The original documents are located in Box 15, folder "Federal Election Commission Legislation (3)" of the Michael Raoul-Duval Papers at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

May 5, 1976

MEMORANDUM FOR: DOUG BENNETT

FROM: MIKE DUVAL

SUBJECT: JUDSON DAVIS

Judson Davis came in to see me. Dick Cheney asked me to see him pursuant to a request from Governor Holshouser that we talk to him.

He wants to be a member of the Federal Election Commission and I understand that you have some paperwork on him already. He advises that Senator Helms supports this request.

I advised Mr. Davis that your office would handle this request and would be back in touch with him at the appropriate time.

cc: Dick Cheney

Background - Judson S. Davis

Grandfather - Chester C. Davis
President of Ford Foundation
Member of Federal Reserve Board
Head of Agriculture Adjustment Administration

Father - Chester S. Davis
Former FBI agent
Special feature writer for Winston-Salem Journal & Sentinal

Education -
Winston-Salem City Schools
Wake Forest University - Political Science
Babcock School of Business Administration

1963 - 1966 President Winston-Salem Teenage Democrats
1965 Page in North Carolina Senate
1966 5th District Vice President of N. C. Young Democrats
1968 Managed campaign for state House candidates
1969 Member of Winston- Salem Redevelopment Commission
1970 - 1972 Assistant Director Winston-Salem Housing Foundation
1969 - 1970 Appointed by Robert W. Scott to the N. C. Democratic Party Study Commission
This Commission restructured the Democratic Party for openness so voters could participate easier
This Commission steared the Presidential Primary Bill through the N. C. General Assembly
1973 - 1974 Served as Forsyth County and Northwestern N. C. Campaign Manager for Robert Morgan (U. S. Senate) and Rufus Edmisten (N. C. Attorney General)
1972 - present time Executive Vice President of R. G. Abernethy Ind., Inc.

Member -- Good Government League
Chamber of Commerce (Congressional Action Committee)

THE WHITE HOUSE

WASHINGTON

May 5, 1976

File FEC

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

FROM: PHILIP BUCHEN P.

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

D R A F T

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.

WASHINGTON

Hold

May 5, 1976

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

FROM: PHILIP BUCHEN P.

SUBJECT: Federal Election Campaign Act Amendments of 1976

Attached for your review is a proposed signing statement for consideration by the President in the event he determines that the above act should be signed.

Attachment

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 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 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 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 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.

Mike:

The draft veto statement has not been changed since this memo to President.

Helen

Mike Duval

THE WHITE HOUSE

WASHINGTON

April 24, 1976

Lib

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN P.

SUBJECT: Conference Bill to amend the Federal Campaign Laws

I. INTRODUCTION

This memorandum supplements the one to you of April 22, 1976, on the same subject. In that memorandum were analyzed in detail the only two groups of troublesome provisions in the bill, namely those which bear on the rule-making independence of the Commission and those which affect the campaign efforts involving corporations, unions and their respective Political Action Committees (PAC's).

This memorandum is designed to bring together all the principal advantages and disadvantages of your signing the bill when it comes to you, probably during the week of April 26, 1976, and to provide draft alternative statements for your issuance at the time (Tab A for vetoing and Tab B for signing). Which of the two types of statements are applicable depends on your decision of whether you will sign or will return the bill.

At this time it is not possible to know whether or not certain of the troublesome provisions where the exact meaning is unclear could be beneficially clarified by language changes in the present draft conference report or by floor debate at the time the conference bill is taken up for vote.

II. ADVANTAGES AND DISADVANTAGES OF SIGNING BILL

1. Advantages of signing bill

a) Finally permits reconstitution of Commission as soon as you nominate and Senate confirms six members, and as a result:

(i) Permits civil enforcement of the campaign laws under expanded enforcement provisions (For example, PFC complaints against Reagan's alleged violations will be entertained, whereas they are now in abeyance)

(ii) Issuance of Advisory Opinions and regulations can proceed for the guidance of candidates (Extensive regulations can be expected to be ready for submission to Congress by June 4, if the Bill is signed)

(iii) Certification for payment of Federal matching funds to Presidential candidates can be renewed (No payments have been certified after March 22, and PFC has an accumulated claim of close to one million dollars)

(iv) Significant new provisions of bill and clarifications can become operative, such as those requiring for the first time Union disclosure of costs for communications to support or oppose candidates

b) Immediately upon signing will permit borrowing by Presidential candidates on security of anticipated Federal matching funds even before Commission members are nominated and confirmed

c) The Bill as proposed by the Conference Committee offers some advantages which would not otherwise be obtained under your proposed bill for simply reconstituting the Commission, such advantages being principally:

(i) A much more comprehensive and flexible civil enforcement mechanism is provided to the Commission, the effect of which is to facilitate voluntary compliance through conciliation agreements and the authority to levy fines, particularly in instances of violations not serious enough to warrant criminal prosecution through the Justice Department.

(ii) For the first time, each Union will be required to report costs of communications used to support or oppose clearly identified candidates which are in excess of $2,000 (Although the provision applies to Corporations as well, the latter do not ordinarily or extensively engage in such communications.)

(iii) Although multiple PAC's of a single corporation related to its respective divisions or subsidiaries will be limited in their aggregate contributions per candidate as if these PAC's were a single giver (limited to $5,000 per candidate in each election) this so-called non-proliferation provision applies as well to the PAC's of a single international union and all of its locals or to a national COPE and all of its state affiliates; and this aggregation principle would have an immediately greater impact on Union PAC's which at present probably outnumber active and sizeable PAC's of businesses.

(iv) Contributions to the Republican National Committee building fund would no longer be restricted, so that by raising enough money from large contributors to purchase or construct an office building, the Committee will save rental costs and will free the money saved to use for campaign activities (Although this applies as well to the DNC, it is likely to be of greater advantage to the RNC).

(v) The Senatorial Campaign Committee and the National Committee of either party could together give a maximum of $17,500 to each of its Senatorial candidates for each election, rather than the present $10,000 combined limit.

d) Most of the public, the media, and other candidates will probably regard the signing as a positive step in support of election reform and as a readiness on your part to refrain from increasing the financial squeeze on your Republican opponent's campaign and on the Democratic candidates' campaigns when the latter are fearful of the advantage this present plight gives to Humphrey. (Already, White House silence on whether you would sign the bill has been challenged as being self-serving.)

e) In terms of your own campaign, with crucial primary contests coming up in Texas, Alabama, Georgia, and California where Reagan has innate strength that can probably only be equalized or overcome by full campaign efforts on your behalf, the need of the PFC for matching funds to meet its budgets for these states can best be satisfied in time by your signing the bill.

f) Will avoid the uncertainty and delays which will be created pending a veto-override or, if that does not occur, before enactment of a new bill that you do sign; and avoids the risks of a veto override with the political disadvantages to you which could result from an override or, if that does not happen, the submission of a new bill to you that poses other disadvantages.

2. Disadvantages of signing bill

a) Because the bill continues and adds to the Congressional one-house veto provisions over Commission rules and regulations, you will be perceived as accepting the action of the Congress in further weakening the independence of the Commission. (However, because you have already stated that you believe such provisions are unconstitutional, you can mitigate this consequence in a signing statement that proposes quick challenge in the Courts of these provisions. Also, because such provisions in a law that is meant to govern elections to Congress present the most favorable case for declaring them unconstitutional, you may get a decision that will be precedent for regarding as invalid similar veto provisions in the many other statutes which allow Congressional and even Committee vetoes of Executive regulations.)

b) Because other new provisions of the bill may be unconstitutional, such as restrictions on communications and solicitations by corporations, unions and their PAC's, signing may imply your acceptance of these restrictions, although again language in your signing statement can mitigate this implication.

c) Acceptance of the bill will mean that the new provisions therein, some of which are difficult to interpret, will add to uncertainty and the potential for litigation.

d) Because on February 27, 1976, a statement by you on amendments to the Campaign laws contained the words "...I will veto any bill that will create confusion and will invite further delay and litigation," you may be perceived as going back on this commitment if you sign the bill.

e) You will incur dissatisfaction on the part of business interests for the reasons set forth at length in part III of my memorandum to you of April 22, 1976; and to the extent that the business concerns may prove warranted and will cut down the ability or willingness of business interests to support the campaigns of Republicans, our party would be adversely affected.

f) Adoption of this bill may discourage any further and more comprehensive legislation to deal with critical problems in the electoral process, such as for delegate selection and for difficulties experienced during the 1976 election under the present law as amended by this bill.

III. RECOMMENDATIONS

On the assumption that the Conference Bill is passed by Congress in its present form and floor debates do not give rise to interpretations which change the fair meaning of the present language, signing is recommended by Rogers Morton, Philip Buchen, Max Friedersdorf,

Return of the bill without your signature is recommended by

Your tentative views may be indicated below, although with the understanding that your choice of options will be kept in confidence until you receive the bill and make your final decision.

_____ Tentatively prefer signing

_____ Tentatively prefer return of bill without my signature

_____ Other:

TAB A

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.

TAB B

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 new 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.

The Court originally deferred the effective date of its ruling for 30 days to "afford Congress an opportunity to reconstitute the Commission by law or to adopt other valid enforcement mechanisms." When it appeared that Congress would fail to act within the 30-day period, the Court extended the stay of its ruling until March 22. Again, the Congress failed to act on the simple measure required by the Court to reconstitute the Commission. Through the neglect of Congress, the Commission has been without its enforcement and executive powers for over one month at a critical stage of the election process for Congressional as well as Presidential candidates.

Instead of acting on the simple corrective legislation required by the Supreme Court, the Congress has proceeded to amend the existing campaign

laws in a great number of ways. The laws as amended have the effect of seriously limiting the independance of the Federal Election Commission from Congressional influence and control of the Federal Election Commission, and they change many of the rules governing the conduct of the current election campaigns after they have been under way for some months.

Over two months ago I stated that I could not approve any bill that would create confusion and would invite further delay and litigation in the present campaign. Without question, the legislation passed by the Congress does have these defects. Further confusion and delay in providing guidance for candidates and their supporters or contributors will ensue while the Commission considers the effect of the bill on its previously issued opinions and regulations. Provisions of the bill which lack clarity may lead to further litigation, and those provisions which purport to restrict communications and solicitations by corporations, unions, trade associations and their respective Political Action Committees will surely give rise to litigation over their doubtful constitutionality.

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 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 on which they have relied in standing for nomination.

Accordingly, I am today approving this legislation and 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.

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 the present legislation, it is absurd for the Congress to take credit for the establishment of an independent regulatory agency to administer, enforce and regulate the Federal election campaign laws, when candidates who serve in the Congress reserve to themselves the right to reverse the decisions of the Commission in this fashion.

Accordingly, 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.

In the just over six months remaining until the general elections, the Commission will have the difficult, but critical, task of administering

this new legislation in a manner that minimizes the confusion which is caused by its 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 the authority to levy civil fines.

In addition, the legislation charts new ground in further limiting the influence of big money in our electoral process, by avoiding proliferation of Political Action Committees under common control, and 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 appear to go part way in making improvements.

Also, 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.

BRYCE N. HARLOW

1801 K STREET, N. W.
SUITE 1104
WASHINGTON, D. C. 20006
(202) 833-9500

5/6

mike —

Herewith, some
grist for the mill you're
grinding!

Bryce

Bryce Harlow
Suite 1104
1801 K Street

MEMORANDUM

TO: White House Staff DATE: April 22, 1976

FROM: Bob Wager, Treasurer, BreadPAC
Bob Pyle, Consultant to BreadPAC

SUBJECT: Presidential Action on FECA Amendments of 1976 (S.3065)

Section 321 of the pending bill would impose unconstitutional restrictions on corporate communications and solicitation by corporate and industry political action committees. It also would provide preferential treatment for political funds established by membership organizations as compared to those established by industry trade organizations. Finally it would continue the favored position of labor union sponsored political activities and create potentially divisive political class warfare. Accordingly, we strongly urge the President to veto S.3065 and call upon the Congress to enact a simple bill reconstituting the Federal Election Commission.

The Limits on Communication

Section 321(b) (2) (A) would prohibit any corporate expenditures for communications on political subjects to rank and file employees, union or nonunion. Section 321(b) (2) (B) would outlaw nonpartisan registration and get-out-the-vote drives aimed at the same classes of employees. The first restriction violates the Constitution. As the Supreme Court said in Buckley v. Valeo:

> The First Amendment affords the broadest protection to such political expression in order "to assure the unfettered interchange

> of ideas for the bringing about of political and social changes desired by the people." Roth v. United States, 354 U.S. 476, 484 (1957). Although First Amendment protections are not confined to "the exposition of ideas," Winters v. New York, 333 U.S. 507, 510, (1948), "there is practically universal agreement that a major purpose of the Amendment was to protect the free discussion of governmental affairs, ... of course, including discussions of candidates..." Mills v. Alabama, 384 U.S. 214, 218 (1966). This no more than reflects our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964). In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation. As the Court observed in Monitor Patriot Co. v. Roy, 401 U.S. 265, 272 (1971), "it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office."
>
> The First Amendment protects political association as well as political expression. The constitutional right of association explicated in NAACP v. Alabama, 357 U.S. 449, 460 (1958), stemmed from the Court's recognition that "effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association." ... Buckley v. Valeo, Slip op., p. 9.

These principles clearly prohibit the restrictions on free speech and association which Congress has imposed in this Subsection.

The Justice Department has taken the position that the second restriction also infringes constitutional rights.

> We have long been of the opinion that 18 U.S.C. 610 cannot be applied to prohibit unions and corporations from using their general assets to engage in activities which are completely nonpartisan in nature consistently with the First Amendment. In this regard, such a prohibition would certainly have an effect on expression, albeit an indirect one. At the same time, we fail to see how the application of Section 610 to nonpartisan expenditures such as this serves any compelling Federal interest, or is even remotely related to either of the two purposes which the section was enacted to protect: i.e. to protect the integrity of the Federal elective system from the corrupting influence of infusions of vast aggregates of corporate and union wealth, and to protect the interests of minority stockholders and union members from having their monies used to support political candidates they personally oppose. Moreover, there is dicta in several cases decided under 18 U.S.C. 610 which, in our view, reflect a judicial recognition that this statute prohibits only the support of partisan political activity. ... Letter from Assistant Attorney General Richard L. Thornburgh to General Counsel John Murphy of the Federal Election Commission, November 3, 1975. Attached.

The restrictions imposed in these provisions are arbitrary and discriminatory. They violate the core of the First Amendment. They should not be sanctioned by the President, even though they have been in the law for many years.

The Restrictions on Solicitation

Section 321(b) (4) (A) (B) and (D) impose three severe restrictions on solicitations for political committees. Subsection (A) would prevent a corporate committee from

soliciting rank and file employees and their families and a union committee from soliciting stockholders or executives and their families. Subsection (B) eases this limitation a bit by allowing corporate committees to solicit union or nonunion personnel and their families twice a year in writing at their homes. It also authorizes unions to solicit corporate stockholders and executives in the same manner. Subsection (D) would permit an industry fund to solicit the executives of its member companies only after such solicitation has been "separately and specifically approved" by the corporation and it has not approved solicitation by more than one industry fund per year.

In the Justice Department letter referred to above, Assistant Attorney General Thornburgh indicated that solicitation to, and participation in, political funds is a constitutionally protected activity. See attached letter, p. 2-3. Accordingly, at least where the group to be solicited shares a close community of interest with the person soliciting them, Congress cannot cut off that person's solicitation without violating the constitutional rights of both those to be solicited and the one soliciting them. Buckley v. Valeo, supra at p. 9; NAACP v. Alabama, 357 U.S. 449 (1958).

This argument should invalidate Subsections (A) and (B) but there are additional unconstitutional restrictions contained in Subsection (D). First, the requirement that the member corporation approve solicitation of its stockholders

and executives amounts to private restraint on their freedom of expression and association. Cf. Thornhill v. Alabama, 310 U.S. 88 (1940). It would subject their political rights to a veto by their employer. Such restrictions have regularly been struck down. Buckley v. Valeo, supra at p. 9; NAACP v. Alabama, supra at 460.

Second, when a corporation is engaged in more than one business, as for example baking and poultry production, it would have to choose one industry fund over the other, thus denying those engaged in the business represented by the rejected fund, their right to political expression and association.

In Buckley v. Valeo the Supreme Court recognized that "contribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy." Slip op., p. 16. The Court upheld the contribution ceilings there, in part because they "require candidates and political committees to raise funds from a greater number of persons and to compel people who would otherwise contribute amounts greater than the statutory limits to expend such funds on direct political expression, rather than to reduce the total amount of money potentially available to promote political expression." Ibid.

But this restriction would do precisely what the Supreme Court indicated is impermissible. Many of the baker and

supplier firms which belong to the American Bakers Association have told us they will not authorize participation in BreadPAC due to this statutory restriction if the President signs S.3065. Our funds and those of other industry PACs, would clearly be substantially reduced below the point of effective advocacy.

The effect of Subsection (D) would be to compel a footrace between competing political funds each year for permission to solicit a firm's executives and stockholders. Surely the First Amendment rights of association and expression cannot be so obstructed.

Preferential Treatment of Membership Organizations

Section 321(b) (4) (C) authorizes membership organizations to establish political funds and to solicit contributions from their individual members. There are no restrictions such as those contained in Subsection (D), despite the fact that these individuals are in many instances employed by corporations. But due to the fortuitous fact that the individual rather than the corporation is the member of the organization, the political committee is able to escape the onerous restrictions contained in Subsection (D).

Yet there are no substantive differences between the membership organization PAC and the trade association PAC. The distinction is purely one of form. It results in arbitrary and capricious restrictions on the trade association PAC to their great disadvantage in the political process.

In summary, Section 321 is a crazy quilt pattern of unconstitutional and unwise restrictions on legitimate political activity. It provides adequate grounds for a veto of S.3065 by the President.

Labor's Advantage

It has been widely recognized that until the 1974 Campaign Financing Act Amendments, Labor enjoyed a distinct advantage in political fund raising. Part of the purpose of the 1974 Amendments was to establish parity between corporate and union political committees. The FEC recognized this and implemented the policy in the SunPAC case.

Immediately after that decision, Labor began efforts to overturn it. While the press and public were focusing on reconstitution of the Commission, and the funding of Presidential campaigns, Labor got the restrictions it wanted on corporate and industry political committees.

Labor has now carved out millions of employees, <u>both</u> union and nonunion, who are virtually immune from effective corporate and industry PAC fund raising efforts. It has created, in effect, a huge private preserve, where it is almost unchallenged in political activity. Management is left with a comparatively small pool of stockholders and executives. This result can only increase tensions between management and labor. It will surely create a more adversary situation between them. This is not in the national interest.

The Alternative

The President has a clear and simple alternative, the position he took immediately after the decision in Buckley v. Valeo. Congress should enact a bill limited to reconstituting the Federal Election Commission.

We recognize that a veto of the bill would result in some adverse editorials for a few days. But their impact could be effectively countered by a strongly worded veto message emphasizing the bill's unconstitutional provisions and grave political imbalance. Such a message could strike a responsive chord with the public and put great political pressure on Congress to pass a reconstitution bill quickly.

Then, public attention will immediately shift to Congress which will be forced to accede to the President. Within a month after Congressional action, the veto will have been forgotten by the electorate.

Though the President will receive some critical publicity for a short time, this could be outweighed by a gain in public esteem for maintaining a fair balance in the electoral system and protecting the constitutional rights of freedom of expression and association.

On the other hand, signing the bill would signal acceptance of Labor superiority in political fund raising and permanent restrictions on corporate and industry political activity. The next Congress will not loosen the ties which would bind corporate and industry PACs. The trend is to tighten them.

So unless the President vetoes this bill, business will have to live with at least these restrictions for a long time to come. But a veto would give the President's allies another chance to fight for their political rights before a hopefully more sympathetic 95th Congress, with a strong, elected Republican President in the White House. At the same time, the President will have greatly strengthened the forces which support him and his efforts to elect more Republicans to Congress.

Sustaining the Veto

If the President vetoes the bill, it will return first to the Senate for an override attempt. S.3065 passed the Senate 55-28 on March 24.

The 28 noes included 19 Republicans and 9 Democrats. Though 1 or 2 might switch on the override, most seem solid. From among the absentees, the Administration should be able to count on at least 5 votes - Brock, Curtis, Goldwater, Thurmond and Young.

Moreover, the Administration might be able to persuade up to 7 Republican Senators to support the President on the override. These include Beall, Hatfield, Packwood, Pearson, Schweiker, Stevens and Taft. Overall, it seems likely the President would be able to sustain the veto in the Senate.

The vote count is even better in the House. When the bill passed on April 1, 155 members opposed it, far more than

necessary to sustain the veto. Republicans voted 125-12 against it. With absentees, 140 votes would probably be sufficient to sustain the veto. Conservatively, it appears the President would have a small margin to spare in the House.

Conclusion

The President should veto S.3065. It is in his political interest to do so and the veto would be sustained.

Attachment

Assistant Attorney General
Criminal Division

Department of Justice
Washington 20530

November 3 1975

Mr. John G. Murphy
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Re: Advisory Opinion Request 1975-23

Dear Mr. Murphy:

Reference is made to several informal discussions between our respective staffs concerning the referenced Advisory Opinion Request (A.O.R.), which has been submitted to the Commission by two political committees affiliated with the Sun Oil Corporation pursuant to 2 U.S.C. 437f, and to your draft Advisory Opinion which your staff was kind enough to make available to us for review and comment.

The A.O.R. seeks the views of the Commission on whether the Sun Oil Corporation may defray the administrative expenses of the two political committees consistent with 18 U.S.C. 610. The draft Advisory Opinion proposed by your staff would conclude that neither political committee may do so on the facts presented. For reasons described below, we disagree.

From the description provided in the A.O.R., SUN-EPA appears to us to represent an activity by the Sun Oil Corporation through which the corporation encourages its employees to participate in politics in general, including making personal contributions to candidates or political committees of their choice. To facilitate the latter, the corporation offers to its employees a convenient payroll deduction plan where the employee may request the payroll office to withhold a portion of his salary which is transmitted by the corporation to candidates or political committees designated by the contributing employee. Provided that the corporation in no manner suggests to the contributing employee the identity of certain candidates or committees which should be the beneficiaries of such personal contributions, provided that absolutely no pressure of any kind is applied to induce participation in the program, and provided corporate funds are not indirectly contributed to the ultimate recipients through such means as artificially inflating employees' salaries, we would tend to view the corporate disbursements effected to administer such a program as "non-partisan" in nature. That is to say, under these stringent circumstances, such corporate disbursements, in themselves, could not be said to favor one candidate for Federal office over his opposition, although the general objective of the program is certainly "political" in that it encourages employees to participate voluntarily in politics through personal contributions of the employees' own choosing.

We have long been of the opinion that 18 U.S.C. 610 cannot be applied to prohibit unions and corporations from using their general assets to engage in activities which are completely non-partisan in nature consistently with the First Amendment. In this regard, such a prohibition would certainly have an effect on expression, albeit an indirect one. At the same time, we fail to see how the application of Section 610 to non-partisan expenditures such as this serves any compelling Federal interest, or is even remotely related to either of the two purposes which the section was enacted to protect: i.e. to protect the integrity of the Federal elective system from the corrupting influence of infusions of vast aggregates of corporate and union wealth, and to protect the interests of minority stockholders and union members from having their monies used to support political candidates they personally oppose. Moreover, there is dicta in several cases decided under 18 U.S.C. 610 which, in our view, reflect a judicial recognition that this statute prohibits only the support of partisan political activity. See: United States v. Auto Workers, 352 U.S. 567 (1957); United States v. Pipefitters Local Union #562, 434 F.2d 1116, 1121 (8th Cir. 1970); United States v. Construction and General Laborers Local #264, 101 F. Supp. 869, 875 (D. Mo. 1951); Cort v. Ash, 496 F.2d 416 (3rd Cir. 1974), reversed on other grounds, 422 U.S. 66 (1975). Finally, the fact that the Hansen Amendment, added to Section 610 by the 1971 Federal Election Campaign Act, recognized a "non-partisan" exception only in the case of "voter registration drives" and "get-out-the-vote campaigns" which were directed at a corporation's stockholders and a union's members, is not dispositive of the matter. The 1971 amendatory language was intended primarily to codify pre-existing case law, which as indicated above recognized a broader "non-partisan" exception to this statute. United States v. Pipefitters Local #562, 407 U.S. 385 (1972). A construction of this language which would render it narrower than First Amendment requirements would be illogical and inconsistent with the rule of statutory construction that where possible statutes should be interpreted to achieve constitutional results.

SUN-PAC, from the description given in the A.O.R., would appear to us to satisfy all of the statutory requirements of a voluntary segregated fund, except that it intends to solicit the corporation's employees, as well as its stockholders and their families. The preliminary conclusion of your staff that this particular "segregated fund" is not among those permitted by 18 U.S.C. 610, as amended, seems to us to be predicated upon concern that the statutory text itself, given a strict reading, confines the "segregated fund" exception exclusively to funds which confine their solicitations to union members, corporate stockholders, and their respective families.

As indicated above, it has been our view that a strict reading of the scope of such limiting language, descriptive of an exception to a criminal statute, is not appropriate where it would lead to a result which infringes upon Constitutionally-protected activity. Here we note that at least one Circuit Court has addressed the concept of the segregated fund in Constitutional terms and concluded that members of a union have a right under the First Amendment

to associate together through a political committee affiliated with the union, to express themselves politically through such a committee, and that it would be a derogation of these First Amendment rights to prohibit the union from defraying the administrative expenses of such a committee or from controlling the disposition of any funds which it voluntarily raises from its membership. United States v. Pipefitters Local #562, 434 F.2d 1116, 1119-1121 (8th Cir. 1970), reversed on other grounds, 407 U.S. 385 (1972). Although this analysis was conducted in the context of union members, we suggest that it is equally applicable to any group of individuals which has a "special relationship" to the union or the corporation which is sponsoring the segregated fund in question. See: United States v. C.I.O., 335 U.S. 106, 121 (1948). While we recognize that there may be many grey areas presenting difficult questions as to whether a given class enjoys an adequately close affinity of interest with a given union or corporation so as to require that its segregated fund be permitted to solicit them, employees of a corporation (or the employees of a union for that matter) are certainly within this class. Indeed, very recently the Supreme Court has expressly held that 18 U.S.C. 610 does not prohibit a union-supported segregated fund from soliciting voluntary contributions from the union's employees. United States v. Pipefitters, 407 U.S. 385, 409. It is, therefore, only logical that the segregated fund exception to this section has the same reach with respect to corporations.

For these reasons, we would be disposed to decline prosecution under 18 U.S.C. 610 of any fact situation such as those described in Advisory Opinion Request 1975-23 concerning SUN-EPA and SUN-PAC.

Sincerely,

RICHARD L. THORNBURGH
Assistant Attorney General

Objections to the Federal Election Campaign Act Amendments of 1976 (S. 3065)

A. Fails to Create an Independent Federal Election Commission.

1. Requires that regulations be subject to Congressional veto.
2. Permits such veto to be on a section-by-section basis.
3. Requires that regulations be written before an Advisory Opinion dealing with a matter of general law can be rendered.

B. Promotes the Use of Cash and Increases the Possibility of Fraud.

1. Requires that certain solicitations by corporations and labor organizations be made in a manner that will insure the anonymity of potential contributors.
2. This requirement inherently conflicts with the policy of openness and full disclosure.
3. This promotes the use of cash in order to preserve anonymity.
4. The use of cash creates opportunities for fraudulent conduct.
5. Makes it impossible to provide a receipt or documentation for credits and deductions.

C. Restricts Non-Partisan Communications and Activities by Corporations and Labor Organizations with Certain Persons.

1. Non-partisan communications are by definition nonpolitical
2. Such nonpolitical communications and activities should be afforded the protection of the First Amendment
3. Any such restrictions are unconstitutional

D. Restricts the Use of Voluntary Contributions to a Separate Segregated Fund.

1. In Buckley v. Valeo, the Supreme Court held that limitations upon independent expenditures are unconstitutional.
2. The bill prohibits a separate segregated fund from making independent expenditures to solicit anyone other than certain individuals or groups.
3. Any such restrictions are unconstitutional.

E. Contains Vague Provisions.

1. The bill restricts certain types of solicitations by corporations and labor organizations.
2. "Solicitation" is not defined in the bill.
3. Therefore, the bill fails to provide adequate notice concerning prohibited or restricted activities.

Conference Bill

Federal Election Campaign Act Amendments

Good Features

1. Reconstitution
2. Reports of expenditures on behalf of candidates, $2,000 per candidate per election
3. Honorariums are not considered political contributions
4. Advisory opinions are applicable to others in identical circumstances

Bad Features

1. Restricts company relationship with its own rank and file employees
   A. Allows their solicitation only by mail - twice a year - anonymity. Effectively bans use of payroll deduction
   B. Restricts non-partisan activities toward rank and file employees unless jointly sponsored with another organization that does not endorse candidates and are conducted by that organization.
2. Anonymous contributions encourage cash contributions and increase the threat of fraud
   A. Effectively requires a corporation to retain an independent third party to receive contributions and maintain records

3. Severely limits contributions

   A. $5,000, individual to PAC (now $25,000) (will affect corporate PACs most)

   B. $5,000, PAC to PAC (now unlimited)

4. Effectively limits a corporation, subsidiaries, etc. to single PAC, whether or not independently operated.

5. Erodes FEC independence; in many instances will require regulations (subject to veto) before issuing of Advisory Opinion. (Ain't gonna be many advisory opinions.)

6. Enhances unions' financial role in elections by:

   A. Compelling company to provide check-off for union PAC if given for corporate PAC

   B. Providing for union negotiations regarding check-off for union PAC even if not employed by corporation

   C. Requiring corporation to relinquish list to independent mailing house to solicit both corporate and union contributions if it does not wish to provide lists to unions

   D. Relinquishing lists to any outside party threatens security of such lists

   E. Limiting contributions of individuals to PACs, which will affect corporate PACs most

   F. Effectively limiting corporations to one PAC

7. No definition of solicitation - so don't know:

   A. When you've made one of the 2 solicitations

   B. Whether reference in employee newsletter is solicitation

8. Association PACs restricted - company can allow only one association per year to solicit its employees

9. New Prohibition on using solicited funds for solicitation

10. Reference to political committees established by the Chamber of

Commerce and its state and local chambers are treated as single political committee.

JE

THE FEDERAL ELECTION ACT AMENDMENTS OF 1976: SOME REFORM

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 4, 1976

Mr. MICHEL. Mr. Speaker, having been necessarily absent from the session yesterday, I regretfully missed the debate on the elections bill. I was paired against the measure, however, and would like to take this opportunity to indicate the reasons for my unfavorable view of it.

When we passed the elections bill of 1974, I voted against it, and in doing so I raised several issues. I said it was an "incumbent protection act," for a variety of reasons, the most important of which was the expenditure limitation, which greatly reduced the chances of a challenger unseating an incumbent.

I said it would weaken our party structures, because it treated them like special interest groups so far as contributions to candidates were concerned.

I said it gave an unfair advantage to the labor unions, and I cited some rather remarkable statistics drawn from some of the special elections which had been run in that year, and which showed how the union machines were able to circumvent contribution limitations by manipulating the rules with regard to in-kind contributions.

I called for limitations on honoraria, and in that we were successful in getting an amendment adopted which limited the size of honoraria which a Senator or a Congressman or a Federal employee could receive.

There were any number of other problems with the 1974 bill, and I pointed many of them out in one way or another.

Now, what has happened since then? Of course, the Supreme Court stepped in and threw out some of the more objectionable portions of the 1974 bill, just as many of us said they would. They threw out, for example, the expenditure limitations, one of the major "incumbent protection" features of the law.

They also threw out another of those features, the method of selection of the Federal Elections Commission members. That was also a wise move in my view, but sadly, it had one unfortunate side-effect: it necessitated the Congress taking some new action.

That action is the bill we have been arguing about these many weeks now: It is a bad bill. It overturns, in substantial part, the FEC's so-called Sun-Pac decision, which was one of the very few decisions that body had made which was greeted with approval on my side of the aisle. But the majority party could not see fit to allow us that crumb, and so they have written into the new law a whole series of restrictions on corporate solicitations of campaign funds which I am reliably informed will cripple many of the good citizenship programs which many of these companies have planned to implement. Some reform.

And along the way, the drafters of this bill also decided to throw out a portion of the Taft-Hartley Act and permit unions to collect political contributions through payroll deductions under law. Such provisions are now going to become part of the collective bargaining procedure, whereas before they were prohibited in all cases. So you see, the unions, which as I said in my 1974 remarks received a big advantage in that year, have extended and consolidated that advantage in this legislation. More power to the labor bosses: Some reform.

The limitations on honoraria were relaxed, so our friends on the other side of the Hill can earn a little more money for themselves, and a particularly heinous little provision has been added which permits anonymous campaign contributions up to $50.

That little gem opens the door for the wholesale circumvention of the contribution limitations. Now, the only limitation is on how many $50 bills and plain envelopes a fat cat wants to bother to combine and mail. Some reform.

And although the Supreme Court had said that Congressmen could no longer appoint Commission members, the new bill uses a number of other devices to make the commissioners toe the line to the greatest extent possible. In particular, they will have to toe the line for the Chairman of the House Administration Committee, to whom they must now report all their decisions for approval. The chairman of the House Administration Committee just happens to be also the chairman of the Democratic House Campaign Committee. Some reform.

And I could go on and on. All we needed to do is to pass a simple little bill reconstituting the FEC along lines that the Supreme Court would smile on, but instead the politicians used the opportunity to legislate themselves every possible advantage.

They took out all their frustrations, every thing the FEC had done which hampered their style a little bit, and changed it to suit themselves. Some reform.

A good many of us have for years argued against the constantly growing penchant of Congress to regulate everything under the sun. Among other things, we have frequently cited the fact that regulations, whether they be of the OSHA type or the FCC type or the ICC type or whatever, tend to work to the advantage of the powerful, the guy with the clout.

It would be more to the advantage of the little guy, we have said, to leave things substantially unregulated, because then he can find a niche and he can compete.

But alas, it seldom has happened that way. And finally the Congress has got around to regulating politicians, and just like their business regulations, they work to the advantage of the guy with clout, in this case the fat cats, union bosses and incumbant Congressmen.

I will not be a party to such a action. I consider it unwise, unethical, unfair and unjustifiable. It will do for free elections what other laws have done for free enterprise. And that is not good.

CONGRESSIONAL RECORD
May 4, 1976

Mr. HUDDLESTON, Mr. CLARK, Mr. DOLE, Mr. YOUNG, and Mr. BELLMON conferees on the part of the Senate.

Mr. HUMPHREY. Mr. President, I shall take just this very brief moment to pay my respects and thanks to the staff of the Committee on Agriculture and Forestry and those who were particularly assigned to the work of this legislation. I consider their work to be of the highest professional caliber. They spent many hours to carry out the investigation that had to go into this study and the preparation of the legislation which has been adopted here by the Senate.

So I express thanks particularly to the chief of staff, Mr. Michael R. McLeod, and to all of his associates, and I shall include them by name in the RECORD: Carl P. Rose, William A. Taggart, and James C. Webster. I express thanks to the following personnel of the grain investigation staff: Phillip L. Fraas, Bert L. Williams, Hugh M. Williamson, and Ann C. Bond. And I also wish to thank Nelson Denlinger of my staff for his help.

I express our thanks to the General Accounting Office for the study carried out which was of major importance in this investigation.

I also pay special recognition to those in the media, particularly in the press corps, who did such an excellent job of reporting the developments in the grain inspection difficulties and scandal. I think this was very instrumental in bringing to the public's attention some of the mistakes that were being made and some of the difficulties that we were encountering. I express to them our sincere thanks.

I also express thanks to our colleagues. This legislation, at least legislation of this kind, with whatever differences we may have, is needed.

The Senator from Kansas (Mr. DOLE) has been a tremendous help in the preparation of legislation. He disagreed with the final bill, but he and I both know that we will work out some of these differences in conference.

I also say that every member of the two subcommittees, and the subcommittee chaired by Mr. HUDDLESTON and the subcommittee that I am privileged to chair, worked long hours over many months to perfect this legislation. So, I express my thanks to our colleagues.

Mr. DOLE. Mr. President, let me express my appreciation to the distinguished Senator from Minnesota, the staff, and others who have brought this to light and worked on legislation.

Let me also add, as the view of the Senator from Kansas, that the bill passed by the Senate will never become law, and it is the view of the Senator from Kansas that we may now go to conference and come up with some semblance of good legislation.

There has never been any difference of opinion in the committee about the need for tightening up the program. I guess the only questions raised are in which direction we go, whether we go for a Federal takeover or at least a Federal-State-private working relationship. That is the position the Senator from Kansas holds.

For that reason, the Senator from Kansas voted against final passage but, as indicated, it is the prediction of this Senator that when we go to conference it is going to be a very tough conference. The House of Representatives has some very strong reservations about many provisions in the Senate bill, but it is the view of the Senator when we come from conference we will have a bill that can be supported unanimously by the Senate.

I yield the floor.

ORDER OF BUSINESS

The PRESIDING OFFICER. Who seeks recognition?

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE FEDERAL ELECTION CAMPAIGN ACT

Mr. HELMS. Mr. President, the conference on the Federal Election Campaign Act met this afternoon, as I understand it; and, as I further understand, the conference will meet again tomorrow.

This committee may or may not bring forth a finished report on the bill. Without seeing the finished text, it is fairly obvious from what we already know that no report can emerge from the conference which is worthy of approval by the Senate. However, in the event that the Senate does approve this bill in the form in which I understand it will be presented to the Senate, I hope that the President of the United States will veto it.

Mr. President, it has been reported widely in the news media—and I am certain that the reports are accurate—that the Presidential candidates are clamoring for quick passage of this bill so that the Federal Election Commission may be reconstituted and that distribution of the taxpayers' funds now being held up by the U.S. Supreme Court decision will be resumed as soon as possible. But there is at least one candidate for President, I say to the distinguished Presiding Officer, who is not clamoring for this legislation. I talked with Ronald Reagan today, and he informed me in no uncertain terms that he is full-out opposed to the bill as it now stands.

He would much rather have the President veto this bill, even though obviously there would be practical disadvantage to the financial structure of the Reagan campaign. The Reagan campaign is experiencing financial difficulties, as I understand the other are experiencing. The Reagan campaign could use the money. But as Governor Reagan put in in our telephone conversation today, this bill involves too high a price to pay for the money involved.

I compliment the distinguished former Governor of California for his stand in this matter, because the Senator from North Carolina never has favored the distribution of the taxpayers' money for political campaigns. I voted against the concept. I am unalterably opposed to it. I consider it a rip-off of the taxpayer.

So I say again, Mr. President, that I commend Ronald Reagan for his stand; and I hope there may be some other candidates who will take a like position. But in the event that Congress does approve this bill, as I understand it to be, I hope the President of the United States will veto it. He will be well advised to do so.

QUORUM CALL

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

HOUSING AMENDMENTS OF 1976

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate now proceed, without further action to be taken thereon, to the consideration of S. 3295.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 3295) to extend the authorization for annual contributions under the United States Housing Act of 1937, to extend certain low-income housing programs under the National Housing Act, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill? The Chair hears none, and it is so ordered.

ORDER FOR RECOGNITION OF MR. HELMS ON TOMORROW AND WEDNESDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow and on Wednesday, after the two leaders or their designees have been recognized under the standing order, Mr. HELMS be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene tomorrow at 12 o'clock noon.

After the two leaders or their designees have been recognized under the standing order, Mr. HELMS will be recognized for not to exceed 15 minutes, after which there will be a period for the transaction of routine morning business, not to extend beyond 1 p.m., with statements therein limited to 5 minutes each.

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GEORGE WATSON
Vice President,
Washington Bureau Chief

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ISSUES AND ANSWERS

abc NEWS

SUNDAY, APRIL 25, 1976

Transcript of a one hour interview produced and broadcast over ABC-TV and ABC Radio and published by Tyler Business Services, Inc., Washington, D. C.

GUESTS:
JIMMY CARTER (D. Ga.)
SENATOR FRANK CHURCH (D. Id.)
SENATOR HENRY JACKSON (D. Wash.)
REP. MORRIS UDALL (D. Ariz.)
GOV. GEORGE WALLACE (D. Ala.)

INTERVIEWED BY:
BOB CLARK - ISSUES AND ANSWERS
Chief Correspondent

HERBERT KAPLOW - ABC News
Correspondent

NO RELEASE TO PRESS

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

RICHARD L. LESHER
PRESIDENT

1615 H STREET, N.W.
WASHINGTON, D. C. 20062
202/659-6207

MAY 7 - 1976

May 6, 1976

Mike - Just received this - might also help in your project - Bruce

File FEC

The President
The White House
Washington, D. C.

Dear Mr. President:

On behalf of the National Chamber and its business and professional members across the country, I urge you to veto the Federal Election Campaign Act Amendments, S. 3065.

I have not seen our members so aroused about an issue since the construction site picketing bill. They are indignant, and rightfully so.

We are particularly offended that the bill is designed so blatantly to protect and enhance the financial role of unions in elections, while restricting the growth of business political committees that might otherwise come to balance the unions' influence.

That objective is clearly the sole reason for:

-- restricting the solicitation of rank-and-file employees by corporate political action committees,

-- sharply reducing the ceiling on individual contributions to a PAC,

-- effectively limiting a corporation and all its subsidiaries and divisions to a single PAC, even if there is no common control or direction,

-- permitting a company to allow solicitation of its officials by only one association PAC per year,

-- circumventing present labor law so unions can now demand, for the first time, that companies collect political contributions from unionized employees by payroll deductions, and

-- requiring that companies provide names and addresses of non-union employees to unions or third parties, for solicitation by union PACs.

If these new restrictions and requirements become law, thereby fostering the advantage already held by unions, we see little if any chance of any substantial improvement in the philosophical balance in Congress.

Perhaps the crowning insult to business is the bill's new restriction on "non-partisan" activities, such as those which encourage employees to register and vote. Many companies have been doing this for years, to encourage responsible citizenship. Now they would be told they can do so only if such activities are conducted with the joint sponsorship of some outside organization.

The Chamber also believes the bill unworthy of your signature for other reasons. It further erodes the independence of the Federal Election Commission by allowing Congress to veto not only complete FEC regulations, but mere sections of regulations. Additionally, in most instances, an advisory opinion could not be granted until the FEC had first issued a regulation that could survive the Congress. Such Congressional power over an agency is without precedent and mocks any description of the FEC as "independent."

The bill also undermines a major purpose of the FEC -- openness and disclosure -- by requiring anonymity of contributors of $50 or less. This promotes the use of cash and clearly raises the probability of fraud.

It is regrettable that Congress would not respond to the problem created by the Supreme Court decision with legislation authorizing a simple reconstitution of the FEC, as you initially suggested. But the delay is not your responsibility and should have no bearing on your decision.

The principles at stake in this issue are too great to be sacrificed merely to hasten the release of matching funds to Presidential candidates. To do so would have lasting adverse effects on our political processes -- and, at the same time, confirm the success of the strategy employed by the unions and their allies in this matter.

We urge you to veto S. 3065 -- and pledge our efforts to encourage Congress to sustain the veto.

Sincerely,

Richard L. Lesher

THE WHITE HOUSE

WASHINGTON

May 10, 1976

MEMORANDUM FOR: DICK CHENEY

FROM: MIKE DUVAL

SUBJECT: MEETING WITH MARY LOUISE SMITH

I recommend that Mrs. Smith remain here after the meeting with the President so that she can be available to the Press in front of the White House.

Nessen's briefing is likely to run past 1 o'clock and therefore she should be prepared to wait until it's over.

I recommend the following guidance for her comments:

IF THE PRESIDENT IS LEANING TOWARDS SIGNING --

- Meeting focused on long-term impact of bill on two-party system.
- This bill will give the Republican Party a "fair chance" to compete in the long run with the Democratic Majority Party.
- There are, however, a great many other factors such as the unconstitutional provisions of the bill. Therefore, it will be a very tough call and one that only the President can make.

IF THE PRESIDENT IS LEANING TOWARDS VETO --

- Same points as above, except 2nd point above, but indicate that this bill "...tilts the election process against a strong minority party. It may, in fact, severely damage the Republican Party ten or twenty years from now."

FOR IMMEDIATE RELEASE May 11, 1976

file FEC

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

After extensive consultation and review, I have decided that the Federal Campaign Act Amendments of 1976 warrant my signature.

I am therefore signing those amendments into law this afternoon. I will also be submitting to the Senate for its advice and consent the nominations of six persons to serve as members of the reconstituted Commission.

Shortly after the Supreme Court ruled on January 30 that the Federal Election Commission was invalid as then constituted, I made it clear that I favored a simple reconstitution of the Commission because efforts to amend and reform the law could cause massive confusion in election campaigns that had already started.

The Congress, however, was unwilling to accept my straightforward proposal and instead became bogged down in a controversy that has now extended for more than three months.

In the process, efforts were made to add several provisions to the law which I thought were thoroughly objectionable. These suggested provisions would have further tipped the balance of political power to a single party and to a single element within that party. I could not accept those provisions under any circumstance and I so communicated my views to various Members of the Congress.

Since that time, to my gratification, those features of the bill have been modified so as to avoid in large measure the objections I had raised.

Weighing the merits of this legislation, I have found that the amendments as now drafted command widespread, bipartisan support in both Houses of Congress and by the Chairpersons of both the Republican National Committee and the Democratic National Committee.

I still have serious reservations about certain aspects of the present amendments. For one thing, the bill as presently written will require that the Commission take additional time to consider the effects which the present amendments will have on its previously issued opinions and regulations.

more

A more fundamental concern is that these amendments jeopardize the independence of the Federal Election Commission by permitting either House of Congress to veto regulations which the Commission, as an Executive agency, issues. This provision not only circumvents the original intent of campaign reform but, in my opinion, violates the Constitution. I have therefore directed the Attorney General to challenge the constitutionality of this provision at the earliest possible opportunity.

Recognizing these weaknesses in the bill, 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.

Moreover, further delay would undermine the fair and proper conduct of elections this year for seats in the U.S. Senate, the House of Representatives and for the Presidency. Effective regulation of campaign practices depends upon the existence of a Commission with valid rulemaking and enforcement powers. It is critical that we maintain the integrity of our election process for all Federal offices so that all candidates and their respective supporters and contributors are bound by enforceable laws and regulations which are designed to control questionable and unfair campaign practices.

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 the added complexity of the present amendments. In this regard, the Commission will be aided by a newly provided civil enforcement mechanism sufficiently flexible to facilitate voluntary compliance through conciliation agreements and, where necessary, penalize noncompliance 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. Also, this law strengthens provisions for reporting money spent on campaigns by requiring disclosure of previously unreported costs of partisan communications which are intended to affect the outcome of Federal elections.

Following the 1976 elections, I will submit to the Congress legislation that will correct problems created by the present laws and make additional needed reforms in the election process.

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FOR IMMEDIATE RELEASE May 11, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

After extensive consultation and review, I have decided that the Federal Campaign Act Amendments of 1976 warrant my signature.

I am therefore signing those amendments into law this afternoon. I will also be submitting to the Senate for its advice and consent the nominations of six persons to serve as members of the reconstituted Commission.

Shortly after the Supreme Court ruled on January 30 that the Federal Election Commission was invalid as then constituted, I made it clear that I favored a simple reconstitution of the Commission because efforts to amend and reform the law could cause massive confusion in election campaigns that had already started.

The Congress, however, was unwilling to accept my straightforward proposal and instead became bogged down in a controversy that has now extended for more than three months.

In the process, efforts were made to add several provisions to the law which I thought were thoroughly objectionable. These suggested provisions would have further tipped the balance of political power to a single party and to a single element within that party. I could not accept those provisions under any circumstance and I so communicated my views to various Members of the Congress.

Since that time, to my gratification, those features of the bill have been modified so as to avoid in large measure the objections I had raised.

Weighing the merits of this legislation, I have found that the amendments as now drafted command widespread, bipartisan support in both Houses of Congress and by the Chairpersons of both the Republican National Committee and the Democratic National Committee.

I still have serious reservations about certain aspects of the present amendments. For one thing, the bill as presently written will require that the Commission take additional time to consider the effects which the present amendments will have on its previously issued opinions and regulations.

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FOR IMMEDIATE RELEASE MAY 17, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

The President today announced his intention to nominate six persons to be members of the Federal Election Commission. These are new positions established by Public Law 94-283 of May 11, 1976, (Federal Election Campaign Act Amendments of 1976). They are:

Joan D. Aikens, of Swarthmore, Pennsylvania, businesswoman, in women's retailing. She has been a member of the Commissi on since April 14, 1975.

Thomas Everett Harris, of Alexandria, Virginia, member of the staff of the AFL-CIO since 1955. He has been a member of the Commission since April 14, 1975.

Neil Staebler, Ann Arbor, Michigan, Fellow, Institute of Politics, Harvard University. He has been a member of the Commission since April 11, 1976.

William Springer, of Champaign, Illinois, appointed to the Federal Power Commission on June 4, 1974 and resigned December 1, 1975. This is a new appointment.

Vernon Wallace Thomson, of Richland Center, Wisconsin, former Representative from the Third District of Wisconsin. He has been a member of the Commission since April 14, 1975.

Robert Owens Tiernan, of Warwick, Rhode Island, former Representative from the Second District of Rhode Island. He has been a member of the Commission since April 14, 1975.

The purpose of the Federal Election Commission is to administer, seek to obtain compliance with, and formulate policy with respect to the Federal Election Campaign Amendments of 1976. The Commission shall transmit reports to the President and to each House of Congress. Each report shall contain a detailed statement with respect to the activities of the Commission in carrying out its duties, together with recommendations for such legislative or other actions as the Commission considers appropriate.

The Commission shall elect a chairman and vice chairman from among its members.

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File FEC

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file [FEC]

MR. DeBRINE: The FEC appears to be ready to go into action with its five members as soon as they are sworn in. Do you intend to do that today?

THE PRESIDENT: The Senate was going to confirm the five original -- I had hoped the Senate would likewise confirm the six members so we could have a fully operative Federal Election Commission, The question whether I will swear him in today or not, has to come to mydesk again because I spent ~~a~~ better than hours this morning with the President of France and I have had some other matters. I wouldhope that all six could be sworn in simultaneously and than we would have a fully operating Commission.

MR. DeBRINE: You would rather wait then until you have all six?

THE PRESIDENT: I think that is the more proper way to do it, yes.

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File
Election laws

THE WHITE HOUSE

WASHINGTON

June 24, 1976

File - Federal Election Commission

EYES ONLY

MEMORANDUM FOR: MIKE DUVAL

FROM: BARRY ROTH BR

There is no provision in the Federal Election Campaign Act which would prohibit a candidate from raising or expending funds for the general election prior to nomination. However, if that person is later nominated as the candidate of a "major party", he would then be ineligible to receive federal funding in the general campaign. Section 9003(b) of Title 26 requires the candidates of a major party in a Presidential election to certify under penalty of perjury that "(2) no contributions to defray qualified campaign expenses have been or will be accepted" except to make up deficits caused by insufficient funds in the Federal Election Campaign fund. Under the federal funding scheme, except for certain amounts, which can be expended by the National Committee of the major party, the candidate cannot raise or expend funds from other sources.

The FEC is beginning to waiver in its interpretation of the point in view of the need for advance spending for the general election campaign. For your confidential information, the PFC is now drafting a possible complaint against Jimmy Carter, arguing he is spending funds for the general election in violation of these provisions.

One last reminder, if a candidate elects to forego federal funding in the general campaign, there are no limits on the amount of money he may spend from either his own resources or from other sources. However, the contribution limitations, i.e., $1,000 from an individual per election and $5,000 from a political committee, would continue to apply. If the candidate foregoes Federal funding, he can spend unlimited amounts from his personal resources or those of his immediate family. With Federal funding, he is limited to spending $50,000 per election from such personal resources.

EYES ONLY

THE WHITE HOUSE

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June 24, 1976

file
Election laws

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EYES ONLY

If we continue to do this and drop the ball when it comes to getting our story out to the public at large, then the White House staff will not be doing its job to help the President's campaign efforts.

- One specific lesson we can learn from the FEC mistakes is that once a story does begin to break, notwithstanding our attempts to control the release of news, we must be prepared to act much faster in putting out the President's position. It might be that we will not be able to complete detailed staffing or allow statements to be written with all the arguments and counter-arguments we'd like to see in them. It might well be that we'll have to move the story out very quickly, and all of us should be prepared to pull together to accomplish this without getting hung up on normal staffing procedures and specific details of content.