the process to be. In the words of Senator Humphrey, a veteran of four national campaigns:

> "Campaign financing is a curse. It's the most disgusting, debilitating, demeaning, disenchanting experience of a politician's life. It's stinky, it's lousy. I just can't tell you how much I hate it...You even have to go through all kind of fakery. You ask 'em and you just have to feel like a louse. When you are desperate, these are the things you just have to do."

When special interest money is needed to keep advertising on the air the weekend before the election, special interests and large contributors are in the driver's seat and, in Senator Russell Long's

words, "the distinction between a campaign contribution and a bribe is almost a hairline's difference."

Congressional Public Financing

When Congress enacted public financing for Presidential races in 1974, it rejected a similar system for Congressional races. Although the Senate approved Congressional public financing by a wide margin it was defeated in the House of Representatives by a 228 to 187 vote and dropped in conference. The House was clearly exercising a double standard at that time, and the reason is simple and clear. One of the major advantages of public financing is that it increases the opportunity for challengers to be heard and to run competitive races against incumbents. This led a number of House members in 1974 to vote for Presidential public financing and then switch their position to vote against Congressional public financing.

In the 94th Congress the support for Congressional public financing has increased substantially, in good part because of the election of 90 new House members in 1974. Representative Phillip Burton (D-Calif.) and John Anderson (R-Ill.) have 225 co-sponsors for their Congressional public financing bill, and more than 240 members of the House are now on record for that election reform as a result of a Common Cause survey taken during the 1974 elections.

Strong bipartisan leadership continues in the Senate under Senators Kennedy (D-Mass.), Scott (R-Pa.), Clark (D-Iowa), Mondale (D-Minn.), Schweiker (R-Pa.), Cranston (D-Calif.) and Mathias (R-MD).

In the 1974 law Congress took the Presidency off the auction block. The efforts to reform campaign financing in Federal elections

will never be finished, however, until Congress is also taken off the auction block.

Common Cause believes public campaign financing is as important in the Legislative branch as it is in the Executive. As Chairman John W. Gardner said in testimony before the House Subcommittee on Elections, "...the root evils of campaign financing can never be eliminated until candidates are assured of adequate funds to run a creditable and competitive campaign without having to rely on big-money contributors. This can never be accomplished until a comprehensive system of public financing is established."

Public financing of all Federal election campaigns and contribution limits can go a long way toward restoring confidence in the governing process and in elected leadership. A major step has been taken toward assuring American citizens that public officials have less of the private and more of the public interest at heart and more Americans are being brought into the electoral process. The growth of the Presidential Election Campaign Fund is one small sign that voters are not apathetic: they want to improve government and are willing to contribute toward that goal.

# # #

common cause
2030 M STREET, N.W., WASHINGTON, D. C. 20036
John W. Gardner, Chairman (202) 833-1200

March 15, 1976

Dear Senator:

The Senate will shortly consider S. 3065, legislation arising out of the Supreme Court's decision on the constitutionality of the Federal Election Commission.

Common Cause supports the central provisions of S. 3035 which reconstitutes the Commission with six voting members nominated by the President and confirmed by the Senate. The legislation also contains several key loophole-closing provisions, including measures to prevent the proliferation by interest groups of political action committees, and to assure complete disclosure of independent campaign expenditures. We urge you to oppose any efforts to eliminate these important provisions.

A bipartisan group of Senators have announced their intention to add Congressional public financing to S. 3035. We urge your support for their efforts. The absence of public financing for Congressional races is the missing link in our federal campaign finance laws. Twice during the last Congress, the Senate enacted such legislation only to have it defeated in the House of Representatives. This year there are 225 House members who have cosponsored legislation to establish public financing for Congressional races.

There are two areas of particular concern to us regarding the enforcement process established by S. 3035, and we urge the following corrective steps:

1) The Rules Committee bill has added a new provision requiring the concurrence of at least two of the Commission's three Democratic appointees and two of the three Republican appointees in order for the Commission to take any investigative or enforcement action. Adoption of this "two plus two" requirement adds an unprecedented and unacceptable restriction on the ability of the Commission to act. The Commission already needs the concurrence of 2/3 of its members for any action. The additional restriction imposed by this provision can only serve the goal of preventing the Commission from effectively exercising its enforcement responsibilities.

Acceptance of the "two plus two" requirement is an effort to politicize the Commission -- not depoliticize it as some have alleged. We support the minority views set forth on this issue by Senators Hatfield, Scott and Griffin, and urge elimination of the provision.

2) S. 3035 would bar the Justice Department from exercising criminal enforcement powers if the Federal Election Commission and a candidate or contributor entered into a civil conciliation agreement.

This provision -- also without precedent -- would give an independent agency the power to block criminal prosecution by the Justice Department despite the fact that the agency has no power at all to initiate such prosecution. We believe there is no justification for this section and urge that it be deleted from the bill.

In addition, Common Cause urges you to support an amendment to restore the crucial requirement for disclosing a contributor's principal place of business for donations over $100. This provision which has been in the law since April 7, 1972, is fundamental to meaningful campaign finance disclosure. It is essential, for example, if the public is to learn in a timely fashion the patterns of special interest giving to federal candidates. The Rules Committee bill, by eliminating the requirement for setting forth an individual's principal employer, has severely undermined the 1972 campaign disclosure law.

We urge the Senate to enact S. 3035, and restore the Federal Election Commission to its central role in administering and enforcing our federal campaign finance laws.

Sincerely,

John Gardner
Chairman

THE WHITE HOUSE

WASHINGTON

March 19, 1976

MEMORANDUM FOR:

PHIL BUCHEN ✓
ROGERS MORTON
JACK MARSH
MAX FRIEDERSDORF
JIM CAVANAUGH
BOB ORBEN
JERRY JONES
BARRY ROTH
STUART SPENCER
BOB VISSER

FROM: JIM CONNOR

SUBJECT: Federal Election Commission Statement

Attached is a proposed statement by the President on which I have been asked to get your comments as soon as possible. If you could send your comments to me (either by phone or in writing) by 2:30 pm today, March 19, it would be greatly appreciated. Thanks.

Encl.

Barry notified them —
No objection

(GERGEN) March 19, 1976

FEDERAL ELECTION COMMISSION STATEMENT

Early this year, in its ruling on the campaign reform laws, the Supreme Court said the Congress had 30 days to correct a small defect in the Federal Election Commission or the Commission would lose most of its powers.

Three weeks ago, because the Congress had not yet acted, the Court gained a 21-day extension.

Now some 50 days have passed, and this Congress is still engaged in inexcusable and dangerous delays.

Time is running out. On midnight Monday, the watchdog set up to protect our elections will be stripped of most of its authorities.

The American people have a right to ask -- just as I am asking:

-- Why won't the Congress act immediately to extend the life of the Commission through the November elections? This is the proposal that I have made repeatedly and it is a sound, sensible approach.

-- Why are some members of the Congress still trying to impose massive changes upon the campaign laws right in the midst of a campaign? It is clear that such changes would create greater chaos and uncertainty so that I could not in good conscience accept such a bill.

-- Finally, why do some members of the Congress seem to be retreating from our commitment to fair, clean elections. No one can ignore the fact that the American people have had enough of "politics as usual".

These are the questions to which the Congress must be held to account as we approach Monday's deadline. I urge the Congress to act with dispatch in re-establishing th

Federal Election Commission so that the democratic process in 1976 will be truly worthy of our great nation.

Thank you.

THE WHITE HOUSE

WASHINGTON

March 26, 1976

MEMORANDUM FOR: ED SCHMULTS
MAX FRIEDERSDORF

FROM: BARRY ROTH

SUBJECT: S. 3065

The following is in response to your request for identification of the principle problems raised by S. 3065 to reconstitute the Federal Election Campaign (FEC) and to make certain amendments in the Campaign Act:

1. Section 104(e)(2) of the bill (the so-called Pack Wood Amendment) was modified on the Senate Floor to require that expenditures by a corporation, labor organization, or other membership organization which explicitly advocates the election or defeat of a clearly identified candidate through a communication with stockholders or members or families shall report such expenditures once they exceed in the aggregate of $1,000.00 per candidate per election.

   This was an increase from the $100.00 figure in the original substitute bill and represents a substantial loophole as unions can refer to numerous candidates and thus spend thousands of dollars in total while continuing to spend less than $1,000.00 per candidate.

   Our preference should be either to return to the $100.00 level or to make the

threshold amount at $1,000.00 for all candidates jointly. Another alternative would be to clarify the types of expenses that would have to be reported, regardless of amount such as cost relating to phone banks, mail solicitation and the like.

2. Section 110 of the bill establishes a new Section 321 of the Federal Election Campaign Act and is designed to modify the FEC's SUNPAC decision. At present the law permits a corporation to solicit contributions for a separate segregated account from all employees of a corporation.

   This bill allows a corporation to solicit only from its stockholders and executive or administrative personnel and their families. The Act provides an exception that all other employees of the corporation may be solicited not more than twice a year, in writing and at their residences.

   The new Act also provides that any contribution resulting from this solicitation must be received in a manner that the identity of who has contributed or not contributed cannot be determined.

   This last feature results in barring the use of the checkoff for non-management personnel.

   I am advised that this is in fact Senator Cannon's intent. This undermines the effectiveness of the solicitation and also requires mailings that may well be too expensive for a corporation to elect to undertake. Furthermore, this creates an anonymity for contributions that is anathema to the thrust of the entire campaign law.

3. This new Section 321(b)(2)(B) also makes it illegal "for an employee to solicit a subordinate employee." At best, this language is ambiguous and could possibly be interpreted to prohibit a non-coercive solicitation of funds by the chief executive officer of a corporation directed to employees or even other officers. On the other hand, it could be argued that the use of the word "employee" does not include management personnel since the statute refers in several instances to officers and employees and at other times to executive or administrative personnel.

   In the absence of any definitive legislation on this point, however, clarification is at a minimum necessary and elimination from the statute preferable.

   An alternative approach would be to structure subparagraphs (B)(C)(D) as guidelines which are used to determine whether or not there has been coercion rather than providing that such activities are per se illegal.

4. Sections 321(b)(4) &(5) are also ambiguous. Subparagraph 4 provides that notwithstanding any other law, any method of soliciting contributions which is permitted to a corporation shall also be permitted to a labor organization.

   Subparagraph 5 provides that any method of soliciting voluntary contributions that a corporation uses, it must make that same method available to the union at cost once it has received a written request for such.

   A question has been raised whether this mandates corporations to provide checkoffs for union PACs. My understanding is that Section 4 was intended not to be mandatory but only to make it clear that such union checkoffs are legal. However, this is an ambiguity that must be clarified. This can be done either in the legislative history

or by changing the word "shall" in subparagraph 4 to "may."

Another alternative would be to combine subparagraphs 4 and 5 and then clearly state that the corporation is not required to provide a method for receiving voluntary contributions unless it has itself used that method.

5. Section 110 of the bill also establishes a new Section 320 of the FECA. Subsection (A)(3) of it provides that ". . . all contributions made by political committees, established, financed, maintained or controlled by any person or persons including any parent subsidiary branch or division, department or affiliate or local unit of such persons or by any group of persons shall be considered to have been made by a single political committee. While some people claim that this fact is intended to prevent the proliferation of both union and corporation PACs, a contrary argument can be made with respect to union PACs.

The key language in this section appears to be "political committees established, financed, maintained or controlled by." It is my understanding that this language tracks a proposed FEC regulation which would have considered local unions to be independent of the national and other locals and thus would consider such contributions as being from separate political committees. Since corporations are by law not independent from themselves, the same argument cannot be made.

This is an important question upon which there should either be clarification or legislative history to indicate that this

currently prohibits the proliferation of union and corporate PACs.

The thrust of these SUNPAC amendments will discourage corporations now in the process of establishing PACs from so doing. It is also quite possible that some existing PACs will be terminated.

There appears to be several alternatives for legislative action in this regard. The first is to press for the Senate bill with the changes described above. Another would be to prohibit the establishment of separate segregated funds by both unions and corporations, thus, ensuring equality through prohibition. A third alternative would be to reject the current Senate bill and push for simple reconstitution as the only timely and equitable method that can be accomplished.

I am advised that the Business Roundtable is contacting its members today to push for simple reconstitution. Ed McCabe, who represented Sun Oil before the FEC on the SUNPAC decision, is also examining this section and will advise us of his views in this regard.

[April 1976]

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 allowed 50 days to "afford Congress an opportunity to reconstitute the Commission by law."

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 83 days in its attempts to amend the existing law in over 100 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.

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. 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.

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 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.