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Dick Cheney

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THE WHITE HOUSE

WASHINGTON

February 26, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES E. CONNOR

SUBJECT: FEDERAL ELECTION LAWS

The purpose of this memorandum is to bring you up to date on recent developments in the Federal Elections Commission problem and to obtain your decision on future courses of action.

BACKGROUND:

As a result of the Supreme Court decision on January 30th, the Federal Election Commission will lose most of its powers as of midnight Monday, March 1st. Your position to date has been to call for a simple reconstitution of the Federal Election Commission in an appropriate Constitutional fashion.

It had initially appeared that the greatest resistance to reconstitution would be by Congressman Wayne Hays. Last week, however, Hays, after meeting with Labor leaders in Florida, changed his position substantially and agreed to reconstitution and a number of other amendments to the Federal Election Law. On Friday, February 20th, you issued a statement (attached at Tab A) which indicated that you would have "very serious reservations" about any change in the existing law and you again urged the Congress to take only the step of reconstituting the Commission in the appropriate way. Since then we have been able to obtain a copy of the Hays bill and analyze it. The problems with it are summarized at Tab B. In addition, actions late this afternoon by the Senate are discussed in Tab C.

ISSUES:

The Hays bill is seen as totally objectionable. It is clearly intended as a mechanism by the Democrats to institutionalize the financial power of the labor unions in the electoral process and to lessen significantly

the ability of other interests in society to participate in the financing of electoral campaigns. There appears to be an extremely strong push on the part of the Democrats to force action on the Hays bill.

Some of your advisers and representatives of outside groups believe a clear veto signal at this time is crucial to solidify Republican Congressional support on the Hill. Max Friedersdorf, however, after consultation with Rhodes and Griffin, believes a Presidential statement reemphasizing the President's recommendation and urging Congress to act is necessary. They prefer to describe the reported Senate Rules Committee Bill as "unacceptable in its present form"; not give an overall veto signal; and not issue a signal on the House Bill until it is in final form. Jack Marsh indicates that a veto signal for the Hays bill as reported out of Committee would be appropriate.

A draft of a veto signal statement is attached at Tab D.

As far as whether or not to issue a veto signal is concerned, there are several options you might wish to consider.

Option 1: Issue a clear veto signal for any legislation other than simple reconstitution of the Commission.

Option 2: Issue a clear veto signal for the House version in its present form.

Option 3: Take no action now and wait for further developments next week.

A second concern centers around the possibility of an extension of the life of the Federal Elections Commission. This afternoon Common Cause filed for a 30 day extension in order to permit Congressional action. The Justice Department will be asked by the Supreme Court to comment on the Common Cause motion. It will be necessary for you to decide how we should respond to that request.

In the absence of the Federal Election Commission there will not be any legal way for matching funds to be paid to Presidential candidates. The PFC thinks that you are in a better position than either Reagan or the Democratic candidates to survive for a period without matching funds. Your advisers further agree that a lack of matching funds is the surest method for pressing the Democratic leadership to take action on reconstituting the Commission, and they suggest that you vigorously oppose any attempts to provide matching funds through other means.

Your choices are basically three-fold:

- Option 1: To indicate support for a 30 day extension.
- Option 2: To oppose any extension on the grounds that the Congress can certainly act if it chooses to.
- Option 3: To indicate you would accept an extension, but one of not more than a week since the time necessary for simple reconstitution is quite brief.

The advantage of Option 1, to indicate support for a 30 day extension, is that it already has been proposed by so-called reform groups and your support for it would be seen as aligning you with the reform movement. The disadvantage is that it would take pressure off of the Congress to act quickly because it would keep funds flowing at least for-30 days to the Democratic candidates.

The advantage of Option 2, to oppose extension, is that it would maximize the pressure on the Congress to act. Its disadvantage is it might be construed as your being against the Federal Election Commission.

The advantage of the 3rd Option, an extension of not more than a week, is that it would keep pressure on. Its disadvantage is that it appears doubtful that the Court would accede to such a brief request. Bob Visser is of the opinion that the Court is likely to reject any request for an extension, but that if they did grant such a request, it would probably be for the 30 day period.

Attachments:
Tabs A-D

FEBRUARY 20, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

On February 16, I submitted legislation to the Congress which would reconstitute the Federal Election Commission along the lines mandated by the Supreme Court. At that time, the Congress had two weeks in which to take affirmative action on this legislation or the Commission would lose most of its powers under the Federal Election Campaign Act. Now, there are only nine days left for the Congress to act.

I believe that the measure I proposed is the right way to proceed. There is simply no time to consider with sufficient care amendments to the law which are not essential to compliance with the Supreme Court decision. Nor is this the time to introduce other changes and new uncertainties into the law just as the primaries are beginning. I would have very serious reservations about any change in the existing rules under which citizens may be allowed to participate in the 1976 elections and I urge that the Congress take only the simple and necessary step of reconstituting the Federal Election Commission in an appropriate constitutional manner.

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February 26, 1976

MEMORANDUM TO: Jim Conner
FROM: Bob Visser *RV*
Tim Ryan
SUBJECT: Federal Election Campaign Act
Amendments of 1976
Proposed by Representative Hays

The proposed bill submitted to the Committee on House Administration by Rep. Hays on February 23, 1976, would seriously alter the Federal election campaign laws as they presently exist. This bill essentially tracks the proposal by Senator Pell with the major exception that it does not include public financing for Congressional members.

The Hays bill would have the following effects:

1. Reconstitute the Federal Election Commission (FEC) so that it is composed of six members appointed by the President with the advice and consent of the Senate and the Secretary of the Senate and the Clerk of the House, ex officio, and without the right to vote.

2. Members of the Commission will be appointed on a full-time basis and may not engage in any other business, vocation or employment.

Comment: At the present time the Commissioners may engage in outside business. In fact, Commissioners Curtis and Tiernan are presently engaged in the private practice of law.

3. The Commission is given exclusive and primary jurisdiction with respect to the civil enforcement of the new bill's provisions. The criminal provisions have been consolidated within Title 2 of U. S. Code and would provide less stringent criminal sanctions than the existing law.

4. Advisory Opinions which involve activity which is not subject to any existing rule or regulation of the FEC must be reduced to regulation form within thirty (30) days.

Comment: This provision will cause utter confusion at the Federal Election Commission since the time frame is unreasonable and certain issues must be handled on a case-by-case basis and are not easily reduced to regulation.

5. Whenever a Committee of the House reports a resolution relating to a regulation or a rule of FEC, this bill provides that it is, at any time thereafter, in order to move to proceed to the consideration of that resolution. The motion is highly privileged and is not debatable. In addition, any amendment to the motion is not in order nor may one move to reconsider the vote by which the motion is agreed to or disagreed.

6. Individual contributions to a political committee are limited to \$1,000 per calendar year; political committees may contribute only \$5,000 to other political committees.

Comment: The present election campaign law found constitutional by the Supreme Court in Buckley v. Valeo provides that an individual may contribute up to \$25,000 per calendar year to any political committee such as the RNC. In addition, the present law places no monetary restriction on political committees contributing to other political committees. For example, a political action committee (PAC) could contribute unlimited monies to the RNC since a PAC is considered a "political committee". In addition, the Hays' bill does not fully describe whether a political committee is restricted to contributing \$5,000 to another political committee per calendar year or per election; presently it would restrict a contribution to a one-time basis.

7. The bill restricts the proliferation of political committees established, financed, maintained, or controlled by any person, including any parent, subsidiary, branch, division, department or a local unit of such person or by any group of persons.

Comment: This provision restricts a corporate or union PAC to a single \$5,000 contribution per candidate no matter how many sub-units, subsidiaries or locals exist within the parent organization that may have their own PAC.

8. The financing by any person of the dissemination, distribution or republication, in whole or in part, of any broadcast or any written, graphic or other form of campaign materials prepared by a candidate would be considered an expenditure by the candidate rather than an independent expenditure.

Comment: This provision would essentially eliminate independent expenditures by individuals who might walk into a campaign headquarters, pick up a bumper sticker or other written material and then republish and distribute that material to the public. Such expenditures would be treated as an expenditure by the political committee and not an independent expenditure by that individual despite the fact that it was not authorized by the campaign committee.

9. The national committee of a political party may not make any expenditure in connection with the general election campaign of its candidate for President which exceeds 2 cents multiplied by the voting age population.

Comment: This provision eliminates the opportunity, if such exists under the present law, for a national committee to make an independent expenditure on behalf of its candidate for the office of President of the United States. This question is presently being discussed by the RNC and the PFC.

10. The bill provides that a contribution or expenditure does not include communications by a corporation to its stockholders and executive officers and their families or by a labor organization to its members and their families on any subject, nor does it include non-partisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive officers and their families or by a labor organization aimed at its members and their families.

Comment: This provision expands the present law to include executive officers and their families for communications on any subject and non-partisan registration and get-out-the-vote campaigns. Executive officers are defined as individuals employed by a corporation who are paid on a salaried rather than hourly basis and who have policy making and supervisory responsibilities.

11. Corporate political action committees (PAC's) may solicit contributions from only stockholders, executive officers and their families; however, unions may solicit all members and their families.

Comment: This amendment legislatively overrules the FEC's SUN PAC decision which held that corporate PAC's could use treasury funds to solicit contributions for its PAC from stockholders and their

families and their employees. The removal of all employees who are hourly paid or who are not involved in policy making or supervisory responsibilities essentially isolates a large portion of the employees in the United States from organized political activity through political action committees. Moreover, if they are members of a union, only one group - organized labor - will be permitted to solicit their funds for political purposes while at work. This provision has the potential of creating a national political force unequalled in power - COPE. Finally, all hourly paid employees who are not union members are left with no organized opportunity for in-house political participation.

12. Any corporation that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions to a PAC shall make available, on request, that method to a labor organization representing any member who is working for that corporation.

Comment: This provision provides that if a corporation permits a contribution check-off system for its executives or a withholding of dividends from stockholder dividends for a PAC, it must also provide a check-off system for union members who are employees. Further, the broad language in the Hays bill most likely extends past this check-off provision which is found in the Pell bill and would include any facilitation which a corporation may utilize with regard to solicitation of contributions for its PAC.

February 26, 1976

The Senate Rules Committee completed work on a modified version of the Hays bill pertaining to the Federal Election Campaign Act of 1971 late today and will meet again formally on Monday, March 1, 1976, to report the bill with the expectation it will be considered on the Senate floor the middle of next week.

The Senate version agreed upon today retained the objectionable Sun-Pac provision by a vote of 5 to 4 along party lines with Senator Jim Allen (D-Ala.) voting with the Republicans.

The objectionable thousand dollar limitation on individual contributions to political action committees was cleared up and a limitation raised to \$25,000.

The transfer authority among multi-candidate committees was raised to \$25,000, thus improving the bill.

The public financing for House and Senate races was defeated on a 3 to 3 vote.

It is the opinion of Senator Hugh Scott and Senator Bob Griffin that the bill is still in unacceptable form and they will oppose it during Floor consideration.

February 26, 1976

Harder Version

DRAFT STATEMENT ON FEDERAL ELECTION COMMISSION

I want to express my grave concern this morning about the future of the Federal Election Commission and the potential threat to fair and honest elections this fall.

The Commission was set up a year ago because voters across the Nation wanted a strong watchdog to guard our elections against improper influences. Now, the powers of the commission are about to expire; the watchdog is about to lose its teeth.

I have said before and I repeat now: we must not retreat from our commitment to clean elections. The Federal Election Commission must go forward.

Unfortunately, in considering this issue, some Members of the Congress seem more intent on serving their own partisan interests than serving the public interest. I will not be a party to such brazen maneuvers, and I will veto any bill whose hidden purpose is to give one major party permanent, built-in advantages against all the others.

No one is fully satisfied with the campaign laws now on the books, but an election year is not a time to begin fiddling with those laws.

I urge the Congress to put aside its debates and get on with the most urgent business at hand. We must provide the Federal Election Commission with a new lease on life so that the American people will be assured of good, clean elections this fall.

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When the Supreme Court acted on this matter, it made it clear that the Congress could remedy the problem by simply reconstituting the Commission. I supported the Court's view and urged swift Congressional action. Instead, various interests -- political and otherwise, both in and out of the Congress -- have sought to exploit this issue by attempting to tamper hastily and very dangerously with the fundamentals of our political process. This highly charged political season is no time for this kind of major revision of a very important and very delicate statute. I will veto any measure that seeks to go beyond a reconstitution of the Commission.

Certainly no one is fully satisfied with the campaign laws now on the books. When the current political season is behind us, I ask the Congress to work with me in conducting a thorough review and revision of those laws. But right now, the most urgent task is to re-create the Federal Election Commission. I urge that the Congress put aside these ill-advised and dangerous maneuvers, and let's get on with the job of ensuring that the political process in 1976 remains just as fair and honest as we can possibly make it.

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Tabs A-D

FOR IMMEDIATE RELEASE

FEBRUARY 20, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

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