The original documents are located in Box 14, folder "Federal Election Campaign Act Amendments - 1976 (2)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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

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)

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.

THE WHITE HOUSE

WASHINGTON

February 27, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: MAX L. FRIEDERSDORF MLF

SUBJECT: Wayne Hays' Reaction to Presidential Statement on the Federal Election Commission

Chairman Hays reacted violently today to the President's statement on the Federal Election Commission.

He called at 4:20 p.m. today and was livid about the veto threat.

Hays indicated he is calling off the scheduled House Administration Committee mark-up on the bill Monday, and instead, convening a House Democratic Caucus.

Hays said he will recommend the Caucus instruct him to report the originial Hays bill immediately, rejecting all Republican amendments.

Hays said he had been cooperating with the Minority leadership and jurisdictional Members in working out a compromise and had been accepting Republican amendments.

He was quite abusive and sounded berserk with anger about a possible veto.

I reviewed the statement with him and before we hung up, he had calmed down some.

However, the Chairman will be difficult to deal with on this issue next week.

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

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

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

THE WHITE HOUSE

WASHINGTON

February 27, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: MAX L. FRIEDERSDORF M.L.F.

SUBJECT: Presidential Statement on the Federal Election Commission

Congressional reaction to today's Presidential statement on the Federal Election Commission:

BILL FRENZEL - Excellent idea, good statement.

BOB GRIFFIN - Pleased with statement.

HERB BURKE - Supportive.

HUGH SCOTT - Strongly supportive.

CARL CURTIS - Great statement. Plans to issue a statement in support of the President's position.

MARK HATFIELD - Enthusiastic and will back the President all the way.

CHUCK WIGGINS - Would have preferred the President convey his views privately through the leadership.

John Rhodes, Bob Michel, John Anderson, Sam Devine, Bill Dickinson and Henson Moore were all unavailable by phone; the President's statement was read to their respective staff, with the request that the Congressmen be notified.

bcc: Jack Marsh
Rog Morton
Dick Cheney
Bo Callaway
Jim Connor
Phil Buchen

[March 1976?]

TALKING POINTS: FEDERAL ELECTION COMMISSION LEGISLATION

1. In response to the recent ruling of the Supreme Court, Congress is considering the so-called Hays Bill to reconstitute the Federal Election Commission. This legislation would also amend several important provisions in the Federal Election Campaign Act Amendments of 1974.

2. The House Administration Committee is currently marking up its bill. In the Senate, floor action is anticipated on a companion measure within the week.

3. Four principal problems are raised by this legislation:

a. Existing law establishing ground rules for the operation of corporate political action committees is substantially altered to their disadvantage as compared to similar committees of labor unions.

b. Substantial constraints are placed on the independence of the Federal Election Commission with respect to the promulgation of regulations, issuance of advisory opinions and enforcement of the election laws.

c. The penalties which are currently available for violation of the federal election laws are substantially weakened and, in some respects, eliminated.

d. In several instances "improvements" proposed by the Hays Bill will lead to further uncertainty and litigation in order to ascertain Congressional intent and to resolve additional Constitutional questions.

4. Unless this legislation is drastically altered, I will be forced to veto the measure.

5. My principal concerns relative to this legislation are to insure the independent enforcement of the election laws in the present campaign and to carry forward some notion of equity between candidates and parties under the election laws.

6. We cannot afford to permit further confusion in the election laws to be introduced at this stage of the campaign; and we must unite in opposition to the present proposals, and in support of an independent election commission.

Presidential Campaign

THE WHITE HOUSE

WASHINGTON

March 1, 1976

MEMORANDUM FOR: JIM CONNOR

FROM: PHILIP BUCHEN P.

SUBJECT: Campaign Reform Legislation

To date, virtually all criticism by Republicans of the Hays Bill to reconstitute the FEC has focused on the limitations on corporate political action committees and on contributions by multi-candidate political committees. Virtually no one has pointed out other problems created by this bill, such as limitations on the independence of the FEC. Both Max Friedersdorf and Ron Nessen have requested any other objections that we have to the Hays Bill in order to strengthen our position. Attached is a listing of such problems. If you concur, please provide this to Max and Ron.

As the President recognized, his leverage comes from the need of all Presidential candidates, including himself, for Federal matching funds. The earlier Max signals that the President will also veto legislation that would continue the certification function without reconstituting an independent FEC, the better his public position will be vis-a-vis election reform. This anticipates what Congress would do assuming a veto is upheld, and it puts the President in an up-front position, as well as showing him using his leverage to ensure independent enforcement of the election laws this year.

One last factor for your consideration concerns the limitation in the President's bill of the election laws to 1976. Hugh Scott's office says that there is no way the Senate will agree to this. Thus, some direction will have to be given later to Scott and Griffin on whether to compromise on this matter at a later time.

PROBLEMS RAISED BY H.R. 12015
(HAYS BILL TO RECONSTITUTE THE FEC)

1. Undue limitations on independent regulation and enforcement of the election laws:

A. The requirements of Section 108 and 2 U.S.C. 438(c) that all regulations proposed by the Commission be submitted to the Congress and subject to a one-house veto. This is unconstitutional with respect to the regulations of an independent agency performing Executive functions.

B. The requirement of Section 108 that within 30 days of issuing an Advisory Opinion, the Commission must reduce the opinion to regulations of general applicability which are thus subject to a one-house veto.

C. The requirement of Section 108 that any Advisory Opinion issued since October 15, 1974, now be reduced to regulation and submitted to Congress.

D. The requirements of Section 109 that the Commission shall attempt for not less than 30 days to achieve voluntary compliance to correct or prevent any violation of FECA, before it can go to Court.

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D. The requirements of Section 109 that the Commission shall attempt for not less than 30 days to achieve voluntary compliance to correct or prevent any violation of FECA, before it can go to Court.

2. Transferring the criminal provisions of FECA from Title 18 of the United States Code to Title 2:

A. Section 109 provides, in part, that a "conciliation agreement, unless violated, shall constitute an absolute bar to any further action by the Commission, including bringing a civil proceeding ...." This may confuse any criminal prosecution by permitting a defendant to argue that he stopped as soon as he was caught -- even though the violation was serious and warranted prosecution. This can be read as a restriction on the power of the Department of Justice to enforce the criminal provisions over which it must constitutionally retain jurisdiction.

B. Section 109 raises additional uncertainty as to Justice's authority to enforce the criminal provisions of FECA by its preference for civil enforcement, and the exclusive vesting of civil enforcement authority in the Commission.

C. Section 112 in adding a new section 328 to FECA reduces from felonies to misdemeanors certain violations of the Federal election laws. It also establishes a floor of $5,000 in any calendar year for a contribution or expenditure for which no criminal

penalty can be sought, regardless of the willful nature of the violation of the statutory limitation on contributions and expenditures. No criminal penalty is provided for provisions such as the fraudulent misrepresentation of campaign authority or acceptance of excessive honorariums.

3. The proposed amendments in the law are certain to bring new litigation and introduce further uncertainty at a time when the primaries have already begun:

A. Section 112 would provide a new section 320 of FECA which would consider the "financing by any person of the dissemination, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees or their authorized agents" as an expenditure subject to the candidate's expenditure limitation (if he receives Federal matching funds), even though the use of his materials was unauthorized or without his knowledge.

B. Section 112 would provide a new section 323 to FECA which shall require that any communication not authorized by the candidate shall clearly and conspicuously so state on its face, and also state the name of the person that financed the expenditure. This is different from the disclosure requirement of 2 U.S.C. 434(e) upheld by the Court in Buckely v. Valeo, at pp. 75-76,

and raises again the problems presented by the Supreme Court's decision in Tulley v. California, 362 U.S. 60 (1959). In that case, the Court invalidated an ordinance of the City of Los Angeles that forbade distribution in any place under any circumstances, of any handbill which did not have printed thereon the name and address of the person who prepared, distributed or sponsored the handbill. The Court determined that this identification requirement tended to restrict the freedom to distribute information and thereby freedom of expression. Although not conclusive as to the constitutionality of this amendment, it is typical of litigation that can be brought if such amendments are passed.

4. The general effect of the proposed amendments will be to introduce uncertainty into our 1976 campaign process at a time when greater certainty is critical, for example:

A. The provisions of Section 108 with respect to Advisory Opinions leaves uncertainty as to whether the Advisory Opinion itself will stand disapproved if the regulation is disapproved and whether it will be necessary for the recipient of an opinion to wait for congressional action or non-action until he can rely on the opinion.

B. Section 108 precludes the Commission from issuing more than one advisory opinion relating to a transaction or activity. Thus persons other than the first to ask for such an opinion will not be able to rely on that opinion as a bar to future enforcement proceedings.

THE WHITE HOUSE
WASHINGTON

ES

3/1

Barry left this for you.

He said to make any changes and then give to M. Buchen

Please make copy for me.

Mr. Buchen 3/16

THE WHITE HOUSE

WASHINGTON

March 1, 1976

MEMORANDUM FOR: JIM CONNOR

FROM: PHILIP BUCHEN P.

SUBJECT: Campaign Reform Legislation

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B. Section 108 precludes the Commission from issuing more than one advisory opinion relating to a transaction or activity. Thus persons other than the first to ask for such an opinion will not be able to rely on that opinion as a bar to future enforcement proceedings.

March 2, 1976

Copy to Bailey.

Dear Phil:

On Monday the Senate Rules Committee added one sentence to Wayne Hays' bill and voted the bill out of Committee. The added line reads:

> A political committee of a national organization shall not be precluded from contributing to a candidate or committee merely because the committee was affiliated with a multi-candidate political committee which has made the maximum contribution it is permitted to make to a candidate or committee.

If you wonder what it means, please turn the page.

It means --

State and local COPEs may give their candidates the maximum contributions even if national COPE has given its maximum.

Let's blow 'em out of the water!

William A. Steiger, M.C.

WILLIAM A. STEIGER
6TH DISTRICT, WISCONSIN

ROOM 1025
LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-2476

MEMBER:
WAYS AND MEANS
COMMITTEE

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Washington, D.C. 20515

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MANITOWOC, WISCONSIN 54220
(414) 684-1521

FOND DU LAC, WISCONSIN
(414) 922-1180

February 26, 1976

MEMORANDUM TO: Philip W. Buchen

The House Administration Committee and the Senate Committee on Rules and Administration both are mid-way through the mark-up of Mr. Hays' bill, HR 12015. Hays told the House Committee Wednesday he plans to report the bill to the floor by Wed., [redacted] or Thursday, and that the Senate Committee will be prepared to do likewise. (The Senate Committee is ahead of the House group in mark-up, because the Senators met all day today. Neither committee is making many changes in the Hays draft and the two houses have obviously agreed upon the Hays approach.)

I have outlined the most objectionable features of the bill.

Four of the provisions raise serious constitutional problems.

The sole salvation I can think of is for the President to take a firm stand before the houses vote.

In light of his expressed misgivings at the time of his signing the Federal Election Campaign Act Amendments of 1974, President Ford can easily remind the Congress and the country of what he said on October 15, 1974. He thought it might contain First Amendment problems. The Court has proved him right, and he is in a position to resolutely refuse legislation that presents new First Amendment problems more serious than those struck down by the Court.

GERALD R. FORD LIBRARY

Objectionable Provisions Would:	Response:
* require the FEC to turn its advisory opinions into regulations within 30 days. Either house of Congress could veto the regulations. (Retroactive to October 15.)	FEC advisory opinions enable candidates to act with some certainty of what the law means. Hays' change would strip the FEC of its ability to give binding opinions.
There is also a line veto provision.	Of the 6 advisory opinions the FEC has sent Congress, not one has emerged to date. This experience will lead the FEC to resort to Opinions of Counsel, rather than AO's, but such opinions have no legal effect. President Ford noted Feb. 16 that the legislative veto is unconstitutional as applied to regulations of an executive agency.
* include the Secretary of the Senate and the Clerk of the House as ex officio Members of the Commission.	Asst. Atty. Gen. Scalia's testimony is the best response to this -- 2/18/76

"Let me now outline what the President's legislation would accomplish. Section 2(a) provides for the appointment of all Commission members by the President, by and with the advice and consent of the Senate. Section 2(b) includes a number of technical conforming amendments which eliminate language relevant to the system under which Commissioners were previously appointed.

I should mention that there is one feature of Section 2 which was not directly addressed by the Supreme Court. Section 2 would eliminate the Secretary of the Senate and the Clerk of the House as non-voting, ex officio members of the Commission. We believe that the spirit of the opinion, and even the letter of the Constitution, require this result. The connection of these two officers to the legislative branch is even closer than that of the present congressionally appointed members who have the right to vote. They are not only appointed by Congress, but paid by it and removable by it. We believe that the absence of voting power is not determinative for constitutional purposes. The power to be present and to participate in discussions is the power to influence. Normally, a judge, commissioner or juror, or even a corporate director, who is disqualified for conflict of interest, is expected to excuse himself not only from voting but from deliberations as well. In Weiner v. United States, the Supreme Court stressed that an independent agency should decide matters on the merits "entirely free from the control or coercive influence, direct or indirect * * * of either the Executive or the Congress."

In Valeo the Court used similar words in describing the Commission's functions as "exercised free from day-to-day supervision of either Congress or the Executive Branch." As long as two officers of the legislative branch sit on the Commission there is thus a danger that constitutional requirements will not be met and that, at the very least, the entire law will be subject to further litigation and challenge.

Objection Provisions Would:	Response:
* Limit individuals to contributions of no more than $1,000 in a calendar year to any political committee (except the national and state committees of the political parties)	This injures all the voluntary citizens groups that traditionally play a healthy and vital role in American elections: the American Conservative Union, the Republican Boosters Club, the Democratic Study Group, the National Committee for an Effective Congress, the Americans for Constitutional Action, AMPAC, BIPAC, Counsil for a Livable World, and dozens more. It further presents First Amendment problems .
* Limit groups to giving $5,000 to any other political committee	The political committees have never been limited except for giving to candidate campaigns. First Amendment problems again.
* Rule that an individual's republishing, or distributing "in whole or in part" any broadcast or any advertisement of a candidate or his committee is not an expenditure but is a contribution and therefore limited to $1,000.	As Justice Renquist asked Archibald Cox during the oral argument, November 10, 1975 -- "If an individual carries a placard someone else wrote, is that not speech?" A clear First Amendment problem.
* Limit corporate PACs to soliciting funds from management (individuals employed "on a salary basis...and who have policy making and supervisory responsibilities) and stockholders. Each corporation or subsidiary could have only one PAC.	FEC, notably Neil Staebler, held differently. President is well on record.
* Permit union members to make voluntary payroll checkoffs to a union PAC, if an employer allows management to checkoff to a corporate PAC.	

February 26, 1976

CONCERNING MR. HAYS' FEC LEGISLATION

By William A. Steiger (R-Wis)

When Chairman Hays said he'd changed his mind and he now supports reinstatement of the Federal Election Commission, I was less skeptical than the one who replied that he wanted to take a careful look "at the language" of that proposal.

But I have taken a careful look at Mr. Hays' proposal, and this is what I've found.

H.R. 12015, presently under mark-up by both the Committee on House Administration and the Senate Committee on Rules and Administration, will remove from the Criminal Code, and make subject to civil penalties only, all of the following parts of the election law:

* the prohibition on contributions from foreign nationals
* the ban on contributions from government contractors
* the limits on contributions, expenditures, and the use of currency in political campaigns
* the regulation of corporate and labor Political Action Committees, and
* the limits on honorariums that Members of Congress receive.

However, the Hays proposal will extend criminal penalties to one person. That is the person who blows the whistle.

> "Any person who believes a violation" of the federal election law "has occurred" and who files "a complaint with the Commission...shall be subject to the provisions of section 1001 of Title 18, United States Code."

What does Section 1001 say? Whoever communicates with a federal agency and conceals "a material fact," it warns, "or uses any... document knowing the same to contain any (repeat, any) false, fictitious or fraudulent statement or entry" is guilty of a crime.

In other words, no candidate, no foreign national, no corporation, no labor union, and no Member of Congress who is found guilty of violating the Federal Election Campaign Act will run the risk of being labeled "a criminal." The only person who runs that risk is the citizen who sends a complaint to the Federal Election Commission.

Some might argue that the Hays proposal is only a bill which has not been reported to the House floor. Unhappily, the situation is more serious than that.

H.R. 12015 is sponsored by 9 of the 17 Majority Members of the House Administration Committee. (Representatives Hays, Dent, Hawkins, Annunzio, Gaydos, Jones, Minish, Rose and Burton)

It is also the only bill the Committee is considering, although no fewer than four other FEC-related bills have been introduced.

Moreover, in a departure from normal procedure, H.R. 12015 is the only bill under consideration by the Senate Rules Committee.

Both committees plan to report the Hays bill to their respective floors on February 25 or 26.

Poring over the bill as a whole, one must conclude that the members and staffs of the responsible committees of Congress have neither read nor comprehended the Supreme Court's decision on the election law. The proposal addresses none of the new inequities indirectly created by the Court's action. In fact, it makes changes that raise new First Amendment problems more serious than those struck down by the Court.

Instead of raising the contribution limits, so that middle and lower income candidates might no longer be constrained by law in challenging a wealthy opponent, the Hays bill lowers them.

It will limit individuals to contributing no more than $1,000 to any political committee (solely excepting the national and state committees of the political parties) in a calendar year. At present, the law sets this limit on contributions which individuals make to a candidate or to a candidate's committee. But to all other committees one may give up to $25,000 in a calendar year.

The Hays bill further limits an independent political committee by barring it from giving more than $5,000 to any other political committee in a calendar year. Political committees aren't now restricted in their giving, unless they contributing to a candidate's campaign.

The only conceivable effect of the new legislation will be to stifle the activities of such voluntary groups as the Council for a Livable World, the American Conservative Union, the National Committee for an Effective Congress, the Republican Boosters Club, and the dozens of other citizens' organizations that traditionally play a healthy and vital role in American elections.

It is hard to know what rationale can justify these further restrictions on the supporters and activities of the voluntary groups.

Less than 30 days ago, the Supreme Court reminded Congress "the First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive or unwise."

The Court specifically cited the Constitutional protection of the rights of political committees.

> "It is not the government but the people -- individually as citizens and candidates and collectively as associations and political committees -- who must retain control over the quantity and range of debate on public issues in a political campaign."

When Congress votes on new legislation this coming week, the words of the First Amendment may bear repeating:

> "Congress shall make no law...abridging the freedom of speech...."

It is not an overstatement to say the Hays bill is a catalogue of misreforms. Nonetheless, one further provision must be examined in detail.

The bill requires the Commission to turn its advisory opinions into regulations within 30 days. Advisory opinions are the FEC's replies to candidates and committees who want to comply with the law and who need to know what it means in a given situation. Opinions are quickly published in the Federal Register and they have enabled candidates and their workers to act with some certainty.

The significance of the Hays change is that all of these advisory opinions, when issued as regulations, must be sent to Congress; and Commission decisions that don't serve the interests of incumbents, Congress cooly vetoes.

To date the FEC has sent six regulations to Congress, and none has yet emerged.

In his message to the Senate on February 16, President Ford said the legislative veto is unconstitutional as applied to regulations of an executive agency. Today, however, the Senate Rules Committee reviewed without changing the provision to expand the legislative veto to cover every advisory opinion issued by the Commission.

It boggles the imagination, but the new provision will also be retroactive. It "shall apply to any advisory opinion rendered...after October 15, 1974."

This date appears to be a typographical error. The FEC's first advisory opinion wasn't issued until July 15, 1975. No doubt the "4" in 1974 should be changed to a "5." And then the bill should be deep 6-ed.

NEW JERSEY FEDERATION OF ESTONIAN-AMERICAN ASSOCIATIONS RESOLUTION

We, Americans of Estonian ancestry, gathered on this second day of February, 1976, at the Estonian House in Jackson, New Jersey, to observe the 58th anniversary of Estonia's Independence, and mindful of the sad fact that the homeland of our forefathers is still oppressed and suffering under the totalitarian rule of the Soviet Russia, declare the following:

Whereas all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social, cultural and religious development; and

Whereas the peoples of Estonia and the other Baltic countries of Latvia and Lithuania have been forcibly deprived of these rights by the Soviet Union; and

Whereas it has been the firm and consistent policy of the Government of the United States to support the aspirations of the Baltic peoples for self-determination and national independence:

Now, therefore be it

Resolved, That we Americans of Estonian descent reaffirm our adherence to the principles for which the United States stands and pledge our support to the President and the Congress to achieve lasting peace, freedom, and justice in the world; also be it

Resolved, That we urge the President of the United States to direct the attention of world opinion at the United Nations and at other appropriate international forums to the denial of the rights of self-determination for the peoples of Estonia, Latvia, and Lithuania; also be it

Resolved, That we urge the United States Senate to adopt Senate Resolution 319, expressing the sense of the Senate that the signing in Helsinki of the Find Act of the Conference on Security and Cooperation in Europe did not change in any way the long-standing policy of the United States on non-recognition of the Soviet Union's illegal seizure and confiscation of the Baltic States of Estonia, Latvia and Lithuanian; also be it

Resolved, That we urge the United States Senate and the United States House of Representatives to adopt pending bills calling for the establishment of the Commission on Security and Cooperation in Europe; also be it

Resolved, That we urge the United States Ambassador to the United Nations to reintroduce the proposal to the United Nations General Assembly calling for worldwide amnesty of all political prisoners; also be it

Resolved, That copies of this resolution be forwarded to the President of the United States, the Secretary of the State, the United States Ambassador to the United Nations, the United States Senators and Representatives of New Jersey and the press.

ELECTION LAW AS SEEN BY DEPARTMENT OF JUSTICE

HON. WILLIAM A. STEIGER

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 25, 1976

Mr. STEIGER of Wisconsin. Mr. Speaker, on February 18, Assistant Attorney General Antonin Scalia appeared on the Hill to outline the current state of the Federal election law and to present the administration's proposal for remedying it.

Although I do not espouse the precise position Mr. Scalia outlined, because I believe we should consider the new problems posed by the contribution limits, I do believe his testimony offers a noteworthy discussion of the status of the law following the ruling of the Supreme Court.

I have taken the liberty of excerpting the major portions of Mr. Scalia's comprehensive testimony, and I commend it to my colleagues for careful reading and consideration.

EXCERPTS FROM STATEMENT OF ANTONIN SCALIA

Mr. Chairman and Members of the Subcommittee:

On January 30, the decision of the Supreme Court in Buckley v. Valeo, cut a gaping hole in the Federal Election Campaign Act of 1971—or, to be more faithful to the constitutional theory of what occurred, the decision found that a gaping hole already existed. The damage was so substantial that the Chief Justice, in his dissenting opinion, expressed the view that the entire Act should have been stricken down since, as altered by the Court's decision, it is "unworkable and inequitable."

In the aftermath of the Valeo case there are two sets of decisions which must be taken by Congress, one of which is extraordinarily difficult, and the other extraordinarily urgent. The extraordinarily difficult question can be taken verbatim from Chief Justice Burger's dissent: "When central segments, key operative provisions, of this Act are stricken, can what remains function in anything like the way Congress intended?"

Congress will obviously have to address this issue eventually. . . . I have no reason to believe—and indeed, the press reports since the Valeo decision lead me to doubt—that [the] process of reconsideration will be any less difficult or protracted than that which produced the 1974 Amendments.

There is, however, a second issue which must be resolved. It can, I think, be separated from the first, if not by logic, then at least by the genius for compromise and practicality which is the hallmark and the prerequisite of our democratic system. And approached with good will and with overriding concern for the national interest by all sides, it need not be as difficult an issue. I refer to the immediate, pressing necessity of making such minimal adjustments as are absolutely essential to prevent the enactment and subsequent partial invalidation of the 1974 Amendments from seriously distorting the 1976 election campaigns. Those campaigns are well under way; they have at all levels—but especially at the Presidential level—been planned and conducted on the basis of certain assumptions which, unless the Constitution requires, it would be a public disservice to upset.

It is essentially the second of these issues which I wish to discuss today. . . .

Let me begin with a brief analysis of the principal effects of the Valeo decision. These may be divided into two categories which roughly parallel the two basic issues which I have discussed above. First, there are its effects upon what might be termed the substantive provisions of the election law. A large gap has been created in that portion of the law which previously limited campaign expenditures, both by candidates and by persons acting independently of candidates. That limitation has been held invalid except as applied to candidates who voluntarily accept Federal funding. Since there is no Federal funding for House and Senate races, no expenditure limitations are applicable to any candidates there; nor, even in the Presidential campaigns, is there any limitation upon expenditures that are not "controlled by or coordinated with the candidate and his campaign."

The Court upheld limitations upon contributions to candidates, even those candidates who have not accepted Federal funding. Moreover, it made clear that "expenditures controlled by or coordinated with the candidate and his campaign" can be treated as contributions though expenditures "made totally independently of the candidate and his campaign" cannot be restricted.

The disclosure provisions of the law were upheld, with respect to all types of contributions and expenditures.

Even in the brief time since the Valeo decision, much has been said and written concerning the likely effects of these substantial changes. By limiting contributions but *not* limiting expenditures on the part of candidates who have received no Federal funding, the post-Valeo law undoubtedly increases the importance of the candidate's personal wealth. By drawing a crucial line between expenditures "controlled by or coordinated with the candidate" (which can be limited) and those which are "independent" (which cannot) the post-Valeo law creates a distinction that may be impossible to administer. Perhaps most important of all, by enabling contributions above the established limits to be funneled into campaigns only through organizations separate from the candidate himself, the post-Valeo law may sap the strength of our "political party" system, and foster elections whose major themes are selected by issue-oriented or narrowly factional groups, rather than by the candidate or even the candidate's political party.

These results . . . render a reconsideration of the Court-modified election laws essential. The total system which now exists is one which, in substantial and important respects, has been designed by no Congress and approved by no President. One of the purposes of the President's legislative proposal is to assure, insofar as possible, this needed reconsideration at a time when it can intelligently and dispassionately occur.

Turning now to the second category of effects of the Valeo decision, its effects upon the administration of the Federal Election Campaign Act: The clear holding of the Supreme Court was that the Federal Election Commission's composition violates the Appointments Clause of the Constitution as to all but its investigatory and informative powers. As you know, a majority of its members were appointed by congressional officers. As long as the Commissioners are not appointed by the President with the advice and consent of the Senate, or by the President alone, the Commission cannot perform executive, *i.e.*, enforcement functions. These include primary responsibility for bringing civil actions against violators, for making rules to carry out the Act, for making administrative determinations and for issuing advisory opinions. The Court mitigated the effects of its opinion by staying its judgment "for a period not to exceed 30 days * * * insofar as it affects the authority of the Commission to exercise the duties and powers granted it under the Act." The stay seems to mean that until 30 days from January 30, 1976, the Commission may continue to exercise all of the powers given to it by statute with respect to the substantive provisions which have been upheld. . . .

Beyond the 30-day period the legal situation, if Congress does not act, becomes more complicated. One safe statement is that there will be plenty of work for lawyers trying to figure out the application of Valeo to concrete situations. I will try to review some of the problem areas . . . To borrow from Mark Twain, the reports of the Commission's total demise are somewhat exaggerated. The Court said that the Commission could unquestionably continue to exercise those powers which are essentially of an investigative and informative nature, falling in the same general category as those powers which Con-

gress might delegate to one of its own committees." These powers were also described as "functions relating to the flow of necessary information—receipt, dissemination, and investigation."

As to those substantive provisions of the Act which are not invalidated by the Valeo decision, we are left in the following enforcement position. The criminal provisions of the Act can still be enforced. Title 18 of the United States Code includes a number of criminal provisions of the election law which are under the jurisdiction of the Fraud Section of the Criminal Division of the Department of Justice. Section 608, dealing with limitations on contributions and expenditures has, as mentioned, been truncated by the Court's decision; but the remainder of Section 608 and other provisions over which the Commission has had concurrent enforcement jurisdiction are left unaffected. These include Sections 610, 611, and 613–617 of Title 18 which deal with contributions by banks, corporations, labor unions, government contractors and foreign nationals, anonymous contributions, cash contributions and similar matters. Complaints can be filed directly with the Department of Justice or with the Commission. As the law stands now, if the Commission receives a complaint or has information concerning an apparent criminal violation it can report the matter to the Attorney General.

The Commission can, however, no longer bring civil actions to enforce the campaign financing restrictions. The law had previously vested in the Commission "primary jurisdiction with respect to the civil enforcement" of the election laws, including the power to obtain injunctive relief in certain circumstances, and to sue for return of overpayments made by the Secretary of the Treasury. As the Court read the applicable provisions, none of these powers required the concurrence or participation of the Attorney General; they were all held unconstitutional.

If Congress does not act, we will be faced with the question whether the Attorney General can, without further legislation, assume the civil enforcement responsibilities which the Commission has been compelled to abandon. . . .

Other issues involve certification of expenses, rulemaking and advisory opinions. . . .

The Court held in Valeo that assignment of these powers to the Commission was inconsistent with fundamental notions of separation of powers.

The result of this holding is a large gap in administration of the law. Unless the Congress acts, there will be no clear or easy method of handling certification of eligibility for funds. Treasury will of course be reluctant to disburse the significant amounts of money involved without following the statutory certification procedure, ven when the claim of the candidate seems clear. No one is specifically authorized to take over the prescribing of regulations. . . .

Based on these broad conclusions, it seems clear to us that legislation is urgently needed, and that temporary inaction—at least with respect to these administrative provisions—is not a realistic option. As I have suggested above, however, it is possible to segregate these features from the more substantive provisions calling for congressional reconsideration; and thus to facilitate the prompt legislative action which is essential. The purposes of the President's proposal are twofold: First, to assure the smooth operation of the campaign laws during the current elections by making the minimal administrative changes necessary for that purpose. Second, to provide assurance that there will occur at a later date congressional reconsideration of the entire election law package, as substantively altered by the Supreme Court's decision. These two objectives are not unrelated. It is our hope that those in Congress who desire major substantive change can, in the interest of prompt action, be persuaded merely to defer that legislative battle, though not to abandon it entirely. As noted in his transmittal letter to the President of the Senate, in order to set an example for the suppression of those controversial issues which can be reserved for next year, the President has on his part even refrained from including in his proposal the revision of a clearly administrative feature to which he has strenuous objection, now that the Commission has been held to be performing executive functions— namely, the one-House congressional veto of Commission rules. It is hoped that all Members of Congress—who we know have strong feelings on many substantive features of this law—can likewise be induced to submerge those feelings, for the time being, in the national interest.

Let me now outline what the President's legislation would accomplish. Section 2(a) provides for the appointment of all Commission members by the President, by and with the advice and consent of the Senate. Section 2(b) includes a number of technical conforming amendments which eliminate language relevant to the system under which Commissioners were previously appointed.

I should mention that there is one feature of Section 2 which was not directly addressed by the Supreme Court. Section 2 would eliminate the Secretary of the Senate and the Clerk of the House as non-voting, ex officio members of the Commission. We believe that the spirit of the opinion, and even the letter of the Constitution, require this result. The connection of these two officers to the legislative branch is even closer than that of the present congressionally appointed members who have the right to vote. They are not only appointed by Congress, but paid by it and removable by it. We believe that the absence of voting power is not determinative for constitutional purposes. The power to be present and to participate in discussions is the power to influence. Normally, a judge, commissioner or juror, or even a corporate director, who is disqualified for conflict of interest, is expected to excuse himself not only from voting but from deliberations as well. In Weiner v. United States, the Supreme Court stressed that an independent agency should decide matters on the merits "entirely free from the control or coercive influence, direct or indirect * * * of either the Executive or the Congress."

In Valeo the Court used similar words in describing the Commission's functions as "exercised free from day-to-day supervision of either Congress or the Executive Branch." As long as two officers of the legislative branch sit on the Commission there is thus a danger that constitutional requirements will not be met and that, at the very least, the entire law will be subject to further litigation and challenge.

Section 3 includes a number of technical provisions designed to make the new appointment provision in Section 2 dovetail with the requirements of the present law. Thus, the terms of the present commissioners are ended upon the appointment and confirmation of the new appointees. The provision forbidding present officeholders from being appointed is made inapplicable to present Commission members, so that the President would not be barred from appointing incumbents.

Section 4 provides that all actions heretofore taken by the Commission shall remain in effect until modified, superseded or repealed according to law. This reenforces the statement of the Supreme Court that past acts of the Commission and interim acts until the end of the 30-day stay are accorded de facto validity.

Secion 5 provides that the laws relating to the Federal Election Commission, contribution limitations, and primary and election financing shall not apply to any election that occurs after this year except runoffs of elections held this year. The provisions of Title 18 which include basic measures dealing with such matters as contributions by corporations, unions, and government contractors, and with anonymous and cash contributions, would not be affected. In addition, the provisions for tax credits for contributions for candidates to public office and the $1.00 tax check-off system would be retained. Thus, potential methods of financing would be available even if there were a halt in the authority to disburse funds. In addition, this provision would not terminate the Commission. It could continue to work on matters relating to the 1976 elections as long after those elections as necessary, or on matters not related to a specific election.

We hope that this cut-off provision will facilitate passage of the bill we have presented. By providing for future lapse of the now distorted 1974 substantive changes, it is intended to assure—and we believe will be successful in achieving—thorough reconsideration of these problems in 1977 when there will be time to act deliberately and on the basis of experience. There is no time to resolve fundamental differences now.

FORMER DEFENSE SECRETARY JAMES SCHLESINGER'S ANALYSIS OF THE PROBLEMS IN AMERICAN FOREIGN AND DEFENSE POLICY-MAKING TODAY

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 25, 1976

Mr. KEMP. Mr. Speaker, our former Secretary of Defense, Dr. James R. Schlesinger, has made a penetrating analysis of what is probably at the heart of our problems in American foreign and defense policymaking of late. He has shown that it lies in the attitudes of too many toward both America's role in preserving freedom and protecting our security interests and toward the Soviet Union's most likely intentions and actions in the years ahead if America allows current trends to continue.

It is as dangerous to bury our heads in the sand in the face of Communist aggression today as it was when we buried our heads in the sand in the face of Nazi, Fascist aggression in the late thirties and early forties. We buried our heads in the sand of artificial neutrality then, and it lead to war. What will be the consequences of our burying our heads again?

If anyone has any question about the accuracy of Dr. Schlesinger's analysis—which appeared recently in Fortune magazine—I would encourage them to read the translation of Leonid Brezhnev's address this week before the 25th Party Congress in Moscow. Those remarks, which the Washington Star reported as "exuding confidence," show quite clearly that the Soviet Union is engaged in exactly what Dr. Schlesinger says they are.

Congress cannot abdicate its constitutional role in foreign and defense policymaking. It is time this former Secretary

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Texts of Messages, News Conference

Federal Election Commission

Following is the White House text of President Ford's proposal for continuing the Federal Election Commission: (Story, p. 435)

TO THE CONGRESS OF THE UNITED STATES:

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 con-

[redacted]

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

Veto Text

Following is the White House text of President Ford's Feb. 13 veto of HR 5247, the Public Works Employment Act: (Story, p. 415)

TO THE HOUSE OF REPRESENTATIVES:

[redacted]

preferential treatment to those units of government with the highest taxes without any distinction between those jurisdictions which have been efficient in holding down costs and those that have not.

Fifth, under this legislation it would be almost impossible to assure taxpayers that these dollars are being responsibly and effectively spent.

Effective allocation of over $3 billion for public works on a project-by-project

THE WHITE HOUSE

WASHINGTON

March 3, 1976

Campaign

MEMORANDUM FOR THE VICE PRESIDENT

FROM: PHILIP BUCHEN P.W.B.

SUBJECT: Campaign Reform Legislation

This is in response to your request for a listing of the problems raised by the legislation -- the so-called "Hays" Bill -- now being considered in the House (H.R. 12015) and Senate (S. 3065). Both bills are substantially the same. The House Administration Committee is continuing to mark up the bill, while the Senate Rules Committee has reported its bill to the floor. Floor action is expected in the Senate by early next week.

Four principal problems are raised by this legislation:

a. Existing law establishing ground rules for the operation of corporate political committees is substantially altered to their disadvantage as compared to similar committees of labor unions.

b. Substantial constraints are placed on the independence of the Federal Election Commission with respect to the promulgation of regulations, issuance of advisory opinions and enforcement of the election laws.

c. The penalties which are currently available for violation of the election laws are substantially weakened and, in some respects, eliminated.

d. In several instances "improvements" proposed by the Hays Bill will lead to further uncertainty and litigation in order to ascertain Congressional intent and to resolve additional Constitutional questions.

These problems are detailed at Tab A, based on the Senate bill.

PROBLEMS PRESENTED BY S. 3065
TO RECONSTITUTE THE
FEDERAL ELECTION COMMISSION

I. New Limitations on Corporate and Union Political Action Committees:

A. Section III establishes a new section 321 of the Federal Election Campaign Act (FECA) which would permit a corporation to expend corporate funds or funds from a separate segregated account for the purpose of soliciting funds only from shareholders, executive or administrative personnel (employees paid on a salary rather than hourly basis, and who have policy-making or supervisory responsibilities) and their families. Present law permits corporations to use corporate funds to solicit from employees and shareholders. The bill would also change the present law which places no restrictions on who may be solicited with funds from a segregated account.

B. This section prohibits the solicitation by both corporate and union PAC's of an estimated 70 million non-union employees. By a 5 to 4 margin, the Senate Rules Committee voted down an Amendment to the bill that would have permitted solicitation of such employees by union and corporate PAC's. It thus limits the participation of a majority of employees from one form of participation in the political process.

C. Section III of the bill appears to limit the proliferation of both union and corporate PAC's by providing that "all contributions made by political committees established, financed, maintained, or controlled by any person or persons, including any parent, subsidiary, branch, division, department, affiliate, or local unit of such person, or by any group of persons, shall be considered to have been made by a single political committee...." However, the statute then provides that "a political committee of a national organization shall not be precluded from contributing to a candidate or committee merely because the committee was affiliated with a multi-candidate political committee which has made the maximum contribution it is permitted to make to a candidate or committee." The effect of this provision is to allow state and local COPEs to give their candidates the maximum contribution even if the national COPE has given its maximum. Affiliated corporate PAC's would not be able to do this.

II. Undue Limitations on Independent Regulation and Enforcement of the Election Laws:

A. Section 109 of the bill continues the current requirement that all regulations proposed by the Commission be submitted to the Congress subject to a one-house veto. The bill provides that any motion of disapproval reported by any House committee is highly privileged and not subject to amendment on the floor. The one-house veto is unconstitutional with respect to the regulations of an independent agency performing Executive functions. The result of the present veto provision has been to keep every regulation submitted by the FEC to date from becoming effective.

B. Section 107 requires that within 30 days of issuing an Advisory Opinion on a matter not covered by regulations, the Commission must reduce the opinion to regulations of general applicability which are thus subject to a one-house veto. This requirement is retroactive to October 15, 1974, and would effectively permit the Congress to reverse any Advisory Opinion that has been issued.

C. Section 101 goes beyond the requirement in the present law that all decisions be by at least a 4 to 2 vote to require that in any such vote, there be two members of each party voting in favor. This would create chaos on the Commission, which has had shifting coalitions on a number of issues, with three members of a party voting with a member of the other party. This would effectively reverse the "Sun Pac" decision which was decided on a 4 to 2 vote with two Democratic members dissenting.

D. Section 108 affirmatively requires that the Commission must attempt to achieve voluntary compliance when it suspects a violation of the law. Although not as restrictive as the House bill which requires that no less than 30 days be spent in attempting to gain voluntary compliance, it still imposes unnecessary burdens on the Commission, which may inhibit it from taking prompt and appropriate action in Court.

III. Weakening of the Penalties Provided in the Present Law:

A. Section 108 of the Bill provides, in part, that a "conciliation agreement, unless violated, shall constitute an absolute bar to any further action by the Commission, including bringing a civil proceeding...." This may confuse any criminal prosecution by permitting a defendant to argue that prosecution is barred because he stopped as soon as he was caught -- even though the violation may have been serious. This can also be read as a restriction on the power of the Department of Justice to enforce the criminal provisions over which it must constitutionally retain jurisdiction.

B. Section 108 raises additional uncertainty as to Justice's authority to enforce the criminal provisions of FECA by its preference for civil enforcement, and the exclusive vesting of civil enforcement authority in the Commission. Section 101 also raises questions on Justice's authority, in providing that the "Commission shall administer, seek to obtain compliance with, and formulate policy with respect to, this Act and chapter 95 and chapter 96 of the Internal Revenue Code of 1954."

C. Section 111 of the bill also reduces from felonies to misdemeanors the maximum penalty for violation of certain provisions of FECA. It eliminates altogether criminal penalties for such provisions as the fraudulent misrepresentation of campaign authority or acceptance of excessive honorariums. Possible deterrents to violation of the law are thus substantially lessened.

IV. The proposed amendments in the law are certain to bring new litigation and introduce further uncertainty in the current elections:

A. Section 111 would provide a new section 320 of FECA which would consider the "financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents" as an expenditure subject to the candidate's expenditure limitation (if he receives Federal matching funds), even though the use of his materials was unauthorized or without his knowledge.

B. Section 111 would provide a new section 323 to FECA which shall require that any communication not authorized by the candidate shall clearly and conspicuously so state on its face, and also state the name of the person that financed the expenditure. This is different from the disclosure requirement of 2 U.S.C. 434(e) upheld by the Court in Buckley v. Valeo, at pp. 75-76, and raises again the problems presented by the Supreme Court's decision in Tulley v. California, 362 U.S. 60 (1959). In that case, the Court invalidated an ordinance of the City of Los Angeles that forbade distribution in any place under any circumstances, of any handbill which did not have printed thereon the name and address of the person who prepared, distributed or sponsored the handbill. The Court determined that this identification requirement tended to restrict the freedom to distribute information and thereby freedom of expression. Although not conclusive as to the constitutionality of this amendment, it is typical of litigation that can be brought if such amendments are passed.

C. The provisions of Section 107 with respect to Advisory Opinions leaves uncertainty as to whether the Advisory Opinion itself will stand disapproved if the regulation later promulgated is disapproved by Congress and whether it will thus be necessary for the recipient of an opinion to wait for congressional action or non-action in order to rely on the opinion.

D. Section 107 precludes the Commission from issuing more than one advisory opinion relating to a transaction or activity; thus, persons other than the first to ask for such an opinion will not be able to rely on that opinion as a bar to future enforcement proceedings.

THE WHITE HOUSE

WASHINGTON

March 3, 1976

MEMORANDUM FOR THE VICE PRESIDENT

FROM: PHILIP BUCHEN P.W.B.

SUBJECT: Campaign Reform Legislation

This is in response to your request for a listing of the problems raised by the legislation -- the so-called "Hays" Bill -- now being considered in the House (H.R. 12015) and Senate (S. 3065). Both bills are substantially the same. The House Administration Committee is continuing to mark up the bill, while the Senate Rules Committee has reported its bill to the floor. Floor action is expected in the Senate by early next week.

Four principal problems are raised by this legislation:

a. Existing law establishing ground rules for the operation of corporate political committees is substantially altered to their disadvantage as compared to similar committees of labor unions.

b. Substantial constraints are placed on the independence of the Federal Election Commission with respect to the promulgation of regulations, issuance of advisory opinions and enforcement of the election laws.

c. The penalties which are currently available for violation of the election laws are substantially weakened and, in some respects, eliminated.

d. In several instances "improvements" proposed by the Hays Bill will lead to further uncertainty and litigation in order to ascertain Congressional intent and to resolve additional Constitutional questions.

These problems are detailed at Tab A, based on the Senate bill.

PROBLEMS PRESENTED BY S. 3065
TO RECONSTITUTE THE
FEDERAL ELECTION COMMISSION

I. New Limitations on Corporate and Union Political Action Committees:

A. Section III establishes a new section 321 of the Federal Election Campaign Act (FECA) which would permit a corporation to expend corporate funds or funds from a separate segregated account for the purpose of soliciting funds only from shareholders, executive or administrative personnel (employees paid on a salary rather than hourly basis, and who have policy-making or supervisory responsibilities) and their families. Present law permits corporations to use corporate funds to solicit from employees and shareholders. The bill would also change the present law which places no restrictions on who may be solicited with funds from a segregated account.

B. This section prohibits the solicitation by both corporate and union PAC's of an estimated 70 million non-union employees. By a 5 to 4 margin, the Senate Rules Committee voted down an Amendment to the bill that would have permitted solicitation of such employees by union and corporate PAC's. It thus limits the participation of a majority of employees from one form of participation in the political process.

C. Section III of the bill appears to limit the proliferation of both union and corporate PAC's by providing that "all contributions made by political committees established, financed, maintained, or controlled by any person or persons, including any parent, subsidiary, branch, division, department, affiliate, or local unit of such person, or by any group of persons, shall be considered to have been made by a single political committee...." However, the statute then provides that "a political committee of a national organization shall not be precluded from contributing to a candidate or committee merely because the committee was affiliated with a multi-candidate political committee which has made the maximum contribution it is permitted to make to a candidate or committee." The effect of this provision is to allow state and local COPEs to give their candidates the maximum contribution even if the national COPE has given its maximum. Affiliated corporate PAC's would not be able to do this.

II. Undue Limitations on Independent Regulation and Enforcement of the Election Laws:

A. Section 109 of the bill continues the current requirement that all regulations proposed by the Commission be submitted to the Congress subject to a one-house veto. The bill provides that any motion of disapproval reported by any House committee is highly privileged and not subject to amendment on the floor. The one-house veto is unconstitutional with respect to the regulations of an independent agency performing Executive functions. The result of the present veto provision has been to keep every regulation submitted by the FEC to date from becoming effective.

B. Section 107 requires that within 30 days of issuing an Advisory Opinion on a matter not covered by regulations, the Commission must reduce the opinion to regulations of general applicability which are thus subject to a one-house veto. This requirement is retroactive to October 15, 1974, and would effectively permit the Congress to reverse any Advisory Opinion that has been issued.

C. Section 101 goes beyond the requirement in the present law that all decisions be by at least a 4 to 2 vote to require that in any such vote, there be two members of each party voting in favor. This would create chaos on the Commission, which has had shifting coalitions on a number of issues, with three members of a party voting with a member of the other party. This would effectively reverse the "Sun Pac" decision which was decided on a 4 to 2 vote with two Democratic members dissenting.

D. Section 108 affirmatively requires that the Commission must attempt to achieve voluntary compliance when it suspects a violation of the law. Although not as restrictive as the House bill which requires that no less than 30 days be spent in attempting to gain voluntary compliance, it still imposes unnecessary burdens on the Commission, which may inhibit it from taking prompt and appropriate action in Court.

III. Weakening of the Penalties Provided in the Present Law:

A. Section 108 of the Bill provides, in part, that a "conciliation agreement, unless violated, shall constitute an absolute bar to any further action by the Commission, including bringing a civil proceeding...." This may confuse any criminal prosecution by permitting a defendant to argue that prosecution is barred because he stopped as soon as he was caught -- even though the violation may have been serious. This can also be read as a restriction on the power of the Department of Justice to enforce the criminal provisions over which it must constitutionally retain jurisdiction.

B. Section 108 raises additional uncertainty as to Justice's authority to enforce the criminal provisions of FECA by its preference for civil enforcement, and the exclusive vesting of civil enforcement authority in the Commission. Section 101 also raises questions on Justice's authority, in providing that the "Commission shall administer, seek to obtain compliance with, and formulate policy with respect to, this Act and chapter 95 and chapter 96 of the Internal Revenue Code of 1954."

C. Section 111 of the bill also reduces from felonies to misdemeanors the maximum penalty for violation of certain provisions of FECA. It eliminates altogether criminal penalties for such provisions as the fraudulent misrepresentation of campaign authority or acceptance of excessive honorariums. Possible deterrents to violation of the law are thus substantially lessened.

IV. The proposed amendments in the law are certain to bring new litigation and introduce further uncertainty in the current elections:

A. Section 111 would provide a new section 320 of FECA which would consider the "financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents" as an expenditure subject to the candidate's expenditure limitation (if he receives Federal matching funds), even though the use of his materials was unauthorized or without his knowledge.

B. Section 111 would provide a new section 323 to FECA which shall require that any communication not authorized by the candidate shall clearly and conspicuously so state on its face, and also state the name of the person that financed the expenditure. This is different from the disclosure requirement of 2 U.S.C. 434(e) upheld by the Court in Buckley v. Valeo, at pp. 75-76, and raises again the problems presented by the Supreme Court's decision in Tulley v. California, 362 U.S. 60 (1959). In that case, the Court invalidated an ordinance of the City of Los Angeles that forbade distribution in any place under any circumstances, of any handbill which did not have printed thereon the name and address of the person who prepared, distributed or sponsored the handbill. The Court determined that this identification requirement tended to restrict the freedom to distribute information and thereby freedom of expression. Although not conclusive as to the constitutionality of this amendment, it is typical of litigation that can be brought if such amendments are passed.

C. The provisions of Section 107 with respect to Advisory Opinions leaves uncertainty as to whether the Advisory Opinion itself will stand disapproved if the regulation later promulgated is disapproved by Congress and whether it will thus be necessary for the recipient of an opinion to wait for congressional action or non-action in order to rely on the opinion.

D. Section 107 precludes the Commission from issuing more than one advisory opinion relating to a transaction or activity; thus, persons other than the first to ask for such an opinion will not be able to rely on that opinion as a bar to future enforcement proceedings.

FEC

THE WHITE HOUSE

WASHINGTON

March 8, 1976

MEMORANDUM FOR: JACK MARSH

FROM: PHIL BUCHEN P.

Attached is a draft response to Mr. Robert Magill regarding current legislation to reconstitute the FEC and make other changes in the election laws.

DRAFT

Dear Bob:

Thank you for your letter of March 1 in support of the President's proposal for simple reconstitution of the Federal Election Commission.

The President shares your concern with respect to the possible disruption and uncertainty in the 1976 election campaigns that the amendments now being considered in Congress could cause. Additionally, he is concerned with the attempts being made in Congress to limit the independence of the Commission and to weaken the enforcement mechanisms that are contained in the present law. For your information, I have enclosed a copy of the President's latest statement in this regard.

Your interest is appreciated.

With best wishes,

Sincerely,

John O. Marsh, Jr.
Counsellor

Mr. Robert F. Magill
Vice President
General Motors Corporation
General Motors Building
Detroit, Michigan 48202

GENERAL MOTORS CORPORATION
GENERAL MOTORS BUILDING
DETROIT, MICHIGAN 48202

ROBERT F. MAGILL
VICE PRESIDENT

March 1, 1976

Mr. John O. Marsh, Jr.
Counsellor to the President
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Jack:

Unfortunately it appears that some members of Congress are taking advantage of the recent Supreme Court ruling on the Federal Elections Commission to attempt an extensive revision of the Federal Election Campaign law. It is our understanding that the proposals under consideration would severely limit the activity of corporate political action committees while imposing no similar limitations on other organizations. If enacted, these proposals would unnecessarily add controversy to the elections process.

We strongly support the President's call for a simple reconstitution of the Federal Elections Commission. This is not the time to make ill-considered changes in our relatively new campaign law and we hope that the President will not accept any bill which contains such changes.

Sincerely yours,

R. F. Magill

Wednesday 3/10/76

7:05 Bob Wolthuis said you should call Congressman Wiggins Thursday morning because Wiggins and Rhodes are going to hold a press conference and do some damage to the Federal Election Commission bill that was reported out of the House Committee today and apparently it is pretty bad. And before Wiggins and Rhodes say anything they want to make sure they're in harmony with the White House.

I told Barry, and he will be in his office if you need to check anything with him. He said he has not seen a copy of the bill yet.

Monday 3/15/76

5:05 Tom Cooper of the House Administration Committee 225-8281
spoke to you about the minority views on the House version of the Federal Election campaign and said they would be sending something over this afternoon.

They will be sending it over tomorrow morning instead.

H 330 Capitol

Tues 3/16
10:45 requested
messenger to
pick it up.

THE WHITE HOUSE

WASHINGTON

March 15, 1976

MEMORANDUM FOR: JACK MARSH
MAX FRIEDERSDORF

FROM: PHIL BUCHEN P.

SUBJECT: Federal Election Campaign Act Amendments of 1976, H. R. 12406

With regard to our meeting this morning with Congressmen Wiggins, Devine and Frenzel, the minority members of the House Administration Committee will file later this week a Minority Report with dissenting views on the Hays Bill to amend the Federal Election Campaign Act.

Additionally, the minority members, with the possible exception of Jim Cleveland, will offer the following amendments to the Hays Bill:

(1) To strike the provisions with respect to Advisory Opinions.

(2) To strike the provision for termination of the FEC after March 1977 by a one-House resolution.

(3) To strike the provision that only violations with respect to contributions or expenditures which in the aggregate exceed $5,000 may be criminally prosecuted.

(4) To amend the provision that would bar investigation by the FEC of the activities of the staff of any holder of Federal elective office.

(5) To amend the provision that allows for an item veto of Commission regulations and the preferential treatment for such resolutions. (This would effectively continue the one-House veto provision in the present law.)

(6) To amend the provision relating to union and corporate PACs to permit the solicitation by corporations of all non-union salaried employees and to require the disclosure of expenditures by unions and corporations for communications with members or salaried employees, respectively, regarding clearly identifiable candidates and non-partisan registration and get-out-the-vote campaigns.

The minority members will also seek leave to offer a substitute bill and/or a motion to recommit the Hays Bill with instructions to report out a bill that would simply reconstitute the Commission. They have not yet decided whether to include a termination provision, although we have suggested the provision that was proposed by the President.

cc: Jim Connor

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 tracts 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.