THE FEDERAL ELECTION COMMISSION

CAMPAIGN GUIDE

THE 1976 AMENDMENTS

INTRODUCTION

On May 11, 1976, the "Federal Election Campaign Act Amendments of 1976 " (Public Law 94-283) were signed into law and went into immediate effect.

These 1976 Amendments modify the "Federal Election Campaign Act of 1971" which had previously been amended in 1974.

To help candidates, political committees and others involved in federal election campaigns understand the effect of the new amendments, the Federal Election Commission has prepared this special "Campaign Guide" outlining major changes in the law.

Column II (1971/1974 Provisions) highlights the law in effect prior to the 1976 Amendments. Column III (1976 Amendments) highlights changes made by the new amendments.

It should be noted that this Campaign Guide should not be used as a substitute for the actual text of the law, but is only to provide a general overall summary of the effect of the 1976 Amendments. A special printing is being prepared of the text of the FECA, as amended, showing both deleted and additional language, which will be available shortly from the Commission.

This "Campaign Guide" does not include the new detailed provisions concerning solicitation of contributions to corporate or union separate segregated funds. This will be the subject of a separate "Campaign Guide" being prepared by the Commission.

Similarly, this "Campaign Guide" does not include the new Amendments to those sections of the law relating to public financing for Presidential elections and Presidential nominating conventions – these will be available in a new "Compilation of Federal Election Laws" also being prepared by the Commission – but only concentrates on the disclosure and limitations provisions applicable to all other candidates, political committees, and other persons.

One general change should be noted at the outset: Under the 1971/1974 Act, disclosure provisions were codified in Title 2, United States Code, and campaign limitation provisions were codified in Title 18, United States Code. The 1976 Amendments revised this structure so that all provisions (except the public financing provisions of Title 26), are now codified in Title 2.

For any further information, contact the FEC Office of Public Information, 1325 K Street, N.W., Washington, D.C. 20463, call (202) 382-4733, or call TOLL-FREE (800) 424-9530.

(May 1976)

SUBJECT	1971/1974 PROVISIONS	1976 AMENDMENTS
(1) CANDIDATES AND COMMITTEES		
(A) ORGANIZATION		
–Principal Campaign Committee Support	--Could not support any other candidate.	--Now may provide "occasional, isolated, or incidental" support of another candidate.
(B) REGISTRATION		(No change)
(C) RECORD-KEEPING		
–Records of contributions	--Had to be kept for contributions over $10.	--Now only requires record-keeping of contributions over $50. **Note: No change, however, in requirement that donors who contribute over $100 in the aggregate be identified in the reports where committee has knowledge of such aggregated contributions.
–Campaign depositories	--Candidate had to have "a" checking account for deposit of any contributions.	--Now may also maintain "such other accounts" as desired (including checking accounts, savings accounts, or certificates of deposit).
(D) REPORTING		
–Filing with Principal Campaign Committee	--Every committee supporting a candidate had to file its report with that candidate's Principal Campaign Committee.	--New law clarifies that only committees authorized by a candidate to raise contributions or make expenditures must file with the Principal Campaign Committee.
–Treasurer's "best efforts"	-- (No provision)	--Committee treasurers and candidates who show they have used "best efforts" to obtain and submit all required information shall be deemed in compliance with the law.
–Waiver of quarterly report filing	--Quarterly reports waived for any quarter in which $1,000 is not received or spent. (Except for end-of-year report due in January regardless of amount).	--In addition, in non-election year, candidates and committees authorized by candidates do not have to file reports in quarters when combined contributions and expenditures do not exceed $5,000 (except for end-of-year report due in January regardless of amount).
–Internal communications	-- (No provision)	--Adds new requirement that membership organizations (including labor organizations or corporations) must report their expenditures for all communications primarily devoted to express advocacy of the election or defeat of a clearly identified candidate, when the total actual cost of such communications relating to all candidates in an election exceeds $2,000.

SUBJECT	1971/1974 PROVISIONS	1976 AMENDMENTS
(2) CONTRIBUTIONS		
(A) CONTRIBUTION LIMITS		
(i) FROM AN INDIVIDUAL		
–To a candidate or that candidate's authorized committee(s)	--$1,000 per election.	--Same ($1,000 per election).
–To national political party committees	--No limit (except $25,000 limit on total contributions per year).	--$20,000 per year.
–To any other political committee	--No limit (except $25,000 limit on total contributions per year).	--$5,000 per year.
–Total aggregate contributions per year	--$25,000 per year.	--Same ($25,000 per year).
(ii) FROM A POLITICAL COMMITTEE QUALIFYING AS A "MULTICANDIDATE COMMITTEE" * (See definition below)		
–To a candidate or that candidate's authorized committee(s)	--$5,000 per election.	--Same ($5,000 per election).
–To national political party committees	--No limit.	--$15,000 per year.
–To any other political committee	--No limit.	--$5,000 per year.
–Total aggregate contributions per year	--No limit.	--Same (no limit).
(iii) FROM ANY OTHER POLITICAL COMMITTEE OR ORGANIZATION		
–To a candidate or that candidate's authorized committee(s)	--$1,000 per election.	--Same ($1,000 per election).
–To national political party committees	--No limit.	--$20,000 per year.
–To any other political committee	--No limit.	--$5,000 per year.
–Total aggregate contributions per year	--No limit.	--Same (no limit).

*** DEFINITION OF "MULTICANDIDATE COMMITTEE"**

--A political committee meeting all of the following 3 conditions:
(1) has been registered under the Act for 6 months;
(2) has received contributions from more than 50 persons;
(3) has made contributions to 5 or more federal candidates.
A state political party committee need only meet (1) and (2).

NOTE: There is no change in these conditions from the 1971/1974 Provisions, but the special term "multicandidate committee" was added in the 1976 Amendments.

SUBJECT	1971/1974 PROVISIONS	1976 AMENDMENTS
(CONTRIBUTIONS CONT.)		
(iv) SPECIAL EXCEPTIONS ADDED TO THE 1976 AMENDMENTS		
--Senate Elections: The Republican or Democratic Senatorial Campaign Committee, or the National Committee of a political party, or any combination of such committees may contribute not more than $17,500 in an election year to a Senate candidate.		
--Party Committee Limits: No limits on "transfers" between political committees of the same political party.		
--Subsidiary Committee Limits: For purposes of applying contribution limits, all political committees (including corporate or union separate segregated funds) established, financed, maintained or controlled by the same organization (such as subsidiaries, divisions, local units, etc.) are treated as a single political committee for purposes of contribution limits.		
NOTE: There is an exception to this "single political committee" rule for political parties. Contributions by a single national political party committee and by a single state political party committee are not treated as one committee for purposes of applying the contribution limits.		
(B) CONTRIBUTION DEFINITIONS		
--"Contract"	--Defined as "a contract, promise, or agreement, express or implied".	--Now only defined as a "written" contract. Also the words "express or implied" were deleted.
--Legal or accounting services	-- (No provision)	--Not counted as "contribution" so long as lawyer/accountant is paid by his or her regular employer and does not engage in general campaign activities. But amounts paid or incurred must be reported.
--$500 exemption	--Costs to an individual, up to $500, of sale of food or beverage by a vendor at cost.	--$500 exemption for vendor applies to a person (including committees, corporations, groups, etc.), not just an individual.
(3) EXPENDITURES		
(A) EXPENDITURE LIMITS		
--Candidate personal spending limits from own funds	--Presidential, $50,000; Senate, $35,000; House, $25,000.	--No limits except for Presidential candidates accepting public funds, which remain the same.
--Campaign spending limits	--Presidential: primary, $10 million; general, $20 million. --Senate: primary, greater of 8¢ per voter or $100,000; general, greater of 12¢ per voter or $150,000. --House: $70,000 each election. --Annual cost-of-living increase in spending limits. --Exemption of fund-raising costs up to 20% of the spending limits.	--No limits except for Presidential candidates accepting public funds, which remain the same.
(B) EXPENDITURE DEFINITIONS		
--Legal or accounting services	-- (No provision)	--Not counted as "expenditure" so long as lawyer/accountant is paid by his or her regular employer and does not engage in general campaign activities. But amounts paid or incurred must be reported.

SUBJECT	1971/1974 PROVISIONS	1976 AMENDMENTS
(4) INDEPENDENT EXPENDITURES		
--Definition	--An expenditure "relative to a clearly identified candidate... advocating the election or defeat of a clearly identified candidate".	--Changed to refer to expenditures "expressly" advocating a candidate. --To be "independent" an expenditure also can not involve any "cooperation", "consultation", or be in "concert" with or "be at the request or suggestion of" any candidate or candidate's agent. An expenditure made with any such involvement with a candidate is a "contribution" subject to contribution limits.
--Independent spending limit	--$1,000 per candidate per election.	--No limit.
--Reports:		
(i) Filed by individuals	--Reports of independent expenditures over $100 on dates political committees file, but reports need not be cumulative.	--Basically same reporting requirements, except the language "need not be cumulative" is stricken. --Additional language added that must file the same information required of contributors over $100, and the same information required of political committees. --Must also report name(s) of candidate(s) independently supported or opposed, and state "under penalty of perjury" whether there was any cooperation, etc., with any candidate. --Must report any "independent expenditure" of $1,000 or more within 24 hours if made within 15 days of an election.
(ii) Filed by political committees	--No special requirement. Same reports required of any political committee.	--Basically same, except must also report name(s) of candidate(s) independently supported or opposed, and state "under penalty of perjury" whether there was any cooperation, etc., with any candidate. --Must report any "independent expenditure" of $1,000 or more within 24 hours if made within 15 days of an election.
(5) PUBLICATION/BROADCAST NOTICES		
(A) Unauthorized literature or advertisements	--Must contain statement that unauthorized by candidate, and that candidate not responsible.	--These two sections (A) and (B) are replaced by a by a single new section covering communications "expressly advocating the election or defeat of a clearly identified candidate" through use of media, direct mail, or any advertisements. In such cases, the communication must either: (1) if authorized, state the name of the candidate or candidate's agent who authorized the communication, or (2) if unauthorized, state that the communication is unauthorized, identify who "made or financed" it, and list the name(s) of any affiliated or connected organization.
(B) Pamphlets or advertisements	--Must state who is responsible, and list names of officers for any organization.	
(C) Fund-raising solicitation	There is no change in the requirement that any fund-raising solicitation (whether authorized or unauthorized) contain a statement that reports are filed with, and available for purchase from, the FEC.	

SUBJECT	1971/1974 PROVISIONS	1976 AMENDMENTS
(6) MISCELLANEOUS PROVISIONS		
--Definition of "election"	--Included any political party caucus or convention "held" to nominate a candidate.	--Changed to include those which have "authority to" nominate a candidate.
--FEC indexes	----------	--FEC required to compile 2 new indexes: (1) Independent expenditures made on behalf of each candidate; (2) All political committees supporting more than one candidate, including the dates they qualify for the "multicandidate committee" contribution levels.
--Honorariums	--Federal officeholders or officers limited to $15,000 per year, and $1,000 per "appearance, speech, or article". Exemption for recipient's actual travel and subsistence.	--Limits increased to $25,000 per year and $2,000 per honorarium. --Travel and subsistence exemption extended to spouse or one aide. --Additional exemption added for agent or booking fees. --Honorariums exempt from definition of "contribution" to a candidate.
--Issue-oriented organization report	--Reports required by any organization making any reference to a candidate, including voting record lists, issue-oriented comments, etc.	--Deleted.
(7) FEDERAL ELECTION COMMISSION		
--Appointment	--6 Commissioners, 2 each appointed by President, Senate, and House. Staggered terms every year. 6 year terms.	--6 Commissioners, all appointed by the President. Confirmed by the Senate with 6 year terms staggered every 2 years (so terms expire in non-election years).
--Authority to prescribe regulations	--Only for Title 2 disclosure provisions. No authority to prescribe regulations for Title 18 limitations provisions.	--Since all the provisions of the FECA formerly codified in Title 18 are now included in Title 2, FEC now has authority to prescribe regulations for all provisions of the Act.
--Advisory opinions		
:Who may request	--Any federal officeholder, any federal candidate, or any political committee.	--Also, the national committee of any political party.
:Scope	--Must relate to specific transaction or activity of requestor.	--Basically same, but language now reads that advisory opinions must relate to the "application" of a general rule of law in the Act or regulations to a specific factual situation.
:Immunity	--Person receiving advisory opinion and acting in good faith reliance on it "presumed to be in compliance" with the law. --Limited to person asking and receiving advisory opinion.	--Basically same, but language now reads that such person "shall not. . .be subject to any sanction" of the law. --Extended to any person involved in same transaction, or in another transaction "indistinguishable in all its material aspects".

SUBJECT	1971/1974 PROVISIONS	1976 AMENDMENTS
(8) COMPLIANCE PROCEDURES		
--Authority	--FEC had "primary" civil jurisdiction authority.	--Now has "exclusive" primary civil jurisdiction authority.
--Form of complaints	-- (No provision)	--Now must be in writing, signed and sworn, notarized, and subject to false reporting laws. FEC may not act solely on basis of an anonymous complaint.
--FEC investigation	--Any complaint filed.	--Only if FEC "has reason to believe" violation has been committed.
--Rights of person complained against	--Right to request hearing concerning any complaint.	--Hearings eliminated, but when FEC investigates (see above), right to demonstrate that no action should be taken.
--Voluntary compliance	--FEC to utilize "informal means of conference, conciliation or persuasion" to settle cases.	--Basically same, except minimum of 30 days (or half the number of days before an election) to use informal methods. --Cases to be settled by adoption of "conciliation agreement". Civil penalties can be included in conciliation agreement involving "knowing and willful violations".
--Civil actions	--FEC authority to seek civil action in court, or ask Justice Department to seek civil relief.	--Now sole FEC authority.
--Referral of cases to Justice Department	--If apparent violation of a Title 18 provision (see (9)), or if FEC unable to correct a violation of Title 2 provision (see (9)).	--Now only if FEC determines there is probable cause of a knowing and willful violation, and if the violation involves contributions or expenditures aggregating $1,000 or more.
--Confidentiality	--FEC barred from making any information public about any investigation without consent of subject of investigation.	--Same. However, new provision requires FEC after investigation to make public any conciliation agreement, any attempt at conciliation, and any determination that no violation has occurred.
--FEC inaction	-- (No provision)	--Right to appeal to U.S. District Court for FEC failure to act on complaint within 90 days or for FEC dismissal of a complaint.
--Court enforcement	--No specific language, except referral to Justice Department.	--FEC has authority to seek court enforcement of a conciliation agreement, or of a court order.

SUBJECT	1971/1974 PROVISIONS	1976 AMENDMENTS
(9) PENALTIES STRUCTURE		
-Title 2 reporting and disclosure provisions (Sections 431-456)	--A fine up to $1,000; or 1 year prison; or both.	--For any violation, a fine up to the greater of $5,000 or the amount of any contribution or expenditure involved; -- (or in the case of a knowing and willful violation, a fine up to the greater of $10,000 or twice the amount of any contribution or expenditure involved).
--Limitations sections codified in the 1971/1974 Provisions in Title 18 (Sections 608-617), and re-codified in the 1976 Amendments in Title 2 (Sections 441a-441i)	--A fine up to $25,000; 1 or 5 years prison (depending on the section); or both.	--Same as above for any violation, except: --For knowing and willful violations of contribution and expenditure provisions aggregating $1,000 or more, a fine up to the greater of $25,000 or 300% of any amount involved; or 1 year prison; or both. --Exceptions: (i) these additional penalties apply to violations over $250 for: --corporate/union provisions --$100 cash contribution limit --prohibition of contributions in the name of another. (ii) these additional penalties apply to violations of any amount for misrepresentation of campaign authority.

GSA DC 76-9226

THE WHITE HOUSE

WASHINGTON

May 1, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN

SUBJECT: Conference Bill to Amend the Federal Election Campaign Laws

This supplements my memorandums to you of April 22 and 24 (see Tabs A & B) on the same subject. The Conference Committee has now approved a bill which is scheduled to be on the House Floor on Monday, May 3. There are no substantive changes in the bill, although; several significant changes have been made in the Joint Explanatory Statement. All of the Republican Conferees, except Bill Dickinson, have signed the Report.

I. Comments on the Joint Explanatory Statement

Attached at Tab C is a is a memorandum from the PFC General Counsel concerning certain changes made in the Explanatory Statement. We agree with his comments on advisory opinions and political action committees (PAC's). In addition, we offer the following comments:

1. The Statement does not define the term stockholder, but instead notes that the normal concepts of corporate law should apply. It is thus questionable whether employees with a beneficial interest in stock bonus, ownership, or option plans, where the rights are vested but the shares have not been transferred, could be considered to be stockholders. If they are stockholders, they can be solicited on an unlimited

basis, even though members of an union or other non-management employees are included. However, business interests have not yet expressed concern on this point.

2. Contribution limitations: The bill limits to $20,000 per year, contributions by individuals to "political committees established or maintained by a national political party," and to $15,000 per calendar year by PAC's to these same committees.

   It was previously understood that these limits applied so (i) an individual could divide the $25,000 of total contributions he is allowed per year among the National Committee, and the House and Senate Campaign Committees as long as he did not give one Committee more than $20,000; and (ii) a PAC could contribute $15,000 each to the National Committee, and the House and Senate Campaign Committees. However, the present language of the Statement so interprets the bill as to treat these three Committees as one for the purpose of applying the limitations on contributions made to them. The RNC indicates that this would have virtually no effect on its activities, and accordingly, does not object to this provision in its present form, but obviously it may have an adverse effect on the Senate and House Campaign Committees.

II. Comments on Reaction of Business Interests

A major objection of business interests had been to the risk of having to furnish employee and shareholders lists to unions. Although grounds for this objection have been removed by language in the Conference Statement, business is still complaining about the limitations which remain on whom they can solicit and

communicate with for political purposes. The argument is based on the First Amendment rights of the corporation and the employees to freely associate with persons having similar interests. Business states that a corporation's community of interest includes all of its employees. In this regard, business cites a letter sent to the FEC last year by Assistant Attorney General Thornburgh, which indicated that Justice would not take any action against corporations who solicited voluntary contributions from all of their employees. Justice's letter was based, in part, on this First Amendment argument, and it was later adopted by the FEC in its SUNPAC opinion.

If both corporations and unions are permitted unlimited solicitation rights, corporations may be said to have an advantage because only corporations know the identity of all of the employees and have the facilities or ability to canvas for contributions in the plant or to mail to home addresses. Because of these advantages, it is unlikely that a Democratic-controlled Congress will ever give unrestricted solicitation rights to corporations and unions unless unions are provided with all methods and facilities available to the corporation for solicitation, including the right to solicit non-union employees during business hours. The unions would argue that otherwise they are at a disadvantage in soliciting non-union employees when they have a community of interest with all of labor, whether or not organized. Yet, if such equal access were to be required by Congress, as a price for allowing unlimited solicitations by both corporations and unions, the corporations would likely object even more than they do to the present bill.

Thus, it seems more realistic for business to accept the present bill, and to try attacking it later on constitutional grounds rather than to expect that Congress will legislate in favor of corporations on this issue.

Attachments

THE WHITE HOUSE
WASHINGTON

May 3, 1976

TO: PHIL BUCHEN

FROM: RUSSELL A. ROURKE

_____ For Direct Reply

_____ For Draft Response

__X__ For Your Information

_____ Please advise

May 3, 1976

Dear George:

Many thanks for your letter of April 30 as well as the attachments relative to the Federal Election Campaign Act Amendments.

I noted the material with great interest, and I have been happy to bring it to the attention of Mr. Philip W. Buchen, Counsel to the President.

Thank you for taking the time to bring this matter to my attention.

With every good wish, I remain,

Sincerely,

Russell A. Rourke
Deputy to Presidential
Counsellor, John O. Marsh, Jr.

George D. Webster, Esq.
Webster, Kilcullen & Chamberlain
1747 Pennsylvania Avenue, N. W.
Washington, D. C. 20006
cb
cc: PBuchen

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OF COUNSEL
H. CECIL KILPATRICK
MILTON A. SMITH

April 30, 1976

Mr. Russell Roerk
The White House
Washington, D. C.

Dear Russ:

Attached hereto is a copy of a letter to Howard Cannon. This points out how bad this bill is for trade associations and in my opinion, it is a disaster. I am sending a copy of the letter to Bud Meredith also and he will have it so he can mention it to you on Monday.

Best personal regards.

Sincerely,

George D. Webster

GDW:jh

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MILTON A. SMITH

April 30, 1976

Mr. James P. Low
American Society of Association Executives
1101 - 16th Street, N.W.
Washington, D. C. 20036

Dear Jim:

The Congress has really stuck it to trade associations in the bill as it has come out of conference. This is the worst thing I have ever seen.

You have a meeting at 2 p.m. on Monday with Howard Cannon. I do not know what the explanation of this is but you cannot operate with them. Alan Dye is going to go with you and I suggest you might take Tom Boggs with you since I will be out of town.

Please see the attached memorandum which has been written by Alan Dye for your use on Monday.

Sincerely,

George D. Webster

GDW:jh

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OF COUNSEL
H. CECIL KILPATRICK
MILTON A. SMITH

April 30, 1976

Honorable Howard Cannon
United States Senate
Washington, D. C. 20510

Dear Howard:

On August 27, at your request, we sent you information explaining why we believed that Section 321 of the Federal Election Campaign Act Amendments of 1976 unfairly damage the trade association community. Primarily, this was because there was no clear description in the bill of who a membership corporation, such as a trade association, could solicit for contributions to its separate segregated fund, where its members were themselves corporations. The Senate provision tentatively adopted by the Conference Committee allowed membership corporations to solicit their members. The House provision, also adopted, would allow trade associations to solicit the stockholders and executive and administrative personnel of their members under limited conditions. The legislation left open the question of whether a trade association separate segregated fund could send a solicitation to a corporate member, and if so, what action that corporate member could take in response to such a solicitation.

Instead of taking some reasonable action to define the rights of trade associations in this area, such as described in the suggested colloquy which we submitted with our letter, the Conference Committee elected in its conference report (p. 63) to indicate that Section 321(b)(4)(C), allowing membership corporations to solicit their members, does not apply to trade associations with corporate members at all. What the conference report seems to mean is that a trade association which has corporate members may solicit contributions only under the conditions of Section 321(b)(4)(D). This would effectively disenfranchise many trade associations, since Section 321(b)(4)(D) allows solicitations only where the corporate member has specifically approved such solicitations and has approved no such solicitations by any other trade association in any calendar year. Thus, if most of a trade association's members are members of numerous trade associations, it may be able to solicit contributions from almost no one.

Additionally, what if a trade association is composed of both corporate and noncorporate members? May it solicit its noncorporate members without limit and its corporate members only within the limits of Section 321(b)(4)(D)? Or may it solicit its noncorporate members at all? If it is not apparent from the names of the members on the membership list whether or not particular members are incorporated, will such a trade association violate the law by sending a mailing to all of its members? Must such trade associations inquire of all their members whether they are incorporated, and then adjust its mailing list in accordance with its findings? These questions illustrate the ridiculous and discriminatory effects which would flow from following the intent expressed by the conference report. Such applications of the law will make it impossible for many associations or individuals to fully exercise their First Amendment rights. The Supreme Court in Buckley v.Valeo expressly found that in politics money can equal speech protected by the First Amendment. To deny one sector of the community the right to political speech is grossly unfair and probably unconstitutional.

A second problem with the amendments appears in §320 of the bill, which limits aggregate contributions of "affiliated" organizations. The major problem with this provision is that in many, if not most, cases, state and local affiliates of national trade associations are completely autonomous. No one of them has any control over another. The examples cited in the conference report (p. 58), however, indicate an intention to apply the "anti-proliferation" rules to wholly independent and autonomous affiliates of national organizations. Leaving aside the very serious question whether any such intention can be given legal effect, there are numerous issues of practicability and equity. For instance, why should one such organization be penalized for the actions of another? How is each local affiliate supposed to ascertain the amount which others have donated to any candidate? Once such an "anti-proliferation" provision is extended beyond organizations under common control it becomes ludicrous.

We believe that some change should be made in the committee report discussing these sections of the Election Act Amendments. Such changes are absolutely necessary to the proper functioning of the election law and to the participation of associations and their members in the political process. If there is anything at all which may be done in this regard at this late date, we urge you on behalf of ASAE and the association community to attempt it.

If we may give you any information which will help you to assess this issue, please let us know.

Very truly yours,

George D. Webster

THE WHITE HOUSE

WASHINGTON

Barry + Mr Schmults have cys.

ACTION MEMORANDUM LOG NO.:

Date: May 5 Time: 400pm

FOR ACTION: Phil Buchen
Robert Hartmann
Jack Marsh
Max Friedersdorf
Bill Seidman

cc (for information): Jim Cavanaugh
Dick Parsons

FROM THE STAFF SECRETARY

DUE: Date: May 6 Time: noon

SUBJECT:

S. 3065 - Federal Election Campaign Act Amendments of 1976

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

X For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Sign S. 3065 _____ Veto S. 3065 _____

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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

James M. Cannon
For the President

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 5 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3065 - Federal Election Campaign Act Amendments of 1976
Sponsor - Sen. Cannon (D) Nevada

Last Day for Action

May 17, 1976

Purpose

To reconsitute the Federal Election Commission as an independent executive branch agency, with members appointed in accordance with the requirements of the Constitution, and to amend certain other provisions of law relating to the financing and conduct of election campaigns.

Discussion

The enrolled bill, as reported out of Conference on April 28, 1976, passed the House by a roll call vote of 291-81 and the Senate by 62-29.

S. 3065 greatly exceeds the scope of the legislation you proposed to the Congress on February 16, 1976. That legislation, introduced in the Senate as S. 2987 by Sen. Griffin, would have (a) reconstituted the Commission's membership in accordance with the Supreme Court decision in Buckley v. Valeo and (b) limited the application of the laws administered by the Commission to the 1976 elections. This would have allowed for later consideration of a comprehensive and carefully considered election reform bill.

Mr. Buchen has given you several memorandums that discuss the bill in detail and analyze its various implications. In addition, the Department of Justice, in the attached views letter, sets forth several problems in the bill which, as they relate to separation of powers and enforcement, Justice believes are sufficiently serious to justify a veto:

- Separation of powers: congressional power to review and veto proposed regulations of the Commission, and retention of the Secretary of the Senate and Clerk of the House as members of the Commission, albeit without a vote.

- Enforcement problems: negotiation and compromise by the Commission of willful violations of criminal statutes.

- First Amendment issues: limitations on corporate management and union solicitations, and restrictions on the use of corporate and union funds in non-partisan activities.

- Statute of limitations: retention of an inadequate three-year period as opposed to the general Federal statute of limitations of five years.

Whether or not these concerns of Justice are outweighed by other considerations surrounding the bill as presented to you by Mr. Buchen is a question on which we defer to your principal advisers on this bill.

James M. Frey
Assistant Director for
Legislative Reference

Enclosures

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

May 4, 1976

Honorable James T. Lynn
Director, Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This is in response to your request for our views on H. Rep. No. 1057, the Conference Report on S. 3065, the Federal Election Campaign Act Amendments of 1976. 122 Cong. Rec. (daily ed.) H 3576-98.

Should S. 3065, as reported by the Conference Committee, be passed by both Houses, we believe that the following aspects of the bill, as they relate to both constitutional issues and enforcement problems of the Department of Justice, should be considered by the President in deciding whether to approve the bill:

1. The bill continues certain separation of powers problems.

a. Section 108 amends the powers of the Federal Election Commission as they relate to advisory opinions. It provides that a "general rule of law" not stated in the Act or in specified chapters of the Internal Revenue Code may only be proposed by the Commission as a rule or regulation pursuant to the procedures established by §315(c) of the Act. Advisory opinions issued prior to the proposed amendment must be set forth in proposed regulations within 90 days after the enactment of the amendments.

The net effect of this provision is to narrow the function of advisory opinions and broaden the function of regulations. Commission regulations are subject to disapproval by a single House of Congress. 2 U.S.C. §438(c).

When the President's bill was drafted, S. 2987, an Administration decision was made (contrary to the recommendation of the Office of Legal Counsel of this Department) not to propose deletion of the device for disapproval of regulations by either House of Congress because the proposal would be controversial. Nevertheless, the President stated in his Message to Congress that he thought that the provision was unconstitutional, Federal Election Campaign Act Amendments, 1976, Hearing before the Subcommittee on Privileges and Elections of the Senate Rules and Administration Committee, 94th Cong., 2d Sess., p. 134 (1976), and Assistant Attorney General Scalia (in charge of the Office of Legal Counsel) reiterated his "strenuous objection", at the Senate hearing. Id. at 133.

The proposed amendment would have the practical effect of contracting the independent powers of the Commission and expanding the practical significance of the congressional veto, making it more objectionable than previously. The Supreme Court declined to rule on the one-House veto provision involved in Buckley v. Valeo because the Commission, as constituted, could not validly exercise rule making powers. 96 S. Ct. 612, 692, n. 176 (1976). However, the spirit of the Buckley decision is that Congress should not engage in executing laws as opposed to enacting them. 96 S. Ct. at 682ff. This is entirely consistent with the position we have taken on the unconstitutionality of legislative veto of regulations. For general presentations on the subject see the statements by Assistant Attorney General Scalia in Congressional Review of Administrative Rulemaking, Hearings before the Subcommittee on Administrative Law and Governmental Relations, House Judiciary Committee, 94th Cong., 1st Sess., 373 (1975); and on Reform of the Administrative Procedure Act before the Subcommittee on Administrative Practice and Procedure, Senate Judiciary Committee, April 28, 1976.

It should also be noted that for the Commission to

decide individual cases properly without setting forth "general rules of law," will be difficult. This is an exceedingly artificial requirement, designed, of course, to keep the adjudicative function of the Commission as closely as possible within congressional control.

b. Section 101 of the bill provides that the Commission shall be composed of the Secretary of the Senate and the Clerk of the House, ex officio and without the right to vote, and six members appointed by the President with the advice and consent of the Senate. Although the holding of Buckley would be met by this provision since the President must appoint the voting members, the constitutional question still exists as to whether the two legislative officers, the Clerk of the House and the Secretary of the Senate, can remain on the Commission.

The President's bill provided for their elimination from the Commission, and Assistant Attorney General Scalia testified in the Senate hearing that their presence on the Commission would be both unconstitutional and an unwise precedent. The connection of the two ex officio members to the legislature is, of course, even closer than that of the members who the court held were unconstitutionally appointed, since they are not only appointed by Congress but also paid by it and removable by it. See Federal Election Campaign Act Amendments, 1976, Hearing, supra, pp. 119-20, 135-36 (1976). At the time that S. 3065 was reported by the Rules Committee, three minority members took exception to the fact that the bill failed to address the problems of legislative officers serving on an executive commission. S. Rep. No. 94-677, p. 62 (1976).

2. Enforcement problems.

The enforcement section, as amended (Sec. 109), would weaken all of the present statutes dealing with campaign finance violations (18 U.S.C. §§608-617) by enabling the Commission to dispose of even willful

violations through nonjudicial means. We strenuously object, in principle, to the concept that the existence or non-existence of willful violations of criminal statutes should be the subject of negotiation and compromise with the Commission.

3. First Amendment issues.

Among other things, §112 of the bill would move 18 U.S.C. §610 to the Federal Election Campaign Act (FECA), making it §321. It would alter the existing exceptions to the general bar on corporate or union contributions in the following ways:

a. It would impose restrictions on the categories of persons which "segregated funds," supported with corporate or union assets, can lawfully solicit. Generally, corporate funds would be allowed to solicit only corporate stockholders and management or supervisory personnel, and their families while union funds would be allowed to solicit only union members and their families. (Section 112 adding §321(b)(4)(A) to the FECA). A corporate fund nevertheless would be permitted to solicit unionized employees and their families only twice a year, and a union fund would be permitted to solicit management personnel and stockholders only twice a year. Section 112 adding §321(b)(4)(B) to the FECA. Neither union nor corporate segregated funds are permitted to solicit persons who are not employees or shareholders of the business entity with which the fund in question (be it union or corporate) is associated.

Restrictions such as these pose questions of deprivation of associational rights protected by the First Amendment. A 1948 decision, United States v. C.I.O., 335 U.S. 106, 121, indicated that corporations and unions had a First Amendment right to communicate with members, stockholders or customers on subjects of mutual political interest. In United States v. Pipefitters Local #562, 434 F.2d 1116, 1123 (8th Cir. 1970) reversed on other grounds, 407 U.S. 385 (1972), the Court of Appeals

for the Eighth Circuit held that the right to maintain segregated funds supported by unions or corporations was essential to preventing the present election law (18 U.S.C. §610) from violating the First Amendment. Most recently, in Buckley v. Valeo, supra, 96 S. Ct. 639, fn. 31, the Court said: "Corporate and union resources without limitation may be employed to administer these [segregated] funds and to solicit contributions from employees, stockholders, and union members." The Court was characterizing what the law permitted rather than what the First Amendment required. However, the discussion in the Buckley footnote is significant, since the fact that such independent association was available seems to have been a factor in the Court's conclusion that the limits imposed on individual contributions by the present 18 U.S.C. §608(b) are constitutional. Thus, restricting the scope of solicitation of segregated funds through the proposed legislation could undermine the contribution limitations which this bill carries forward into the FECA. Section 112, adding §320 to the FECA.

b. Proposed §321(b)(a)(B), as added by §112 of the bill, seems to place restrictions on the use of corporate or union funds to engage in non-partisan activities. The language of this subsection permits such expenditures only if they are intended to defray the cost of voter registration drives and get-out-the-vote campaigns and only if they are directed at members of unions and their families or stockholders and management personnel of corporations. However, the reach of this provision is different from the definition of "expenditure" contained in the definitional section (2 U.S.C. §413(f)(4)(B)), which purports to permit any non-partisan expenditures "designed to encourage individuals to register to vote, or to vote." The Conference Report purports to resolve the conflict between the definition and the statutory text by a compromise which would permit corporations and unions to engage in non-partisan activities not restricted as in §321, provided they do so as a joint venture with some recognized non-partisan organization. 122 Cong.

Rec. (daily ed.) H 3594. It is not clear what weight can be given the Conference Report in view of the lack of statutory text to support it. Even if the compromise in the Report is valid, §321(b)(2)(B) could still be read to prohibit such innocuous activities as the use of corporate or union premises to provide a public forum from which all qualified candidates could speak to the public.

This is, of course, a constitutionally sensitive area and there are cases indicating that the First Amendment protects the right to engage in non-partisan activities. Cort v. Ash, 496 F.2d 416, 426 (3d Cir. 1974) rev'd on other grounds, 422 U.S. 66; United States v. Construction and General Laborers Local #264, 101 F. Supp. 869, 875 (W.D. Mo., 1951); cf. United States v. Auto Workers, 352 U.S. 567, 586 (1957); United States v. Pipefitters, 434 F.2d 1116, 1121 (8th Cir., 1970), supra.

It is not therefore clear how far restrictions can be applied to corporate or union political expenditures which are truly nonpartisan. In such circumstances, the Federal interest in regulating campaign expenditures is slight compared to the limitation placed on the constitutional right of expression and the performance of civic duties.

The foregoing comments concerning the possible constitutional problems involved in restricting both solicitations by segregated funds, non-partisan expenditures by unions and corporations, were incorporated, in substance, in a letter which the Criminal Division of the Justice Department sent to the Federal Election Commission commenting on one of the Commission's proposed Advisory Opinions on these subjects. This letter, dated November 3, 1975, is in the public domain and was largely adopted by the Commission in the widely discussed SUN-PAC Advisory Opinion which resulted. Advisory Opinion 1975-23.

As the Court indicated in Buckley v. Valeo, delicate balancing considerations are involved in deciding First Amendment issues. At present, the law in this area is not so clear that these First Amendment issues compel or clearly warrant disapproval of the bill.

4. Statute of limitations.

The bill does not change the present three-year statute of limitations. Since this Department must usually wait until the Commission refers a matter to it before it prosecutes, §313, this special limitation period, added in 1974 (2 U.S.C. §455), is inadequate. The general Federal statute of limitations is five years.

The bill, is, of course, long and complex. We have not, at this juncture attempted to list all the legal problems it may present, nor are all the items analyzed above of equal importance.

The Department of Justice believes, however, that the problems listed, as they relate to separation of powers and enforcement, are sufficiently serious to justify a Presidential veto of S. 3065.

Sincerely,

Michael M. Uhlmann

Michael M. Uhlmann
Assistant Attorney General
Office of Legislative Affairs

THE WHITE HOUSE

WASHINGTON

May 10, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: PHILIP W. BUCHEN P.

SUBJECT: Public and Congressional Reaction to the Federal Election Campaign Act Amendments of 1976

A solicitation was made by the U. S. Chamber of Commerce to its members which urged them to oppose your signing the above bill and to register their opposition by communicating with you. The solicitation was impassioned and, in my opinion, it misrepresented or overstated the effects on business of the Amendments enacted by Congress.

Attached at Tab A is a summary of the business firms which have registered opposition to your signing of the bill. I have my doubts that people who sent communications in opposition to the bill fully understand all aspects of the legislation or appreciate the consequences of your attempting to get better legislation out of Congress at this time.

Because of the campaign by the U. S. Chamber of Commerce to arouse opposition, it is not surprising that we lack communication in support of your signing. However, Jack Mills called to indicate that he and his trade association think you should sign the bill. The same is true of Bob Clark of Sante Fe Railroad, John Tope of Republic Steel and Rod Markley of Ford Motor Company.

Attached at Tab B is a summary of opinions expressed by Members of Congress who wrote to you in regard to the bill.

Attached at Tab C is a draft signing statement. Attached at Tab D is a draft veto statement which is now being revised.

Attachments

BUSINESS REACTION

VETO

Joseph B. McGrath
Forest Product Political Committee

J. W. Heiney
Indiana Gas Company Inc.

David E. Brown
Kemper Insurance and Financial Co.

Ian Macgregor
Amax Inc.

Richard Peake
Government & Public Affairs
PPG Industries, Inc.

E. F. Andrews
Allegheny Ludlum Industries, Inc.

Lyle Littlefield
Gerber Products Company

John Harper
Alcoa

Michael D. Dingman
Wheelabrator-Frye Incorporated

David Packard
Hewlett-Packard Company

Paul E. Thornbrugh
MAPCO, Inc.

Robert A. Roland
National Paint & Coatings Assoc.

John L. Spafford
Associated Credit Bureaus

William R. Roesch
Kaiser Steel Corporation

VETO - Continued

James Maclaggan
Ampact

C. Boyd Stockmeyer
The Detroit Bank and
Trust Company

O. H. Delchamps
Delchamps, Inc.

E. J. Schaefer
Franklin Electric Co, Inc.

Russell H. Perry
Republic Financial Services, Inc.

Charles S. Mack
CPC International, Inc.

Vestal Lemmon
NAII

Samuel J. Damiano
Chamber of Commerce

Donald M. Kendall
PEPSICO

Robert F. Magill
General Motors Corporation

James A. Brooks
The Budd Company

Robert Ellis
Chamber of Commerce

Richard L. Lesher
Chamber of Commerce

Roger J. Stroh
United Fresh Fruit and Vegetable
Assn.

VETO - Continued

James W. McLamore
National Restaurant Association

C. David Gordon
Association of Washington
Business

Raymond R. Becker
Interlake, Inc.

Bernard J. Burns
National Agents Political
Action Committee

Rodney W. Rood
Atlantic Richfield Company

Arthur F. Blum
Independent Insurance Agents
of America

John Pannullo
National Utility Contractors Assn.

Harry Roberts
True Drilling Co.

Michael R. Moore
Texas Retail Federation

Moody Covey
Skelly Political Action Committee

J. Kevin Murphy
Purolator Services, Inc.

Harold J. Steele
First Security Bank of Utah

Edwin J. Spiegel, Jr.
Alton Box Board Company

Frank K. Woolley
Association of American
Physicians and Surgeons

Jack W. Belshaw
Wellman Industries Good
Government Fund

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Gerald W. Vaughan
Union Camp Corporation

James A. Gray
National Machine Tool
Builders Association

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Cosmo F. Guido
National Lumber and Building
Material Dealers Assoc.

R. W. Strauss
Stewart-Warner Corporation

Robert S. Boynton
National LIme Association

TAB B

CONGRESSIONAL

SIGN	VETO
Speaker Carl Albert	Congressman Jake Garn
Congressman Bill Frenzel	
Congressman Walter Mondale	
Senator Robert Taft	

THE WHITE HOUSE

WASHINGTON

May 10, 1976

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CONGRESSIONAL

SIGN	VETO
Speaker Carl Albert	Congressman Jake Garn
Congressman Bill Frenzel	
Congressman Walter Mondale	
Senator Robert Taft	

May 10, 1976

DRAFT SIGNING STATEMENT

On October 15, 1974, I signed into law the Federal Election Campaign Act Amendments of 1974 which made far-reaching changes in the laws affecting federal elections and election campaign practices. This law created a Federal Election Commission to administer and enforce a comprehensive regulatory scheme for federal campaigns.

On January 30, 1976, the United States Supreme Court ruled that certain features of the 1974 law were unconstitutional and, in particular, declared that the FEC could not constitutionally exercise enforcement and other executive powers unless the manner of appointing the Members of the Commission was changed.

Today, I am signing into law the Federal Election Campaign Act Amendments of 1976. These Amendments will duly reconstitute the Commission so that the President shall appoint all six of its Members, by and with the advice and consent of the Senate.

The failure of the Congress to reconstitute the Commission earlier and the resulting deprivation of essential Federal matching fund monies has so substantially

impacted on seven of the candidates seeking nomination for the Presidency by their respective parties that they felt impelled to seek relief on two occasions from the Supreme Court. The Court determined that it was not in a position to provide that relief.

Further delay in reconstituting the Commission would have an even more egregious and unconscionable impact on these candidates and on the conduct of their campaigns. As President, I cannot allow the outcome of the primary elections to be influenced by the failure of candidates to have the benefits and protections of laws enacted before the campaigns and on which they have relied in seeking their respective nominations.

Also, further delay would undermine the fairness of elections this year to the U. S. Senate and the House of Representatives, as well as to the Office of President, because effective regulation of campaign practices depends on having a Commission with valid rulemaking and enforcement powers. It is most important to maintain the integrity of our election process for all Federal offices so that all candidates

and their respective supporters and contributors are made to feel bound by enforceable laws and regulations which are designed to overcome questionable and unfair campaign practices.

The amendments have received bi-partisan support in both Houses of Congress and by the Chairpersons of both the Republican National Committee and the Democratic National Committee. This support provides assurance that persons strongly interested in the future of both major political parties find the law favors neither party over the other.

Accordingly, in addition to approving this legislation, I am submitting to the Senate for its advice and consent, the nominations of the six current members of the Commission as members of the new Commission. I trust that the Senate will act with dispatch to confirm these appointees, all of whom were previously approved by the Senate, as well as the House, under the law as it previously existed.

Notwithstanding my readiness to take these steps, I do have serious reservations about certain aspects of the present amendments. Instead of acting promptly to adopt the provisions which I urged -- simply to

reconstitute the Commission in a constitutional manner -- the Congress has proceeded to amend previous campaign laws in a confusing variety of ways.

The result is that the Commission must take additional time to consider the effects of the present amendments on its previously issued opinions and regulations. The amendments lack clarity in many respects and thus may lead to further litigation. Those provisions which purport to restrict communications and solicitations for campaign purposes by unions, corporations, trade associations and their respective political action communities are of doubtful constitutionality and will surely give rise to litigation. Also, the Election Campaign Act, as amended, seriously limits the independence of the Federal Election Commission from Congressional influence and control.

In one important respect, the present limitations depart substantially from the accepted goal of making the new Commission, which will have considerable discretionary authority over the interpretation and application of Federal election campaign laws, independent from the control of incumbents in the

exercise of that discretion. Specifically, it would permit either House of Congress to veto regulations which the Commission issues.

On numerous occasions, Presidents have stated that provisions of this sort, allowing the Congress to veto regulations of an executive agency, are an unconstitutional violation of the doctrine of separation of powers. I have discussed this matter with the Attorney General, and it is our hope that clear judicial resolution of the constitutional point can soon be obtained. In the meantime, I hope and expect that the Commission will exercise its discretion with the degree of independence which the original proponents of this legislation and, I believe, the public expect and desire.

I look to the Commission, as soon as it is reappointed, to do an effective job of administering the campaign laws equitably but forcefully and in a manner that minimizes the confusion which is caused by their added complexity. In this regard, the Commission will be aided by a newly provided comprehensive and flexible civil enforcement mechanism designed to facilitate voluntary compliance through conciliation agreements and to penalize non-compliance through

means of civil fines.

In addition, the new legislation refines the provisions intended to control the size of contributions from a single source by avoiding proliferation of political action committees which are under common control, and it strengthens provisions for reporting money spent on campaigns by requiring disclosure of previously unreported costs of partisan communications intended to affect the outcome of Federal elections.

I would have much preferred postponing consideration of needed improvements to the Federal Election Campaign laws until after the experience of the 1976 elections could be studied. I still plan to recommend to the Congress in 1977 passage of legislation that will correct problems created by the present laws and will make additional needed reforms in the election process.

DRAFT VETO

Statement By the President

Almost three months ago, the United States Supreme Court ruled that certain provisions of the Federal Election Campaign Laws were unconstitutional, and, in particular, declared that the FEC could not constitutionally exercise enforcement and other executive powers unless the manner of appointing the Members of the Commission were changed. At the same time, the Court made it clear that the Congress could remedy this problem by simply reconstituting the Commission and providing for Presidential appointment of the Members of the Federal Election Commission.

Although I fully recognized that other aspects of the Court's decision, as well as the original election law itself, mandate a critical and comprehensive review of the campaign laws, I realized that there would not be sufficient time for such a review to be completed during the time allotted by the Court which would result in any meaningful reform. Moreover, I recognized the obvious danger that various opponents of campaign reform and other interests -- both political and otherwise -- would exploit the pressures of an election year to seek a number of piecemeal, ad hoc

and hastily considered changes in the election laws. In accordance with the Court's decision, I submitted remedial legislation to Congress for immediate action which would simply and immediately have reconstituted the Commission for this election, while at the same time, ensuring full scale review and reform of the election law next year with the added benefit of the experience to be gained by this election. The actions of the Congress in ignoring my repeated requests for immediate action and instead enacting a bill which would fundamentally destroy the independence of the Commission, have confirmed my worst fears.

The most important aspect of any revision of the election laws is to insure the independence of the Federal Election Commission. This bill provides for a one-house, section-by-section veto of Commission regulations -- a requirement that is unconstitutional as applied to regulations to be proposed and enforced by an independent regulatory agency. Such a permanent restriction would have a crippling influence on the freedom of action of the Commission and would only invite further litigation.

Moreover, the bill would also introduce certain new provisions into the election law which may be of doubtful constitutional validity, would inadvertently affect other federal legislation, and would at the same time change many of the rules applicable to the current election campaigns of all federal candidates. In the meantime, campaigns which were started in reliance on the funding and regulatory provisions of the existing law all are suffering from lack of funds and lack of certainty over the rules to be followed this year. The complex and extensive changes of this bill will only create additional confusion and litigation and inhibit further meaningful reform. Even those changes which I would consider desirable and an improvement over existing law would be best considered from the perspective of a non-election year with full and adequate hearings on the merits and impact of these revisions.

Accordingly, I am returning Senate bill 3065 to the Congress without my approval and again ask the Congress to pass the simple extension of the life of the Commission. Tbe American people want an

independent and effective Commission. All candidates must have certainty in the election law and all Presidential candidates need the federal matching funds which have been unduly held up by those who would exploit the Court's decision for their own self-interest. At this late stage in the 1976 elections, it is critical that the candidates be allowed to campaign under the current law with the supervision of the Commission in a fair and equitable manner absent the disruptive influence of hastily enacted changes.

ACTION MEMORANDUM — WASHINGTON — LOG NO.:

Date: May 5 — Time: 400pm

FOR ACTION: Phil Buchen
Robert Hartmann
Jack Marsh
Max Friedersdorf
Bill Seidman

cc (for information): Jim Cavanaugh
Dick Parsons

FROM THE STAFF SECRETARY

DUE: Date: May 6 — Time: noon

SUBJECT:

S. 3065 - Federal Election Campaign Act Amendments of 1976

ACTION REQUESTED:

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

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Sign S. 3065 ✓ Veto S. 3065 _____

P.W.B.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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

James M. Cannon
For the President

5/4/76

DRAFT SIGNING STATEMENT

On October 15, 1974, I signed into law the Federal Election Campaign Act Amendments of 1974 which made far-reaching changes in the laws affecting federal elections and election campaign practices. This law created a Federal Election Commission to administer and enforce a comprehensive regulatory scheme for federal campaigns.

On January 30, 1976, the United States Supreme Court ruled that certain features of the 1974 law were unconstitutional and, in particular, declared that the FEC could not constitutionally exercise enforcement and other executive powers unless the manner of appointing the Members of the Commission was changed.

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Further delay in reconstituting the Commission would have an even more egregious and unconscionable impact on these candidates and on the conduct of their campaigns. As President, I cannot allow the outcome of the primary elections to be influenced by the failure of candidates to have the benefits and protections of laws enacted before the campaigns on which they have relied in standing for nomination.

Also, further delay would undermine the fairness of elections this year to the U. S. Senate and the House of Representatives, as well as to the Office of the President, because effective regulation of campaign practices depends on having a Commission with valid rule-making and enforcement powers. It is most important to maintain the integrity of our election process for all Federal offices that all candidates and their respective supporters and contributors are made to feel bound by enforceable laws and regulations which are designed to overcome questionable and unfair campaign practices.

The amendments have received bi-partisan support in both Houses of Congress and by the Chairpersons of both the Republican National Committee and the Democratic National Committee. This support provides assurance that persons strongly interested in the future of both major political parties find the law favors neither party over the other.

Accordingly, in addition to approving this legislation, I am submitting to the Senate for its advice and consent, the nominations of the six current members of the Commission as members of the new Commission. I trust that the Senate will act with dispatch to confirm these appointees, all of whom were previously approved by the Senate, as well as the House, under the law as it previously existed.

Notwithstanding my readiness to take these steps, I do have serious reservations about certain aspects of the present amendments. The Congress instead of acting promptly to adopt the provisions which I urged -- simply to reconstitute the Commission in a constitutional manner -- has proceeded to amend previous campaign laws in a confusing variety of ways.

The result is that the Commission will have to take additional time to consider the effects of the present amendments on its previously issued opinions and regulations. The amendments, as drafted, lack clarity in many respects and thus may lead to further litigation. These provisions which purport to restrict communications and solicitations for campaign purposes by unions, corporations, trade associations and their respective political action communities are of doubtful constitutionality and will surely give rise to litigation. Also, the Election Campaign Act, as amended, seriously limits the independence of the Federal Election Committee from congressional influence and control.

On numerous occasions, my predecessors and I have stated that provisions such as those contained in this legislation that allow one house of Congress to veto the regulations of an Executive agency are an unconstitutional violation of the doctrine of separation of powers. In passing the present legislation under which candidates who serve in the Congress reserve to themselves the right to reverse the decisions of the Commission in this fashion, the Congress has failed to assure that the agency to administer and enforce the Federal election campaign laws can be truly independent in the exercise of its regulatory functions.

For this reason, I have directed the Attorney General to take such steps at the appropriate time as may resolve the Constitutional issues which will arise if either House of Congress chooses to interfere with the independence of the Commission by exercise of the Congressional one-house veto over Commission rules or regulations.

I look to the Commission, as soon as it is reappointed, to do an effective job of administering the campaign laws as now amended equitably but forcefully and in a manner that minimizes the confusion which is caused by their complexity. In this regard, the Commission will be aided by a newly provided comprehensive and flexible civil enforcement mechanism designed to facilitate voluntary compliance through conciliation agreements and to penalize non-compliance through means of civil fines.

In addition, the new legislation refines the provisions intended to control the size of contributions from a single source by avoiding proliferation of political action committees which are under common control, and it strengthens provisions for reporting money spent on campaigns by requiring disclosure of previously unreported costs of partisan communications intended to affect the outcome of Federal elections.

I would have much preferred postponing consideration of needed improvements to the Federal Election Campaign laws until after the experience of the 1976 elections could be studied. Yet, I do welcome certain of the changes made by the present bill which apprear to go part way in making improvements. I still plan to recommend to the Congress in 1977 passage of legislation that will correct problems created by the present laws and will make additional needed reforms in the election process.

THE WHITE HOUSE
WASHINGTON

5/12

Barry cleared
this with
Mike McCurry
in your absence.

FEC - UNCONSTITUTIONAL

Q. The President, in his statement, says that the FEC amendments are unconstitutional. Why did he sign them into law?

A. Although there are weaknesses in the bill, the President, in his statement, said that, "...I have nevertheless concluded that it is in the best interest of the Nation that I sign this legislation. Considerable effort has been expended by members of both parties to make this bill as fair and balanced as possible."

The President went on to point out in his statement that the amendments jeopardize the independence of the Federal Election Commission by permitting either House of Congress to veto regulations which the Commission issues. The President stated that, in his opinion, this provision is unconstitutional and he has directed the Attorney General to challenge it.

The entire law is not unconstitutional, and indeed the Supreme Court so ruled on January 30. The unconstitutional provisions -- particularly relating to the one-House veto -- can be either corrected by new legislation or perhaps by court action.

In the meantime, the Commission, once reconstituted, can continue to insure that elections are run in the fair manner.

M.D.
5/12/76

FEC

THE WHITE HOUSE

WASHINGTON

May 21, 1976

Dear Mr. Goodmon:

Thank you for your letter of May 10 in which you extend to me an opportunity to reply to a recent Viewpoint Editorial (no. 3340) on the Federal Election Campaign Act Amendments of 1976.

I appreciate your thoughtfulness in this regard and I am pleased to accept this opportunity to respond. I have enclosed a copy of the President's signing statement which I believe explains both the effects of this Bill and the reasons underlying the President's decision to sign it. I trust that you will consider the President's statement as an appropriate response for an editorial broadcast.

Again, thank you for your courtesy.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

Mr. James F. Goodmon
President
Capitol Broadcasting Co., Inc.
P.O. Box 12000
2619 Western Boulevard
Raleigh, North Carolina 27605

THE WHITE HOUSE

WASHINGTON

October 1, 1976

MEMORANDUM

TO: THE PRESIDENT

FROM: MILDRED LEONARD ML

RE: "MOTORCYCLERS FOR FORD COMMITTEE"

David Mehney has the following suggestion to assist in your campaign. He would like your approval of this idea and needs your response by Wednesday, October 6th:

Under the heading of "Motorcyclers for Ford Committee," which would consist of Dave Mehney and Ivan Wager, posters and a letter supporting you will be sent to the motorcyle dealers throughout the country.

On the posters for display in the dealerships Dave would like to have photographs of Jack or Steve (or both) showing them riding motorcycles. NO PARTICULAR MOTORCYCLE COMPANY WOULD BE ADVERTISED. In fact, Dave said the photos would definitely not show any brand names.

Dave Mehney and Ivan Wager want to do this on their own and at their own expense. He recognizes that the cyclists' endorsement of you might not go well with many people who do not like motorcycles. But those same people are not likely to go into the dealers where the posters and materials would be displayed.

cc: Mr. Buchen-per President's instructions for discussion with him.
Mr. Baker - " " " " " " " .
Mr. Cheney " " " " " " " .