The original documents are located in Box 16, folder "Federal Election Campaign Act Amendments of 1976 - Memoranda (3)" of the John Marsh Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

May 1, 1976

MEMORANDUM FOR: MAX FRIEDERSDORF RKW

FROM: CHARLES LEPPERT, JR. CLJr.

SUBJECT: S. 3065 - Federal Election Campaign Act Amendments of 1976.

This is an addendum to my April 29 memo concerning recommendations from Members of Congress to the President on the Federal Election Campaign Act Amendments Conference Report.

Representative Guy Vander Jagt

Recommends that the President sign the bill even though he recognizes it is a complicated and exceedingly important decision for the President. Vander Jagt says this despite the erroneous contention of the NAM and the Chamber of Commerce that the bill reported by the Conference gives labor advantages over the business community.

Vander Jagt says the President's option is to take this bill or go back to the 1974 law as impacted by the Supreme Court decision. Vander Jagt says he voted against the '74 bill and will vote against this conference report.

Vander Jagt says that speaking strictly political that the impact of business and industry PAC's on the outcome of elections is minimal at best. So even if all PAC were stopped it is not that much of a problem. The best evidence available to the House Congressional Campaign Committee shows that the PAC's help the Democrats more than Republicans. In 1974 the PAC's contributions went 5% to Republican challengers and 55% to Democratic incumbents.

On the issue of the requirement making lists available to unions, Vander Jagt says this is in his judgement a misreading of the bill and is nonsense.

If the President vetoes the bill, he should do so not on the basis that the bill gives advantages to unions and screws industry, He should veto the bill on the basis that the bill strips the FEC of its independence over the

regulation of federal elections. It puts the "rabbits in the cabbage patch." It undoes any political campaign reform by taking out the Justice Department and others normally associated with the enforcement of clean elections and makes the FEC totally subservient to the Congress.

If the bill is vetoed, there is a shot at sustaining the bill in the House, Vander Jagt says. However, he states that most Members are pleased that the criminal sanctions are taken out because this bill as reported by the conferees protects Members from going to jail.

The conferees made the bill good enough to make it a close call and much harder to sustain a veto.

Vander Jagt says my best private counsel is that the President should sign the bill. But whatever he does, I'll support him.

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 4, 1976

MEMORANDUM FOR: MAX FRIEDERSDORF

FROM: JACK MARSH

The President read this letter on the plane last evening. Would you please handle an acknowledgment and any follow-up necessary by virtue of whatever action the President takes on the FEC matter.

You might coordinate with Charlie, who may have made an initial acknowledgment.

Many thanks.

APR 30 1976

THE WHITE HOUSE
WASHINGTON

Date April 29, 1976

TO: JACK MARSH

FROM: CHARLES LEPPERT

Please Handle _____

For Your Information _____

Per Our Conversation _____

Other:

This should be an addendum to the memorandum which I sent to Max today.

WILLIAM L. DICKINSON
2ND DISTRICT, ALABAMA

WASHINGTON OFFICE:
2436 RAYBURN HOUSE OFFICE BUILDING
PHONE: AREA CODE (202) 225-2901
WASHINGTON, D.C. 20515

2ND DISTRICT COUNTIES:
BARBOUR
BULLOCK
BUTLER
COFFEE
CONECUH
COVINGTON
CRENSHAW
DALE
GENEVA
HENRY
HOUSTON
MONTGOMERY
PIKE

Congress of the United States
House of Representatives
Washington, D.C. 20515

April 29, 1976

WALTER J. BAMBERG
FIELD REPRESENTATIVE

DISTRICT OFFICES:
ROOM 401 POST OFFICE BUILDING
PHONE: AREA CODE (205) 265-5611, EXT. 453
MONTGOMERY, ALABAMA 36104

FEDERAL BUILDING
100 WEST TROY STREET
PHONE: AREA CODE (205) 794-9680
DOTHAN, ALABAMA 36301

COMMITTEES:
ARMED SERVICES
HOUSE ADMINISTRATION
JOINT COMMITTEE ON PRINTING

APR 30 1976

The Honorable Gerald R. Ford
The White House
Washington, D. C. 20500

Dear Mr. President:

Within a short period of time, the Federal Election Campaign Act Amendments of 1976 will be transmitted to you for your necessary action. I respectfully urge you to veto this legislation for the reasons which I have stated below.

The bill goes far beyond the simple extension of the Federal Election Commission which you have recommended. Needless to say, it goes far beyond any requirement of the Supreme Court's recent Buckley decision.

This legislation adds yet another layer of complexity to what is already a well-nigh incomprehensible Federal Election law. One of its effects will surely be to discourage many individuals across the country from entering politics.

The most cursory glance at this legislation reveals that it is a massive revision of our election laws in a year that features the full array of Federal elections. This amounts to changing the rules in the middle of the game, which is clearly unconscionable.

I have one additional fundamental objection to this legislation which I wish to bring to your attention. To my mind the Federal government has no business at all embarking on a massive regulation of our election process. This was one of my problems with the 1974 Amendments to the Federal Election Campaign Act. In my view, the 1976 Amendments compound this problem severalfold. What is needed is a simple law requiring total disclosure of contributions and expenditures and not the incredibly intricate statute that we have at the present time.

I realize the political repercussions involved and the criticisms that will ensue from a veto, and only you can make the final judgment of whether or not a veto is worth it. However, I personally believe that you should veto this bill. The Congress should pass a simple extension of the Federal Election Commission that will have a termination date of March 31, 1977. After that date, the Congress could undertake a thorough review of our Federal election laws in a deliberate manner.

Sincerely,

WM. L. DICKINSON
Member of Congress

WLD:bw

THE WHITE HOUSE

WASHINGTON

May 5, 1976

MEMORANDUM TO: JACK MARSH

FROM: RUSS ROURKE

Jack, I recommend a veto. On both substantive as well as political grounds, it is the only course of action to take. If the President signs, he will get none of the credit, but all of the flak stretching from Reagan forces to the business community.

Sign

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: MAY 5 1976

Date: May 5 Time: 400pm due Thurs 5/6/76

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 JM Veto S. 3065 _____

called 5/7 dl

X2684

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
Assistant Attorney General
Office of Legislative Affairs

THE WHITE HOUSE

WASHINGTON

MAY 5 1976

May 5, 1976

MEMORANDUM FOR: ROBERT HARTMANN
JACK MARSH
RICHARD CHENEY
RON NESSEN
JIM CONNOR
DAVE GERGEN
GWEN ANDERSON

FROM: PHILIP BUCHEN

SUBJECT: Federal Election Campaign Act Amendments of 1976

Nino Scalia (Justice Department) has recommended that the attached paragraphs be substituted for the last paragraph on page 4 and the first paragraph on page 5 on the Draft Signing Statement that I sent to you this morning.

Attachment

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, my predecessor and I 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.

THE WHITE HOUSE
WASHINGTON

MAY 7 1976

Date: 5/6/76

TO: JACK MARSH

FROM: Max L. Friedersdorf

For Your Information X

Please Handle

Please See Me

Comments, Please

Other

April 29, 1976

Outline of the Major Deficiencies in the Final Conference Agreement on S.3065 -- the Pending Federal Election Campaign Act Amendments

1. Goes far beyond the simple FEC extension recommended by the President.

2. Goes far beyond any requirement of the Supreme Court's recent Buckley decision. (A simple extension of the FEC meets the Supreme Court's directives.)

3. Nullifies the supposed independence of the FEC, by giving either House of Congress the right to veto -- in whole, or in part -- whatever the Commission decides.

4. Encourages secret, anonymous giving in cash up to $50 at a time -- with no practical restriction on how often, or with whose money, a person could make such anonymous cash gifts.

5. Does nothing to restrict a labor union's present license to spend unlimited union funds contacting union members for partisan purposes -- e.g., phone brigades; drive members to polls; leaflets, newsletters, etc. Unions would have to report some, but not all, of the money so spent -- but there is still no limit on the actual amounts they could spend.

   (The strongest single force behind the National Democratic Party has for years been the political muscle of the big unions. The law is already tilted heavily in the unions' favor, even without these pending changes. To approve these changes now would expand and lock in for years this imbalance -- in favor of Democrats, and against Republicans!)

6. Severely restricts corporate non-partisan communications, registration and get-out-and vote campaigns. First, they are improperly limited to shareholders, executive and "managerial" people. Then -- if a corporation should want to go beyond those three categories, to include its regular work force as well -- it may do so only in concert with some "neutral" organization (such as the League of Women Voters, Common Cause, perhaps Rotary, etc.) which does not support candidates. Bizarre as well as unconstitutional.

7. Restricts a corporate employer to two written solicitations a year to rank-and-file employees, with no oral solicitations permitted. Clearly unconstitutional abridgements of free speech.

8. Makes a major intrusion into labor-management matters that are covered by Taft-Hartley. The final statutory language of S. 3065 empowers a union to get from an employer a list of names and addresses for all his employees* (including unorganized rank and file workers). The Conference Report carries language saying that if an employer doesn't want to give such a list to a union, then he must retain "an independent mailing service" -- and that service must then be used to send out the union's materials and the company's solicitations as well. The Conference Report goes on to say the conferees intend that such lists be used only for political solicitation; however, no penalty is provided for using the lists for other purposes.

9. In similar fashion, the final Conference Bill requires release of stockholder* lists -- if unions request them -- but if a corporation does not wish to give them direct to the union, then provision must be made via "an independent mailing service" to get the union's material to the stockholders.

---

*These two requirements attach automatically where a corporation (1) has any union contract, and (2) in any way "facilitates" the making of any employee political contributions.

May 6, 1976

MEMORANDUM FOR: ROLAND ELLIOTT

FROM: JACK MARSH

Attached is some correspondence I have recently received on the subject of the FEC legislation. I would greatly appreciate your responding directly, on my behalf, to these people.

Would you please direct a copy of your responses to my office for our records?

Many thanks.

dl

May 7, 1976

MEMORANDUM FOR: RUSS ROURKE

FROM: JACK MARSH

Coordinate with Mike Duval on setting up the meeting of the Congressional leaders on the FEC bill for Tuesday. Additionally, you should coordinate with Rog Morton as to who should be participants in this meeting. It should be representatives of the House and the Senate Campaign Committee and I suspect some other Republican leaders.

JOM/dl

THE WHITE HOUSE

WASHINGTON

May 7, 1976

MEMORANDUM TO: JACK MARSH

FROM: RUSS ROURKE

Jack, attached is the tentative list for Tuesday's FEC meeting.

I discussed it with Max and Bob Wolthuis Friday evening. A final cut at the list and the telephone invitations will be made Monday morning.

As you know, Mary Louise Smith will not be able to attend Tuesday's meeting, but will be meeting with the President and Dick Cheney on Monday at 12:00 p.m.

cc: MFriedersdorf
BNicholson

FEC MEETING 11:30 am., TUESDAY, MAY 11,
Cabinet Room

1) Guy Vander Jagt
2) Ted Stevens
3) John Rhodes
4) Hugh Scott
5) Rog Morton, Roy Hughes, Bob Visser
6) Phil Buchen, Barry Roth
7) Conference Committee
   - Bob Packwood
   - Bob Griffin
   - Chuck Wiggins
   - Bill Frenzel
   - Bill Dickinson
8) Mark Hatfield
9) Jack Marsh, Dick Cheney, Max Friedersdorf and other appropriate White House Staff.

National Republican Congressional Committee

512 HOUSE OFFICE BLDG. ANNEX • WASHINGTON, D.C. 20515 • TELEPHONE (202) 225-1800

CHAIRMAN
Guy Vander Jagt, M.C., Michigan

EXECUTIVE DIRECTOR
Steven Stockmeyer

May 6, 1976

The President
The White House
Washington, D. C.

Dear Mr. President:

I am taking the liberty of writing to you relative to vital legislation now awaiting your action, S. 3065, the Federal Election Campaign Acts Amendments. Because of the tremendous importance of this legislation to our elective process, I most respectfully urge you to defer any final decision until Republican campaign leadership might have an opportunity to confer with you personally.

If it is at all possible, I would suggest you meet with Mrs. Mary Louise Smith, Chairman, National Republican Committee; Senator Ted Stevens, Chairman of the Senate Republican Campaign Committee; and myself, as Chairman of the National Republican Congressional Committee. I would hope such a meeting could be arranged early next week.

Thank you, Mr. President, for considering this request.

With all good wishes,

Sincerely,

Guy Vander Jagt, M.C.
Chairman

GVJ:mlt

May 7, 1976

MEMORANDUM TO: JACK MARSH

FROM: RUSS ROURKE

Jack, attached is the tentative list for Tuesday's FEC meeting.

I discussed it with Max and Bob Wolthuis Friday evening. A final cut at the list and the telephone invitations will be made Monday morning.

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cc: MFriedersdorf
BNicholson

RAR:cb

SUGGESTED ATTENDEES AT TUESDAY FEC MEETING WITH THE PRESIDENT

1) Guy Vander Jagt
2) Ted Stevens
3) ~~Mary Louise Smith~~
4) Rog Morton, Roy Hughes, Bob Visser
5) Phil Buchen, Barry Roth
6) Conference Committee
   - Bob Packwood
   - ~~Hugh Scott~~
   - Bob Griffin
   - Chuck Wiggins
   - Bill Frenzel

   Bill Dickinson
7) Mark Hatfield
8) National Republican Committee
   - Jim Collins
   - Pierre duPont
   - John Rousselot
   - Bill Broomfield
   - J. Herbert Burke
   - Silvio Conte
   - Ed Derwinski
   - Ham Fish
   - John Hammerschmidt
   - Bill Harsha
   - Joe McDade
   - Larry Winn
   - Bob Kasten
   - Trent Lott
   - John Myers
   - Joel Pritchard
   - Ron Sarasin
   - Sam Steiger
   - Charles Thone
   - Bill Whitehurst
   - John Buchanan
   - Dave Treen
   - Bill Armstrong
9) Republican Senatorial Campaign Committee
   - Howard Baker
   - Dewey Bartlett
   - Cliff Case
   - Pete Domenici
   - Hiram Fong
   - Jim Pearson
   - Chuck Percy
   - Richard Schweiker
   - Strom Thurmond
   - John Tower

Date: May 10, 1976 Time:

MAY 10 1976

FOR ACTION:
Jim Cannon
Max Friedersdorf
Jim Lynn
Jack Marsh

cc (for information):
Tim Austin
Mike duVal
Dave Gergen
Jerry Jones
Bob Hartmann

due: COB 5/10

FROM THE STAFF SECRETARY

DUE: Date: Monday, May 10, 1976 Time: COB

SUBJECT:

Philip W. Buchen memo 5/10/76 re
Public and Congressional Reaction
to the Federal Election Campaign Act
Amendments of 1976

ACTION REQUESTED:

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

REMARKS:

Your comments are needed by close of business today as this package will be sent into the President tomorrow morning. Thank you

Approve
Sign
Sheet

called 5/10 dg

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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

Jim Connor
For the President

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

VETO - Continued

Robert P. Nixon
Franklin Electric

Arch L. Madsen
Bonneville International Corp.

Ellwood F. Curtis
Deere and Company

William E. Hardman
National Tool, Die and Precision
Machining Assn.

J. D. Stewart
DEPAC

Carl F. Hawver
National Consumer Finance Assoc.

Thomas P. Mason
Comsumer Bankers Assoc.

R. R. Frost
Piggly Wiggly Southern, Inc.

Paul J. Kelley
U-HAUL

Neil W. Plath
Sierra Pacific Power Company

Michael R. Moore
Texas Retail Federation

Malcolm E. Harris
Distilled Spirits Council of the U.S.

Lawrence L. Burian
National Air Transportation
Associations

Walter D. Thomas
FMC Corporation

Gerald W. Vaughan
Union Camp Corporation

James A. Gray
National Machine Tool
Builders Association

Donald V. Seibert
J. C. Penney Company, Inc.

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	

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. The 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.

Jack best laid plans !

:-)

Mike

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ŧPM-Ford-FEC, 150

ŧURGENT

ŧBy HOWARD BENEDICT

ŧAssociated Press Writer

WASHINGTON (AP) - President Ford is expected to sign legislation restructuring the Federal Election Commission and releasing federal funds for presidential candidates, a Republican senator said after a meeting with Ford today.

Sen. Ted Stevens, R-Alaska, said the signing was expected later in the day.

Stevens was among 11 members of Congress who met with the President to discuss the bill.

The Federal Election Commission staff has tentatively certified applications for $2.1 million in federal matching money for release when the agency is reconstituted.

"We asked for the meeting," Stevens told reporters. "We believe the President will sign the bill today and send to the Congress his nominations for the six members of the commission."

ŧMore

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