The original documents are located in Box 9, folder "Federal Election Campaign Act Amendments (4)" of the Loen and Leppert Files at the Gerald R. Ford Presidential Library.

FOR IMMEDIATE RELEASE FEBRUARY 16, 1976

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

THE BRIEFING ROOM

11:36 A.M. EST

In only two weeks time, unless there is affirmative action by the Congress, the Federal Elections Commission will be stripped of most of its powers. We must not allow that to happen.

The Commission has become the chief instrument for achieving clean Federal elections. If it becomes an empty shell, public confidence in our political process will be further eroded and the door will be opened to abuses in the coming elections.

We can and we must reconstitute the Commission in the next two weeks. I am today submitting essential legislation to get that job done and I urge the Congress to join with me in quick and effective action. There can be no retreat on an issue so fundamental to our democracy.

Thank you very much.

END (AT 11:38 A.M. EST)

FOR IMMEDIATE RELEASE FEBRUARY 16, 1976

Office of the White House Press Secretary

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FOR IMMEDIATE RELEASE FEBRUARY 16, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE CONGRESS OF THE UNITED STATES:

In only two weeks time, unless there is affirmative action by the Congress, the Federal Election Commission will be stripped of most of its powers.

We must not allow that to happen. The American people can and should expect that our elections in this Bicentennial year, as well as other years, will be free of abuse. And they know that the Federal Election Commission is the single most effective unit for meeting that challenge.

The Commission has become the chief instrument for achieving clean Federal elections in 1976. If it becomes an empty shell, public confidence in our political process will be further eroded and the door will be opened to possible abuses in the coming elections. There would be no one to interpret, advise or provide needed certainty to the candidates with regard to the complexities of the Federal Election law. If we maintain the Commission, we can rebuild and restore the public faith that is essential for a democracy.

The fate of the Commission has been called into question, of course, by the decision of the Supreme Court on January 30. The Court ruled that the Commission was improperly constituted. The Congress gave the Commission executive powers but then, in violation of the Constitution, the Congress reserved to itself the authority to appoint four of the six members of the Commission. The Court said that this defect could be cured by having all members of the Commission nominated by the President upon the advice and consent of the Senate. Under the Court's ruling, the Commission was given a 30-day lease on life so that the defect might be corrected.

I fully recognize that other aspects of the Court's decision and that, indeed, the original law itself have created valid concerns among Members of Congress. I share many of those concerns, and I share in a desire to reform and improve upon the current law. For instance, one section of the law provides for a one-House veto of Commission regulations, a requirement that is unconstitutional as applied to regulations of an agency performing Executive functions. I am willing to defer legislative resolution of this problem, just as I hope the members of Congress will defer adjustment of other provisions in the interest of the prompt action which is now essential.

It is clear that the 30-day period provided by the Court to reconstitute the Commission is not sufficient to undertake a comprehensive review and reform of the campaign laws. And most assuredly, this 30-day period must not become a convenient excuse to make ineffective the campaign reforms that are already on the books and have been upheld

more

by the Court. There is a growing danger that opponents of campaign reform will exploit this opportunity for the wrong purposes. This cannot be tolerated; there must be no retreat from our commitment to clean elections.

Therefore, I am today submitting remedial legislation to the Congress for immediate action. This legislation incorporates two recommendations that I discussed with the bipartisan leaders of the Congress shortly after the Court issued its opinion.

First, I propose that the Federal Election Commission be reconstituted so that all of its six members are nominated by the President and confirmed by the Senate. This action must be taken before the February 29 deadline.

Second, to ensure that a full-scale review and reform of the election laws are ultimately undertaken, I propose that we limit through the 1976 elections the application of those laws administered by the Commission. When the elections have been completed and all of us have a better understanding of the problems in our current statutes, I will submit to the Congress a new, comprehensive election reform bill to apply to future elections. I also pledge that I will work with the Congress to enact a new law that will meet many of the objections of the current system.

I know there is widespread disagreement within the Congress on what reforms should be undertaken. That controversy is healthy; it bespeaks of a vigorous interest in our political system. But we must not allow our divergent views to disrupt the approaching elections. Our most important task now is to ensure the continued life of the Federal Election Commission, and I urge the Congress to work with me in achieving that goal.

GERALD R. FORD

THE WHITE HOUSE,

February 16, 1976.

# # # #

FOR IMMEDIATE RELEASE FEBRUARY 16, 1976

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GERALD R. FORD

THE WHITE HOUSE,

February 16, 1976.

# # # #

from the office of:

Congressman Wayne L. Hays, 18th District, Ohio

STATEMENT OF CONGRESSMAN WAYNE L. HAYS - FEBRUARY 18, 1976

In recent weeks I have spent considerable time discussing federal election campaign law reforms with my colleagues. Since the Supreme Court decision of last month, it has been my intention to act expeditiously, yet responsibly, to remedy the court's objections to the law, especially as it pertains to the Federal Election Commission.

As many of you are aware, I have been highly critical of the Federal Election Commission over the last several months and, in the wake of the recent Supreme Court decision, have leaned toward abolishing the agency.

Instead, however, I find it is a better solution to retain the Federal Election Commission with more stringent guidelines as to its business conduct.

I have, therefore, directed my staff to prepare legislation which will:

---authorize the President to appoint members of the Federal Election Commission;

---provide the FEC with primary jurisdiction over the regulation of political campaigns;

---require the FEC to correct violations through a process of conciliation and provide that when a conciliation agreement is reached, no civil or criminal proceedings may be initiated;

---prohibit the FEC from launching investigations based on anonymous complaints;

---require that a majority vote of the entire commission be necessary to authorize investigations, initiate civil proceedings or refer matters to the Justice Department;

---require the FEC to promulgate regulations from Advisory Opinions of general applicability within 30 days of issuance; and

---provide that a political advertisement shall clearly state whether it is authorized by a candidate, and if it is not so authorized, it shall bear the name of the person who financed the expenditure.

I have spoken with President Ford about this proposal, and he has indicated his support for such a bill.

It is now my intention to call a meeting of the House Administation Committee for early next week with the hope that this bill will be ready for floor action as soon thereafter as practicable.

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CONTACT: Carol Clawson
(202) 225-2060

THE WHITE HOUSE

WASHINGTON

February 20, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: PHILIP BUCHEN P.W.B.

SUBJECT: Federal Election Commission (FEC) -- The Hays Bill

Wayne Hays has now announced the rough outline of a bill that he will introduce on Monday to reconstitute the FEC and make certain other changes in the Federal election laws. Although other problems will no doubt be posed by this legislation, one provision will be particularly objectionable. As reported by the press, Hays intends to limit corporate political action committees (PAC's) by preventing them from using corporate funds to solicit and administer voluntary contributions from nonmanagement employees. This feature of the Hays proposal was apparently worked out last week by Hays, DNC Chairman Strauss, and labor representatives and could further enhance the relative advantages given to labor in the Federal Election Campaign Act.

Last November, the FEC authorized the formation of corporate political action committees and allowed them to use corporate funds to collect voluntary contributions from shareholders and all employees. Since the FEC decision, approximately 100 corporate PAC's have been formed and substantially more are in the process of formation.

We believe that your opposition to limiting solicitations by corporate PAC's should be communicated to the Hill. Attached is a draft statement along these lines.

Attachment

PROPOSED STATEMENT BY THE PRESIDENT
REGARDING
RECONSTITUTION OF THE FEDERAL ELECTION COMMISSION

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

I believe that the measure I proposed is the right way to proceed. There is simply no time to consider amendments to the law not essential to compliance with the Supreme Court order. Nor is this the time to introduce other changes and new uncertainties into the law just as the primaries are beginning. In particular, I would have serious reservations about any amendment which would go beyond the order of the Court and change the existing rules under which citizens may be allowed to participate in political action committees of any kind.

February 21, 1976

MEMORANDUM TO: Phil Buchen

FROM: PFC Legal Staff

SUBJECT: Federal Election Campaign Act Amendments of 1976 -- Proposed by Senator Pell

The proposed bill submitted to the Subcommittee on Privileges and Elections by Senator Pell would seriously alter the federal election campaign laws as they presently exist. It also appears that this bill tracks the checklist of Representative Hays' bill which we believe Hays will introduce on Monday. The only provision not included in the Hays checklist is the public financing for Congressional staffs.

The Pell bill would have the following substantial effects:

1. Reconstitute the Federal Election Commission (FEC) so that the six members are appointed by the President, by and with the advice and consent of the Senate.

2. Advisory Opinions which involve activity that is likely to recur shall be reduced to regulation form within thirty days.

   Comment: This provision will cause confusion on the part of campaign committees. For example, if a political committee receives an Advisory Opinion from the FEC it will not be able to rely on this opinion until it is reduced to regulation form and not disapproved by the Congress.

3. Individual contributions to a political committee are limited to $1,000 per calendar year; political

committees may contribute only $5,000 to other political committees per calendar year.

Comment: The present election campaign law found constitutional by the Court in Buckley v. Valeo provides that an individual may contribute up to $25,000 per calendar year to a political committee such as the RNC. In addition, the law places no monetary restrictions on political committees contributing to other political committees. For example, a political action committee (PAC) could contribute $100,000 to the RNC today.

4. Corporate political action committees (PAC's) may solicit contributions from only stockholders or officers of a corporation; unions, however, may solicit contributions from their members.

Comment: This amendment legislatively overrules the FEC's SUN PAC decision which held that corporate PAC's could use treasury funds to solicit contributions for its PAC from stockholders and their families, and employees. The removal of employees from this provision essentially isolates corporate employees from in-house political activity. Moreover, if they are members of a union, only one group -- organized labor -- will be permitted to solicit their funds for political purposes while at work. This provision has the potential of creating a national political force unequaled in power -- COPE.

5. If a corporation permits a contribution check-off system for officers or the withholding of dividends for a PAC, it must also provide a check-off system for union members who are employees.

6. Title II of the bill provides public financing of Senate and House elections with matching funds for both primary and general elections after January 1, 1977.

COMPARISON OF MAJOR PROVISIONS OF THE PELL BILL TO RECONSTITUTE THE FEC WITH PRESENT LAW

Pell Bill	Comments	Present Law
(1) Provides for six member commission appointed by the President, not more than 3 members affiliated with the same political party		Provides for 6 voting members selected by President, Senate and House, and non-voting membership for Clerk of the House and Secretary of the Senate.
(2) Requires candidates and committees to keep records of contributions only in excess of $100.	Presumably candidates for Presidential matching funds will have to continue to keep records to determine eligibility for funds	Requires candidates and committees to keep records of contributions in excess of $10.
(3) Requires the FEC to convert advisory opinions of general applicability to regulations subject to one house congressional veto within 30 days of issuance	One house veto provisions in present law and the proposed bill are unconstitutional.	No time limit on when FEC must submit regulations.
(4) Limits individuals to contributions of no more than $1000 to any political committee supporting federal candidates.	Would seriously impair the RNC, Boosters and Congressional campaign committee in their fundraising efforts.	Individuals can contribute up to $25,000 per year to multicandidate political committees supporting federal candidates

Pell Bill	Comments	Present Law
(5) Limits political committees from contributing more than $5,000 to any other political committee.	Limits transfers between multicandidate committees, including the RNC and congressional campaign committees.	Political committees are now limited to $5,000 only if they are contributions to a single candidate committee, or if earmarked for a particular candidate.
(6) Limits expenditure of corporate funds to solicit and administer political contributions only from a stockholder or officer of the corporation. Effective date of prohibiting the current use of corporate funds to solicit and administer funds from employees is 30 days from enactment.	Corporate PACs would be severely limited if not eliminated. No corporation would have a check-off for a corporate PAC if the Pell bill passes because it mandates the same for the union. Effectively closes off the vast majority of the white and blue collar work forces to participation in any corporate PAC.	Permits corporations to expend corporate funds to solicit and administer voluntary political contributions from employees and stockholders.
(7) Public financing for primary and general elections for House and Senate seats beginning in 1977.	This is the only constitutional way to limit expenditures in congressional and Senatorial races.	No comparable provision.

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Amendment to 18 U.S.C. § 610

[The third and fourth paragraphs of 18 U.S.C. § 610 to be amended by the addition of the underscored language]

For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. For the purposes of this section "corporation" includes any trade or industry organization or association whose members include one or more corporations, and such organizations shall have the same rights of communication and solicitation with respect to stockholders and employees of their member corporations as such corporations have with respect to their own stockholders and employees under this section.

As used in this section, the phrase "contribution or expenditure" shall include any direct or indirect payment distribution, loan, advance, deposit, or gift of money, or

any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section; but shall not include communications by a corporation to its stockholders, supervisory and managerial employees, and their families or by a labor organization to its members and their families on any subject; nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders, supervisory and managerial employees, and their families; the establishment, administration, and solicitation of contributions to a separate segregated fund, to be utilized for political purposes, from its stockholders, supervisory, and managerial employees by a corporation or from its members by labor organization: Provided, That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical

force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction.

EXPLANATION

The purpose of these amendments is to clarify in two respects the 1974 Amendments to the Federal Election Campaign Act:

(1) These amendments make it clear that a corporation is entitled to bear the expense of certain kinds of communications with and solicitations from its stockholders and supervisory and managerial employees, but that a corporation may not bear the expenses of such communications and solicitations with respect to other types of employees or the general public. This amendment is designed to limit the Federal Election Commission's decision in SunPac which had authorized corporations to pay the expenses of such communications and solicitations for all types of employees. This amendment strikes a better balance between the interests of corporations and of

labor unions by limiting corporate payments of expenses to those relating to stockholders and supervisory and managerial employees and by limiting labor organization payments of expenses to those relating to members.

(2) These amendments further make it clear that an industry or trade association or organization is given the same rights with respect to the stockholders and supervisory and managerial employees of its member corporations as the corporations themselves have with respect to their own stockholders and supervisory and managerial employees. Under the previous law, it was unclear whether a trade association which established a separate segregated fund could bear the expenses of solicitations to the fund from stockholders and supervisory and managerial employees of the association's member corporations. Under the present amendment, an industry association may use funds contributed by its members for

expenses of establishment, administration, and solicitation of a separate segregated fund which seeks contributions from the stockholders and supervisory and managerial employees of the member corporations.

MEMORANDUM RE ELECTION LAW AMENDMENTS
February 23, 1976

TO: MINORITY MEMBERS
COMMITTEE ON HOUSE ADMINISTRATION

FROM: Louis Wilson Ingram, Jr.

The Committee on House Administration will not consider any Bill having a greater impact on the future of America than the amendments to the Federal Election Campaign Act, as amended in 1974, which will be before us today. The importance of having the actual language of the proposals briefed could, therefore, not be overstated.

The efforts of the Minority in general, and ours in particular to prepare as articulate and well reasoned analysis, have been frustrated by a disinclination by the Majority to provide an advance copy of the actual draft language. If there is any legitimacy to the legislative process, the opposition has an absolute right to review such amendments prior to having to discuss and vote on them.

In view, moreover, of the Chairman's rejoinder to Mr. Frenzel, on Thursday, February 19, with respect to prohibiting corporate PAC solicitation of employees, it would seem the Majority has nothing to fear in providing the Minority with such a preview. The Chairman said "it is not going to be sticky because every Democrat will vote for it and we have two-thirds of the membership of the House." Perhaps, there are constitutional questions which they would prefer to have remain obscure in the legislative history of these amendments. In any event, repeated requests of the Majority Counsel have not produced the specific language under consideration today.

What follows, therefore. is distilled from three sources: the Hays "concept memo" which was made available by the Chairman to Mr. Wiggins, the transcript of the Committee meeting of February 19, and the hearing before the Senate Committee on Rules and Administration. In going over these materials, we noted a curious similarity of language in key phrases between the Senate version, the "concept memo" and the Brademus/Thompson amendments (proposed at the meeting of 2/19), a similarity which might make one wonder if it were possible that they all proceeded from the pen of the same author. For that reason, we treat them herein as a single set of proposals.

THE SPECIFIC "LABOR" PROPOSALS

The Hays proposals to amend the FECA would make <u>eight</u> changes calculated to favor the political influence of organized labor first at the polls and second in the Congress.

(1) Reduce the $25,000 "per annum" ceiling on individual contributions to $1,000 "per annum" with respect to multi-candidate committees, including PACs.

(2) Reduce the unlimited transfer of funds among multi-candidate committees and PACs to $5,000 "per annum".

(3) Prohibit PACs from soliticing "employees".

(4) Require corporations to assume a substantial portion of overhead expenses of union PACs by requiring them to provide a "check-off" in favor of union PACs if they provide a payroll deduction in favor of corporate PACs.

(5) Prohibit the "proliferation" of PACs.

(6) Provide Congressional disapproval of Advisory Opinions by requiring that AOs be recast as regulations of general applicability.

(7) Remove the Commission's independent authority to "formulate general policy" with respect to the criminal provisions including 18 USC 610.

(8) Consolidate the administration and enforcement of "all election related statutes" in the Federal Election Commission.

As used herein "multican" refers to those qualified multi-candidate committees which are not sponsored by corporations or unions, and "PACs" refers to those committees (indeed, often qualified multi-candidate committees) which are sponsored by corporations or unions, the treasury funds of either of which are used to defray overhead expenses.

ORIENTATION OF CORPORATE/EMPLOYEE PACS ISSUE

The proposed attack on entrepreneurial participation in the electoral process requires careful opposition. There are many who find themselves in strenuous disagreement with the assualt but are restrained by a fear of being seen a defenders of corporate interests. Given the current atmosphere and the lately revealed abuses of corporate funding to influence elections and elected officials, this apprehension is not without foundation.

On the other hand, there are legitimate arguments against a labor power grab and it is the purpose of the next few paragraphs to explore this issue from that viewpoint.

Don't Cure the Disease by Killing the Patient

It is axiomatic to a free society that abuses of freedom cannot be corrected by a restriction of freedom itself; to conclude otherwise would be to foredoom any sort of personal or economic liberty. The corporate abuses of the election process cannot, therefore, be properly addressed by diminishing access to that process of those who have not so abused it. They must be addressed by prosecution and punishment.

Not all "Corporations" are "Big Business"

Unfortunately, when "corporations" are mentioned, many people, aided and abetted by a press hostile to personal liberty, think only of those corporations on the Fortune 500 list. The fact is that most corporations are small enterprises, controlled by ordinary people; corporations which could not possibly exercise undue influence on the electoral process. These small and medium size businesses are operated by men and women who have a right to make their political voice heard.

Community of Interest

The interests of their workers are, moreover, demonstrably intertwined with the interests of the entrepreneurs because it is the "corporate" community which provides jobs unless one is committed to government becoming the only real employer. It is an interesting footnote to this controversy, that one Labor complaint in the SUNPAC debate is management "domination" of their employees political views; how would that "domination" be reduced if the State were the only real employer?

There is a genuine "community of interest" between employers and employees, in fact a greater community of interest in that relationship than between union leaders and their members, for the main thurst of union leadership is to do those things that will maintain its power, and if possible increase it. This course requires that union leaders be "doing something". Any normally intelligent person can see immediately that this course serves no useful public purpose. If union leaders are genuinely concerned about jobs for the unemployed, they should be anxious to see productive economic expansion. In fact, that are anxious to bring about non-productive expansion of government make-work programs.

70 Million Workers Don't Belong to Unions

Irrespective of the political implications of a SUNPAC gag would have for "union shops", the far more important effect would be felt on non-union shops which employ over 75% of all American workers. It is presumptious for the so-called leaders of but a fraction of the labor force to claim thay have a right to speak for the entire labor force. It is outrageous for them to ask the Congress to gag the right of political expression of those who have determined not to unionize.

On this basis the proposed restriction of corporations to solicit only their shareholders and, possibly, their officers, serves not only to restrict communication with others who share a community of interest but it substantially restricts the free flow of ideas, particularly where it denies non-union workers the opportunity to voluntarily amplify their political voice in concert with their employers.

SUNPAC STATUTORY AUTHORITY EXAMINED

The SUNPAC issue must be analyzed in order to properly position it politically. At the heart of the matter is the original provision in Sec. 610 that corporations and unions each might contribute to a segregated political fund for political purposes. A closer examination of the applicable language will be helpful.

The Broad Prohibition

Sec. 610 begins with a blanket prohibition, "It is unlawful for any ... corporation ... or any labor organization to make a contribution or expenditure (in any federal election) ... or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section". It should be obvious, even to the more careless reader, that this particular language reaches to all political activity by corporations or unions.

The Exceptions

The fourth paragraph of Sec. 610 defines "contribution and expenditure" and establishes three exceptions to the blanket prohibition. It should be noted that the 610 definition differs from the Sec. 591 definition in that the latter refers to "contributions and expenditures" made for the purpose "of influencing the election" whereas 610 refers to "contributions and expenditures" made "in connection with any election". The latter is substantially more inclusive of periferal election activities.

The definition of "contributions and expenditures" then specifies the three exceptions. The prohibition "shall not include" (1) " communications by a corporation to its stockholders and their families or by a labor organization to its members and their families on any subject;" (2) " non-partisan registration and get-out-the-vote

campaigns by a corporation aimed at its stockholders and their families, or by a labor organization aimed at its members and their families;" (3) "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization: provided, That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by ... (force or the threat of force) ... ; or by ... monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction".

Note that the exception has three distinct parts: (1) communications on any subject and (2) registration drives, each of which are confined to an audience composed of either stockholders or members; the segregated fund exception in (3) is not restricted to stockholders and members and, moreover, specifically bars coercion with respect to members and employees.

The FEC did not create a new exception in permitting corporations to solicit its employees,for the language of Sec. 610 plainly contemplates that the solicitation activity will be aimed at union members and corporate employees or there would be no need to have protected these persons from "force or the threat of force".

The SUNPAC opinion, moreover, set forth stringent guidelines to preclude abuses, or the appearance of abuses, such as coercion. The present attempt to change the law springs not from an honest perception that the Commission erred, but from a pragmatic determination to further tilt the electoral scales.

A CLOSER EXAMINATION OF THE EIGHT "LABOR" PROPOSALS

(1)

Reduce the $25,000 "per annum" ceiling on individual contributions t $1,000 with respect to multicans and PACs.

The reduction of the contribution ceiling with respect to multicans and PACs to $1,000 "per annum" substantially reduces the effectiveness of these committees because it will make a quantum increase in the difficulty of raising money. At present, a contributor may give up to $25,000 "per annum" to any one multican or PAC if he chooses to exhaust his individual ceiling in that manner. The individual contributions to union PACs have not in the past reflected the same proportion in excess of $1,000 as have the contributions to corporate PACs and multicans.

It should be noted with respect to individual contributions to multicans and PACs, the "per annum" ceiling really amounts to a bi-annual ceiling. This results from the statutory language which makes "contributions to a candidate in a non-election year count toward the annual ceiling in the next election year. With respect to non-candidate committees (those other than "principal campaign committees", authorized committees, and single candidate committees) there would have been no problem with making non-election year contributions. Based on the language of the Senate bill, as proposed in a "confidential draft", the proposed restriction would apply literally to each year regardless of whether there was or was not an election.

(2)

Reduce the unlimited transfer of funds among multicans and PACs to $5,000 p/a.

The reduction of the unlimited transfer of funds among committees produces two debilitating effects. (a) If a committee had received contributions from more than 50 persons and had made contributions to five or more federal candidates, but had not been registered for six months its candidate contributions would be limited to

$1,000, but it could none-the-less transfer, without limit, its funds to a multican which could make the $5,000 candidate contributions. The proposed restriction would bar this. (b) A PAC would be barred from transferring more than $5,000 to a multican which would be legally able to solicit employees.

The latter result would effectively inhibit the following course of action: a PAC (because of its reliance on "treasury monies") may not solicit employees, but it may solicit stockholders and "officers"; it does so and subsequently several officers or white collar workers form a multican which would be free to solicit anyone and everyone including the corporate employees with the idea that the PAC will transfer its "working political funds" (those netted after the payment of overhead) to the multican for the purpose of defraying the overhead of the multican.

(3)

Prohibit PACs from soliciting "employees".

The prohibition of PACs from soliciting the employees, other than the officers of the sponsoring organization, is, of course, designed to permit unions an exclusive shot at their members. This prohibition is invoked in the name of equity but plainly the unspoken assumption that the political interests of union members is inimical to the political interests of management is absurd if not violative of the general welfare. For the Congress to pit one group against the other is a flagrant injustice to equal protection as it may be perceived by ordinary people.

The definitional problem has not been resolved, at this writing. Corporations might be permitted to solicit their "officers", or their "officers and supervisory personnel", or "such employees not members of the authorized bargaining agent". The latter would be the most preferable as it would preserve an organized political voice for the 75% of the labor force which are not organized.

(4)

Require corporations to assume a substantial portion of the overhead expenses of union PACs .

To require corporations to assume any of the expense of union PACs is such an extreme abuse of power as to be nothing short of obscene. Section 610 specifically excepts the overhead expense of segregated funds from its overall prohibition of corporation and union contributions. Plainly, the right of <u>each</u> to bear the expense of soliciting their own stockholders, members and employees was staked out in the original Act. This change does not respond to the FEC SUNPAC opinion in any way, but uses that as an excuse to make a significant change in the law.

(5)

Prohibit the proliferation of PACs.

Any attempt to restrict the so-called "proliferation" of PACs must be seen to to rest on the unstated deceit that local unions are somehow "independent" of their international affiliates. It is a matter of record that many Internationals have receivership clauses in the contracts with their locals which clauses permit the International to, unilaterally, place the local in receivership, without cause, and therefore, appoint the local officers. There are locals which have been in receivership for years. This is a common practice among the miners and teamsters.

These facts notwithstanding, there is a commonality of purpose and action among Internationals and their locals which is often more intense than that among the various divisions and subsidiaries of a corporation. By restricting corporations

"and unions" to a single PAC, there would be implaced a federal policy to nationalize the impact of special interest. This would result in an inversion of the power pyramid by focusing PAC interest on national officers rather than on those races closer to home.

The proposed restriction, although apparently universal with respect to both corporations and unions, would impact more debilitatingly upon the free enterprisers.

(6)

Provide for Congressional Disapproval of Advisory Opinions.

The proposal to subject Advisory Opinions to Congressional disapproval is a "gift" for which we should be grateful. Although the proposals, as a whole, present numerous opportunities for constitutional challenge, this remarkable vanity takes the cake! It is difficult to imagine the Supreme Court looking with favor upon a provision which attempts to place a legislative veto on the exercise of a judicial power.

The proposal would require the FEC to recast AOs (of general applicability) into regulations of general applicability, subject to Congressional disapproval, within 30 days of issuance.

An Advisory Opinion is available to specified persons in order to assure them that their particular fact situation and proposed course of action is lawful, and if so advised, the requestor is presumed to be in compliance with the law. Thus, an AO is not unlike a declaratory judgement and, therefore, an exercise of a quasi-judicial power.

The proposal and promulgation of regulations, under general rulemaking authority, is an exercise of a quasi-legislative function.

To require that AOs be recast as regs subject to Congressional disapproval is to require that the AOs be subject to Congressional disapproval. Without reference to the Buckley Decision, this proposal is unconstitutional on its face, but when reference to that decision is made, one must conclude that the Court would take a dimmer view of the disapproval process. It would appear to any unbaised observer, that such a process seriously interfers with the independence of the agency.

(7)

Remove FEC's authority to "formulate general policy" with respect to Title 18.

The proposal to strike the FEC's power to "formulate general policy" with respect to sec. 610, and other criminal provisions, further invades its independence with respect to the formulation of AOs. It can hardly be said that the SUNPAC opinion did not turn on Sec. 610 or that it did not involve the "formulation" of a policy. This proosal has been offered as a means to prevent further "Office Account"-type regulations, but that is a patently hollow excuse, for that reg was not proposed under the "formulation of policy" power of the FEC, but rather under its "rulemaking" power.

(8)

Consolidate the administration of "all election related statutes".

Finally, the proposal to consolidate the administration of all election-related statutes in the FEC will result in the Department of Justice becomming a co-plaintiff in the next constitutional challenge. The motive for this is plain to those who have had access to the complete SUNPAC record. The Assistant Attorney General for the Criminal Division wrote the FEC, prior to the issuance of their SUNPAC opinion, stating that Justice would not prosecute a corporation under the

fact situation and course of action proposed by Sun Oil Corporation. Justice has a tradition of being more conservative than commissions even under Democrat administrations.

The proposal would dig deep into the authority of the Department of Justice to administer the criminal provisions of the US Code. It would confer upon a civil agency "exclusive and primary jurisdiction" of criminal statutes and, particularly when viewed against that agency's record, unreasonably subject persons to unequal protection.

VETO RELATED STRATEGY

A narrow victory or defeat in tomorrow's primary might make the President more sensitive to conservative suggestions and, therefore, more apt to veto this Bill. In any case, congressional opponents of the Bill have only the following expectations:

(1) Presidential approval; (2) a veto overridden; (3) a veto sustained, and (4) with respect to (1) and (2), a judicial attack on the resulting Act.

It would seem that the inclusion of public financing would assure a veto, particularly with the Senate's open-end authorization. Without public financing, one gets a variety of vibrations from the White House. If the President perceives the full dimension of the SUNPAC gag, he might be inclined to take what his advisors are telling him are the political risks.

This author feels that there are no risks: those who would be outraged by a veto are not his supporters, and his supporters will, for the mostpart, be outraged by this Bill.

The main problems facing the President are these: his early commitment to reconstitution of the FEC, his commitment, as announced by Hays, to the concept memo; and the appearance that a veto would be a brash attempt to preserve the role of big business in the electoral process.

The President could announce his willingness to "come to the Hill" to sign the Frenzel/Mikva Bill the very day it passes both Houses. He could also issue an Executive Order extending the life of the FEC for five legislative days and announce that he is not certain of his authority to do so and will recind the Order upon the request of the Majority Leadership (or he might ask the Supreme Court for a further stay).

The President could take the position that the Hays concepts lost something in the translation into statutory language.

He could veto the measure on the basis that it denies to 70 million workers freedom of expression in the electoral process, that it denies to the majority of American employers who do not abuse the process, a common voice with their employees. If it goes to the Floor under a restricted rule, he could also claim that it is too important an issue to be gagged by such limitation.

In any case, a veto might only be sustained by a margin of two or three votes and <u>only if</u> the vast majority of Republicans were to support The President.

More likely is a renewed attack on the Constitutionality of the FECA as amended and re-amended in '76. Every ground that might be available for such an attack should be underscored by an amendment the rejection of which would focus on the

determination of the Majority to disregard the oath to support and defend the Constitution. An array of such amendments would set the stage for an injunction to bar enforcement, a request for emergency hearing, and the placement of such a case at the head of the dockets.

Done 2/25/76

THE WHITE HOUSE
WASHINGTON

2-24-76

Nota:

Send a copy to:

Jack Marsh

Max F.

Rogers CB. Morton

Roy Hughes

Bob Hartmann on

Hwy trust dist. Chm.

RED TAG

THE WHITE HOUSE

WASHINGTON

February 24, 1976

MEMORANDUM FOR: MAX L. FRIEDERSDORF

THRU: VERN LOEN VL

FROM: CHARLES LEPPERT, JR. C.L.J.

SUBJECT: Federal Election Campaign Act

The House Administration Committee today continued reading the bill H. R. 12015 for amendments. A copy of the printed bill is attached along with the amendments adopted and one which was passed over and will be offered again.

The Committee meets again tomorrow at 10:30 a. m. to continue mark-up of the bill.

Attachment

cc: Phil Buchen

AMENDMENT OFFERED BY
Annunzio

2 U.S.C. 437c is amended by adding at the end thereof the following new subsection:

(g)(1) Notwithstanding any other law, the Federal Election Commission established by section 310 (a)(1) of the Act (2 U.S.C. 437.c) (a)(1) is abolished at the close of February 28, 1977. The term of office of any member of such Commission shall terminate on such date.

(2) Nothing in this section shall affect any proceeding pending in any court of the United States on the date the Federal Election Commission is abolished under subsection (1).

Passed over
will be brought
up later.

Committee on House Administration

"(2) Any proceeding pending in any court of the United States on the date the FEC is abolished under subsection (1) shall be continued under the supervision of the Attorney General or his designee."

Amendment to the Annunzio Amendment

Amendment offered by Mr. Thompson

DUTIES AND FUNCTIONS OF THE
SECRETARY AND THE CLERK

On page 5, immediately after line 4, strike out all of Section 101(d).

Passed -

Approved by Voice Vote

Amendment to H. R. 12015

(Federal Election Campaign Act Amendments of 1976)

Offered by

Page 3, immediately after line 13, insert the following:

"(B) A member of the Commission may serve on the Commission after the expiration of his term until his successor has taken office as a member of the Commission.

Page 3, line 14, strike out "(B)" and insert in lieu thereof "(C)".

Page 3, line 18, strike out "(C)" and insert in lieu thereof "(D)".

Passed

THE WHITE HOUSE

WASHINGTON

February 26, 1976

MEMORANDUM FOR: MAX L. FRIEDERSDORF

THRU: VERN LOEN

FROM: CHARLES LEPPERT, JR. CLJr.

SUBJECT: H. R. 12015, Federal Election Campaign Act Amendments of 1976.

Attached for your information are the second set of amendments adopted by the House Administration Committee to H. R. 12015 at its last meeting on Wednesday, February 25.

The Committee has concluded marking-up the bill through Section 107. They begin with Section 108 at the next scheduled meeting at 10:30 a. m., Monday, March 1.

Lou Ingram, Minority Counsel, asked if the President would veto the bill if it contained provisions providing for the public financing of House and Senate campaigns. Ingram contends that if the bill contains such provisions and the President would veto the bill the legislative strategy at this point should be to include provisions providing for public financing of House and Senate races. What is the guidance on Ingram's strategy?

cc: Phil Buchen
Barry Roth
Bob Visser, PFC

Amendment by Mr. Wiggins

Page 7, line 8, redesignate subsection (c) as subsection (d);

Page 8, line 1, redesignate subsection (d) as subsection (e);

Page 7, line 8, insert the following new subsection (c):

Amend Section 301 (e)(5) [2 U.S.C. Section 431 (e)(5)] by adding the following:

"(G) a gift, subscription, loan, advance, or deposit of money or anything of value to a national committee of a political party or to a State committee of a political party (including any subordinate committee of a State committee) specifically designated for the purpose of defraying costs not incurred [with respect to constructing, purchasing, leasing, renting, or otherwise acquiring office facilities which are not acquired] for the purpose of influencing the election of candidates in a particular election." reported 304.b

Passed over

Amendment by Mr. Wiggins

PARTY NEWSLETTERS

Page 7, line 24, add the following new paragraph:

(4) by inserting immediately after clause (I) the following additional clause:

"(J) notwithstanding any other provision of this Act, the costs of preparing, publishing, and mailing or distributing the usual and customary newsletters of a committee of a political party to its paid subscribers."

16 N - 9 Ayes

Amendment by Mr. Wiggins

VOTER REGISTRATION BY POLITICAL PARTIES

Page 7, line 10, redesignate paragraph (1) as paragraph (2),

line 12, redesignate paragraph (2) as paragraph (3),

line 14, redesignate paragraph (3) as paragraph (4),

line 10, insert the following new paragraph (1):

(1) by striking out the semicolon at the end of clause (B), inserting a comma, and adding the following:

"except that such activities conducted by political parties or committees thereof need not be nonpartisan; and";

Passed voice

Amendment by Mr. Wiggins

REPORTS BY POLITICAL COMMITTEES AND CANDIDATES

Page 9, line 1, strike out the word "and", and insert therein the word "or".

Passed
Unanimous consent

Amendment by Mr. Wiggins

REPORTS BY POLITICAL COMMITTEES AND CANDIDATES

Page 10, line 23, strike out the sentence beginning with "Statements required" and insert in lieu thereof the following sentence:

"Statements required by this subsection shall be filed on the same dates that reports of the candidates with respect to which such contributions or expenditures are made are required to be filed."

failed on voice vote

Amendment offered by Mr. Thompson

STANDING TO REQUEST ADVISORY OPINIONS

Page 13, line 19, strike out "the Democratic Caucus and the Republican Conference of each House of the Congress,"

Amendment to H. R. 12015

(Federal Election Campaign Act Amendments of 1976)

Offered by Mr. Hays

Page 8, immediately after line 12, insert the following:

(p) "independent expenditure" means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate or any authorized committee or agent of such candidate and which is not made in concert, with, and is not at the request or suggestion of, any candidate or any authorized committee or any authorized committee or agent of such candidate.

Passed over
Will be brought up Mon. 3/1

AMENDMENT TO H.R. 12015

Offered by Mr . Wiggins

On page 7, at Line 16, after "by a candidate" insert "receiving federal funds" and at Line 22, after "any such insert the word "excess".

Passed

Amendment to H. R. 12015

Offered by Hays

Page 8, strike out line 10 through line 12 and insert in lieu thereof the following:

"(o) 'Act' means the Federal Election Campaign Act of 1971, as amended by the Federal Election Campaign Act Amendments of 1974 and the Federal Election Campaign Act Amendments of 1976.".

Passed

FOR IMMEDIATE RELEASE FEBRUARY 27, 1976

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT
ON THE EXTENSION OF
THE FEDERAL ELECTION COMMISSION

THE BRIEFING ROOM

2:23 P.M. EST

It is nice to see you this afternoon. Please sit down.

One year ago the Federal Election Commission was set up because voters across the country wanted a strong watchdog to insure that we have clean and honest elections.

Now, as a result of a Supreme Court decision and a delay in Congressional action, the essential powers of that Commission are in jeopardy. Unless Congress acts within the 20-day extension just granted by the Supreme Court, the Commission will no longer be able to enforce the campaign laws, advise candidates on what those laws mean, or certify candidates for Federal matching funds. In short, the watchdog will have lost its teeth.

We must not retreat from our commitment to clean elections. When the Supreme Court acted on this matter, it made it clear that the Congress could remedy this problem by simply reconstituting the Commission. I supported the court's view and asked that the Congress act swiftly to extend the life of the Commission.

Instead, various interests, both political and otherwise, both in and out of Congress, have chosen this moment to advance the wide range of hastily considered changes in the campaign laws.

Most of the bills now being considered in the Congress would introduce great uncertainty in the campaign process.

With the 1976 elections only nine months away, I do not believe this is the proper time to begin tampering with the campaign reform laws, and I will veto any bill that will create confusion and will invite further delay and litigation.

MORE

Certainly, no one is fully satisfied with the campaign laws now on the statute books. When the current political season is behind us, I ask the Congress to work with me in conducting a very thorough review and revision of those laws.

But, right now the most pressing task is to re-establish the Federal Election Commission as quickly as possible.

I urge the Congress to put aside its debates and enact the bill that I have sent to the Congress to provide for an immediate and simple extension of the Commission.

We must get on with the job of insuring that the political process in 1976 will be just as fair, just as honest as we can make it.

END (AT 2:27 P.M. EST)