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House Committee Print

[COMMITTEE PRINT]

April 6, 1976

S. 3065

FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS OF 1976

CONFERENCE AGENDA

CONFERENCE AGENDA—S. 3065

Subject	House amendment	Senate bill	Conference action
Short title	Federal Election Campaign Act Amendments of 1976.	Same as House amendment.	
Federal Election Commission membership	(1) Secretary of Senate and Clerk of House serve as ex officio members.	(1) Same as House amendment.	(1)
	(2) Six members appointed by President, by and with advice and consent of Senate.	(2) Same, except 8 members.	(2)
	(3) No more than 3 members may be affiliated with same political party.	(3) Same as House amendment.	(3)
	(4) No provision.	(4) At least 2 members may not be affiliated with any political party.	(4)
	(5) Six-year terms.	(5) Eight-year terms.	(5)
	(6) Members first appointed serve staggered terms: one for 1-year term, one for 2-year term, one for 3-year term, one for 4-year term, one for 5-year term, and one for 6-year term, as designated by President. Of members first appointed, no member affiliated with a political party may be appointed for term which expires 1 year after term of another member affiliated with same political party.	(6) Members first appointed serve staggered terms: two not affiliated with same political party serve until April 30, 1977; two not affiliated with same political party serve until April 30, 1979; two not affiliated with same political party serve until April 30, 1981; two not affiliated with same political party serve until April 30, 1983.	(6)
	(7) Member may serve beyond expiration of term until successor takes office.	(7) No provision.	(7)
	(8) Member appointed to fill vacancy may serve only unexpired term.	(8) Same as House amendment.	(8)
	(9) Vacancy is filled in same manner as original appointment.	(9) Same as House amendment.	(9)
	(10) Members may not engage in any other business, vocation, or employment; members are given 1 year to terminate outside activities.	(10) No provision.	(10)
	(11) Commission is given authority to carry out Federal Election Campaign Act of 1971 (FECA) and chapters 95 and 96 of the Internal Revenue Code of 1954 (IRC). Commission is given exclusive primary jurisdiction regarding the civil enforcement of such provisions. Nothing in FECA may be construed to limit any investigatory, supervisory, or similar authority of the Congress regarding Federal elections.	(11) Same as House amendment, except that the Senate bill uses the phrase "exclusive and primary jurisdiction".	(11)

Subject	House amendment	Senate bill	Conference action
Federal Election Commission membership—Continued	(12) Affirmative vote of 4 members of the Commission is required for Commission to establish guidelines and to take certain other actions under FECA.	(12) Same as House amendment, except that Senate bill requires a 5-member majority.	(12)
	(13) No provision.	(13) Personnel of Commission may be appointed, and their pay may be fixed, without regard to provision of title 5, United States Code.	(13)
	(14) President required to appoint members as soon as practicable after date of enactment of House amendment.	(14) Same as House amendment.	(14)
	(15) First appointments made by President may not be considered to be appointments to fill unexpired terms of current members.	(15) Same as House amendment.	(15)
	(16) Current members may continue to serve until new members are appointed, except that they may exercise only such powers and functions as are consistent with *Buckley* v. *Valeo*.	(16) Current members may continue to serve until a majority of new members are appointed and qualified; current members may exercise only such powers and functions as are consistent with *Buckley* v. *Valeo*.	(16)
	(17) FECA rule stating that members may not be elected or appointed officers or employees of Federal Government is waived regarding current members.	(17) Same as House amendment.	(17)
	(18) No provision.	(18) Personnel, property, and records of Commission are transferred to the Commission as reconstituted by the Senate bill. Provisions of Senate bill do not affect any proceeding pending before Commission. Suits and proceedings commenced by or against Commission are not abated as a result of the reconstitution of the Commission. Any reference to the Commission in any Federal law is considered to be a reference to the Commission as reconstituted by the Senate bill.	(18)
Changes in FECA definitions	(1) The term "election" includes a convention or a caucus which has authority to nominate a candidate.	(1) Same as House amendment.	(1)
	(2) The term "contribution" includes a written contract, promise, or agreement to make a contribution. The phrase "express or implied" is deleted from the provision relating to contracts.	(2) Same as House amendment, except that the phrase "express or implied" is not deleted.	(2)

Subject	House amendment	Senate bill	Conference action
Changes in FECA definitions—Continued	(3) The term "contribution" does not include legal or accounting services rendered to national committees, unless attributable to campaign activities, or legal or accounting services rendered to a candidate or political committee to ensure compliance with FECA, title 18, United States Code, or chapter 95 or 96 of IRC.	(3) Same as House amendment, except that (a) legal or accounting services are considered contributions if the person paying for the services is a person other than the employer of the individual rendering the services; and (b) amounts paid for legal or accounting services must be reported to Commission.	(3)
	(4) The term "contribution" does not include gifts or other advances to a national committee or a State committee designated for construction or purchase of office facilities which are not used for campaign purposes. Such gifts and advances, and the cost of construction or purchase, must be reported to Commission.	(4) No provision.	(4)
	(5) No provision.	(5) The term "contribution" does not include a loan made by a national or State bank in the ordinary course of business. Such loans must be reported to Commission and shall be considered a loan by each endorser or guarantor.	(5)
	(6) No provision.	(6) The $500 ceiling on activities under section 301(e)(5) of FECA applies to activities by any person, rather than by any individual.	(6)
	(7) No provision.	(7) The term "expenditure" does not include partisan registration or get-out-the-vote activity by national or State committees. The cost of such activity must be reported to Commission.	(7)
	(8) The term "expenditure" does not include costs of soliciting contributions, to the extent such costs do not exceed 20 percent of any expenditure limitation under section 320(b) of FECA. All such costs must be reported to Commission.	(8) Same as House amendment.	(8)
	(9) The term "expenditure" does not include legal or accounting services rendered to national committees, unless attributable to campaign activities, or legal or accounting services rendered to a candidate or political committee to ensure compliance with FECA, title 18, United States Code, or chapter 95 or 96 of IRC.	(9) Same as House amendment, except that (a) legal or accounting services are considered expenditures if the person paying for the services is a person other than the employer of the individual rendering the services; and (b) amounts paid for legal or accounting services must be reported to Commission.	(9)
	(10) No provision.	(10) The term "expenditure" does not include a loan made by a national or State bank in the ordinary course of business. Such loan must be reported to Commission.	(10)

CONFERENCE AGENDA—S. 3065—Continued

Subject	House amendment	Senate bill	Conference action
Changes in FECA definitions—Continued	(11) The term "Act" means FECA as amended by FECA Amendments of 1974 and FECA Amendments of 1976.	(11) Same as House amendment.	(11)
	(12) The term "independent expenditure" means expenditure expressly advocating election or defeat of clearly identified candidate made without cooperation or consultation with, or request or suggestion of, any candidate.	(12) No provision.	(12)
	(13) The term "clearly identified" means (a) name of candidate appears; (b) photograph or drawing of candidate appears; or (c) identity of candidate is apparent by unambiguous reference.	(13) No provision.	(13)
Organization of political committees	(1) Certain political committee disclosure requirements contained in section 302(e) of FECA are repealed.	(1) Same as House amendment.	(1)
	(2) No provision.	(2) Persons receiving contributions on behalf of a political committee must provide information relating to such contributions only if they exceed $100.	(2)
	(3) No provision.	(3) Treasurers of political committees are required to keep accounts of the identification of persons making contributions only if such contributions exceed $100.	(3)
Reports by political committees and candidates	(1) In nonelection years, candidates must file reports for calendar quarters in which they receive contributions or make expenditures in excess of $10,000.	(1) Same as House amendment, except that ceiling is $5,000 rather than $10,000.	(1)
	(2) Treasurers of political committees authorized by a candidate to raise contributions or make expenditures, other than candidate's principal campaign committee, must file reports with the candidate's principal campaign committee.	(2) Same as House amendment.	(2)
	(3) Reports must disclose independent expenditures in excess of $100 by political committees other than authorized committees of a candidate.	(3) Same as House amendment.	(3)

Subject	House amendment	Senate bill	Conference action
Reports by political committees and candidates—Continued	(4) Every person who makes contributions or independent expenditures other than by contributions to a political committee exceeding $100 during a calendar year must file a report with the Commission. Such reports must be filed on filing dates applicable to political committee reports. Any independent expenditure of $1,000 or more made after the 15th day, but more than 24 hours, before an election must be reported within 24 hours of such independent expenditure. Commission must prepare candidate-by-candidate indices of reported expenditures.	(4) Same as House amendment, except that (a) pre-election indpendent expenditure reporting deadline is 48 hours, rather than 24 hours; and (b) "independent expenditure" is not used as a defined term.	(4)
	(5) No provision.	(5) Corporations, labor organizations, and other membership organizations issuing communications to their stockholders, members, or their families, must report expenditures related to such communications which exceed $1,000 per candidate per election.	(5)
	(6) No provision.	(6) Persons making contributions in response to a solicitation by a corporation or labor organization must report to the recipient of the contribution the total amount of such contributions made to such recipient during a calendar year if the contributions exceed, in the aggregate, $100.	(6)
	(7) No provision.	(7) If political committee treasurer or candidate demonstrate that their best efforts have been used to obtain required information, they shall be considered in compliance with the reporting requirements.	(7)
Reports by certain persons	FECA reporting requirement relating to persons making expenditures relating to an election or a candidate is repealed.	Same as House amendment.	
Campaign depositories	Authorized political committees of a candidate are given discretion to maintain one or more checking accounts in the campaign depositories designated by the candidate.	No provision.	
Powers of Commission	(1) Commission may develop prescribed forms necessary to carry out FECA and chapter 95 or 96 of IRC.	(1) Same as House amendment.	(1)
	(2) Commission is given authority to formulate	(2) Same as House amendment.	(2)

Subject	House amendment	Senate bill	Conference action
Powers of Commission—Continued	(3) Commission is given authority to initiate, defend, or appeal any civil action to enforce FECA or chapters 95 and 96 of IRC.	(3) Same as House amendment.	(3)
	(4) Power of Commission to initiate civil actions is the exclusive remedy for enforcing FECA (other than actions under section 313(a)(9) of FECA, as added by House amendment).	(4) Same as House amendment.	(4)
Advisory opinions	(1) National committees may request Commission to render advisory opinions.	(1) No provision.	(1)
	(2) Commission or any of its employees may not render any advisory opinion except in accordance with provisions contained in FECA.	(2) No provision.	(2)
	(3) Any person involved in a transaction or activity which is covered by an advisory opinion and any person involved in a similar transaction or activity may rely on the provisions of the advisory opinion and may not be subjected to any sanction under FECA or chapter 95 or 96 of IRC.	(3) No provision.	(3)
	(4) Any advisory opinion of general applicability regarding a transaction or activity which is not already covered by a rule, Commission must transmit to Congress a proposed rule not later than 30 days after enactment of the House amendment or 30 days after rendering such advisory opinion. Such rule is subject to congressional review provisions contained in FECA.	(4) No provision	(4)
Enforcement	(1) Any person believing that a violation of FECA or chapter 95 or 96 of IRC has occurred may file written complaint with Commission. Complaint must be notarized and signed and sworn to by such person. Such person is subject to section 1001 of title 18, USC, relating to false or fraudulent statements. Commission may not conduct any investigation solely on the basis of an anonymous complaint.	(1) Same as House amendment.	(1)

Subject	House amendment	Senate bill	Conference action
Enforcement—Continued	(2) If Commission has reasonable cause to believe that a person has violated FECA or chapter 95 or 96 of IRC, Commission must notify the person and conduct investigation. Commission must permit any person under investigation to demonstrate that Commission should not take any action against such person under FECA.	(2) Same as House amendment.	(2)
	(3) Commission must seek to correct or prevent any violation of FECA or chapter 95 or 96 of IRC by informal methods during the 30-day period following Commission determination of reasonable cause to believe that violation has occurred or is about to occur. Commission also must seek to enter into conciliation agreement with the person involved in the violation. The 30-day rule is waived if Commission has reasonable cause to believe that (a) a person has failed to file the quarterly report prior to the general election required by FECA before the date of an election; (b) a person has failed to file a report required to be filed not later than 10 days before an election; or (c) on basis of complaint filed less than 45 days but more than 10 days before an election, person has committed a knowing and willful violation of FECA or chapter 95 or 96 of IRC. In such cases Commission must seek to informally correct the violation for a period of not less than one-half the number of days between date of Commission's determination of violation and date of the election involved. A conciliation agreement shall be a complete bar to any further investigation by the Commission, unless the person involved violated the agreement.	(3) Same as House amendment, except that the minimum time periods for conciliation stated in the House amendment are omitted.	(3)
	(4) Commission may institute civil action if it is unable to correct or prevent a violation by informal methods, and if it determines there is probable cause to believe that violation has occurred or is about to occur. Remedy may include a permanent or temporary injunction or restraining order or a civil penalty which does not exceed greater of $5,000, or an amount equal to amount of any contribution or expenditure involved in the violation. The Federal court involved shall grant relief sought by Commission upon proper showing that the person involved has violated or is about to violate FECA or chapter 95 or 96 of IRC.	(4) Same as House amendment.	(4)

Subject	House amendment	Senate bill	Conference action
Enforcement—Continued	(5) Commission may refer apparent violations to Attorney General if it determines there is probable cause to believe that a knowing and willful violation subject to, and as defined in, section 328 of FECA, as added by the House amendment, has occurred or is about to occur. Commission is not required to seek informal conciliation before making any such referral.	(5) Same as House amendment, except that Senate bill extends this provision to apply to chapter 95 or 96 of IRC.	(5)
	(6) Commission may include civil penalty in a conciliation agreement if it believes there is clear and convincing proof that a knowing and willful violation of FECA or of chapter 95 or 96 of IRC has occurred. The civil penalty may not exceed greater of $10,000 or an amount equal to 200 percent of amount of any contribution or expenditure involved in the violation. In the case of a violation which is not knowing and willful, conciliation agreement may require the person involved to pay civil penalty which does not exceed greater of $5,000, or amount equal to amount of the contribution or expenditure involved in the violation.	(6) Same as House amendment, except that conciliation agreement relating to knowing and willful violations may impose civil penalty which does not exceed greater of $10,000, or amount equal to 300 percent of amount of any contribution or expenditure involved in such violation.	(6)
	(7) Commission must make available to public (a) results of conciliation efforts; and (b) any determination by Commission that a person has not violated FECA or chapter 95 or 96 of IRC.	(7) Same as House amendment.	(7)
	(8) A Federal court may impose civil penalty if it determines there is clear and convincing proof that a person has knowingly and willfully violated FECA or chapter 95 or 96 of IRC. The civil penalty may not exceed greater of $10,000, or amount equal to 200 percent of the contribution or expenditure involved in the violation. Commission may bring a civil action against any person subject to a conciliation agreement if it believes that such person has violated the agreement. Commission may obtain relief if it establishes that the person has violated, in whole or in part, any requirement of the agreement.	(8) Same as House amendment, except that court-imposed civil penalty for knowing and willful violation may not exceed greater of $10,000, or amount equal to 300 percent of the contribution or expenditure involved in the violation.	(8)
	(9) Subpena for witnesses in civil actions in any Federal district court may run into any other district.	(9) Same as House amendment.	(9)

Subject	House amendment	Senate bill	Conference action
Enforcement—Continued	(10) Any party may file petition with U.S. District Court for the District of Columbia if the party is aggrieved by Commission's dismissal of a complaint, or by failure by Commission to act on complaint within 90 days after filing. Petition must be filed (a) in the case of a dismissal, no later than 60 days after dismissal; or (b) in the case of failure by Commission to act, no later than 60 days after the initial 90-day period. The court may declare that the dismissal or failure to act is contrary to law and direct the Commission to take action consistent with the declaration. The party involved may bring a civil action if the Commission fails to act in accordance with the declaration.	(10) Same as House amendment.	(10)
	(11) Any judgment of a Federal district court may be appealed to the court of appeals. Any court of appeals judgment is final, subject to review by the Supreme Court. Any action brought under the enforcement provisions of FECA, as added by the House amendment, must be advanced on the docket of the court involved and put ahead of all other actions.	(11) Same as House amendment.	(11)
	(12) Commission may petition a Federal court to hold a person in civil contempt if Commission determines after investigation that the person has violated an order of the court. If Commission believes that the violation is knowing and willful, Commission may petition the court to hold the person in criminal contempt. In any case referred to the Attorney General, the Attorney General shall report its status no later than 60 days thereafter, and every 30 days thereafter until final disposition of the case.	(12) Same as House amendment.	(12)
	(13) Any member of Commission, employee of Commission, or any other person who discloses identity of any person under investigation shall be fined not more than $2,000. A knowing and willful violation is subject to a fine of not more than $5,000.	(13) No provision.	(13)
Conversion of contributions to personal use	No provision.	Excess contributions received by candidate, and amounts contributed to an individual to support his activities as a Federal office holder, may be used for office expenses or for any other lawful purpose but may not be converted to any personal use.	

Subject	House amendment	Senate bill	Conference action
Duties of Commission	(1) Commission must compile and maintain separate cumulative index of reports filed by political committees supporting more than one candidate.	(1) Same as House amendment.	(1)
	(2) Commission must give priority to auditing and conducting field investigations relating to payments received by candidates under chapters 95 and 96 of IRC.	(2) No provision.	(2)
	(3) Congress may disapprove proposed rules of Commission in whole or in part.	(3) No provision.	(3)
	(4) Motions to consider resolutions reported by committees in the House relating to proposed rules of Commission are highly privileged. It is in order at any time to move to consider the resolution, and such a motion is not debatable.	(4) No provision.	(4)
	(5) In any proceeding to enforce FECA or chapter 95 or 96 of IRC, no rule, advisory opinion, or opinion of counsel of the Commission may be used against the person against whom the proceeding is brought. No such rule, advisory opinion, or opinion of counsel (a) shall have force of law; (b) may be used to create a presumption of violation or criminal intent; (c) shall be admissible as evidence against the person involved; or (d) may be used in any other manner. This provision does not apply to any rule which takes effect after congressional review.	(5) No provision.	(5)
	(6) No provision.	(6) The period during which Congress may disapprove a proposed rule of the Commission is changed from 30 legislative days (in existing law) to the later of 30 calendar days or 15 legislative days.	(6)
Additional enforcement authority	If a person fails to file report required by title III of FECA, Commission must (a) seek to correct failure informally for 30 days; or (b) if failure occurs less than 45 days before an election, seek to correct failure for period of not less than one-half the number of days between the failure and the election. Commission may not act until after election in the case of a complaint filed 5 days or less before the election.	Section 407 of FECA, relating to additional enforcement authority, is repealed.	

Subject	House amendment	Senate bill	Conference action
Mass mailings as franked mail	No provision.	Members of Congress are prohibited from mailing as franked mail any general mass mailing less than 60 days before an election. The term "general mass mailing" means newsletters and similar mailings of more than 500 pieces with similar content mailed at same time or different times. Senate bill adds this provision to FECA, and also amends title 39, USC, to change the current 28-day provision to 60 days.	
Limitations on contributions and expenditures	(1) No person may make contributions to any candidate in any election exceeding $1,000.	(1) Same as House amendment.	(1)
	(2) No person may make contributions to any political committee in any calendar year exceeding $1,000.	(2) No person may make contributions to any political committee maintained by a political party in any calendar year exceeding $25,000. No person may make contributions to any other political committee exceeding $5,000 in any calendar year.	(2)
	(3) No political committee may make contributions (a) exceeding $5,000 to a candidate in any election; or (b) exceeding $5,000 to any political committee in any calendar year.	(3) No multicandidate political committee may make contributions (a) exceeding $5,000 to a candidate in any election; (b) exceeding $25,000 to any political committee maintained by a political party in any calendar year; and (c) exceeding $10,000 to any other political committee in any calendar year.	(3)
	(4) If the national committee of a political party is serving as the principal campaign committee of a candidate for President, its contributions to other candidates for Federal office are subject to the limits established by FECA, as amended by the House amendment.	(4) No provision.	(4)
	(5) Contributions made by a political committee established by a corporation (including its subsidiaries), a labor organization (including its local units), or any other person shall be considered made by a single political committee, except that this rule does not apply to (a) joint fundraising efforts; and (b) a single political committee established by a national or a State party committee.	(5) Same as House amendment, except that Senate bill also provides that a political committee of a national organization may contribute to a candidate even though the political committee is affiliated with a national multicandidate political committee which has made the maximum permissible contribution to the candidate.	(5)

Subject	House amendment	Senate bill	Conference action
Limitation on contributions and expenditures—Continued	(6) If a corporation and any of its subsidiaries, or a union and any of its local units, establish or control more than one separate segregated fund, all such funds shall be treated as a single separate segregated fund.	(6) No provision.	(6)
	(7) No provision.	(7) Contribution limitations do not apply to transfers between national, State, district, or local committees of the same political party.	(7)
	(8) An individual may not make total contributions of more than $25,000 in a calendar year. Any contribution made to a candidate in a year other than an election year is considered to be made during the year of the election.	(8) Same as House amendment.	(8)
	(9) Contributions to a named candidate made to an authorized committee of the condidate are considered contributions made to the candidate. Any expenditure made in cooperation with a candidate is considered a contribution to the candidate. Any expenditure to finance the publication or broadcast of materials prepared by a candidate is considered a contribution to the candidate. Contributions to a vice presidential nominee are considered contributions to the presidential nominee of the same party.	(9) Same as House amendment.	(9)
	(10) Contribution limits apply separately to each election, except that presidential elections in same year (other than general election) count as one election.	(10) Same as House amendment, except that Senate bill provides that this rule does not apply to the specified annual limit on political committee contributions.	(10)
	(11) Any contribution which a person makes to a candidate through an intermediary is considered a contribution by the person to the candidate. The intermediary must report the name of the source of the contribution.	(11) Same as House amendment.	(11)
	(12) No candidate for President who has established eligibility to receive Federal matching payments in primaries or Federal payments in general election may spend (a) more than $10,000,000 in primaries (amount spent in one State may not exceed twice greater of 8 cents multiplied by voting age population (VAP) or $100,000); or (b) $20,000,000 in general election.	(12) Same as House amendment, except that Senate bill uses phrase "is eligible" to receive payments, rather than "has established eligibility".	(12)
	(13) The presidential spending limits are subject to cost-of-living increases.	(13) Same as House amendment.	(13)

CONFERENCE AGENDA—S. 3065—Continued

Subject	House amendment	Senate bill	Conference action
Limitation on contributions and expenditures—Continued	(14) National committee of political party may make the following expenditure: 2 cents multiplied by VAP for President in general election. National committee or State committees of a political party may make the following expenditures: (a) greater of 2 cents multiplied by VAP or $20,000 for Senator or Representative in State having only one Representative in general election; and (b) $10,000 for Representative in any other State in general election.	(14) Same as House amendment.	(14)
	(15) Secretary of Commerce required to certify VAP in United States and in each State.	(15) Same as House amendment.	(15)
	(16) Candidates and political committees may not accept contributions, or make expenditures, in violation of FECA.	(16) Same as House amendment.	(16)
	(17) Commission must prescribe rules to attribute to different States spending made by candidates seeking presidential nomination.	(17) Same as House amendment.	(17)
	(18) No provision.	(18) Republican or Democratic Senatorial Campaign Committee, and national committee of political party, may make contributions totaling not more than $20,000 to candidate for nomination for election, or election, to Senate in an election year.	(18)
Contributions or expenditures by national banks, corporations, and labor organizations	(1) National banks and Federal corporations barred from making contributions to candidates for any political office. Corporations and labor organizations barred from making contributions to candidates for Federal office.	(1) Same as House amendment.	(1)
	(2) Term "labor organization" defined to mean organization or employee representation committee which deals with employers regarding labor disputes, work conditions, and similar matters.	(2) Same as House amendment.	(2)
	(3) Term "contribution or expenditure" defined to mean any direct or indirect payment of money or anything of value to a candidate for Federal office.	(3) Same as House amendment, except that Senate bill applies the definition to the Public Utility Holding Company Act as well as to FECA.	(3)

Subject	House amendment	Senate bill	Conference action
Contributions or expenditures by national banks, corporations, and labor organizations—Continued	(4) Term "contribution or expenditure" does not include (a) communications by corporation to its stockholders, executive officers, and their families or by union to its members and their families; (b) nonpartisan registration and voting campaigns aimed at corporate stockholders, executive officers, and their families, or at union members and their families; or (c) establishment and operation of separate segregated political fund.	(4) Same as House amendment, except that Senate bill also applies to administrative personnel of corporation. (Note, however, that "administrative personnel" in the Senate bill has same meaning as "executive officer" in the House amendment.)	(4)
	(5) Following rules apply to separate segregated funds: (a) may not make contribution or expenditure with money obtained by physical force, job discrimination, financial reprisal, threat of any of foregoing, dues required as condition of employment or condition of membership in union, or through a commercial transaction; (b) corporation may solicit only from stockholders, executive officers, and their families; (c) an unincorporated trade association may solicit only from stockholders and executive officers of member corporations and their families, except that member corporations must approve solicitation and may not approve solicitations by more than one trade association in same calendar year; (d) labor union may solicit only from members and their families; (e) any method of solicitation which may be used by corporation also may be used by union; and (f) if corporation uses certain method of solicitation it must make such method available to union representing employees of corporation upon request.	(5) Same as House amendment, except that Senate bill does not contain provision regarding unincorporated trade associations, and Senate bill includes following provisions: (a) an employee may not solicit contribution from subordinate employee; (b) person soliciting from employee must inform employee at time of solicitation of political purposes of the separate segregated fund; (c) person soliciting employee must inform employee that employee may refuse to make contribution; (d) (i) corporation may make 2 written solicitations per year to all employees of corporation, and union may make 2 such solicitations per year to all stockholders and employees, whether or not they are union members; (ii) solicitation must be addressed to residence of person involved; and (iii) corporation or union not permitted to determine which persons make contributions as result of solicitations; and (e) membership organization without capital stock may make solicitations to its members.	(5)
	(6) Term "executive officer" defined to mean individual employed by corporation who is paid on salary basis and who has policymaking or supervisory responsibilities.	(6) Same as House amendment, except that Senate bill uses term "executive or administrative personnel".	(6)
Contributions by government contractors	(1) Unlawful for any person entering into certain contracts with US to make contributions to candidate for public office or for any political purpose. Also unlawful to solicit contribution from any such person.	(1) Same as House amendment, except that Senate bill prohibits only knowing solicitations.	(1)
	(2) Not unlawful for corporation or union to operate separate segregated political fund under this provision, unless FECA otherwise bars such fund.	(2) Same as House amendment, except that Senate bill provides that any prohibition, allowance, or duty which applies to a corporation, union, or fund under other provisions of FECA also applies to any	(2)

CONFERENCE AGENDA—S. 3065—Continued

Subject	House amendment	Senate bill	Conference action
Publication or distribution of political statements	Person making expenditure to finance communication advocating election or defeat of candidate must disclose (a) candidate or political committee authorizing the expenditure; or (b) if no such authorization, that there is no authorization, and name of person making expenditure.	Same as House amendment.	
Contributions by foreign nationals	Unlawful for foreign national to make contribution in connection with any election for political office.	Same as House amendment.	
Prohibition of contributions in name of another	No person may (a) make contribution in name of another person; (b) knowingly permit his name to be used to make such a contribution; or (c) knowingly accept contribution made by one person in name of another.	Same as House amendment.	
Limitation on contributions of currency	(1) Person may not make contributions in cash exceeding $100 to any candidate in any election for Federal office. (2) Penalty is fine of $25,000 or 300 percent of contribution, whichever is greater, or imprisonment for not more than one year, or both.	(1) Same as House amendment. (2) General FECA penalty provisions (explained on page 16) apply, rather than the special penalty provided in the House amendment.	(1) (2)
Acceptance of excessive honorariums	Any Federal elected or appointed official may not (a) accept any honorarium exceeding $1,000; or (b) accept honorariums exceeding $15,000 in a calendar year.	Senate bill eliminates any provisions regarding honorariums.	
Fraudulent misrepresentation of campaign authority	Candidates for Federal office and their agents may not (a) fraudulently misrepresent themselves as acting for or on behalf of another candidate in a manner damaging to that candidate; or (b) participate in a plan to violate this provision.	Same as House amendment, except that Senate bill requires knowing and willful participation in order to prove a violation.	

Subject	House amendment	Senate bill	Conference action
Penalty for violations	Any person who knowingly and willfully violates any provision of FECA (other than provisions relating to contributions of currency) in a manner which involves contribution or expenditure of $1,000 or more in a calendar year shall be fined in amount which does not exceed greater of $25,000 or 300 percent of contribution or expenditure involved, or imprisoned for not more than 1 year, or both.	Same as House amendment, with following differences: (a) Violation of provisions relating to separate segregated political funds of corporations and unions subject to fine of $50,000, imprisonment for not more than 2 years, or both. (b) In case of knowing and willful violation of provision relating to contributions in name of another or provision relating to contributions of currency, FECA penalties shall apply to violation involving $250 or more in calendar year. (c) In case of knowing and willful violation of provision relating to fraudulent misrepresentation of campaign authority, FECA penalties shall apply without regard to whether contribution or expenditure of $1,000 in calendar year is involved. (d) Defendant in action for violation of FECA or chapter 95 or 96 of IRC may introduce conciliation agreement as evidence of lack of knowledge or of lack of criminal intent. (e) If defendant is found guilty in criminal action under FECA or chapter 95 or 96 of IRC, court, in imposing penalty, shall take into account whether (i) act or failure to act involved is subject to conciliation agreement; (ii) such agreement is in effect; and (iii) defendant is in compliance with such agreement.	
Savings provision relating to repealed provisions	Repeal of House amendment or any provision of House amendment will not have effect of releasing any liability incurred under FECA.	Same as House amendment, except that Senate bill does not add this provision directly to FECA as an amendment to the 1971 law.	
Principal campaign committees	With respect to rule that political committee supporting more than one candidate may not be designated as principal campaign committee, occasional, isolated, or incidental support shall not be construed as support of a candidate.	No provision.	

CONFERENCE AGENDA—S. 3065—Continued

Subject	House amendment	Senate bill	Conference action
Authorization of appropriations	No provision.	Following amounts authorized to be appropriated to Commission: (a) $8,000,000 for FY 1976; (b) $2,000,000 for transition period of July 1, 1976, to September 30, 1976; and (c) $8,000,000 for FY 1977.	
Repeal of certain provisions of title 18, United States Code	Following provisions of title 18, USC are repealed: (a) section 608, relating to limitations on contributions and expenditures; (b) section 610, relating to contributions or expenditures by national banks, corporations, or labor organizations; (c) section 611, relating to contributions by government contractors; (d) section 612, relating to publication or distribution of political statements; (e) section 613, relating to contributions by foreign nationals; (f) section 614, relating to prohibition of contributions in name of another; (g) section 615, relating to limitations on contributions of currency; (h) section 616, relating to acceptance of excessive honorariums; and (i) section 617, relating to fraudulent misrepresentation of campaign authority.	Same as House amendment.	
Changes in definitions in title 18, United States Code	(1) Term "contribution" does not apply (a) in the case of legal or accounting services rendered to national committee of political party, other than services attributable to election campaign of a particular candidate; or (b) in the case of legal or accounting services rendered to candidate or political committee for purpose of ensuring compliance with FECA, chapter 29 of title 18, USC, or chapter 95 or 96 of IRC.	(1) No provision.	(1)

Subject	House amendment	Senate bill	Conference action
Change in definitions in title 18, United States Code—Continued	(2) Term "expenditure" does not include payment by any person other than a candidate or political committee for legal or accounting services rendered (a) to national committee of political party, other than services attributable to election campaign of a particular candidate; or (b) to candidate or political committee to ensure compliance with FECA, chapter 29 of title 18, USC, or chapter 95 or 96 of IRC.	(2) No provision.	(2)
Expenditures by presidential candidates from personal funds	(1) Candidate for nomination for election, or election, to office of President must certify to Commission that he will not spend more than $50,000 from his personal funds or personal funds of his immediate family.	(1) Same as House amendment.	(1)
	(2) Regarding general election campaigns, expenditures from personal funds made by candidate for Vice President shall be considered to be expenditures made by candidate of the party involved for President.	(2) No provision.	(2)
	(3) Term "immediate family" defined to mean candidate's spouse, and any child, parent, grandparent, brother, or sister of the candidate, and the spouses of such persons.	(3) Same as House amendment, except that Senate bill includes half-brothers and half-sisters.	(3)
	(4) No provision.	(4) Expenditures made by an individual after January 29, 1976, and before date of enactment of Senate bill shall not be taken into account in applying personal funds limitations.	(4)
Deposits in Presidential Election Campaign Fund	House amendment repeals requirement that moneys remaining in Presidential Election Campaign Fund after a presidential election must be transferred to general fund of the Treasury.	Same as House amendment.	
Insufficient amounts in Fund	If Secretary of Treasury determines there are not sufficient moneys in Fund to make payments required under chapters 95 and 96 of IRC, moneys shall not be made available from any other source for the purpose of making such payments.	No provision.	

CONFERENCE AGENDA—S. 3065—Continued

Subject	House amendment	Senate bill	Conference action
Provision of legal or accounting services	Regarding financing of presidential nominating conventions, any payment by person other than national committee of a political party of compensation to any person for legal or accounting services rendered to the national committee shall not be treated as an expenditure made by the national committee in connection with its presidential nominating convention.	Payment for legal or accounting services shall not be treated as an expenditure by national committee of a political party in connection with its presidential nominating convention unless the person paying for such services is a person other than the employer of the individual rendering the services.	
Congressional review of regulations relating to chapters 95 and 96 of the Internal Revenue Code of 1954	(1) Congress may disapprove proposed rules of Commission relating to chapter 95 or 96 of IRC in whole or in part.	(1) No provision.	(1)
	(2) Motions to consider resolutions reported by committees in the House relating to proposed rules of Commission are highly privileged. It is in order at any time to move to consider the resolution, and such motion is not debatable.	(2) No provision.	(2)
	(3) No provision.	(3) The period during which Congress may disapprove a proposed rule of the Commission relating to chapter 95 or 96 of IRC is changed from 30 legislative days (in existing law) to the later of 30 calendar days or 15 legislative days.	(3)
Return of Federal funds	Any candidate receiving Federal funds in connection with presidential primaries or the presidential general election shall no longer be eligible to receive such funds if he ceases to actively seek nomination or election in more than one State.	Regarding candidates receiving Federal matching funds in connection with presidential primaries, a candidate may not continue to receive matching funds if he fails to receive 10 percent or more of votes cast in 2 consecutive primaries. The eligibility of a candidate to receive matching funds may be reinstated if the candidate receives 20 percent or more of the votes cast in a primary held after the candidate's payments were terminated. This provision takes effect on the date of the enactment of the Senate bill.	
Commission to study presidential nominating process	No provision.	Bicentennial Commission on Presidential Nominations is established to review manner in which presidential primary elections are conducted, and to report to the Congress regarding its findings.	

CONFERENCE AGENDA—S. 3065—Continued

Subject	House amendment	Senate bill	Conference action
Financial disclosure of Federal officers and employees	No provision.	Any Federal officer or employee receiving compensation at a gross annual rate exceeding $25,0 nd any candidate for Federal office, must file fi ncial disclosure reports to the Comptroller General of the United States. The statement must include (a) net worth of the person filing; (b) statement of assets and liabilities; and (c) a statement of income identifying each source of income (or a copy of the person's Federal income tax statement).	

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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 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

4/22 Copies sent Hartmann + Smith

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 Republucan 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

WASHINGTON

April 14, 1976

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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.

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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.

Friday 4/16/76

Bob Visser advises that the Republican National Committee called to tell him that the Democratic National Committee has decided, along with several of the Democratic hopefuls, to file a law suit in the District demanding the Secretaryof Treasury pay the matching funds without certification.

I notified Barry.

Fed'l Election Campaign

THE WHITE HOUSE

WASHINGTON

April 22, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN P.

SUBJECT: Conference Bill to amend the Federal Campaign Laws

I. Background

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

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

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

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

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

II. Independence of Commission

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

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

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

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

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

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

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

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

III. Effect on Corporations and Unions

A. Provisions regarding Corporations and their PAC's

The Conference Bill provides that a corporation may:

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

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

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

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

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

B. Provisions regarding Unions and their PAC's

The Conference Bill provides that a union may:

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

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

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

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

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

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

The Conference Bill also provides:

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

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

D. Industry Objections

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

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

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

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

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

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

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

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

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

E. Evaluation of Industry Objections

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

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

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

April 7, 1976

MEMORANDUM

TO: Jim Connor

FROM: Bob Visser
Tim Ryan

RE: Federal Election Campaign Act Amendments of 1976

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

I. Independence of the Commission.

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

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

Recommendation

If the Senate provision which essentially represents

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

II. Political Action Committees.

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

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

> "All of the political committees set up by a single corporation and its subsidiaries would be treated as a single political committee for the purposes of H.R. 12406's contribution limitations;
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> 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;
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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 Republucan 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.

FEC

THE WHITE HOUSE

WASHINGTON

April 22, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN P.

SUBJECT: Conference Bill to amend the Federal Campaign Laws

I. Background

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

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

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

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

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

II. Independence of Commission

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

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

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

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

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

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

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

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

III. Effect on Corporations and Unions

A. Provisions regarding Corporations and their PAC's

The Conference Bill provides that a corporation may:

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

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

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

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

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

B. Provisions regarding Unions and their PAC's

The Conference Bill provides that a union may:

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

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

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

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

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

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

The Conference Bill also provides:

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

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

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April 7, 1976

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FROM: Bob Visser
Tim Ryan

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Recommendation

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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 transferre

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.